

HB

517

STATE OF ALASKA

Department of Public Safety

SPONSOR STATEMENT HOUSE BILL 517

Most Alaskans need a driver's license in order to carry on their daily lives. Obtaining license renewals and conducting other business with the Department of Public Safety, division of motor vehicles (DMV), can be time consuming. Most Alaskans have stood in line waiting to take care of business that require them to physically visit the DMV. This bill will make it easier for the Department of Public Safety to serve the public.

HB 517 will simplify procedures for obtaining a driver's license by removing exceptions to the renewal-by-mail program. Also, current law requires a person involved in an accident resulting in \$500 or more in damage to property to report the accident to the local police or the Alaska State Troopers for investigation. This amount was set in 1977; in present value, the slightest scrape can cost that much to repair. This bill raises the amount for required reporting to \$1,500.

HB 517 also provides for administrative hearings to be held by telephone in most instances to avoid costly travel. It allows the Department of Public Safety to keep its records electronically and provides that certified copies of those electronically stored records are admissible in courts and administrative hearings. It also allows a temporary permit issued by a car dealer to be valid for 60 days rather than 30 days, to give the dealer and the Department of Public Safety more time to take care of the necessary paperwork.

This bill also provides for compliance with the Code of Federal Regulations, Title 49, the Federal Motor Carrier Safety Act Program grant requirements, and item 22 of the Commercial Vehicle Safety Act 49 CFR parts 383, 390 and 391 dealing with disqualifying a commercial driver for an out-of-service violation. It makes housekeeping changes for compliance purposes. Failure to adopt the provisions of 49 CFR may result in sanction of 5 percent of federal highway monies and Federal Motor Carrier Safety Assistance Program Grant (MCSAP) funding.

HOUSE TRANSPORTATION COMMITTEE

Sectional Analysis

HOUSE BILL 517

Motor Vehicle/Commercial Motor Vehicle Bill

Section 1. AS 28.05.061(c) allows the department to keep its records electronically and provides that certified copies of those electronically stored records are admissible in courts and administrative hearings.

Sections 2, 6 - 8. AS 28.05.141(b); 28.15.166(d-f); provides for administrative hearings to be held by telephone in most instances to avoid costly travel.

Section 3. AS 28.10.031(b) allows for a car dealer to issue 60 day temporary permit rather than 30 days.

Section 4. AS 28.10.051(a) allows the department to suspend or revoke the registration of a commercial vehicle if the owner continues to allow it to be operated after an order of repair was issued.

Section 5. AS 28.15.101(c) lifts some of the restrictions on renewing a driver's license by mail.

Sections 9-15 & 22-23. AS 28.20.050(a),(e); 28.20.100(c); 28.20.230(a); 28.20.250(a); 28.22.021; 28.22.041(h); 28.35.080(a); 28.35.080(b). raises the amount required for reporting of property damage resulting from a motor vehicle accident from \$500.00 to \$1,500.00.

Sections 16 & 24. AS 28.32.900(1); 28.40.100(a)(2) repeals the sections relating to exempt areas of the state where the average daily traffic on the roadways is less than 499. Also changes the exemption for vehicle safety inspections for farm vehicles from 300 miles from the farm to 150 miles from the farm.

Sections 17 & 25. AS 28.32.900(2); 28.40.100(a)(3) eliminates the requirement that commercial purposes has to be the primary business of the commercial vehicle operator; any business is sufficient

Section 18. AS 28.33.130(a) adds a provision placing a person "out-of-service" for violation of a regulation relating to safety equipment required on commercial vehicles and allows a person to be placed "out-of-service" when operating a commercial vehicle without a commercial driver's license.

Section 19. AS 28.33.140(a) adds to the list of offenses that the court must disqualify a person from operating a commercial motor vehicle

Section 20. AS 28.33.140(j) adds a new subsection relating to the length of time the court must disqualify a person from operating a commercial motor vehicle.

Section 21. AS 28.33.190 (11) adds a definition of "out-of-service order".

Section 26. AS 28.10.108(b) and (c) repeals outdated statutes to allow for staggered registration, a practice which is in place.

Section 27. Effective date of Act.

2/14/96

CS FOR HOUSE BILL NO. 517(TRA)
IN THE LEGISLATURE OF THE STATE OF ALASKA
NINETEENTH LEGISLATURE - SECOND SESSION

BY THE HOUSE TRANSPORTATION COMMITTEE

Offered:
Referred:

Sponsor(s): HOUSE TRANSPORTATION COMMITTEE

A BILL

FOR AN ACT ENTITLED

1 "An Act relating to records and hearings of the Department of Public Safety;
2 relating to a temporary permit to drive a motor vehicle; relating to regulation
3 of motor vehicles and commercial motor vehicles; relating to ownership of certain
4 abandoned motor vehicles; relating to renewal of a driver's license by mail;
5 relating to commercial driver training schools; increasing the property damage
6 amounts for proof of financial responsibility and proof of motor vehicle eligibility
7 in order to lawfully operate a motor vehicle in the state; relating to certain
8 notifications in accidents involving property damage; relating to motor vehicle
9 registration procedures; and providing for an effective date."

10 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:

11 * Section 1. AS 28.05.061(c) is amended to read:

12 (c) Records maintained by the department under this title or regulations

1 adopted under this title may be stored in any reasonable manner, including
2 electronic data storage. The commissioner and officers and employees of the
3 department designated by the commissioner shall, upon request, prepare under the seal
4 of the department and deliver, unless otherwise prohibited by law, a certified copy of
5 any record of the department maintained under this title or regulations adopted under
6 this title, charging a fee for each certified copy. A certified copy of the record stored
7 under this section is admissible in an administrative [A] proceeding or in a court
8 in the same manner as the original document.

