

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: The Professional Staff of the Committee on Commerce and Tourism

BILL: CS/SB 1638

INTRODUCER: Infrastructure and Security Committee and Senator Lee

SUBJECT: Commercial Motor Vehicles

DATE: April 5, 2019

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Proctor</u>	<u>Miller</u>	<u>IS</u>	<u>Fav/CS</u>
2.	<u>McKay</u>	<u>McKay</u>	<u>CM</u>	<u>Favorable</u>
3.	_____	_____	<u>RC</u>	_____

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 1638 revises numerous provisions relating to commercial motor vehicles (CMV). The bill:

- Updates various CMV regulations to address compatibility concerns with federal regulations;
- Removes exceptions regarding the visibility of headlamps and turn signals by waste collection vehicles under specified circumstances;
- Provides an effective date for certain requirements relating to the use of electronic logging devices and hours of service support documents;
- Removes language requiring intrastate CMVs that are not carrying hazardous materials to comply with certain federal regulations providing maximum drive time requirements;
- Removes a duplicative \$100 fine for falsifying hours of service records;
- Amends a provision to correct a federal regulations reference that allows a short-haul driver, not transporting hazardous materials requiring a placard, to be exempt from maintaining records of duty status;
- Conforms to federal regulation by adding the terms “gross vehicle weight rating” and “gross combined vehicle weight rating” for determining which vehicles, not transporting hazardous materials, meet the 26,001 pound threshold requirement for select intrastate commerce exemptions;
- Removes an exemption from federal regulations regarding transporting petroleum products due to the inclusion of flammable liquids that could require a hazardous material placard; and
- Requires charter buses operating interstate to register as apportionable vehicles.

The bill may have an indeterminate impact to the CMV industry associated with changes to the CMV regulations. In addition, failure to adopt statutory changes to comply with federal regulations may jeopardize federal funding for the state's motor carrier safety program.

II. Present Situation:

Federal Motor Carrier Safety Administration Compatibility

The primary mission of the Federal Motor Carrier Safety Administration (FMCSA), within the United States Department of Transportation, is to prevent commercial motor vehicle-related fatalities and injuries.¹ In 2007, the FMCSA presented to Florida a Motor Carrier Safety Assistance Program (MSCAP) review, which concluded that Florida Statutes have multiple compatibility concerns with federal CMV safety regulations.²

Section 316.003(13), F.S. defines "commercial motor vehicle" as any self-propelled or towed vehicle used on public highways in commerce to transport passengers or cargo, if such vehicle:

- Has a gross vehicle weight rating of 10,000 pounds or more;
- Is designed to transport more than 15 passengers, including the driver; or
- Is used in the transportation of materials found to be hazardous for the purposes of the Hazardous Materials Transportation Act³, as amended.

Section 316.302(1)(a), F.S., provides that all owners and drivers of CMVs operating on the state's public highways while engaged in interstate commerce are subject to the following parts of 49 C.F.R.:

- 382 Controlled Substance and Alcohol Use Testing;
- 385 Safety Fitness Procedures;
- 390 Federal Motor Carrier Safety Regulations; General;
- 391 Qualifications of Drivers and Longer Combination Vehicle Driver Instructors;
- 392 Driving of Commercial Motor Vehicles;
- 393 Parts and Accessories Necessary for Safe Operation;
- 395 Hours of Service for Drivers;
- 396 Inspection, Repair, and Maintenance; and
- 397 Transportation of Hazardous Materials; Driving and Parking Rules.

Section 316.302(1)(b), F.S., provides that, with certain exceptions, all owners or drivers of CMVs engaged in intrastate commerce are subject to the following parts of 49 C.F.R. except as it relates to the definition of bus, as those rules and regulations existed on December 31, 2012:

- 382 Controlled Substance and Alcohol Use Testing;
- 383 Commercial Driver's License Standards; Requirements and Testing;
- 385 Safety Fitness Procedures;
- 390 Federal Motor Carrier Safety Regulations; General;

¹ Federal Motor Carrier Safety Administration, available at: <https://www.fmcsa.dot.gov/mission/about-us> (last visited April 5, 2019).

² 2007 Florida State MSCAP Review (Copy on file with Senate Committee on Infrastructure and Security).

³ 49 U.S.C. ss. 1801 *et seq.*

- 391 Qualifications of Drivers and Longer Combination Vehicle Driver Instructors;
- 392 Driving of Commercial Motor Vehicles;
- 393 Parts and Accessories Necessary for Safe Operation;
- 395 Hours of Service for Drivers;
- 396 Inspection, Repair, and Maintenance; and
- 397 Transportation of Hazardous Materials; Driving and Parking Rules.

