

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 1151 Department of Highway Safety and Motor Vehicles

SPONSOR(S): Brannan

TIED BILLS: **IDEN./SIM. BILLS:** SB 1134

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Tourism, Infrastructure & Energy Subcommittee		Johnson	Keating
2) Infrastructure & Tourism Appropriations Subcommittee			
3) Commerce Committee			

SUMMARY ANALYSIS

The bill is a comprehensive bill relating to the Department of Highway Safety and Motor Vehicles (DHSMV). In summary, the bill:

- Adopts Federal Motor Carrier Safety Administration (FMCSA) regulations for commercial motor vehicles (CMV) as such regulations exist on December 31, 2020, and provides an additional day for CMV drivers to provide written notice that certain violations were corrected.
- Clarifies that safety belt usage requirements apply to a motor vehicle that is operated and stationary on the public highways of this state.
- Transfers the authority to conduct compliance reviews on non-public sector buses from the Department of Transportation (DOT) to DHSMV to conform to the previous transfer of CMV enforcement from DOT to DHSMV.
- Conforms Florida's odometer disclosure requirements to federal regulations.
- Requires motor carriers whose registration has been suspended to return their license plates.
- Requires DHSMV to deny registrations under the International Registration Plan for motor carriers meeting specified requirements.
- Permanently disqualifies anyone convicted of human trafficking through the use of a CMV from obtaining a commercial driver license.
- Adds texting while driving and using a hand-held mobile telephone while driving as serious disqualifying offenses on a commercial driver license.

The bill does not appear to impact state or local government revenues or expenditures. See Fiscal Comments.

The bill has an effective date of July 1, 2021.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Adoption of Federal Commercial Motor Vehicle Regulations

Current Situation

Florida law provides that all owners and drivers of commercial motor vehicles¹ (CMVs) operating on the public highways in interstate commerce are subject to the following Federal Motor Carrier Safety Administration (FMCSA)² regulations:³

49 CFR Part	Heading
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
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
397	Transportation of Hazardous Materials; Driving and Parking Rules

However, Florida law provides that CMV drivers *or* owners engaged in *intrastate* commerce are only subject to FMCSA regulations as they existed in December 31, 2018.⁴

Since 2018, the FMCSA has adopted final rules on controlled substance testing and hours of service regulations.

Beginning January 1, 2020, the minimum rate for random controlled substance testing for drivers of CMVs requiring a commercial driver license (CDL) was increased from 25 percent to 50 percent per year. Since all owners and drivers of CMVs engaged in intrastate commerce are subject to the rules as they existed on December 31, 2018, the random controlled substances testing rate remains at 25 percent for intrastate drivers.⁵

Beginning September 29, 2020, FMCSA revised its hours-of-service regulations providing greater flexibility to CMV drivers subject to those rules, including revisions to the rules on required breaks/rest periods, additional exceptions during adverse conditions, and modifications to exceptions for short-haul trips.⁶

¹ Section 316.003(13), F.S., defines the term “commercial motor vehicle” as any self-propelled or towed vehicle used on the 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 Act, as amended.

² The Federal Motor Carrier Safety Administration's (FMCSA) mission is to prevent commercial motor vehicle-related fatalities and injuries. Activities of FMCSA contribute to ensuring safety in motor carrier operations through strong enforcement of safety regulations, targeting high-risk carriers and commercial motor vehicle drivers; improving safety information systems and commercial motor vehicle technologies; strengthening commercial motor vehicle equipment and operating standards; and increasing safety awareness. <https://www.federalregister.gov/agencies/federal-motor-carrier-safety-administration> (last visited January 25, 2021).

³ Ss. 316.302(1)(a) and (b), F.S..

⁴ S. 316.302(1)(b), F.S.

⁵ Department of Highway Safety and Motor Vehicles 2021 Agency Legislative Proposals, p.5.

⁶ *Id.*

For the purpose of enforcing Florida law relating to commercial motor vehicles, any law enforcement officer of DSHMV or duly appointed agent who holds a current safety inspector certification from the Commercial Vehicle Safety Alliance⁷ may require the driver of any CMV operated on the state's highways to stop and submit to an inspection of the vehicle or the driver's records. If the vehicle or driver is found to be operating in an unsafe condition, or if any required part or equipment is not present or is not in proper repair or adjustment, and the continued operation would present an unduly hazardous operating condition, the officer may require the vehicle or the driver to be removed from service⁸ until corrected. However, if continuous operation would not present an unduly hazardous operating condition, the officer may give written notice requiring correction of the condition within 14 days.⁹ The 14 day requirement is inconsistent with federal requirements requiring carriers to provide written notice within 15 days.¹⁰

Effect of the Bill

The bill provides that all CMV drivers *and* owners are subject to federal CMV rules contained in 49 C.F.R. parts 382, 383, 385, 386, 390-397 as they exist on December 31, 2020.

