



**House
Legislative
Analysis
Section**

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**ADOPT FED. RULES GOVERNING
COMMERCIAL MOTOR VEHICLES**

**House Bill 5214 as enrolled
Public Act 152 of 1996**

**House Bill 5215 as enrolled
Public Act 265 of 1995**

**House Bill 5216 as enrolled
Public Act 248 of 1995**

**Sponsor: Rep. Eric Bush
House Committee: Transportation
Senate Committee: Transportation and
Tourism**

Second Analysis (4-12-96)

THE APPARENT PROBLEM:

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. In Public Act 339 of 1990, Michigan adopted into its statute federal motor carrier safety and hazardous materials regulations. However, the federal Intermodal Surface Transportation Efficiency Act (ISTEA), passed in 1992, requires all states to update their motor carrier safety regulations every three years to reflect changes continually being made to federal rules. Although many of the current federal regulations reportedly are already being enforced here, the state has entered into a "good faith agreement" with the federal government to adopt these changes before the end of 1995. States that fail to conform their laws to federal rules may lose federal funding for transportation programs.

In a related matter, motor carrier officials have received numerous complaints by commercial drivers and owners of trucking firms who feel state law governing maximum lengths and types of commercial motor vehicle combinations are extremely confusing. Consequently, legislation has been proposed to update provisions in both the Motor Carrier Safety Act and the Michigan Vehicle Code that deal with safety, the transport of hazardous substances, maximum vehicle lengths and similar matters involving commercial motor vehicles.

And finally, 1980 amendments to the Fire Prevention Code authorized the state fire marshal to provide for the regulation, inspection, and oversight of persons who transport hazardous materials. The fire marshal, in response, created what is known as the product identification number, or PIN, program which requires a special placard to be used by vehicles that transport these substances. Then in 1982, after an executive order transferred motor carrier enforcement from the Public Service Commission to the Department of State Police, the fire marshal assigned responsibility for the PIN program to the newly created state police motor carrier division. According to a spokesman for the division, because of the changes proposed by House Bills 5215 and 5216, the state would qualify for certain federal funds for regulating the transport of hazardous materials. However, because the state could not use these funds as long as a state program exists under which inspection fees are imposed, and because the need for the state program will no longer exist with the adoption of new federal motor carrier rules, the department has also requested legislation that would eliminate the PIN program as of October 1, 1996.

THE CONTENT OF THE BILLS:

The bills would amend the Motor Carrier Safety Act, the Michigan Vehicle Code, and the Fire Prevention Code to adopt new federal regulations which govern the transport of hazardous materials and provide for general motor carrier safety, and to eliminate the product identification number (PIN) program as of October 1,

House Bills 5214-5216 (4-12-96)

1996. The bills include provisions that would apply to common carriers and their drivers as well as to drivers of larger vehicles (such as buses), and would update provisions governing random drug testing, hazardous materials vehicle inspections, responsibilities of the Motor Carrier Division of the Department of State Police, and allowable lengths and types of commercial motor vehicle combinations.

House Bill 5215 would adopt into the Motor Carrier Safety Act (MCL 480.11a et al.) the provisions of Title 49 of the Code of Federal Regulations, on file with secretary of state, which govern the transport of hazardous materials and provide for general motor carrier safety. The bill also would adopt the policies and procedures adopted by the U.S. Department of Transportation's federal highway administration and certain other North American standards for uniform out-of-service criteria and inspection procedures. Rules promulgated and filed with the secretary of state as of June 22, 1984, and any subsequent revision to them, would be rescinded on the bill's effective date, and language requiring compliance with current federal rules and requirements of the act would be deleted. A local government unit could not adopt or enforce an ordinance or resolution that was more permissive or restrictive than the act, that required more action, equipment, or permits, or that prevented or obstructed compliance with the act.

Transport of combustible liquid. Under the bill, a truck tractor pulling a semitrailer and a trailer, or pulling two semitrailers, could not transport a combustible liquid unless the vehicle combination was equipped 1) with a device that restricted the horizontal and vertical rotation of the vehicle's dolly assemblage in a way that kept the vehicles in the combination in line with the dolly and each other, where the device would have to be welded to the vehicle so that the weld's strength was not less than 85 percent of the mechanical properties of the adjacent metal in the chassis; and 2) with stops in the spring hangers of each semitrailer and trailer in the vehicle combination in a way that improved the vehicle's stability by reducing the free play of the leaf spring suspension to no more than three-fourths of an inch when the spring passed from tension to compression.

The owner of a vehicle combination equipped with such a device would have to keep on file at his or her principal place of business the device's plans and specifications, the name of its manufacturer, the date it was installed, and the individual manufacturer ID number stamped or permanently affixed to it. This information would have to be kept by the vehicle's

owner and, if the vehicle was sold, transferred to the new owner, or it could be destroyed if the vehicle was retired from service or scrapped. These requirements would apply to devices affixed to vehicles on or after the bill's effective date.

