

HB

343

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
Commercial Motor vehicle..." BRU: Motor Vehicles
 Sponsor: Representative Davis Component: Driver Services
 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						
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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: *Alison M. Elace* Date: 2/3/98
 Agency: Mark Boyer, Dept. of Administration

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MEMORANDUM

DATE: April 30, 1998

TO: Legislative Legal

FROM: Lydia A. Jones *[Signature]*
Senate Transportation Committee

RE: SCS for CSHB 343

Please prepare a Senate Transportation Committee Substitute for CSHB 343 in final form as follows:

On Page 2, line 19:

After "business" insert "or project office."



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MEMORANDUM

DATE: April 26, 1998

TO: Legislative Legal -

FROM: Lydia A. Jones *[Signature]*
Senate Transportation Committee

RE: Transportation Committee Substitute for CSHB 343

Please prepare amendment draft 0-LS1528/E.2 as a Transportation Committee Substitute for CSHB 343.

Thanks.

0-LS1528/E.2
Ford
4/14/98
Preferred

A M E N D M E N T

OFFERED IN THE SENATE

~~BY SENATOR TORGERSON~~

TO: ~~CSHB 404(TRA)~~

HB 343

Change title

1 Page 1, line 3:

2 Delete "for commercial"

3 Insert "and municipal taxes for"

4 Page 8, following line 9:

5 Insert a new bill section to read:

6 **** Sec. 18.** AS 28.10.421(b) is amended to read:

7 (b) The biennial registration fees under this subsection are imposed within the
8 following classifications for [:]

9 (1) a passenger vehicle or motor home not used or maintained for the
10 transportation of persons or property for hire or for other commercial use . . . \$68;

11 (2) a pick-up truck or a van not exceeding 10,000 [6,000] pounds
12 unladen weight and not registered in the name of a company or business [USED
13 OR MAINTAINED FOR THE TRANSPORTATION OF PERSONS OR PROPERTY
14 FOR HIRE OR FOR OTHER COMMERCIAL USE] \$78;

15 (3) a taxicab \$138;

16 (4) a motor bus with a seating capacity for 20 or more persons and
17 used exclusively for commercial purposes in the transporting of visitors or
18 tourists \$168;

19 (5) a motorcycle or a motor-driven cycle \$38;

20 (6) a trailer not used or maintained for the transportation of persons
21 or property for hire or for other commercial use, including, but not limited to, a boat
22 trailer, baggage trailer, box trailer, utility trailer, house trailer, travel trailer, or a trailer
23 rented or offered for rent \$10."

Alaska State Legislature

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Session:

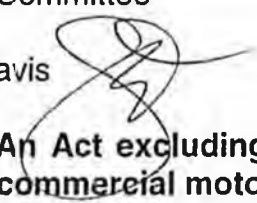
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fx 907/465-3835
800/463-2693

Representative Gary Davis

MEMORANDUM

DATE: February 20, 1998

TO: Senator Jerry Ward, Chair
Senate Transportation Committee

FROM: Representative Gary Davis 

RE: **Hearing on HB 343 "An Act excluding certain motor vehicles from the definition of commercial motor vehicle"**

Please schedule a hearing on House Bill 343 "An Act excluding certain motor vehicles from the definition of commercial motor vehicle." Attached are the following items for inclusion in the committee files.

- Sponsor Statement;
- Sectional Analysis;
- Fiscal Notes from Departments of Administration and Transportation and Public Facilities
- Current Alaska statutes modified by HB 343;
- Correspondence from the Commissioner of Administration indicating that the legislation is consistent with FHWA interpretations (including a copy of those interpretations)

Please contact Deb Davidson of my staff if you have any questions or would like additional information or assistance.

GLD/dld

Attachments

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

Representative_Gary_Davis@legis.state.ak.us

Alaska State Legislature

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Representative Gary L. Davis

SPONSOR STATEMENT

Committee Substitute for House Bill 343(TRA)

“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.