The bill increases the length of time for CMV operators to correct non-hazardous deficiencies from 14 days to 15 days, consistent with federal requirements.

Safety Belt Usage

Current Situation

Under the Florida Safety Belt Law, with some exceptions, it is unlawful for any person:

- To operate a motor vehicle or an auticycle¹¹ unless each passenger and the operator of the vehicle or auticycle under the age of 18 years are restrained by a safety belt or by a child restraint device; or
- To operate a motor vehicle or an auticycle unless the person is restrained by a safety belt.¹²

For the purpose of this law, the term "motor vehicle" means a motor vehicle as defined in s. 316.003, F.S.,¹³ which is operated on the roadways, streets, and highways of this state. The term does not include a school bus, a bus used for the transportation of persons for compensation, a farm tractor or implement of husbandry, a truck having a gross vehicle weight rating of more than 26,000 pounds, a motorcycle, a moped, a bicycle, or an electric bicycle.¹⁴

Additionally, it is unlawful for any person 18 years of age or older to be a passenger in the front seat of a motor vehicle or an auticycle unless such person is restrained by a safety belt when the vehicle or

⁷ The Commercial Vehicle Safety Alliance (CVSA) is a nonprofit association comprised of local, state, provincial, territorial and federal commercial motor vehicle safety officials and industry representatives. The Alliance aims to achieve uniformity, compatibility and reciprocity of commercial motor vehicle inspections and enforcement by certified inspectors dedicated to driver and vehicle safety. <https://www.cvsa.org/about-cvsa/> (Last visited January 25, 2021).

⁸ This is pursuant to the North American Standard Out-of-Service Criteria.

⁹ S. 316.302(9), F.S.

¹⁰ Department of Highway Safety and Motor Vehicles, Agency Analysis of 2021 House Bill 1151, p. 2.

¹¹ Section 316.003(2), F.S., defines the term "auticycle" as a three-wheeled motorcycle that has two wheels in the front and one wheel in the back; is equipped with a roll cage or roll hoops, a seat belt for each occupant, antilock brakes, a steering wheel, and seating that does not require the operator to straddle or sit astride it; and is manufactured in accordance with the applicable federal motorcycle safety standards in 49 C.F.R. part 571 by a manufacturer registered with the National Highway Traffic Safety Administration.

¹² S. 316.614(3), F.S.

¹³ Section 316.003(44), F.S., defines the term "motor vehicle" as a self-propelled vehicle not operated upon rails or guideway, but not including any bicycle, electric bicycle, motorized scooter, electric personal assistive mobility device, mobile carrier, personal delivery device, swamp buggy, or moped.

¹⁴ S. 316.641(3)(a), F.S.

autocycle is *in motion*.¹⁵ The statutory base fine of a nonmoving violation is \$30;¹⁶ however, with various fees and surcharges, the total fine up to is \$108.¹⁷

Court cases have interpreted the Florida Safety Belt Law to apply only when the vehicle is in motion.¹⁸

Effect of the Bill

The bill amends the definition of the term “motor vehicle” for purposes of the Florida Safety Belt Law to provide that it includes a motor vehicle which is operated and stationary on the public highways of this state, for example a motor vehicle stopped at a traffic signal.

Nonpublic Sector Buses

Current Situation

In 2011, DOT’s Office of Motor Carrier Compliance was transferred to the Florida Highway Patrol (FHP) within DHSMV.¹⁹ However, at that time, Florida law relating to nonpublic sector buses²⁰ was not amended to correspond to other statutory changes. Therefore, Florida law still requires DOT to revise standards for the safe operation of nonpublic sector buses. These standards must be directed toward ensuring that:

- Nonpublic sector buses are safely maintained, equipped, and operated.
- Nonpublic sector buses are carrying the insurance required by law and carrying liability insurance on the checked baggage of passengers.
- Florida license tags are purchased for nonpublic sector buses.
- The driving records of drivers of nonpublic sector buses are checked by their employers at least once each year to ascertain whether the driver has a suspended or revoked driver license.²¹

Effect of the Bill

The bill transfers from DOT to DHSMV the authority to conduct compliance reviews on nonpublic sector buses. This conforms the statute to the 2011 transfer of CMV enforcement from DOT to DHSMV.