9 * Sec. 2. AS 28.05.141(b) is amended to read:

10 (b) A hearing ordered under (a) of this section must [SHALL] be held by
11 telephone unless the hearing officer finds that a telephonic hearing would
12 substantially prejudice the rights of the person involved in the hearing or that an
13 in-person hearing is necessary to decide the issues to be presented in the hearing.
14 An in-person hearing must be held at the office of the department nearest to the
15 residence of the person involved in [REQUESTING] the hearing unless the department
16 and the person agree that the hearing is to be held elsewhere. The department shall
17 grant a hearing delay if the person presents good cause for the delay. If a person fails
18 to attend or appear for the hearing at the time and place stated by the department and
19 if a hearing delay has not been granted, the person's failure to attend or appear is
20 considered a waiver of the hearing and the department may take appropriate action
21 with respect to the person.

22 * Sec. 3. AS 28.10.031(b) is amended to read:

23 (b) A licensed vehicle dealer may issue to the purchaser of a vehicle sold by
24 the dealer a temporary permit to operate the vehicle. A permit is effective for a period
25 not to exceed 60 [30] days. The commissioner shall adopt regulations governing the
26 issuance of permits under this section.

27 * Sec. 4. AS 28.10.051(a) is amended to read:

28 (a) The department may suspend or revoke the registration of a vehicle, the
29 certificate of registration or registration plates for a vehicle, or a special permit when
30 (1) the department determines that the registration or certificate, plate,
31 or permit was fraudulently procured or erroneously issued;

1 (2) the department determines that a registered vehicle is mechanically
2 unsafe to be driven or moved on a highway, vehicular way or area, or other public
3 property in this state and the vehicle has been seized or impounded under
4 AS 28.05.091;

5 (3) a registered vehicle has been scrapped, dismantled, or destroyed
6 beyond repair;

7 (4) the department determines that a required fee or tax has not been
8 paid and the fee or tax is not paid upon reasonable notice and demand;

9 (5) a registration plate, permit, or certificate is knowingly displayed
10 upon a vehicle other than the vehicle for which issued;

11 (6) the department determines that the owner of a vehicle has
12 committed an offense under this chapter involving the registration or the certificate,
13 plate, or permit to be suspended or revoked;

14 (7) the vehicle has been reported to the department as stolen or
15 unlawfully converted;

16 (8) the department is otherwise required to do so under the laws of this
17 state; [OR]

18 (9) the department determines that the vehicle owner has violated the
19 requirements of AS 28.10.146 or 28.10.147;

20 (10) the department determines that a repair to a commercial
21 motor vehicle, ordered by the department under regulations adopted under
22 AS 28.05.011, was not completed after the owner or operator represented to the
23 department that the repair had been completed; or

24 (11) the owner or operator of a commercial motor vehicle has
25 placed a commercial motor vehicle back in service after it has been placed out of
26 service by the department without having it reinspected as required under
27 regulations adopted under AS 28.05.011.

28 * Sec. 5. AS 28.11 is amended by adding a new section to read:

29 Sec. 28.11.025. CLAIM OF OWNERSHIP BY PRIVATE PROPERTY
30 OWNER. (a) In addition to removal of an abandoned vehicle under AS 28.11.020,
31 a vehicle that is left standing or parked on private property without the consent of the

1 private property owner and for a period in excess of three years is presumed to be an
2 abandoned vehicle and title to the vehicle may be transferred to the private property
3 owner as provided under this section. A person who claims ownership of an
4 abandoned vehicle under this section shall provide notice of the claim to the vehicle
5 owner of record and to lienholders in the manner prescribed for giving notice by the
6 department under AS 28.05.121. The notice must state the location of the vehicle and
7 the period of abandonment. If the vehicle is not registered in this state or the name
8 and address of the registered or legal owner or lienholder cannot be ascertained, notice
9 shall be given by publication in the manner prescribed in the rules of the court for
10 service of process by publication.

11 (b) If an abandoned vehicle is not reclaimed within 30 days after notice is
12 given as required under (a) of this section, the title to the vehicle vests with the owner
13 of the private property on which the vehicle is located. Upon application, the
14 department shall issue a new certificate of title to a vehicle whose ownership is
15 transferred under this section.

16 * Sec. 6. AS 28.15.101(c) is amended to read:

17 (c) A driver's license may be renewed by mail if the licensee complies with
18 (a) of this section, except that a license may not be renewed by mail if

19 (1) [THE APPLICANT'S LICENSE, WITHIN THE PREVIOUS FIVE
20 YEARS, HAS BEEN REVOKED BY A COURT AFTER CONVICTION FOR AN
21 OFFENSE UNDER AS 28.15.181(a) OR ANOTHER LAW OR ORDINANCE WITH
22 SUBSTANTIALLY SIMILAR ELEMENTS;

23 (2) THE APPLICANT'S LICENSE, WITHIN THE PREVIOUS FIVE
24 YEARS, HAS BEEN SUSPENDED, REVOKED, OR DENIED BY THE
25 DEPARTMENT UNDER AS 28.15.165 OR 28.15.251;

26 (3) THE APPLICANT, WITHIN THE PREVIOUS FIVE YEARS, HAS
27 BEEN CONVICTED OF A MOVING TRAFFIC VIOLATION;

28 (4) the most recent renewal of the applicant's license was by mail; or

29 (2) [(5)] the applicant is 69 years of age or older on the expiration date
30 of the driver's license being renewed.

31 * Sec. 7. AS 28.15.166(d) is amended to read:

1 (d) A person who has requested a hearing under this section and who fails to
2 attend or appear at the hearing, for reasons other than lack of actual notice of the
3 hearing or physical incapacity such as hospitalization or incarceration, waives the right
4 to a hearing. The determination of the department that is based upon the enforcement
5 officer's report becomes final.

6 * Sec. 8. AS 28.15.166(e) is amended to read:

7 (e) The [NOTWITHSTANDING AS 28.05.141(b), THE] hearing under this
8 section must [SHALL] be held by telephone unless the hearing officer finds that
9 a telephonic hearing would substantially prejudice the rights of the person
10 involved in the hearing or that an in-person hearing is necessary to decide the
11 issues to be presented in the hearing. An in-person hearing must be held at the
12 office of the department nearest to the residence of the person involved in
13 [REQUESTING] the hearing unless

14 [(1) A DISTRICT COURT JUDGE OR A MAGISTRATE HAS BEEN
15 DESIGNATED AS A HEARING OFFICER IN THE MATTER BY THE
16 COMMISSIONER; OR

17 (2)] the department and the person agree that the hearing is to be held
18 elsewhere.