Federal regulations define “bus” as “any motor vehicle designed, constructed, and/or used for the transportation of passengers, including taxicabs.”⁴ In its 2007 review, the FMCSA found that Florida’s exemption for taxicabs was not compatible with federal regulations, which include taxicabs in the definition of “bus.”⁵

The FMCSA also found that the statutory provision exempting trucks transporting solid waste and recyclable materials with specified mechanisms operating at speeds of less than 20 miles per hour from certain lighting provisions is incompatible with federal regulations,⁶ which do not contain a similar exemption, and that federal regulations expressly prohibit lamps and reflectors from being obscured.⁷

Federal regulations provide that with some exceptions, CMV drivers are required to be at least 21 years of age.⁸ Federal regulations also provide maximum drive time requirements for property carrying vehicles.⁹ Section 316.302(2)(a), F.S., provides that a person operating a CMV solely in intrastate commerce and not transporting any hazardous material in amounts that require placarding¹⁰ is not required to comply with the above-referenced federal regulations.

Federal regulations provide hours of service rules for CMV drivers.¹¹ Florida law also provides that, except as provided in federal regulations, a person operating a CMV solely in intrastate commerce and not transporting any hazardous material may not drive:

- More than 12 hours following 10 consecutive hours off duty; or
- For any period after the end of the 16th hour after coming on duty following 10 consecutive hours off duty.¹²

These provisions do not apply to drivers of utility service vehicles.¹³

⁴ 49 C.F.R. s. 390.5T.

⁵ 2007 Florida State MSCAP Review, at p. 2.

⁶ 49 C.F.R. 393 Subpart B.

⁷ 2007 Florida State MSCAP Review, at p. 4.

⁸ 49 C.F.R. s. 391.11(b)(1).

⁹ 49 C.F.R. s. 395.3(a) and (b).

¹⁰ Placarding is required pursuant to 49 C.F.R. part 172. In this analysis, everywhere there is a discussion regarding the transportation of hazardous materials, it is assumed to be in amounts that require placarding.

¹¹ 49 C.F.R. s. 395.

¹² Section 316.302(2)(b), F.S.

¹³ 49 C.F.R. s. 395.2, defines “utility service vehicle” as any commercial motor vehicle:

(1) Used in the furtherance of repairing, maintaining, or operating any structures or any other physical facilities necessary for the delivery of public utility services, including the furnishing of electric, gas, water, sanitary sewer, telephone, and television cable or community antenna service;

Section 316.302(2)(c), F.S., specifies that, except as provided in the federal hours of service rules¹⁴, a person operating a CMV solely in intrastate commerce not transporting any hazardous material may not drive after having been on duty more than 70 hours in any period of seven consecutive days, or more than 80 hours in any period of eight consecutive days if the motor carrier operates every day of the week. Upon request of the Department of Highway Safety and Motor Vehicles (HSMV), motor carriers are required to furnish time records or other written verification so that the HSMV can determine compliance with the hours of service requirements. Falsification of time records is subject to a civil penalty not to exceed \$100.

Section 316.302(2)(d), F.S., provides that a person operating a CMV solely in intrastate commerce not transporting any hazardous material within a 150 air-mile radius is not required to comply with federal provisions regarding a driver's record of duty status¹⁵ if the requirements of certain federal rules regarding short-haul operations¹⁶ are met. If a driver is not released from duty within 12 hours after the driver arrives for duty, the motor carrier must maintain documentation of the driver's driving times throughout the duty period.

Section 316.302(2)(f), F.S., provides that a person who is operating a CMV having a declared gross vehicle weight of less than 26,001 pounds operating solely in intrastate commerce and who is not transporting hazardous materials or who is transporting petroleum products¹⁷ is exempt from s. 316.302(1), F.S. However, such person must comply with 49 C.F.R. parts 382, 392, and 393, and with 49 C.F.R. ss. 396.3(a)(1) and 396.9.

In its 2007 findings, the FMCSA determined that s. 316.302(2)(f), F.S., is not compatible with federal regulations since it exempts vehicles transporting petroleum products and the state definition of petroleum products includes liquids that could require placarding, while federal regulations do not allow drivers of vehicles requiring placarding to be exempt from applicable requirements.¹⁸

III. Effect of Proposed Changes:

The bill amends various provisions of ss. 316.302(1) and (2), F.S., addressing issues related to Florida's CMV regulations and their incompatibility with federal regulation.

(2) While engaged in any activity necessarily related to the ultimate delivery of such public utility services to consumers, including travel or movement to, from, upon, or between activity sites (including occasional travel or movement outside the service area necessitated by any utility emergency as determined by the utility provider); and

(3) Except for any occasional emergency use, operated primarily within the service area of a utility's subscribers or consumers, without regard to whether the vehicle is owned, leased, or rented by the utility.

¹⁴ 49 C.F.R. s. 395.1.

¹⁵ 49 C.F.R. 395.8.

¹⁶ 49 C.F.R. s. 395.1(e)(1)(iii) and (v) are various rules relating to short-haul operations.