Odometer Disclosure Requirements

Current Situation

Odometer fraud is a federal offense, and the National Highway Traffic Safety Administration (NHTSA) requires sellers to disclose and declare vehicle odometer readings at the time of sale. According to NHTSA, due to an increase in the current average vehicle age to almost 12 years from the previous average of eight years, an increasingly large number of vehicles are subject to a heightened risk of odometer fraud. In order to combat the increased number of motor vehicles subject to a risk of odometer fraud, NHTSA recently amended the federal rule regarding the exemption from odometer disclosure. The exemption, which previously applied to vehicles 10 years old or older, now applies to vehicles 20 years old or older, beginning with model year 2011 or newer in calendar year 2021.²²

Florida law is inconsistent with the current federal rules and, with limited exceptions, only requires certain odometer disclosures for vehicles 10 years old or newer.

Effect of the Bill

¹⁵ S. 316.614(5), F.S.

¹⁶ S. 318.18(2), F.S.

¹⁷ Florida Association Clerk of Courts, 2020 Distribution Schedule, p. 21.

https://cdn.ymaws.com/www.flclerks.com/resource/resmgr/advisories/advisories_2021/21bull005_Attach_2_2020_Dist.pdf (last visited January 22, 2021).

¹⁸ Department of Highway Safety and Motor Vehicles, Agency Analysis of 2021 House Bill 1151, p. 3.

¹⁹ Ch. 2011-66, L.O.F.

²⁰ Section 316.003(47), F.S., defines the term “nonpublic sector bus” as any bus which is used for the transportation of persons for compensation and which is not owned, leased, operated, or controlled by a municipal, county, or state government or a governmentally owned or managed nonprofit corporation.

²¹ S. 316.70(1), F.S.

²² Department of Highway Safety and Motor Vehicles, Agency Analysis of 2021 House Bill 1151, p. 3

The bill conforms Florida law to NHTSA's recently adopted odometer disclosure requirements by providing that a vehicle with a model year of 2011 or later is exempt from odometer disclosure after 20 years and a vehicle with a model year of 2010 or earlier is exempt after 10 years.

Performance and Registration Information Systems Management (PRISM)

Current Situation

Federal Regulations

FMCSA's Performance and Registration Information Systems Management (PRISM) program is a component of its mission to reduce the number of CMV crashes, injuries, and fatalities. PRISM provides a safety mechanism to identify and immobilize motor carriers²³ with serious safety deficiencies²⁴ and hold them accountable using registration and law enforcement sanctions. PRISM requires motor carriers to correct their safety deficiencies to continue operating or face progressively stringent sanctions.²⁵

Full participation in PRISM is mandatory for all states as a requirement of the Motor Carrier Safety Assistance Program. Florida is at the full participation level of PRISM.²⁶

FMCSA defines "enhanced participation" in regard to PRISM as when a state has the authority to deny vehicle registration to a motor carrier and its vehicles when the motor carrier is attempting to avoid FMCSA enforcement sanctions by "reincarnating" with a new United States Department of Transportation (USDOT) number and company name while maintaining the same officers and directors, business address, telephone number, and email of the out-of-service carrier. Currently, DHSMV does not have this authority.²⁷

While FMCSA has the ability to sanction motor carriers for safety deficiencies, vehicle registrations are solely within state jurisdiction. The enhanced participation level of PRISM requires states to suspend, revoke, or deny vehicle registration of a motor carrier's vehicles when the motor carrier is prohibited from operating by FMCSA. Companies that operate commercial vehicles transporting passengers or hauling cargo in interstate commerce must be registered with FMCSA, have a USDOT number, and comply with federal safety regulations in order to have their vehicles registered under the International Registration Plan.²⁸ When a company fails to meet FMCSA safety requirements, it may be placed out-of-service.²⁹

In Florida, attempts to register as a reincarnated carrier occur on a regular basis. Because DSHMV does not have the authority to deny registration, there is currently no way to track how many Florida-based carriers who reincarnate are circumventing FMCSA sanctions.³⁰

An effectiveness evaluation report released in February 2016 by FMCSA's Strategic Planning and Program Evaluation Division determined that, between 2008 and 2013, states that fully participated in PRISM compared to non-fully participating states have

²³ The term "motor carrier" means a for-hire motor carrier or a private motor carrier. The term includes a motor carrier's agents, officers and representatives as well as employees responsible for hiring, supervising, training, assigning, or dispatching of drivers and employees concerned with the installation, inspection, and maintenance of motor vehicle equipment and/or accessories. 49 C.F.R. s. 390.5.

