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BILL ANALYSIS

Senate Fiscal Agency

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Senate Bill 1067 (as enrolled)

PUBLIC ACT 339 of 1990

Sponsor: Senator Richard D. Fessler

Senate Committee: State Affairs, Tourism, and Transportation

House Committee: Transportation

Date Completed: 1-10-91

RATIONALE

Federal regulations governing motor carrier safety are continually being updated, and states are required to bring their laws into conformity with those regulations. In Michigan, the Motor Carrier Safety Act requires compliance with qualifications established by the Department of State Police, and the Department's Motor Carrier Division promulgated the Federal regulations as administrative rules in 1984; the rules evidently have not been updated since. Reportedly, although most of the current Federal regulations already are being enforced here, the State also must conform its own law to the regulations in order to ensure continued Federal funding for transportation programs. Since amending administrative rules evidently can take up to two years, some believe that the State statute instead should be amended to incorporate the current Federal regulations.

CONTENT

The bill would amend the Motor Carrier Safety Act to adopt Federal regulations that pertain to hazardous materials, motor carrier safety, and definitions, and to do the following:

- Define "commercial motor vehicle" and "motor carrier" to include a vehicle or carrier, respectively, that transports either passengers or property.
- Establish qualifications that individuals would have to meet in order to drive a motor vehicle.
- Require motor carriers to review the driving record of their drivers, and

maintain driver qualification files.

- Require persons to be physically qualified to drive a motor vehicle, but allow nonphysically qualified persons to seek a waiver from the Motor Carrier Division or from a proposed appeal board.
- Exempt certain drivers from the Act and the Federal regulations.
- Limit drivers' hours of service.
- Provide that failure to comply with certain Federal record-keeping requirements would subject the driver and/or carrier to prosecution.
- Require motor carriers to be knowledgeable of and comply with the Act and rules promulgated under it, and require drivers and employees to be instructed regarding applicable provisions.
- Include buses and "certain other motor vehicles" in provisions of the Act that pertain to safety standards and violations.
- Define "bus" as a motor vehicle designed for carrying 16 or more passengers, including the driver, and exclude from the definition a school bus or a bus operated by a public transit agency.
- Establish bumper and override guard requirements.

The bill would take effect April 2, 1991.

Applicability of Act/Regulations

The bill provides that, "This state hereby adopts"

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the hazardous materials regulations, and motor carrier safety regulations (with exceptions pertaining to the construction of certain terms), of Title 49 of the Code of Federal Regulations as of February 28, 1990, except where modified by the Act, "to provide for the safe transportation of persons and property with the intent of following the policies and procedures of the United States Department of Transportation's federal highway administration as they relate to Title 49... and the North American standard uniform out of service criteria and inspection procedures".

Except as otherwise provided in the Act, the Act would apply to all employers, employees, and commercial motor vehicles that transport property or passengers. The Federal regulations entitled "Minimum Levels of Financial Responsibility for Motor Carriers" would apply to motor carriers as provided in the regulations.

Unless otherwise specifically provided, the Act and the rules promulgated under it would not apply to the following:

- The occasional transportation of personal property by individuals not for compensation or in the furtherance of a commercial enterprise.
- The transportation of human corpses or sick and injured persons.
- The operation of an authorized emergency vehicle by a firefighter who had met the driver training standards of the Michigan Firefighter's Training Council.
- A semitrailer or truck used exclusively for storage purposes.

The bill specifies that nothing in the Act could be construed to prohibit an employer from requiring and enforcing more stringent requirements relating to safety of operation and employee safety and health.

Every motor carrier would be required to be knowledgeable of and comply with the Act and the rules promulgated under it that were applicable to the carrier's operations. Every driver and employee would have to be instructed regarding, and comply with, all applicable provisions and rules. The Act could not be construed to prohibit the use of additional equipment and accessories if they were in proper

working condition, were not inconsistent with or prohibited by the Act or rules, and did not decrease the safety of operation of the vehicles on which they were used. All motor vehicle equipment and accessories required by the Act and Federal law or regulation would have to be maintained in compliance with all applicable performance and design criteria set forth in the Act and rules promulgated under it.