19 * Sec. 9. AS 28.15.166(f) is amended to read:

20 (f) A review under this section shall be held before a hearing officer
21 designated by the commissioner. [UPON THE CONSENT OF THE
22 ADMINISTRATIVE DIRECTOR OF THE STATE COURT SYSTEM, THE
23 COMMISSIONER MAY DESIGNATE A DISTRICT COURT JUDGE OR A
24 MAGISTRATE TO SERVE AS THE HEARING OFFICER.] The hearing officer has
25 [SHALL HAVE] authority to

- 26 (1) administer oaths and affirmations;
27 (2) examine witnesses and take testimony;
28 (3) receive relevant evidence;
29 (4) issue subpoenas, take depositions, or cause depositions or
30 interrogatories to be taken;
31 (5) regulate the course and conduct of the hearing;

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(6) make a final ruling on the issue.

* Sec. 10. AS 28.17.041(b) is amended to read:

(b) Regulations adopted under this section must state the requirements for a school license, including requirements concerning manner and form of application, location, place of business, facilities, records, equipment, courses and standards of instruction, instructors, previous records of the school and instructors, financial statements, schedule of fees and charges, character and reputation of the operators and instructors, vehicle equipment and condition, inspection during reasonable business hours, insurance or bonds in the sum and with the provisions the commissioner considers necessary, and other matters the commissioner may prescribe for the protection of the public. Regulations regarding courses and standards of instruction for

(1) noncommercial motor vehicles must be consistent with standards adopted by the commissioner; and

(2) commercial motor vehicles must meet or exceed the model curriculum for training tractor-trailer drivers adopted by the United States Department of Transportation.

* Sec. 11. AS 28.17.061 is repealed and reenacted to read:

Sec. 28.17.061. CIVIL PENALTY. (a) If the department determines a person has violated a provision of this chapter, or a regulation adopted under this chapter, the department may impose a civil penalty not to exceed \$5,000. In determining the amount of a civil penalty imposed under this section, the department shall consider the economic benefit resulting from the violation, the person's prior violations under this section, and the seriousness of the violation.

(b) Before imposing a civil penalty under this section, the department shall provide notice of the civil penalty and an opportunity to request an administrative hearing. If a hearing is not requested within 30 days after notice of the civil penalty is received, the right to a hearing is considered waived. If a hearing is requested, the hearing shall be conducted as provided under AS 28.05.141.

(c) If a person fails to pay a civil penalty imposed under this section within 30 days after the civil penalty is imposed by the department, or if the civil penalty is

1 stayed pending an appeal, within 10 days after the court enters a final judgment in
2 favor of the department, the department shall notify the attorney general. The attorney
3 general may commence a civil action to recover the amount of the civil penalty.

4 * Sec. 12. AS 28.20.050(a) is amended to read:

5 (a) The provisions of this chapter requiring deposit of security and suspension
6 for failure to deposit security apply to the driver and owner of a vehicle subject to
7 registration under the laws of this state that is involved in any manner in an accident
8 in this state resulting in bodily injury to or death of a person or damage to the property
9 of any one person exceeding \$1,500 [\$500].

10 * Sec. 13. AS 28.20.050(e) is amended to read:

11 (e) A peace officer investigating an accident that results in bodily injury to or
12 the death of a person or damage to the property of a person exceeding \$1,500 [\$500]
13 shall inform persons involved in the accident in writing of the requirements of this
14 chapter as they apply to suspension of an operator's license or driving privileges.

15 * Sec. 14. AS 28.20.100(c) is amended to read:

16 (c) If the department evaluates the injuries or damage to a minor in an amount
17 not more than \$1,500 [\$500], the department may accept, for the purposes of this
18 chapter only, evidence of a release from liability executed by a parent [NATURAL]
19 or legal guardian on behalf of the minor without court approval.

20 * Sec. 15. AS 28.20.230(a) is amended to read:

21 (a) The provisions of this chapter requiring the deposit of proof of financial
22 responsibility for the future apply to persons who are convicted of or forfeit bail for
23 certain offenses under motor vehicle laws or who, by ownership or operation of a
24 vehicle of a type subject to registration under AS 28.10, are involved in an accident
25 in this state that results in bodily injury to or death of a person or damage to the
26 property of any one person exceeding \$1,500 [\$500].

27 * Sec. 16. AS 28.20.260(a) is amended to read:

28 (a) Upon receipt by the department of the report of an accident resulting in
29 bodily injury to or death of a person, or [PROPERTY] damage to the property of
30 any one person exceeding \$1,500 [\$500], the department shall suspend the license of
31 the driver of a motor vehicle involved in the accident unless the driver or owner

1 (1) has previously furnished or immediately furnishes security required
2 by this chapter, or is excepted from furnishing security under AS 28.20.060; [.] and
3 (2) maintains proof of financial responsibility for three years following
4 the accident.

5 * Sec. 17. AS 28.22.021 is amended to read:

6 Sec. 28.22.021. REQUIREMENT OF PROOF OF MOTOR VEHICLE
7 LIABILITY INSURANCE. The owner or operator of a motor vehicle required to have
8 motor vehicle liability insurance that complies with this chapter or a certificate of self-
9 insurance that complies with AS 28.20.400, shall show proof of this insurance when
10 that person is involved in an accident that results in bodily injury to or death of a
11 person, or damage to the property of a person exceeding \$1,500 [\$500].

12 * Sec. 18. AS 28.22.041(h) is amended to read:

13 (h) Subsection (a) does not apply to a person who is required to provide proof
14 under AS 28.22.021 if the person

15 (1) is involved in an accident that results in property damage of less
16 than \$1,500 [\$1,000] and the damage occurs only to the property of the person
17 required to show proof of insurance;

18 (2) not later than 15 days after the accident, provides proof of motor
19 vehicle liability insurance that complies with this chapter or a certificate of self-
20 insurance that complies with AS 28.20.400 to the department; and

21 (3) establishes by a preponderance of the evidence that the failure to
22 have in effect motor vehicle liability insurance or to self-insure as required by this
23 chapter at the time of the accident was due to circumstances beyond the control of the
24 person.