²⁴ FMCSA defines the term "motor carrier with serious safety deficiencies" as a motor carrier that is prohibited from operating by FMCSA through the issuance of a federal out-of-service ("OOS") order.

²⁵ Department of Highway Safety and Motor Vehicles, Agency Analysis of 2021 House Bill 1151 p. 3 (March 10, 2021).

²⁶ *Id.*

²⁷ *Id.*

²⁸ The International Registration Plan (Plan) is a reciprocity agreement among states of the US, the District of Columbia and provinces of Canada which recognizes the registration of commercial motor vehicles registered by other jurisdictions. It provides for payment of apportioned licensing fees based on the total distance operated in all member jurisdictions. <https://www.irponline.org/> (last visited March 18, 2021).

²⁹ Department of Highway Safety and Motor Vehicles, Agency Analysis of 2021 House Bill 1151 p. 4 (March 10, 2021).

³⁰ *Id.* at 4.

- A 20.4 percent observable reduction in all CMV crashes,
- A 9.8 percent observable reduction in fatalities involving all CMV crashes, and
- A 6.9 percent reduction in state registered CMVs being placed out-of-service roadside for operating while under a federal out-of-service order.³¹

Effect of the Bill

The bill requires motor carriers or vehicle owners to return suspended plates to DHSMV or surrender them to law enforcement.

The bill authorizes DHSMV to deny registration if an applicant fails to disclose material information required on the application, or if the applicant attempts to hide the disclosure of the real party in interest who has been issued a federal out-of-service order, or if the applicant's business is operated, managed, or otherwise controlled or affiliated with a person who is ineligible for registration, including the applicant entity, a relative, family member, corporate officer, or shareholder.

Human Trafficking

Current Situation

Florida's criminal laws define the term "human trafficking" as transporting, soliciting, recruiting, harboring, providing, enticing, maintaining, or obtaining another person for the purpose of exploitation of that person.³²

Federal law defines the term "severe forms of trafficking in persons" as:

- Sex trafficking in which a commercial sex act is induced by force, fraud, or coercion, or in which the person induced to perform such act has not attained 18 years of age; or
- The recruitment, harboring, transportation, provision, or obtaining of a person for labor or services, through the use of force, fraud, or coercion for the purpose of subjection to involuntary servitude, peonage, debt bondage, or slavery.³³

On January 8, 2019, the federal "No Human Trafficking on Our Roads Act" was signed into law. This legislation directs the USDOT to disqualify for life any individual who uses a CMV in committing a felony involving a severe form of trafficking in persons. On September 23, 2019, an FMCSA rule went into effect that permanently bans drivers convicted of human trafficking from operating a CMV for which a CDL or a commercial learner's permit is required.³⁴

Currently, Florida does not have specific statutory authority to take action against a CDL when an individual commits a felony involving human trafficking.³⁵

Effect of the Bill

The bill defines the term "human trafficking" for purposes of the driver license law as having same meaning as provided in Florida's criminal laws.

The bill provides that DHSMV may not issue a driver license to any person, as a CMV operator, who has been convicted of, or has entered a plea of guilty or nolo contendere, regardless of whether adjudication was withheld, to any felony involving human trafficking under state or federal law involving the use of a CMV.

The bill requires each clerk of court to promptly report to DHSMV each conviction, regardless of whether adjudication was withheld, for human trafficking which involves the use of a CMV.

³¹ *Id.* at 4.

³² S. 787.06(2)(d), F.S.

³³ 22 U.S.C. 7012 (11)

³⁴ Department of Highway Safety and Motor Vehicles, Agency Analysis of 2021 House Bill 1151, p. 4. (March 5, 2021).

³⁵ *Id.*

The bill requires the court to permanently revoke the CDL of a person who has been convicted of, or has entered a plea of guilty or nolo contendere, regardless of whether adjudication is withheld to any felony involving human trafficking under state or federal law involving the use of a commercial motor vehicle. If the court has not permanently revoked such driver license or driving privilege within 30 days after imposing a sentence, DHSMV must permanently revoke the driver license or driving privilege.

The bill provides that any person who uses a CMV involving human trafficking under state or federal law must, be permanently disqualified from operating a commercial motor vehicle upon conviction of, or plea of guilty or nolo contendere to, regardless of whether adjudication is withheld, such felony. This is in addition to any other applicable penalty.

