

HB

343

FISCAL NOTE

STATE OF ALASKA
1998 LEGISLATIVE SESSION

BILL NO. HB 343

| | |
|--|--|
| Revision Date _____ | Dept. Affected <u>DOT&PF</u> |
| Title <u>An Act excluding certain motor vehicles from the definition of commercial motor vehicle</u> | BRU <u>Office of the Commissioner</u> |
| Sponsor <u>Representative Davis</u> | Component <u>Commissioner's Office</u> |
| Requester <u>House Transportation</u> | Component Serial No. <u>530</u> |

Expenditures/Revenues (Thousands of Dollars)

| OPERATING EXPENDITURES | FY 99 | FY 00 | FY 01 | FY 02 | FY 03 | FY 04 |
|-------------------------------|------------|------------|------------|------------|------------|------------|
| 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 | 0.0 | 0.0 | 0.0 | 0.0 | 0.0 | 0.0 |
| CHANGE IN REVENUES () | 0.0 | 0.0 | 0.0 | 0.0 | 0.0 | 0.0 |

FUND SOURCE (Thousands of Dollars)

| FUND SOURCE | FY 99 | FY 00 | FY 01 | FY 02 | FY 03 | FY 04 |
|--------------------------|------------|------------|------------|------------|------------|------------|
| 1002 Federal Receipts | | | | | | |
| 1003 GF Match | | | | | | |
| 1004 GF | | | | | | |
| 1005 GF/Program Receipts | | | | | | |
| 1037 GF/Mental Health | | | | | | |
| Other (Specify Type) | | | | | | |
| TOTAL | 0.0 | 0.0 | 0.0 | 0.0 | 0.0 | 0.0 |

Estimate of any current year (FY98) cost: 0.0

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)*

Prepared by Dennis Poshard
 Division Office of the Commissioner
 Approved by: *Dennis L. Poshard*, Commissioner
 Agency Department of Transportation and Public Facilities

Phone 465-3904
 Date 1/30/98
 Date 1/30/98

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FISCAL NOTE

STATE OF ALASKA
1998 LEGISLATIVE SESSION

BILL NO: CSHB 343 (TRA)

Revision Date: 02/02/98 Dept. Affected: Administration
 Title: "An Act relating to the definition of BRU: Motor Vehicles
Commercial Motor vehicle..." Component: Driver Services
 Sponsor: Representative Davis
 Requestor: (H) TRANS COMPONENT SERIAL NO. 2150

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

| OPERATING | FY 99 | FY 00 | FY 01 | FY 02 | FY 03 | FY 04 |
|------------------------|----------|----------|----------|----------|----------|----------|
| PERSONAL SERVICES | | | | | | |
| TRAVEL | | | | | | |
| CONTRACTUAL | | | | | | |
| SUPPLIES | | | | | | |
| EQUIPMENT | | | | | | |
| LAND & STRUCTURES | | | | | | |
| GRANTS, CLAIMS | | | | | | |
| MISCELLANEOUS | | | | | | |
| TOTAL OPERATING | 0 | 0 | 0 | 0 | 0 | 0 |

| | | | | | | |
|-----------------------------|--|--|--|--|--|--|
| CAPITAL EXPENDITURES | | | | | | |
|-----------------------------|--|--|--|--|--|--|

| | | | | | | |
|-------------------------------|--|--|--|--|--|--|
| CHANGE IN REVENUES () | | | | | | |
| 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 98) impact: \$ 0.0

POSITIONS:

| | | | | | | |
|-----------|--|--|--|--|--|--|
| FULL-TIME | | | | | | |
| PART-TIME | | | | | | |
| TEMPORARY | | | | | | |

ANALYSIS: (Attach a separate page if necessary.)

This bill will not fiscally impact the Division of Motor Vehicles

Prepared By: Juanita M. Hensley Phone: 465-5648
 Division: Motor Vehicles Date: 02/02/98
 Approved by Commissioner: *Mark Boyer* Date: 2/3/98
 Agency: Mark Boyer, Dept. of Administration

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Session:
State Capitol
Juneau, Alaska 99801
(907) 465-2693
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Representative Gary L. Davis

SECTIONAL ANALYSIS

House Bill 343

"An Act excluding certain motor vehicles from the definition of commercial motor vehicle"

Section 1: Amends AS 28.40.100(a)(2) by expanding the exceptions listed under subsection (D) to include construction vehicles that are driven on roads in order to relocate the vehicle to a job site from the definition of a commercial motor vehicle.