25 * Sec. 19. AS 28.32.900(1) is amended to read:

26 (1) "commercial motor vehicle" means a motor vehicle or a
27 combination of a motor vehicle and one or more other vehicles

28 (A) used to transport passengers or property;

29 (B) used upon a highway or vehicular way [CONNECTED TO

30 (i) THE LAND-CONNECTED STATE HIGHWAY
31 SYSTEM; OR

1 (ii) A LAND HIGHWAY OR VEHICULAR WAY
2 WITH AN AVERAGE DAILY TRAFFIC VOLUME GREATER
3 THAN 499]; and

4 (C) which

5 (i) has a gross vehicle weight rating or gross
6 combination weight rating greater than 10,000 pounds;

7 (ii) is designed to transport more than 15 passengers,
8 including the driver; or

9 (iii) is used in the transportation of materials found by
10 the United States Secretary of Transportation to be hazardous for
11 purposes of 49 U.S.C. 1801 - 1813 (Hazardous Materials Transportation
12 Act);

13 (D) except that the following vehicles meeting the criteria in
14 (A) - (C) of this paragraph are not commercial vehicles:

15 (i) emergency or fire equipment that is necessary to the
16 preservation of life or property;

17 (ii) farm vehicles that are controlled and operated by a
18 farmer; used to transport agricultural products, farm machinery, or farm
19 supplies to or from that farmer's farm; not used in the operations of a
20 common or contract motor carrier; and used within 150 [300] miles of
21 the farmer's farm;

22 (iii) school buses;

23 (iv) vehicles owned and operated by the federal
24 government unless the vehicle is used to transport property of the
25 general public for compensation in competition with other persons who
26 own or operate a commercial motor vehicle subject to this chapter, and
27 except to the extent that regulation of vehicles operated by the federal
28 government is permitted by federal law; and

29 (v) vehicles used exclusively for purposes other than
30 commercial purposes;

31 * Sec. 20. AS 28.32.900(2) is amended to read:

1 (2) "commercial purposes" means activities for which a person receives
2 direct monetary compensation or activities for which a person receives no direct
3 monetary compensation but which are incidental to and done in furtherance of the
4 person's [PRIMARY] business;

5 * Sec. 21. AS 28.33.130(a) is amended to read:

6 (a) A person may not operate a commercial motor vehicle or be on-duty

7 (1) if, within the preceding four hours, the person

8 (A) consumed or was under the influence of

9 (i) an alcoholic beverage;

10 (ii) a controlled substance not prescribed by a physician;

11 or

12 (iii) a controlled substance prescribed by a physician that
13 might impair a person's ability to operate a commercial motor vehicle;

14 or

15 (B) had any measurable alcohol concentration within the blood
16 or breath or any detectable presence of alcohol; [OR]

17 (2) while in possession of an alcoholic beverage or a controlled
18 substance not prescribed by a physician unless

19 (A) the alcoholic beverage or controlled substance is manifested
20 and documented as part of an authorized shipment of cargo; or

21 (B) under AS 04, the alcoholic beverage may be legally served
22 to passengers being carried for hire;

23 (3) after being placed out of service for violation of a regulation
24 adopted under AS 28.05.011; or

25 (4) with an invalid operator's or commercial operator's license.

26 * Sec. 22. AS 28.33.140(a) is amended to read:

27 (a) In addition to the court action provided in AS 28.15.181, conviction of any
28 of the following offenses is grounds for immediate disqualification from driving a
29 commercial motor vehicle for the periods set out in this section:

30 (1) operating a commercial motor vehicle while intoxicated in violation
31 of AS 28.33.030;

- 1 (2) refusal to submit to a chemical test in violation of AS 28.35.032;
2 (3) operating a motor vehicle while intoxicated [.] in violation of
3 AS 28.35.030;
4 (4) leaving the scene of an accident in violation of AS 28.35.060, or
5 failing to file, or providing false information in, an accident report in violation of
6 AS 28.35.110;
7 (5) a felony under state or federal law, which was facilitated because
8 the person used a commercial motor vehicle; [OR]
9 (6) a serious traffic violation; or
10 (7) driving after being placed out of service in violation of
11 regulations adopted under AS 28.05.011.

12 * Sec. 23. AS 28.33.140 is amended by adding a new subsection to read:

13 (j) A court convicting a person of an offense described in (a)(7) of this section
14 shall disqualify that person from driving a commercial motor vehicle for the following
15 periods: (1) if the person has not been previously convicted of violating an out-of-
16 service order, not less than 90 days; (2) if the person has been previously convicted
17 once of violating an out-of-service order, not less than one year; (3) if the person has
18 been previously convicted more than once of violating an out-of-service order, not less
19 than three years. In this subsection, "previously convicted" means having been
20 convicted in this or another jurisdiction of an offense described in (a)(7) of this section
21 within 10 years preceding the date of the present offense.

22 * Sec. 24. AS 28.33.190 is amended by adding a new paragraph to read:

23 (11) "out-of-service order" means an order issued under regulations
24 adopted under AS 28.05.011 that prohibits an owner or operator of a commercial
25 motor vehicle from operating a commercial motor vehicle.

26 * Sec. 25. AS 28.35.080(a) is amended to read:

27 (a) The driver of a vehicle involved in an accident resulting in bodily injury
28 to or death of a person or total property damage to an apparent extent of \$1,500 [500]
29 or more shall immediately by the quickest means of communication give notice of the
30 accident to the local police department if the accident occurs within a municipality,
31 otherwise to the Department of Public Safety.