Driver Qualifications

A person could not drive, and a motor carrier could not require a person to drive, a motor vehicle unless the person were qualified to do so. The bill would establish qualification criteria pertaining to a driver's age, ability to read and speak the English language, ability to operate a motor vehicle, ability to secure cargo in or on the vehicle, physical qualifications, licensure, provision to his or her employer of a list of violations, status of not being disqualified due to loss of driving privileges or criminal or other offenses, road test, written examination, and employer application.

List of Previous Employers

A person who applied to operate a commercial motor vehicle, as defined in the Michigan Vehicle Code, would be required to submit a list of the names and addresses of the applicant's employers for whom the applicant operated a commercial motor vehicle, together with the dates of employment and reasons for leaving. The list would have to cover the seven years preceding the three-year period for which such a list is required under Federal regulations.

Motor Carrier Responsibilities

At least annually, a motor carrier would be required to review a copy of the driver's record from each state in which a driver held a license during the preceding year to determine whether the driver met the minimum requirements for safe driving or was disqualified to drive a motor vehicle.

In addition, a motor carrier would have to maintain a driver qualification file for each driver it employed. The required contents of a qualification file would differ according to whether the driver had been a regularly employed driver of a motor carrier of property

for a continuous period that began on or before June 10, 1984, or for a motor carrier of passengers for a continuous period that began 30 days before the bill's effective date; a regularly employed driver who was employed by a motor carrier of property after June 10, 1984, or a regularly employed driver of a motor carrier of passengers who had not been regularly employed for a continuous period that began at least 30 days before the bill's effective date; or an intermittent, casual, or occasional driver. (June 10, 1984, is the date on which Michigan's motor carrier safety rules took effect.)

Failing to complete and preserve the record of duty activities required by Federal regulations, or making false reports in connection with such duty activities would make the driver and/or the carrier liable to prosecution.

Motor carriers would be required to submit, upon demand, all their transportation safety-related documents for inspection or copying during regular business hours to any motor carrier officer displaying a valid Michigan Department of State Police, Motor Carrier Division identification card.

Physical Qualifications

The bill would prohibit a person from driving a motor vehicle unless he or she were physically qualified to do so and, except as provided in the Act, had on his or her person the original or a copy of a medical examiner's certificate that he or she was physically qualified. The driver of a commercial motor vehicle would have to be medically examined and certified if he or she had not been during the preceding 24 months or if the driver's ability to perform his or her normal duties had been impaired by a physical or mental injury or disease.

A person who was not physically qualified but was otherwise qualified could drive a motor vehicle if the Motor Carrier Division or the proposed appeal board had granted the person a waiver. The appeal board would consist of the Directors of the Departments of State Police and Transportation and the Secretary of State, or those individuals' designees, as well as two representatives of the motor carrier industry chosen jointly by the three Department heads and the Michigan Trucking Association. The appeal board would be required to hear and

decide applications for waivers from medical requirements of the Act and rules promulgated under it.

An application for a waiver would have to be submitted jointly by the person and the motor carrier that would employ the person. The bill describes the information that an application would have to contain and the documents that would have to accompany it, including at least two reports of medical examinations that contained the examiner's opinion concerning the individual's ability to operate the motor vehicle safely.

The Motor Carrier Division could deny the application, or approve it in whole or in part, and issue a waiver subject to the terms and limitations the Division considered consistent with safety and the public interest. The Division also could suspend or revoke a waiver. A waiver would be valid for up to two years and could be renewed upon submission of a new application. An applicant who was denied a waiver in whole or in part could appeal for review by contacting the Division.

Exclusions

The bill specifies that the Act and the Federal regulations relating to applications for employment, investigations and inquiries, road tests, and written examinations would not apply to a driver who had been a regularly employed driver of an intrastate motor carrier of property for a continuous period that began on or before June 10, 1984, as long as he or she continued to be a regularly employed driver of that motor carrier. Those Federal regulations also would not apply to someone who had been a regularly employed driver of an intrastate motor carrier of passengers for a continuous period that began at least 30 days before the bill's effective date, as long as he or she continued to be a regularly employed driver of that motor carrier. Further, to the extent that those regulations require a driver to be medically qualified or examined, the regulations and the section of the Act relating to the maintenance of files and records, would not apply to a driver of a vehicle eligible for and displaying a farm registration plate.