Committee Substitute to House Bill 343(Tra) amends the definition of “commercial motor vehicle” in AS 28.40.100(a)(2) by expanding the exceptions to include “special mobile equipment”—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/2/4/98

Representing House District 8

Soldotna, Sterling, Funny River, Cooper Landing, Hope, Moose Pass, Seward

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Representative Gary L. Davis

SECTIONAL ANALYSIS

Committee Substitute to House Bill 343(TRA)

"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 special mobile equipment that is driven on roads in order to relocate the vehicle to a job site from the definition of a commercial motor vehicle.

Title 13 of the Alaska Administrative Code, Chapter 10, Section 010 defines special mobile equipment as follows:

13 AAC 10.010. Definitions

In Chapters 02, 04, 06, and 08 of this title, and in AS 28, unless otherwise provided . . .

(52) "special mobile equipment" means a vehicle which is not designed or used primarily for the transportation of persons or property and only incidentally operated or moved over a highway, including but not limited to ditch digging apparatus, well boring apparatus, construction and maintenance machinery such as asphalt spreaders, bituminous mixers, bucket loaders, tractors other than truck tractors, ditchers, leveling graders, finishing machines, motor graders, road rollers, scarifiers, earthmoving carryalls and scrapers, power shovels and drag lines, and self-propelled cranes and earthmoving equipment; it does not include house trailers, mobile homes, off-highway vehicles, dump trucks, truck-mounted transit mixers, cranes, or shovels, or other vehicles designed for the transportation of persons or property to which machinery has been attached; . . .

CSHB343/SA/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;

criminal punishment intended did not intend to make criminal offenses, it does not intend to make offenses criminal by labeling infractions as criminal. These offenses are civil in nature and are not available for the State v. Clayton, 584 P.2d

relative labeling of a traffic offense by this section, it means, such as "convicted," "liable by a fine." State v. Alaska 1978).
an offense for double on v. State, 676 P.2d 603

05(a) (now repealed) and does in pari materia do not registration statutes as an this section, such a violation shable by up to 90 days' g a defendant to a jury t constitutes prejudicial t Epperly v. State, 648 P.2d

criminal process not af- express contrary declara- intend by the enactment he traditional use of the ment of traffic infractions. 11 (Alaska 1978).

changes in the traditional criminal matters with the that a person cited with an ght to trial by jury or to e action is brought in the menced by the filing of a ment official; it is prose- y. The exceptions appear ostitutional law. State v. ka 1978).

v. State, 655 P.2d 1320

ality of Anchorage, 641 82).

555 P.2d 780 (Alaska Ct.

offense under AS chemical test of a s administered by a ic Safety, the result rance. (§ 17 ch 143

22, ch. 143, SLA 1996 3 and 17-21 of this Act on or after November 8,

(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

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STATE OF ALASKA

TONY KNOWLES, GOVERNOR

DEPARTMENT OF ADMINISTRATION

OFFICE OF THE COMMISSIONER

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February 3, 1998

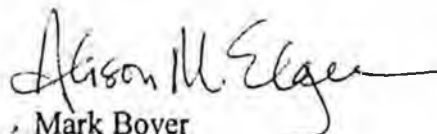
The Honorable Gary L. Davis
House of Representatives
Alaska State Legislature
State Capitol Bldg. - Room 513
Juneau, AK 99801

Dear Representative Davis:

Your amendment to the definition of a commercial motor vehicle in AS 28.40.100(a)(2) by House Bill 343 poses no problem for the department. The exemption of operators of construction equipment from the commercial driver's license requirements is consistent with the FHWA interpretations of related sections of Federal Motor Carrier Safety Regulations. Copies of sections 95.50 and 96.21 of the FHWA Interpretations manual are attached for your convenience.

Juanita Hensley will be available to address any additional questions you or the Committee may have on this issue.

Sincerely,


for Mark Boyer
Commissioner

MB/nn
Enclosures
cc: David Koivuniemi
Juanita Hensley

- 96.20 Must a motor vehicle that meets the definition of a "commercial motor vehicle in Section 390.5 because it transports hazardous materials in a quantity requiring placarding under the Hazardous Materials Regulations (49 CFR 171-180) comply with the fuel system requirements of Subpart E of Part 393, even though it has a gross weight rating (GVWR) of 10,000 pounds or less?