1 * Sec. 26. AS 28.35.080(b) is amended to read:

2 (b) The driver of a vehicle involved in an accident resulting in bodily injury
3 to or death of a person or total property damage to an apparent extent of \$1,500 [\$500]
4 or more shall, within 10 days after the accident, forward a written report of the
5 accident to the Department of Public Safety and to the local police department if the
6 accident occurs within a municipality. A report is not required under this subsection
7 if the accident is investigated by a peace officer.

8 * Sec. 27. AS 28.40.100(a)(2) is amended to read:

9 (2) "commercial motor vehicle" means a motor vehicle or a
10 combination of a motor vehicle and one or more other vehicles

11 (A) used to transport passengers or property;

12 (B) used upon a land highway or vehicular way [CONNECTED

13 TO

14 (i) THE LAND CONNECTED STATE HIGHWAY
15 SYSTEM; OR

16 (ii) A LAND HIGHWAY OR VEHICULAR WAY
17 WITH AN AVERAGE DAILY TRAFFIC VOLUME GREATER
18 THAN 499]; and

19 (C) that

20 (i) has a gross vehicle weight rating or gross
21 combination weight rating greater than 26,000 pounds;

22 (ii) is designed to transport more than 15 passengers,
23 including the driver; or

24 (iii) is used in the transportation of materials found by
25 the United States Secretary of Transportation to be hazardous for
26 purposes of 49 U.S.C. 1801 - 1813 (Hazardous Materials Transportation
27 Act);

28 (D) except that the following vehicles meeting the criteria in
29 (A) - (C) of this paragraph are not commercial vehicles:

30 (i) emergency or fire equipment that is necessary to the
31 preservation of life or property;

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(ii) farm vehicles that are controlled and operated by a farmer; used to transport agricultural products, farm machinery, or farm supplies to or from that farmer's farm; not used in the operations of a common or contract motor carrier; and used within 150 miles of the farmer's farm; and

(iii) recreational vehicles used exclusively for purposes other than commercial purposes;

* Sec. 28. AS 28.40.100(a)(3) is amended to read:

(3) "commercial purposes" means activities for which a person receives direct monetary compensation or activities for which a person receives no direct monetary compensation but that are incidental to and done in furtherance of the person's [PRIMARY] business;

* Sec. 29. AS 28.10.108(b) and 28.10.108(c) are repealed.

* Sec. 30. This Act takes effect July 1, 1996.

FISCAL NOTE

STATE OF ALASKA
1996 LEGISLATIVE SESSION

BILL NO. HB # 517

Revision Date: 2/16/96 Dept. Affected: DOT&PF
 Title: Regulation of Motor Vehicles / BRU: Department Wide
Commercial Motor Vehicles Component: Comm. Ofc.
 Sponsor: Transportation, J. [redacted]
 Requester: [redacted] Transportation COMPONENT SERIAL NO. Comm. Ofc.

(Thousands of Dollars)

EXPENDITURES/REVENUES	FY 97	FY 98	FY 99	FY 00	FY 01	FY 02
OPERATING EXPENDITURES						
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0

CAPITAL EXPENDITURES						
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CHANGE IN REVENUES ()						
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(Thousands of Dollars)

FUND SOURCE	FY 97	FY 98	FY 99	FY 00	FY 01	FY 02
1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1006 GF/MHTIA						
Other - All CIP Sources						
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

Estimate of any current year (FY96) cost: \$ _____

POSITIONS

POSITIONS	FY 97	FY 98	FY 99	FY 00	FY 01	FY 02
FULL-TIME	0	0	0	0	0	0
PART-TIME	0	0	0	0	0	0
TEMPORARY	0	0	0	0	0	0

ANALYSIS: (Attach a separate page if necessary)

Portions of this bill will have a direct and positive impact on the DOT&PF. This legislation will enhance the department's ability to better administer commercial vehicle activities in that it provides clarity to existing law, defines certain violations which will result in the suspension or revocation of vehicle registration and/or special permits, and provides meaningful deterrents to owners and operators of commercial vehicles from operating vehicles that are out of compliance with safety standards and drivers licensing requirements.

Cost savings are not necessarily tangible and will not result in a direct budget reduction. The public safety will however, definitely be enhanced. By keeping commercial vehicles that have been placed out of service by the department off of the road until they have been repaired and reinspected, the public's exposure to unsafe commercial vehicles will be minimized. Subsequently, the state will be less at risk from possible litigation involving unsafe commercial vehicles.

Prepared by: Sam Kito III Phone: 465-3900
 Special Assistant
 Division: Office of the Commissioner Date: _____
 Approved by: [Signature] Date: 2/20/96
 Commissioner
 Agency: Department of Transportation and Public Facilities

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Federal Motor Carrier Safety Regulations carry sanctions against states failing to pass a bill such as this. The sanction will cause the loss of federal highway funds to the State of Alaska in the amount of \$8.0 million in FFY97 (October 1, 1996). The second year of non-compliance carries a 10% penalty of \$16.0 million for FFY98 (October 1, 1997).

FISCAL NOTE

STATE OF ALASKA
1996 LEGISLATIVE SESSION

BILL NO: HB 517

Revision Date: _____ Dept. Affected: Public Safety
 Title: An Act relating to motor vehicles, commercial BRU: DPS Statewide Support
motor vehicles Component: Commissioner's Office
 Sponsor: House Transportation Committee
 Requestor: H TRA COMPONENT SERIAL NO. 0523

EXPENDITURES/REVENUES: (Thousands of Dollars) (inflation not included)

OPERATING	FY 97	FY 98	FY 99	FY 00	FY 01	FY 02
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	-0-	-0-	-0-	-0-	-0-	-0-

CAPITAL EXPENDITURES	-0-	-0-	-0-	-0-	-0-	-0-
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CHANGE IN REVENUES ()	-0-	-0-	-0-	-0-	-0-	-0-
Revenue Code						

FUNDING: (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1006 GF/MHTIA						
Other						
TOTAL	-0-	-0-	-0-	-0-	-0-	-0-

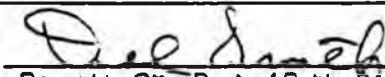
Estimate of current year (FY 95) impact \$ _____

POSITIONS:

FULL-TIME	0	0	0	0	0	0
PART-TIME	0	0	0	0	0	0
TEMPORARY	0	0	0	0	0	0

ANALYSIS: (Attach a separate page if necessary.)