Provisions of the Act pertaining to an intrastate driver's medical qualifications would not apply to the driver of a commercial motor vehicle who

had been a regularly employed driver of the motor carrier for a continuous period that began on or before June 10, 1984, and who met other requirements, including receipt of a waiver from the Motor Carrier Division. Those provisions also would not apply to a bus driver who had been a regularly employed driver of the motor carrier for a continuous period that began at least 30 days before the bill's effective date, who had received a waiver from the Motor Carrier Division, and who met other criteria.

Federal regulations pertaining to the investigation of a driver's past employment would not apply to a person who became a driver for a motor carrier after being a full-time employee of the carrier for at least three years before becoming a driver.

The Act would not apply to a mechanic who serviced motor carrier equipment during the intrastate operation of the equipment when the vehicle or combinations were not being used to transport passengers or property or any for-hire or compensated transportation, and when the mechanic was not otherwise being used as a regularly employed driver. The Act and Federal regulations would not apply to certain utility, telephone, and cable television company service employees.

Hours of Service

The bill specifies that the Federal regulations pertaining to hours of service would apply to all drivers of commercial motor vehicles except farm vehicle drivers; mechanics; utility, telephone, and cable television company service employees; and any driver of a public utility service vehicle being used in cases of emergency.

The bill would prohibit a motor carrier from permitting or requiring a commercial motor vehicle driver, regardless of the number of motor carriers using the driver's services, to drive for any period after having been on duty 60 hours in any seven consecutive days if the motor carrier did not operate every day in the week, or after having been on duty 70 hours in any period of eight consecutive days if the carrier operated motor vehicles every day of the week. This provision would not apply to the following drivers if their total driving time did not exceed 40 hours in any period of seven consecutive days: a driver-salesperson; a driver delivering

home heating fuel between October and April in a vehicle of less than 40,000 pounds of gross vehicle weight; a driver involved with the pickup or delivery of crude oil products during the time when weight limitations were imposed due to seasonal climatic changes; a driver of a vehicle engaged in seasonal construction-related activities within a 100-mile radius of the normal work reporting location; and a driver of a vehicle being used in the delivery of beverages to retail businesses.

Bumpers/Underride Guards

A motor vehicle, except a truck tractor, pole trailer, vehicle engaged in driveaway-towaway operations, and truck tractor and semitrailer combination manufactured after December 31, 1952, that was constructed so that the body or the chassis assembly had a clearance at the rear end of more than 30 inches from the ground when empty, would have to be provided with bumpers or similar devices so that certain specified conditions were met.

A truck tractor and semitrailer combination with a semitrailer length exceeding 50 feet, whose frame or body extended more than 36 inches beyond the rear of its rear axle and was more than 30 inches above the roadway, could not be operated unless it were equipped with an underride guard on the extreme rear of the frame or body. The underride guard would have to meet specified requirements.

MCL 480.11a et al.

FISCAL IMPACT

The bill would have an indeterminate impact on State government. Since the bill would provide for buses and certain other motor vehicles to be subject to a fine of up to \$300 for each safety violation, there could be additional revenue generated by this bill. The actual amount would depend on the number of infractions and the amount of each fine.

ARGUMENTS

Supporting Argument

With certain modifications to accommodate conditions in Michigan--in regard to the medical waiver, for example--the bill essentially would bring Michigan's law into line with current

Federal motor carrier safety regulations, and would ensure that Michigan continued to receive necessary Federal funding for transportation. Amending the State statute would accomplish these purposes in a less time-consuming and costly manner than would updating the administrative rules. Further, the bill would provide for clarity within the law and uniformity with other states' motor carrier safety laws that comply with the Federal regulations. This would reduce confusion for carriers who operate interstate, such as between Detroit and Toledo, as well as intrastate.

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This analysis was prepared by nonpartisan Senate staff for use by the Senate in its deliberations and does not constitute an official statement of legislative intent.