No. Federal Motor Vehicle Safety Standard No. 301 (FMVSS No. 301) contains fuel system integrity requirements for passenger cars and multipurpose passenger vehicles, trucks, and buses that have a GVWR of 10,001 or more pounds. The fuel systems of placarded motor vehicles with a GVWR of less than 10,001 pounds are adequately addressed by FMVSS No. 301 and compliance with Subpart E of Part 393 would be redundant. However, commercial motor vehicles that are not covered by FMVSS No. 301 must continue to comply with Subpart E of Part 393.

- 96.21 What types of equipment are included in the category of off-road motorized construction equipment?

The definition of off-road motorized construction equipment is to be narrowly construed and limited to equipment which, by its design and function is obviously not intended for use, nor is it used on a public road in furtherance of a transportation purpose. Examples of such equipment include motor scrapers, backhoes, motor graders, compactors, tractors, trenchers, bulldozers and railroad track maintenance cranes.

- 96.21 Does off-road motorized construction equipment meet the definitions of motor vehicle and commercial motor vehicle as used in 49 CFR 383.5 and 390.5?

No. Off-road motorized construction equipment is outside the scope of these definitions: (1) when operated at construction sites; and (2) when operated on a public road open to unrestricted public travel, provided the equipment is not used in furtherance of a transportation purpose. Since construction equipment is not designed to operate in traffic, it should be accompanied by escort vehicles or in some other way separated from the public traffic. This equipment may also be subject to State or local permit requirements with regard to escort vehicles, special markings, time of day, day of the week, and/or the specific route.

- 96.22 Are the reasonable suspicion testing and training requirements of Sections 382.307 and 382.603 applicable to an owner-operator who is both an employer and the only employee?

No. The requirements of Sections 382.307 and 382.603 are not applicable to owner-operators in non-supervisory positions. Section 382.307 requires employers to have a driver submit to an alcohol and/or controlled substances test when the employer has reasonable suspicion to believe that the driver has

95.49 When the driver's duty status changes, do Sections 395.8(c) or 395.8(h)(5) require a description of on-duty not driving activities ("fueling", "pre-trip", "loading", "unloading", etc.) in the remarks section in addition to the name of the nearest city, town or village followed by the state abbreviation?

No. Many motor carriers require drivers to identify work performed during a change of duty status. Part 395 neither requires nor prohibits this practice.

***95.50** Do the CDL Regulations (49 CFR 383) apply to operators of motor graders and front-end loaders while removing snow or leaves on a public road?

Yes. The operators would be required to have CDLs if the GVWR of the vehicle is 26,001 pounds or greater. The exemption for operators of off-road construction equipment does not apply in this case because the vehicles are being used on public roads and in the furtherance of a transportation purpose, the removal of snow or leaves from the road. The equipment performs a service on the public road in a manner similar to street sweepers. By previous interpretation, operators of street sweepers, with a GVWR of 26,001 pounds or more, are required to obtain a CDL.

95.50 What is considered a "public road"?

A public road is any road under the jurisdiction of a public agency and open to public travel or any road on private property that is open to public travel.

95.50 Since most operators of construction equipment are not classified by their job description or title as drivers, why do they need to obtain a CDL?

Operators of construction equipment are just like mechanics, shop help, and vehicle salespersons, who operate CMVs on public roads. The CDL regulations address the issue of job function rather than job title. The term "operator" is used in the CDL regulations (49 CFR Part 383) because they cover more persons than the traditional "driver". Operators of construction equipment with a GVWR of 26,001 pounds or more, who operate on the public road, would therefore be required to obtain a CDL regardless of the job description or title.

95.50 Is an operator automatically exempt from the CDL requirements (49 CFR Part 383) if the construction equipment is exempt from state vehicle registration requirements?

No. State vehicle registration has no bearing on who is required to obtain a CDL. The CDL regulations apply to any operator, not otherwise exempted or waived, who operates a CMV.