This bill includes some housekeeping measures that simplify several procedures affecting the operation of the Divisions of Motor Vehicles. It also provides for compliance with the Code of Federal Regulations, Title 49 of the Federal Motor Carrier Safety Assistance Program (MCSAP) and a compliance issue relating to the Commercial Motor Vehicle Safety Act (CMVSA) 49 CFR. Failure to maintain compliance with both the MSCAP grant and CMVSA may result in loss of the MSCAP grant funding and loss of 5 percent of federal highway aid funding.

Prepared By: Juanita M. Hensley Phone: 465-2650
 Division: Motor vehicles Date: 2/15/96
 Approved by Commissioner:  Date: 2/15/96
 Agency: Ronald L. Otto, Dept. of Public Safety

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FISCAL NOTE

STATE OF ALASKA

BILL NO:



U.S. Department
of Transportation
Federal Highway
Administration

400 Seventh St., S.W.
Washington, D.C. 20590

Refer to: HCS-20

Ms. Juxmita M. Hensley
Chief, Driver Services
Division of Motor Vehicles
Alaska Department of Public Safety
P.O. Box 20020
Juneau, Alaska 99802-0020

FEB 13 1996

Dear Ms. Hensley:

Thank you for your January 25, 1996 letter to Mr. Robert Redmond requesting confirmation that a State could be found not to be in substantial compliance with the commercial driver's license regulations if the disqualification of a commercial motor vehicle driver for violation of an out-of-service order is not adopted by October 1, 1996.

You are correct in your belief that a State must adopt and implement the new disqualification requirement for a violation of an out-of-service order by October 1, 1996. In both the "Deadline for Compliance" and "Structure" discussions in the preamble to the final rule "State Compliance With Commercial Driver's License Program" (Federal Register, May 18, 1994, Vol. 59, No. 95), the Federal Highway Administration clearly conveys the fact that State compliance with this 22nd requirement for State participation would not be required before October 1, 1996.

The "Substantial Compliance" discussion in the preamble to the final rule "Violations of Out-of-Service Orders by Commercial Motor Vehicle Operators; Disqualification and Penalties" (Federal Register, May 18, 1994, Vol. 59, No. 95), further conveys the fact that States must be in substantial compliance with this 22nd requirement for State participation by October 1, 1996.

While the effective date for this final rule was June 17, 1994, the State compliance deadline was deferred until October 1, 1996 to allow States sufficient time to take the necessary steps to assure compliance. Any State not meeting this deadline would be subject to sanctions as prescribed in 49 CFR 384.

I hope this information is helpful to you.

Sincerely yours,

James E. Scapellato, Director
Office of Motor Carrier
Research and Standards

cc: Linda Taylor (HSA-30)

FHWA.HCS20.RRedmond:skb:65014:1/31/96
cc: HCSRF, HCS20-RF
H:\HCS\HCS20\LETTERS\4-1\COMPL\HENSLEY
File: State File - Alaska



U.S. Department
of Transportation
Federal Highway
Administration

Region 10
Alaska, Idaho,
Oregon, Washington

401N Central Suite 600
222 SW Columbia Street
Portland, Oregon 97201

April 22, 1994

(503)326-4902

Ms. Nita Hensley
Chief, Driver Services
Division of Motor Vehicles
Juneau, Alaska

Dear Ms. Hensley:

This is in reference to our telephone conversation of April 21, 1994, concerning the State of Alaska's regulatory variances, specifically, the 300-mile exemption for farmers. The State of Alaska's 300-mile farm exemption is incompatible with the Federal Motor Carrier Safety Regulations. This involves both interstate and intrastate drivers. The interstate variance could result in preemption [see 49 CFR 355.25(c)] and the intrastate variance could result in the loss of approximately \$125,000 of the State's grant funding under the Motor Carrier Safety Assistance Program [see 49 CFR 350.21(d)(3)].

If you need additional information concerning this matter, please contact State Programs Manager Steve Hurst at (503)326-4902.

Sincerely,

Donald B. Harris
Acting Regional Director
Office of Motor Carriers

CC: SGT. Ed Stauber
Alaska State Troopers

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

49 CFR Parts 383, 390, and 391

[FHWA Docket No. MC-92-13]

RIN 2125-AC93

Violations of Out-of-Service Orders by Commercial Motor Vehicle Operators: Disqualifications and Penalties

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Final rule.

SUMMARY: The FHWA is amending the Federal Motor Carrier Safety Regulations (FMCSRs) by making a conviction of any violation of an out-of-service order by a driver of a commercial motor vehicle (CMV) a disqualifying offense. Such a conviction will result in suspension, revocation, or cancellation of the driver's commercial driver's license (CDL), or disqualification by the FHWA, for a period of time from 90 days to five years. Civil monetary penalties are provided for both drivers and their employers. This rule implements section 4009 of the Motor Carrier Safety Act of 1991 and responds to a petition filed by the Commercial Vehicle Safety Alliance (CVSA) on June 22, 1990. State's failure to adopt the requirements of this rule will result in withholding of Federal-aid highway funds. This action will deter the violation of CMVs in violation of an out-of-service order.

EFFECTIVE DATE: June 17, 1994.

FOR FURTHER INFORMATION CONTACT: Ms. W. Teresa Doggett, Driver Standards Division, Office of Motor Carrier Standards (202) 366-4009, or Mr. David Sett, Office of the Chief Counsel, (202) 366-0834, Federal Highway Administration, 400 Seventh Street SW., Washington, DC 20590. Office hours are from 7:45 a.m. to 4:15 p.m., e.t., Monday through Friday, except legal Federal holidays.

