



Oregon

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DATE: January 29, 2009

TO: Senate Business and Transportation Committee

FROM: Tom McClellan, DMV Administrator
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SUBJECT: Senate Bill 129 - Commercial Driver License Compliance

INTRODUCTION

Senate Bill 129 is proposed legislation from the Department of Transportation to comply with federal laws and regulations relating to the driving privileges of commercial motor vehicle (CMV) operators. Additional changes are needed to clarify statutes and remove inconsistencies.

BACKGROUND

The Commercial Motor Vehicle Safety Act of 1986 established national standards for commercial motor vehicle operations to achieve greater consistency among states for the purpose of reducing truck and bus crashes. Each state administers a Commercial Driver License (CDL) program based upon federal laws and regulations that sets standards for testing and licensing commercial motor vehicle (CMV) operators. The CDL program also disqualifies CMV drivers that fail to meet the standards or who commit specific offenses identified in federal regulations and Oregon statutes.

The Federal Motor Carrier Safety Administration (FMCSA) regulates commercial motor vehicle operations under the authority of the U.S. Department of Transportation. Among other responsibilities, FMCSA ensures compliance with commercial driver licensing standards for drivers, motor carriers, and states. Those standards are specified in federal regulations that are revised and updated frequently. The Oregon Legislature considers proposed changes in nearly every legislative session to align Oregon statutes with the federal laws and regulations.

Failure to comply with FMCSA regulations can jeopardize full allocation of federal-aid highway funds and Motor Carrier Safety Assistance Program grant funds. For example, Oregon receives approximately \$2.4 million annually for the Motor Carrier Safety Assistance Program, including about \$1.5 million allocated to the Oregon State Police. In addition, FMCSA can withhold 5% of federal-aid highway funds the first year and 10% (about \$26 million) in each subsequent year for non-compliance. Non-compliance also can result in federal decertification of the Oregon CDL program, meaning that Oregonians could not obtain a commercial driver license in this state.

WHAT THE BILL DOES

Section 2: Farm Endorsement

In 2007, the Legislature gave the department authority to impose CDL suspensions for drivers operating commercial motor vehicles (CMV) under a farm endorsement. This was done in response to a federal compliance review in 2004. However, the legislation did not include authority to cancel a farm endorsement when the CDL is suspended. As an example, this means a driver with a CDL suspended for failing a breath test in a CMV may continue to operate a CMV under the authority of the farm endorsement. According to federal regulations, the farm endorsement must be suspended whenever the CDL or right to apply for a CDL is suspended for offenses specified in Oregon statutes and federal regulations.

Sections 3 and 7: Gross Vehicle Weight Rating / Actual Gross Combination Weight

A CDL is required to operate a commercial motor vehicle. The current definition of a commercial motor vehicle includes a gross vehicle weight rating (GVWR) of 26,001 pounds or more as specified by the manufacturer. Under current Oregon statutes, a driver could load a vehicle with a GVWR of less than 26,001 pounds to a weight that exceeds 26,001 pounds and not be required to possess a CDL. FMCSA regulations propose a CMV definition that includes GVWR or actual gross weight, whichever is greater. The definition of CMV proposed in this bill mirrors federal language and will discourage overloading of lighter vehicles to avoid CDL requirements.

Sections 3 and 7: Mass Transit Vehicles

Sections 3 and 7 also remove language inadvertently left in statute relating to the operation of mass transit vehicles. In 2007, references to mass transit vehicles were inadvertently left in the definition of a commercial motor vehicle. The Legislature intended to stop requiring a CDL for operators of mass transit vehicles except when the vehicle exceeds 26,001 pounds or carries more than 16 passengers. However, the remaining language should be removed because it could be interpreted to require a CDL whenever a mass transit vehicle is operated regardless of vehicle size or passenger capacity.

Sections 4 and 5: To Hold a CDL

Federal regulation defines when a CDL disqualification is necessary and prohibits deferring convictions or allowing diversion for a person who holds a CDL. Oregon law uses the phrase "hold a valid CDL" as prescribed in federal regulations, but the word "valid" has led to different interpretations within the court system. In one case, a judge allowed diversion for a CDL holder since the driver's medical certificate had expired. The Oregon Supreme Court rejected that argument and ruled that under current law an invalid medical certificate does not automatically invalidate a Commercial Driver License. Nevertheless, SB 129 changes the definition of "hold a CDL" by deleting the term "valid" to avoid potential misinterpretations and violation of federal regulations. This provision has an emergency clause and will be effective upon passage.