HB343 SA. 1/28/98

Soldotna, AK

Representing House District 8

2 Pass, Seward

SECTIONAL

Alaska State Legislature

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Representative Gary L. Davis

SPONSOR STATEMENT

House Bill 343

“An Act excluding certain motor vehicles from the definition of commercial motor vehicle”

There is apparent confusion among law enforcement officials as to under what circumstances an individual is required to possess a commercial driver's license (CDL). Some Alaska statutes and regulations reference federal requirements, which exempt the need for a CDL in cases of moving construction equipment from one site to another—this is considered by them to be an incidental move. However other Alaska statutes require drivers of any equipment weighing over 26,000 pounds “used upon a land highway or vehicular way” to possess a commercial driver's licenses.

House Bill 343 amends the definition of “commercial motor vehicle” in AS 28.40.100(a)(2) by expanding the exceptions to include construction vehicles that are driven on roads in order to relocate the vehicle to a job site from the definition.

Including this exception clears up the confusion. The intent of the legislation is to allow individuals to move their construction equipment from one site to another without being required to have a commercial driver's license. If an individual is involved in work on the road, a commercial driver's license is still required.

HB343/SS/1/28/98

Representing House District 8
Soldotna, Sterling, Funny River, Cooper Landing, Hope, Moose Pass, Seward

1996 except that to the extent that the amendments made by §§ 6, 7, 10, 11, and 18-21 of this Act involve prior convictions, those prior convictions may have occurred before, on, or after November 8, 1996."

Sec. 28.40.100. Definitions for title. (a) Unless otherwise specifically defined or unless the context otherwise requires, in this title and in regulations adopted under this title

(1) "cancel" means to annul or terminate, by formal action of the department, a certification, registration, license, permit or privilege issued or allowed under this title or regulations adopted under this title, because of an error or defect in the document issued or the application for issuance or because the person holding the document is no longer entitled to it;

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

(A) used to transport passengers or property;

(B) used upon a land highway or vehicular way; and

(C) that

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

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

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

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

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

(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;

(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 business;

(4) "commissioner" means the commissioner of public safety;

(5) "custom collector vehicle" means a vehicle whose body and frame were manufactured before 1949 or a replica of a vehicle whose body and frame were manufactured before 1949 and that has been modified for safe road use; in this paragraph, "modified" includes a material alteration of the drive-train, suspension, brake system, or dimensions of the body;

(6) "department" means the Department of Public Safety;

(7) "driver" means a person who drives or is in actual physical control of a vehicle;

(8) "driver's license" or "license," when used in relation to driver licensing, means a license or permit to drive a motor vehicle, or the privilege to drive or to obtain a license to drive a motor vehicle, under the laws of this state, whether or not a person holds a valid license issued in this or another jurisdiction;

(9) "gross combination weight rating" means the value specified by the manufacturer as the loaded weight of a combination vehicle, except that if a value has not been specified by the manufacturer, the gross combination weight rating is determined by adding the gross vehicle weight rating of the power unit and the total weight of the towed unit and the load on the towed unit;

(10) "gross vehicle weight rating" means the value specified by the manufacturer as the loaded weight of a single vehicle;

(A) suspend execution of sentence or grant probation except on condition that the person serve a minimum term of imprisonment and perform required community work service as provided in (1) of this subsection;

(B) suspend imposition of sentence; and

(4) shall revoke the person's license, privilege to drive, or privilege to obtain a license, and the person may not be issued a new license nor may the privilege to drive or obtain a license be restored for an additional period of not less than 90 days after the date that the person would have been entitled to restoration of driving privileges.

(c) In this section, "previously convicted" means having been convicted in this or another jurisdiction, within 10 years preceding the date of the present offense, of a violation of this section, AS 28.15.291, or another law or ordinance with substantially similar elements. (§ 19 ch 3 SLA 1992)

Editor's notes. — Section 30, ch. 3, SLA 1992 provides that for the purposes of this section, enacted by § 19, ch. 3, SLA 1992, convictions for offenses committed before April 1, 1992 are considered previous convictions.

Sec. 28.33.190. Definitions. In this chapter,

(1) "alcoholic beverage" has the meaning given in AS 04.21.080(b);

(2) "commercial motor vehicle" has the meaning given in AS 28.40.100;

(3) "controlled substance" means any substance listed as being controlled under AS 11.71 or 21 U.S.C. 812 — 813, or determined under federal regulations to be controlled for purposes of 21 U.S.C. 801 — 813 (Controlled Substances Act);

(4) "disqualification" means a withdrawal of the privilege to drive a commercial motor vehicle;

(5) "disqualified" means that a person's privilege to drive a commercial motor vehicle has been withdrawn;

(6) "drive a commercial motor vehicle" means to affect the movement, attempt to affect the movement, or to be in actual physical control, of a commercial motor vehicle in motion, excluding slight motion incidental to loading, unloading, servicing, or inspecting the vehicle;