SUPPLEMENTARY INFORMATION:

Background

On January 15, 1993, the FHWA published a notice of proposed rulemaking (NPRM) (58 FR 4640) that would amend 49 CFR parts 383, 390, and 391 to make a conviction of any violation of an out-of-service order by a driver of a commercial motor vehicle (CMV) a disqualifying offense. Such a conviction will result in suspension, revocation, or cancellation of the driver's commercial driver's license (CDL), or disqualification by the FHWA,

for a period of time from 90 days to five years. Civil monetary penalties were also proposed for both drivers and their employers. The NPRM responded to section 4009 of the Motor Carrier Act of 1991 (49 U.S.C. app. 2718), which directed the Secretary of Transportation to establish sanctions, penalties, and disqualifications relating to violations of out-of-service orders by persons operating commercial motor vehicles.

The statute specifies that any operator of a CMV who is convicted of a first violation of an out-of-service order is to be disqualified for no less than 90 days. Subsequent violations would lead to disqualification periods of from one to five years. The statute also sets forth civil penalties of not less than \$1,000 for drivers who are convicted of a violation of an out-of-service order, and of not more than \$10,000 for employers who are convicted of knowingly allowing a driver to violate an out-of-service order. Finally, the statute added State adoption and enforcement of the penalties for out-of-service violations to the list of conditions necessary to achieve "substantial compliance" with section 4009(a) of the Commercial Motor Vehicle Safety Act of 1986, and thereby avoid a withholding of apportioned Federal-aid highway funds. 49 U.S.C. app. 2708, 2710.

The NPRM also responded to a June 22, 1990, petition filed by the Commercial Vehicle Safety Alliance (CVSA), to include violations of out-of-service orders as disqualifying offenses under the provisions of the CDL program. The CVSA is an alliance of CMV safety enforcement officials from the United States, the Canadian provinces and territories, and the Federal government of Mexico.

Applicability

This rulemaking adds to 49 CFR part 383 of the FMCSRs, disqualification periods and civil penalties for drivers, and civil penalties for employers, who violate out-of-service orders. Part 383 generally encompasses every driver of a motor vehicle that—

- (1) Has a gross combination weight rating (GCWR) of 26,001 or more pounds, inclusive of a towed vehicle with a gross vehicle weight rating (GVWR) over 10,000 pounds;
- (2) Has a GVWR of 26,001 pounds or more;
- (3) Is designed to transport 16 or more passengers, including the driver; or
- (4) Is of any size and is used in the transportation of materials found to be hazardous for the purposes of the Hazardous Materials Transportation Act and which is required to be placarded under the Hazardous Materials

Regulations (49 CFR part 172, subpart F).

No exceptions to the applicability of CDL requirements are provided in the regulations. Pursuant to the waiver authority granted in section 12013 of the Commercial Motor Vehicle Safety Act of 1986, however, the FHWA, on September 26, 1988, issued specific waiver provisions covering active-duty military personnel and, at each State's discretion, certain farmers, firefighters, and operators of emergency equipment (53 FR 37313). Similarly, on April 17, 1992, the FHWA issued a notice of final disposition authorizing States to exempt certain employees of farm-related service industries from CDL knowledge and skills testing, allowing them to obtain a restricted CDL (57 FR 13650). Employees of farm-related service industries are still subject to all other CDL requirements. For these groups, the FHWA found that the waivers were not contrary to the public interest and would not diminish the safe operation of commercial motor vehicles.

To preserve consistency between 49 CFR part 383 (the CDL rules) and 49 CFR part 391 (qualifications of drivers), this action will also extend the purview of these regulations requiring disqualifications for violations of out-of-service orders to drivers of CMVs as defined in 49 CFR 390.5. This extension will affect all vehicles with a GVWR or GCWR greater than 10,000 pounds. This extension, based upon the FHWA's authority to establish minimum safety standards for CMVs, 49 U.S.C. 3102, 49 U.S.C. app. 2505, reflects the FHWA's belief that a smaller vehicle operating while designated as an "imminent hazard" presents the same kind of safety risk as a larger vehicle. Drivers of CMVs with a GVWR or GCWR greater than 10,000 pounds are already subject to civil penalties for violating out-of-service orders, as described in appendix A (IV) to part 386. The driver disqualifications set forth in this rulemaking will serve as an additional inducement to refrain from illegally operating a CMV in violation of an out-of-service order.

Definition

Out-of-service orders are issued in various forms. Operations out-of-service orders result from a Safety or Compliance Review conducted by the FHWA or an authorized enforcement officer of a State or local jurisdiction. Upon a finding of repeated failure to come into compliance with the Federal Motor Carrier Safety Regulations (FMCSRs) despite multiple enforcement actions, operations out-of-service orders direct a motor carrier to cease all or that

Required timing. The State shall qualify a driver as expeditiously as possible.

Recordkeeping requirements. The State shall maintain such driver records as to cause such driver identification to be retained on the CDLIS as the creator of the CDLIS specifies are necessary to the implementation and enforcement of the disqualifications listed for in §§ 384.215 through 384.219.

384.232 Required timing of record checks.

The State shall perform the record checks prescribed in §§ 384.205, 384.206, and 384.220, no earlier than 10 days prior to issuance for licenses issued before October 1, 1995. For licenses issued after September 30, 1995, the State shall perform the record checks no earlier than 24 hours prior to issuance if the license is issued to a driver who does not currently possess a valid CDL from the same State and no earlier than 10 days prior to issuance for all other drivers.

Subpart C—Procedures for Determining State Compliance

§ 384.301 Substantial compliance—general requirement.

To be in substantial compliance with 49 U.S.C. app. 2708(a), a State must meet each and every standard of subpart B of this part by means of the demonstrable combined effect of its statutes, regulations, administrative procedures and practices, organizational structures, internal control mechanisms, resource assignments (facilities, equipment, and personnel), and enforcement practices.

§ 384.303 State certification for Federal fiscal year 1994 (FY 1994).

(a) **FY 1994 Certification Requirement.** Prior to July 18, 1994, each State shall review its compliance with this part and certify to the Federal Highway Administrator as prescribed in paragraph (b) of this section. The certification shall be submitted as a signed original and four copies to the State Director or Officer-in-Charge, Office of Motor Carriers, Federal Highway Administration, located in that State.