Section 6: Military Purposes

Under federal regulations, anyone who operates a CMV for military purposes is exempt from the CDL requirement. Currently, Oregon's law improperly limits this exemption by requiring that the driver have an out-of-state license or permit issued by the armed forces. This section removes those conditions in compliance with the federal regulations.

Section 8: Hazardous Materials Endorsement

Federal regulations require an applicant for a Hazardous Materials Endorsement to provide proof of U.S. citizenship or lawful permanent residence in the United States. Under current Oregon law, an applicant must prove legal permanent or temporary residence as part of a federal Transportation Security Administration background check. This section removes eligibility for those individuals with temporary lawful status in the United States.

Section 9: Suspension Lengths

In 2007, the duration of driver license suspensions for failure to appear and failure to comply for non-CDL drivers were increased to 10 years or until compliance, whichever is earlier. The same changes were not made to the CDL statutes. This section increases the CDL suspensions for failure-to-appear and failure-to-comply to 10 years or until compliance, which achieves consistency with the non-CDL suspensions.

Section 9: Conviction Definition

This section also adds a "conviction" definition. Recent audit findings by FMCSA indicated that Oregon must define "conviction" as it pertains to CDL disqualifying offenses. The definition used by FMCSA ensures that states have authority to disqualify CMV operators or CDL holders for all offenses described in federal regulations. FMCSA insists that the ordinary definition of conviction should not apply. For example, the ordinary definition does not include the failure to appear in court per a summons or the failure to pay a fine or court cost (i.e., "failure to appear" or "failure to comply"). FMCSA believes this creates the possibility of a driver challenging a disqualification on the basis that he/she was not convicted and may not be disqualified under Oregon law. The Department believes it has sufficient authority to properly suspend drivers who commit these offenses within Oregon, but may not have the same authority for some offenses that occur outside the state. Therefore, the conviction definition used by FMCSA and incorporated in SB 129 only applies to CMV or CDL offenses that occur outside Oregon.

Section 10: Law Enforcement Authority

Law enforcement officials have questioned their statutory authority to cite an out-of-state CMV operator for driving while suspended or revoked when the CDL is suspended or revoked in a state other than Oregon. Instead, officers may cite the driver for operating without driving privileges. However, a conviction for operating without driving privileges does not result in a federally mandated CDL disqualification like a driving while suspended or revoked conviction. This section specifies that the offense of driving while suspended or revoked includes operating a commercial motor vehicle in Oregon

while driving privileges are suspended or revoked in any state. This change ensures that law enforcement can properly cite these drivers and that the federally mandated CDL disqualification will be imposed.

Sections 11, 12 and 13: Out-of-Service Orders

Law enforcement may prohibit operation of a CMV by issuing a vehicle or driver out-of-service order, if it is determined the vehicle or driver is in violation of applicable safety standards or laws. FMCSA regulations increased the mandatory civil penalties and commercial driver license suspension periods for violating these out-of-service orders in July 2007. These sections raise the penalties in Oregon to match the minimum federal requirement, and remove redundant and incorrect penalty language in the current statutes.

Proposed Amendments

The Department proposes three amendments to SB 129. The first is a statutory construct recommendation from the Attorney General's Office to repeal ORS 813.052 and create a separate section in Chapter 825 that specifies the civil penalties for violating an out-of-service notice. The second amendment removes the term "knowingly" as a condition for suspending a CDL held by someone who violates an out-of-service order. Use of the term "knowingly" results in a lower standard than is allowable under the federal regulations.

The third amendment arises from new FMCSA regulations published on December 1, 2008 that require states to ensure a person's medical certificate is current and valid while holding a CDL. Currently, state motor vehicle agencies are required to verify possession of a valid medical certificate only at the time of CDL issuance or renewal. Under the new regulations, states must receive and maintain copies of medical certificates, and cancel CDL privileges whenever a medical certification expires or is determined to be invalid. Federal regulations describe a two-year phased implementation beginning January 30, 2012. However, the amendment will request authority to set the actual effective date in administrative rule, rather than specify a start date in statute to meet the federal deadline.

SUMMARY

The changes proposed in SB 129 are necessary to bring Oregon into compliance with federal laws and regulations. The changes reduce the risk of losing federal highway funds, clarify confusing statutes, and remove statutory inconsistencies. Passage of this bill also enhances public safety. We request your support of this bill.