Transfer of hazardous materials. The bill generally would prohibit persons from transferring or allowing to be transferred a hazardous material from a cargo tank, portable tank, or any other container to any cargo tank, portable tank, fuel tank, or any other container on a roadway in the state. This prohibition, however, would not apply to the following transfer situations:

- * Fueling machinery or equipment for construction, farm, and maintenance use;
- * Fueling emergency vehicles;
- * Under emergency conditions if the transfer was done safely. The local fire chief, state fire marshal, or a hazardous materials officer of the state police motor carrier division could prohibit a transfer pursuant to their authority under the Fire Prevention Code.

Exemptions. The act currently prohibits someone from driving a commercial motor vehicle unless he or she is qualified to do so, and specifies various criteria a person must meet in order to be qualified. The bill would delete these qualification requirements and, instead, would simply require a person to meet federal requirements unless otherwise exempt under the bill. The act currently requires that someone who transports hazardous materials in a vehicle required to be marked must be at least 21 years old; the bill would exempt from this provision someone who operated a vehicle that displayed valid farm plates with a gross vehicle weight of 40,000 pounds or less if the driver was at least 18 years old. Persons who were eligible for and displayed a valid medical waiver card or "grandfather" rights card issued under the act also would be exempt from having to meet federal requirements. (Other exemptions also apply currently.) However, someone who qualified for an exemption under these provisions would have to comply with all other applicable federal rules.

The act currently specifies that its provisions do not apply to a mechanic who services motor carrier equipment during the intrastate operation of the equipment when a vehicle combination was not being operated for commercial purposes nor the mechanic used as a regular driver; under the bill, a mechanic also would be limited to test-driving a loaded vehicle within ten miles of the repair facility.

"Grandfathering", medical waiver. The bill specifies that the act's provisions pertaining to random, reasonable cause, and postaccident drug testing for drivers of buses and other commercial vehicles would apply to all drivers "grandfathered" into the act, and "grandfather" rights would remain valid until December 31, 2032. However, the exemption from medical qualifications would apply only to preexisting conditions before the bill's effective date, and any medical condition that normally would disqualify a driver under the act automatically would void any "grandfather" rights. Any driver who developed a normally disqualifying medical condition after being issued a "grandfather" card would have to return the card to the medical appeal board and apply for a medical waiver as provided in the act. Also, the act now requires someone applying for a waiver from a physical disqualification to mail the application to a specific address; the bill would delete the specified address and, instead, would require a person to deliver the waiver application to the state police motor carrier division's headquarters.

Driver files. The act currently requires a motor carrier to maintain a driver qualification file for each driver employed by it and allows this file to be combined with the employee's personnel file. The bill would delete these provisions.

Violations, fines. The act currently provides that a driver who violates the act or rules promulgated under it, or an owner of a vehicle regulated under the act who requires or permits a driver to do so, is guilty of a misdemeanor. Under the bill, someone who violated the act could be jailed for up to 90 days, fined up to \$100, or both. If a violation occurred while a person was transporting a package required to be marked or labeled under federal law, the violator could be jailed up to 90 days, fined up to \$500, or both.

Inspection requirements. The act currently requires motor carriers, when asked, to submit for inspection all their transportation documents relating to safety. Under the bill, hazardous materials vehicle inspection and repair facilities, when asked, would have to submit transportation safety related documents (i.e., for hazardous materials tank certification and repair, and annual certification) to any authorized state police motor carrier officer.

The bill also would delete language that permits the state police motor carrier division to establish and maintain a voluntary motor carrier safety inspection program, and to charge certain fees related to the administration of the program.

In addition, an officer of the state police motor carrier division who displayed valid identification could, without a warrant, require the cargo carrying portion of a vehicle to be opened for inspection of the cargo, any object within that portion of the vehicle, or the interior of the vehicle or any compartment within the interior of a vehicle.

Compliance, shut-down orders. If it was determined that operating commercial motor vehicles on state roadways posed an unreasonable risk or threatened public safety, the Motor Carrier Division would have to issue a compliance order, which could direct the person to make certain changes, repairs, or alterations to the vehicles or operations to bring them into compliance. An order, however, could not impose restrictions beyond what was required to abate the hazard, and any vehicle or driver operating when the order was in effect would be in compliance with all applicable laws and rules. A compliance order would have to include the name and address of the driver and his or her employer, the reason(s) for the order, the conditions that would have to be met to rescind the order, and a statement that the person would have 30 days to comply with it.

If the 30-day period expired without the order's conditions being met, the Motor Carrier Division could seek a shut down order from a circuit court. Upon being petitioned, a circuit court could issue a shut down order, which would direct a vehicle(s) or employee(s) out of service or a person to cease all or part of the person's commercial motor vehicle operation. Restrictions under the order could not be imposed beyond what was required to abate the hazard. A shut-down order would have to include similar identifying information, reason(s) for its issuance, conditions that would need to be met, and a statement of the right to appeal. Also, an order could not prevent vehicles in transit at the time it was issued from proceeding to their immediate destinations, unless a vehicle or person was specifically ordered out of service; such vehicles or persons, however, would be subject to the order upon arrival to their destination.