(7) "employer" means a person who

(A) provides compensation to a person who operates a commercial motor vehicle, including wages or other remuneration, whether through an employment relationship or by contract; or

(B) acts as an agent of someone who provides compensation to a person who operates a commercial motor vehicle, with authority to allow, require, permit, assign, or authorize the person being compensated to operate a commercial motor vehicle;

(8) "hazardous substance" means a substance found by the United States Secretary of Transportation to be hazardous for purposes of 49 U.S.C. 1801 — 1813 (Hazardous Materials Transportation Act);

(9) "operating a commercial motor vehicle" means

(A) to drive a commercial motor vehicle; or

(B) whether or not the vehicle is in motion, or is capable of being moved, to be in actual physical control, or to attempt to affect the movement, of a commercial motor vehicle; and

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

(11) "serious traffic violation" means

(A) speeding 15 miles per hour or more above the posted limit;

(B) reckless or negligent driving, in violation of AS 28.35.040 or 28.35.045 or an ordinance with substantially similar elements;

(C) violation of a provision of this title, or a regulation adopted under this title, relating to improper lane changes or following too closely, or an ordinance with substantially similar elements; or

STATE OF ALASKA

DEPARTMENT OF PUBLIC SAFETY

OFFICE OF THE COMMISSIONER

TONY KNOWLES, GOVERNOR

P.O. BOX 111200
JUNEAU, ALASKA 99811-1200
PHONE: (907) 465-4322
FAX: (907) 465-4362



September 5, 1996

The Honorable Gary Davis
Alaska State Legislature
145 Main Street Loop #223
Kenai, AK 99611

Dear Representative Davis:

In response to your letter dated August 13, 1996, I would like to offer the following information regarding Commercial Drivers License (CDL) enforcement.

You are correct that a front loader less than 26,000 pounds does not require a CDL. If your front loader was greater than 26,000 pounds and you were engaged in an incidental move of the equipment between job sites, you would not need a CDL. If your loader was greater than 26,000 pounds and you were engaged in work on the road such as snow removal, a CDL would be required. It appears that the officer may have been in error when advising you that a CDL was required.

It appears legislation to bring State law into compliance with federal law is not necessary as there is no conflict between the two. In your specific case, the rule was not interpreted properly. There are cases where we must adjust our enforcement posture due to new interpretation rulings from Federal agencies. Such interpretations do not normally require new legislation.

For the reasons stated above, I see no reason to direct that the CDL regulations not be enforced. Rather, it would seem appropriate that we contact the officer involved to ensure he/she understands what the rules are. If you could provide more information as to the agency, time, date, location, and officer if known, we would follow up with proper instruction to ensure appropriate application of the rules.

If you have any further concerns, please contact my office.

Sincerely,



Ronald L. Otte
Commissioner

cc: Col. Glenn Godfrey
Alaska State Troopers

12-L2LH

Public Safety LETTER

FAX TRANSMITTAL

July 11, 1996

Pages: 3

FM:

US Department of Transportation
Office of Motor Carriers
Anchorage, AK
907-271-4068, fax 907-271-4069

TO:

Helen Donahue
Rep. Gary Davis
283-7095
fax: 283-3075

REMARKS:

Helen:

Per our conversation, here is a copy of the definition of a Commercial Motor Vehicle for CDL purposes (basically >26,000lbs) and an interpretation regarding the applicability of CDL regs to off road construction equipment. The operator of such equipment is not required to hold a CDL unless unusual circumstances were involved whereby the equipment was being used on a public access highway (plowing snow for example)



John M. Quartuccio
Special Agent, FHWA
Alaska Division Program Specialist

C D L R E G S

§ 383.3

49 CFR Ch. III (10-1-95 Edition)

(4) Prohibits an employer from allowing a person with a suspended license to operate a commercial motor vehicle;

(5) Establishes periods of disqualification and penalties for those persons convicted of certain criminal and other offenses and serious traffic violations, or subject to any suspensions, revocations, or cancellations of certain driving privileges;

(6) Establishes testing and licensing requirements for commercial motor vehicle operators;

(7) Requires States to give knowledge and skills tests to all qualified applicants for commercial drivers' licenses which meet the Federal standard;

(8) Sets forth commercial motor vehicle groups and endorsements;

(9) Sets forth the knowledge and skills test requirements for the motor vehicle groups and endorsements;

(10) Sets forth the Federal standards for procedures, methods, and minimum passing scores for States and others to use in testing and licensing commercial motor vehicle operators; and

(11) Establishes requirements for the State issued commercial license documentation.

[52 FR 20337, June 1, 1987, as amended at 58 FR 2668, July 2, 1993; 54 FR 90787, Oct. 3, 1989]

§ 383.3 Applicability.