CDL Eight Year Requirement

Current Situation

Pursuant to s. 322.18, F.S., DHSMV issues an original CDL that expires eight years from the date of the driver's next birthday. This allows an original CDL holder to have a license that is valid for more than eight years from the issue date. However, under federal regulations³⁶ a CDL cannot be valid for more than eight years from the date of issuance. This issue has been pointed out as a deficiency in an FMCSA compliance audit.³⁷

Effect of the Bill

The bill provides that a CDL expires at midnight eight years after the licensee's last birthday. This change will not impact current CDL holders.³⁸

CMV-Serious Disqualifying Offense

Current Situation

In 2013, the Legislature codified a federal prohibition on drivers of CMVs using handheld devices while driving. However, at that time, the law was not amended to add this infraction to the list of serious disqualifying offenses.

Under current law, a person who, for offenses occurring within a three-year period, is convicted of two serious traffic violations arising in separate incidents committed in a CMV must, in addition to any other applicable penalties, be disqualified from operating a CMV for a period of 60 days. A holder of a CDL or commercial learner's permit who, for offenses occurring within a 3-year period, is convicted of two serious traffic violations, or any combination thereof, arising in separate incidents committed in a noncommercial motor vehicle must, in addition to any other applicable penalties, be disqualified from operating a CMV for a period of 60 days if such convictions result in the suspension, revocation, or cancellation of the license holder's driving privilege. Current serious disqualifying offenses include, but are not limited to, reckless driving, driving a CMV without a CMV license, improper lane change, and following too close.³⁹

When these violations occur in other states, DHSMV places these violations on the driver record as "not applicable to Florida Statutes" and does not evaluate them to determine if a disqualification should be imposed on the driver. This situation was addressed in a recent FMCSA compliance audit.⁴⁰

Effect of the Bill

The bill provides that texting while driving a commercial motor vehicle or using a hand-held mobile telephone while driving a commercial motor vehicle as provided by federal regulations are serious disqualifying offenses for a CDL. This will give DHSMV the statutory authority to comply with the deficiency in the FMCSA compliance audit.

³⁶ 49 C.F.R. s. 383.73

³⁷ Department of Highway Safety and Motor Vehicles, Agency Analysis of 2021 House Bill 1151, p. 5. (March 5, 2021).

³⁸ *Id.* at 7.

³⁹ Section 322.61(1), F.S.

⁴⁰ Department of Highway Safety and Motor Vehicles, Agency Analysis of 2021 House Bill 1151, p. 4. (March 5, 2021).

Effective Date

The bill has an effective date of July 1, 2021.

B. SECTION DIRECTORY:

Section 1 Amends s. 316.302, F.S., relating to commercial motor vehicles.

Section 2 Amends s. 316.614, F.S., relating to safety belt usage.

Section 3 Amends s. 316.70, F.S., relating to nonpublic sector buses.

Section 4 Amends s. 319.225, F.S., relating to transfer and reassignment forms and odometer disclosure statements.

Section 5 Amends s. 320.0715, F.S., relating to the International Registration Plan.

Section 6 Amends s. 322.01, F.S., providing definitions.

Section 7 Amends s. 322.05, F.S., relating to persons not to be licensed.

Section 8 Amends s. 322.18, F.S., relating to original applications, licenses, and renewals.

Section 9 Amends s. 322.25, F.S., relating to when a court must forward license to DHSMV and report convictions.

Section 10 Amends s. 322.28, F.S., relating to period of suspension or revocation.

Section 11 Amends s. 322.61, F.S., relating to disqualification from operating a commercial motor vehicle.

Section 12 Amends s. 322.34, F.S., conforming a cross reference.

Section 13 Provides an effective date of July 1, 2021.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

While the bill does not have a direct impact on state government revenues, state noncompliance with certain federal regulations such as human trafficking using a CMV and serious disqualifying offenses for CMV drivers, and failing to achieve compatibility with FMCSA regulations within three years of the effective date could impact the state's receipt of federal funds.⁴¹ The bill appears to achieve state compliance with these regulations.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not applicable. The bill does not appear to require counties or municipalities to spend funds or take action requiring the expenditure of funds; reduce the authority that counties or municipalities have to raise revenue in the aggregate; or reduce the percentage of state tax shared with counties or municipalities.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

The bill does not provide a grant of rulemaking, nor does it require rulemaking.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

⁴¹ E-mail from Kevin Jacobs, Legislative Affairs Director, Department of Highway Safety and Motor Vehicles, RE: DHSMV Package questions. (February 24, 2021).