¹⁷ Section 376.301(33), F.S., defines "petroleum product" as "any liquid fuel commodity made from petroleum, including, but not limited to, all forms of fuel known or sold as diesel fuel, kerosene, all forms of fuel known or sold as gasoline, and fuels containing a mixture of gasoline and other products, excluding liquefied petroleum gas and American Society for Testing and Materials grades no. 5 and no. 6 residual oils, bunker C residual oils, intermediate fuel oils used for marine bunkering with a viscosity of 30 and higher, asphalt oils, and petrochemical feedstocks."

¹⁸ 2007 Florida State MSCAP Review, at p. 3.

The bill amends s. 316.302(1)(a), F.S., to provide that all owners and drivers of commercial motor vehicle that are operated on the public highways of Florida while engaged in interstate commerce are subject to parts 383 and 386 of 49 C.F.R.

The bill amends s. 316.302(1)(b), F.S., removing the exception for the federal definition of a bus and updating the date of adoption to December 31, 2018, which updates the state law referencing the applicable federal rules applicable to intrastate CMVs.

The bill amends s. 316.302(1)(d), F.S., removing exceptions regarding headlamps and turn signals by waste collection vehicles under specified circumstances.

The bill creates s. 316.302(1)(e), F.S., providing that the requirement for electronic logging devices and hours of service support documents¹⁹ do not go into effect for motor carriers engaged in intrastate commerce, and not carrying hazardous materials in amounts requiring placarding, until December 31, 2019.

The bill amends s. 316.302(2)(a), F.S., no longer requiring intrastate CMVs that are not carrying hazardous materials to comply with certain federal regulations providing maximum drive time requirements. Therefore, these vehicles will not be required to comply with 49 C.F.R. 395.3, documenting the maximum driving time for operators of property carrying vehicles. These drivers continue to be subject to the maximum driving times required by state law.

The bill amends s. 316.302(2)(c), F.S., by removing the \$100 fine for falsifying hours of service records, because it is duplicative of the fine provided in the CMV penalties statute.²⁰

The bill amends s. 316.302(2)(d), F.S., to update and correct a reference to federal regulations, 49 C.F.R. 395.1(e)(1)(ii) and (iii)(A) and (C) and (v), that allow a short-haul driver, not transporting hazardous materials requiring a placard, to be exempt from maintaining documentation of the driver's driving times. In order to be exempt, a driver must return to the work reporting location and be released from work within 12 consecutive hours and have either 10 or 8 hours off.

The bill amends s. 316.302(2)(f), F.S., to remove specific exemptions from federal regulations for drivers transporting petroleum products due to the inclusion of flammable liquids that could require a hazardous material placard. The paragraph is also amended to refer to the federal criteria for the exemption: CMVs having a *gross vehicle weight*, *gross vehicle weight rating*, and *gross combined weight rating* of less than 26,001 pounds, instead of a declared gross vehicle weight.

The bill deletes s. 316.302(2)(j), F.S., removing the requirement that a qualified driver who operates a CMV in intrastate commerce only, and who does not transport hazardous materials in amounts that require placarding, be exempt from the diabetes requirement for medical examination of 49 C.F.R. part 391, subpart E, ss. 391.41(b)(3) and 391.41(c).

¹⁹ Electronic Logging Devices and Hours of Service Supporting Documents, 80 Fed. Reg. 78291 (Dec. 16, 2015), <https://www.federalregister.gov/documents/2015/12/16/2015-31336/electronic-logging-devices-and-hours-of-servicesupporting-documents> (last visited April 5, 2019).

²⁰ Section 316.3025(3)(b)1., F.S.

The effective date of the bill is October 1, 2019.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

There is a potential impact to the CMV industry associated with changes to the CMV regulations contained in the bill; however, the impact is indeterminate at this time.

C. Government Sector Impact:

According to the FMCSA, failure to adopt regulations to comply with federal compatibility requirements by February 16, 2019, may jeopardize federal funding for the state's motor carrier safety program for federal fiscal year 2019.²¹ Federal funding for the

²¹ William A. Quade, Associate Administrator for Enforcement (Federal Motor Carrier Safety Administration), letter to Colonel Gene Spaulding, Director (Florida Highway Patrol), August 10, 2018 TS (on file with the Committee on Infrastructure and Security).

state's motor carrier safety program for Fiscal Year 2018-2019 totaled \$12,778,315, and when matched with state funds in the amount of \$2,254,997, totaled \$15,033,312.²²

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends section 316.302 of the Florida Statutes.

IX. Additional Information:

- A. **Committee Substitute – Statement of Substantial Changes:**
(Summarizing differences between the Committee Substitute and the prior version of the bill.)

CS by Infrastructure and Security on April 2, 2019:

- The CS makes a technical change to conform to federal requirements, using the word “and” instead of “or” in order to use gross vehicle weight, gross vehicle weight rating, and gross combined weight rating to determine eligibility for an exemption of certain federal requirements.

- B. **Amendments:**

None.

This Senate Bill Analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.

²² Email from Kevin Jacobs, Deputy Legislative Affairs Director, Department of Highway Safety and Motor Vehicles, MCSAP funds, (February 7, 2019).