The rules in this part apply to every person who operates a commercial motor vehicle in interstate, foreign, or intrastate commerce, and to all employers of such persons.

§ 383.5 Definitions.

As used in this part:

Administrator means the Federal Highway Administrator, the chief executive of the Federal Highway Administration, an agency within the Department of Transportation.

Alcohol or alcoholic beverage means:

- (a) Beer as defined in 26 U.S.C. 5062(a), of the Internal Revenue Code of 1954.
- (b) wine of not less than one-half of one per centum of alcohol by volume, or
- (c) distilled spirits as defined in section 5002(a)(8), of such Code.

Alcohol concentration (AC) means the concentration of alcohol in a person's blood or breath. When expressed as a percentage it means grams of alcohol

per 100 milliliters of blood or grams of alcohol per 210 liters of breath.

Commerce means (a) any trade, traffic or transportation within the jurisdiction of the United States between a place in a State and a place outside of such State, including a place outside of the United States and (b) trade, traffic, and transportation in the United States which affects any trade, traffic, and transportation described in paragraph (a) of this definition.

Commercial driver's license (CDL) means a license issued by a State or other jurisdiction, in accordance with the standards contained in 49 CFR part 383 to an individual which authorizes the individual to operate a class of a commercial motor vehicle.

Commercial driver's license information system (CDLIS) means the CDLIS established by FHWA pursuant to section 12007 of the Commercial Motor Vehicle Safety Act of 1986.

Commercial motor vehicle (CMV) means a motor vehicle or combination of motor vehicles used in commerce to transport passengers or property if the motor vehicle—

(a) Has a gross combination weight rating of 28,001 or more pounds inclusive of a towed unit with a gross vehicle weight rating of more than 10,000 pounds; or

(b) Has a gross vehicle weight rating of 28,001 or more pounds; or

(c) Is designed to transport 16 or more passengers, including the driver; or

(d) 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 require the motor vehicle to be placarded under the Hazardous Materials Regulations (49 CFR part 172 subpart F).

Controlled substance has the meaning such term has under section 102(6) of the Controlled Substances Act (21 U.S.C. 802(6)) and includes all substances listed on schedules I through V of 21 CFR part 1308, as they may be revised from time to time. Schedule I substances are identified in appendix I of this subchapter and schedules II through V are identified in appendix J of this subchapter.

hi for
CDL
Report

Regulatory Interpretations / Guidance

§ 383.3 APPLICABILITY

Question 1: *Are school and church bus drivers required to obtain a CDL?*

Guidance: Yes, if they drive vehicles designed to transport 16 or more people.

Question 2: *Do mechanics, shop help, and other occasional drivers need a CDL if they are operating a CMV or if they only test drive a vehicle?*

Guidance: Yes, if the vehicle is operated or test-driven on a public highway.

Question 3: *Does part 383 apply to drivers of recreational vehicles?*

Guidance: No, if the vehicle is used strictly for nonbusiness purposes.

Question 4: *Does part 383 apply to drivers of vehicles used in "van pools"?*

Guidance: Yes, if the vehicle is designed to transport 16 or more people.

Question 5: *May a person operate a CMV wholly on private property, not open to public travel, without a CDL?*

Guidance: Yes.

→ **Question 6:** *Does the FHWA include off-road motorized construction equipment under the definitions of "motor vehicle" and "CMV" as used in § 390.5 and § 383.5?*

Guidance: No, because it is neither used on the highway nor used in the transportation of passengers or property.

→ **Question 7:** *What types of equipment are included in the category of off-road motorized construction equipment?*

Guidance: The definition of off-road construction equipment is to be narrowly construed and limited to equipment which, by its design, appearance, and function, is obviously not intended for use on a public road. Such equipment would include motorscrapers, backhoes, motorgraders, compactors, excavators, tractors, trenchers, and bulldozers.

Question 8: *Do operators of motorized cranes and vehicles used to pump cement at construction sites have to meet the testing and licensing requirements of the CDL program?*

Guidance: Yes, because such vehicles are designed to be operated on the public highways and therefore do not qualify as off-road construction equipment. The fact that these vehicles are only driven for limited distances, at less than normal highway speeds and/or incidental to their primary function, does not exempt the operators from the CDL requirements.

Question 9: *May a State require persons operating recreational vehicles or other CMVs used by family members for nonbusiness purposes to have a CDL?*

Guidance: Yes. States may extend the CDL requirements to recreational vehicles.

Question 10: *Do drivers of either a tractor trailer or straight truck that is converted into a mobile office need a CDL?*

Guidance: Yes, if the vehicle meets the definition of a CMV.