(b) **FY 1994 Certification Content.** The certification shall consist of a statement signed by the Governor of the State, or by an official designated by the Governor, and reading as follows: "I (name of certifying official), (position title), of the State (Commonwealth) of _____, do hereby certify that the State (Commonwealth) is in substantial compliance with all requirements of 49

U.S.C. app. 2708(a), as defined in 49 CFR 384.301, and contemplates no changes in statutes, regulations, or administrative procedures, or in the enforcement thereof, which would affect such substantial compliance through (the last date of the current Federal fiscal year)."

(Approved by the Office of Management and Budget under control number 2125-0542)

§ 384.305 State certifications for Federal fiscal years after FY 1994.

(a) **Certification requirement.** Prior to January 1 of each Federal fiscal year after FY 1994, each State shall review its compliance with this part and certify to the Federal Highway Administrator as prescribed in paragraph (b) of this section. The certification shall be submitted as a signed original and four copies to the State Director or Officer-in-Charge, Office of Motor Carriers, Federal Highway Administration, located in that State.

(b) **Certification content.** The certification shall consist of a statement signed by the Governor of the State, or by an official designated by the Governor, and reading as follows: "I (name of certifying official), (position title), of the State (Commonwealth) of _____, do hereby certify that the State (Commonwealth) has continuously been in substantial compliance with all requirements of 49 U.S.C. app. 2708(a), as defined in 49 CFR 384.301, since (the first day of the current Federal fiscal year), and contemplates no changes in statutes, regulations, or administrative procedures, or in the enforcement thereof, which would affect such substantial compliance through (the last date of the current Federal fiscal year)."

(Approved by the Office of Management and Budget under control number 2125-0542)

§ 384.307 FHWA program reviews of State compliance.

(a) **FHWA Program Reviews.** Each State's CDL program shall be subject to review to determine whether or not the State meets the general requirement for substantial compliance in § 384.301. The State shall cooperate with and provide information in conjunction with any program reviews under this section.

(b) **Preliminary FHWA determination and State response.** If, after review, a preliminary determination is made that a State does not meet one or more of the standards of subpart B of this part, the State will be informed accordingly prior to July 1 of the fiscal year in which the preliminary determination is made. The State will have up to thirty calendar days to respond to the preliminary determination. Upon request by the

State, an informal conference will be provided during this time.

(c) **Final FHWA determination.** If, after reviewing any timely response by the State to the preliminary determination, a final determination is made that the State is not in compliance with the affected standard, the State will be notified of the final determination.

§ 384.309 Results of compliance determination.

(a) A State shall be determined not substantially in compliance with 49 U.S.C. app. 2708(a) for any fiscal year in which it:

- (1) Fails to submit the certification as prescribed in this subpart; or
- (2) Does not meet one or more of the standards of subpart B of this part, as established in a final determination by the FHWA under § 384.307(c).

(b) A State shall be in substantial compliance with 49 U.S.C. app. 2708(a) for any fiscal year in which neither of the eventualities in paragraph (a) of this section occurs.

Subpart D—Consequences of State Noncompliance

§ 384.401 Withholding of funds based on noncompliance.

(a) **Following first year of noncompliance.** An amount equal to ten percent of the funds required to be apportioned to any State under each of sections 104(b)(1), 104(b)(3), and 104(b)(5) of title 23, U.S.C., shall be withheld on the first day of the fiscal year following such State's first year of noncompliance under this part.

(b) **Following second and subsequent year(s) of noncompliance.** An amount equal to ten percent of the funds required to be apportioned to any State under each of sections 104(b)(1), 104(b)(3), and 104(b)(5) of title 23, U.S.C., shall be withheld on the first day of the fiscal year following such State's second or subsequent year of noncompliance under this part.

§ 384.402 Period of availability; effect of compliance and noncompliance.

(a) **Period of availability.**

(1) **Funds withheld on or before September 30, 1995.** Any funds withheld under this subpart from apportionment to any State on or before September 30, 1995, shall remain available for apportionment to such State as follows:

- (i) If such funds would have been apportioned under 23 U.S.C. 104(b)(5)(B) but for the provisions of this subpart, such funds shall remain available until the end of the second fiscal year following the fiscal year for

which such funds are authorized to be appropriated.

(ii) If such funds would have been apportioned under 23 U.S.C. 104(b)(1) or 104(b)(3) but for the provisions of this subpart, such funds shall remain available until the end of the third fiscal year following the fiscal year for which such funds are authorized to be appropriated.

(3) *Funds withheld after September 30, 1995.* No funds withheld under this subpart from apportionment to any State after September 30, 1995, shall be available for apportionment to such State.

(b) *Apportionment of withheld funds after compliance.* If, before September 30 of the last fiscal year for which funds withheld under this subpart from apportionment are to remain available

for apportionment to a State under paragraph (a) of this section, the State makes the certification called for in § 384.305 and a determination is made that the State has met the standards of subpart B of this part for a period of 365 days and continues to meet such standards, the withheld funds remaining available for apportionment to such State shall be apportioned to the State on the day following the last day of such fiscal year.

(c) *Period of availability of subsequently apportioned funds.* Any funds apportioned pursuant to paragraph (b) of this section shall remain available for expenditure until the end of the third fiscal year succeeding the fiscal year in which such funds are apportioned. Sums not obligated at the end of such period shall

lapse or, in the case of funds apportioned under 23 U.S.C. 104(b)(5), shall lapse and be made available by the Secretary for projects in accordance with 23 U.S.C. 118(b).

(d) *Effect of noncompliance.* If, at the end of the period for which funds withheld under this subpart from apportionment are available for apportionment under paragraph (a) of this section, the State has not met the standards of subpart B of this part for a 365-day period, such funds shall lapse or, in the case of funds apportioned under 23 U.S.C. 104(b)(5), shall lapse and be made available by the Secretary for projects in accordance with 23 U.S.C. 118(b).

FR Doc. 94-11843 Filed 5-17-94; 8:45 am
BILLING CODE 4110-22-9