Someone who failed to comply with a shut-down order would be guilty of a misdemeanor and could be fined up to \$1,000, jailed up to 90 days, or both, and a person or vehicle found operating in the state while under a shut-down order would have to be stopped immediately and impounded or arrested. The owner or lessee of the vehicle would be responsible for any costs incurred during impoundment, and a vehicle would have to be released when the court determined that the order had been complied with.

Notification requirement. Under the bill, immediately following an accident involving the transportation of hazardous materials--in which a person was killed or hospitalized for an injury or due to contamination or exposure to hazardous materials, or if an unintentional release of hazardous materials occurred that endangered users of the highway or was caused, or thought to be caused, by a violation of the act or a promulgated rule--the owner, driver, or lessee, or someone representing one of these persons, would have to notify the Motor Carrier Division and the organized fire department of the area in which the incident occurred about what happened. The division would have to be notified by telephone, facsimile machine, or other means.

Bumpers, underride guards. The act currently requires certain older vehicles to be provided with bumpers or similar devices so that certain specified conditions are met. The bill would delete these provisions and, instead, specifies that a vehicle so constructed and maintained so that the body chassis or other parts of the vehicle protected the rear end would be in compliance with the act.

Repeals. The bill would repeal two sections of the act that currently prohibit a person from driving a motor vehicle unless he or she has taken a written examination and been issued a certificate of written examination, and has successfully completed a road test and been issued a certificate of driver's road test. The bill also would repeal a section of the act that provides for the adoption of current federal rules governing commercial motor vehicles.

House Bill 5216 would amend the Michigan Vehicle Code (MCL 257.669, 257.719, 257.721, and 257.722a) to clarify current provisions governing the lengths and types of commercial motor vehicle combinations that may be operated on Michigan roadways, including vehicles that transport hazardous materials. The bill would rename this part of the act the "normal length maximum" subsection and, for the most part, proposes only technical changes to these provisions. However, the bill specifies that it would prohibit any combination of vehicles not specifically authorized in the act from operating in the state.

Currently, the act prohibits the driver of a motor vehicle carrying passengers for hire or certain hazardous materials vehicles from stopping at "a railroad track grade crossing on a freeway or limited access highway where the crossing is protected by a clearly visible signal, crossing gate, or barrier at a time when [one of these] is not activated." The bill would delete this language and, instead, would prohibit a stop from being made at an industrial or spur railroad grade

crossing marked with an "exempt" sign. Under the bill, such signs could be erected only with the Department of Transportation's consent after notice to and an opportunity to be heard by all railroads operating over the industrial or spur line in question.

The bill also would delete language that currently imposes certain testing requirements on certain vehicle combinations that transport flammable liquid in bulk up to the limits allowed under state law. (These provisions are considered obsolete and have been superseded by federal rules which require a different type of test, referred to as a "Title 49 Periodic Test," to be performed on these kinds of vehicles.) In addition, the bill specifies that a truck pulling a trailer, a truck tractor pulling a semitrailer and trailer combination, or a truck tractor pulling two semitrailers could not transport a flammable gas or compressed flammable gas, in bulk, in the state--where the term "in bulk" would mean an amount of product or material that was 3,500 water gallons or more carried by a single containment system.

The bill also would repeal a section of the act that specifies physical qualifications for drivers of commercial vehicles owned and operated by state and local governments, vehicles that transport hazardous materials, and motor buses, and which requires compliance with rules promulgated under the Motor Carrier Safety Act. (These licensees would fall under the provisions contained in House Bill 5215.)

House Bill 5214 would amend the Fire Prevention Code (MCL 29.1 et al.) to transfer statutory authority over the hazardous materials transportation inspection and enforcement program--also known as the PIN, or product identification number, program--from the state fire marshal to the state police motor carrier division, and would eliminate the PIN program as of October 1, 1996. Among other things, ending this program would eliminate the \$95 certification fee for annual inspections and a restricted fund into which fees are deposited. (Currently, the fire marshal may designate oversight of the program to "an officer of the department appointed by the [department] director"; the state police motor carrier division was given this authority after the division was transferred by executive order from the Public Service Commission to the Department of State Police in 1982.)

The fire safety board, however, would still be charged with promulgating rules for the storage, transportation, and handling of liquefied petroleum gas (i.e., propane) as well as the storage, noncommercial transportation, and handling of other hazardous materials. (Under the bill, "noncommercial transportation" would mean the

occasional transport of personal property that was not for compensation or for commercial purposes, and transportation not regulated under the Motor Carrier Safety Act.)

The owner or lessee of a vehicle displaying a state police certification decal (as required under the PIN program) would have to remove it from the vehicle by January 1, 1997, and failure to do so by this date would be a misdemeanor.

The act prohibits a township, city, village, or county from adopting or enforcing an ordinance or resolution "which increases or decreases the responsibilities of [those regulated by the act]" to install a fire alarm system or fire suppression system. The bill would delete this language and, instead, would prohibit a local governmental unit from adopting a law that was inconsistent with the act or any rule promulgated under it, where "inconsistent" would mean a law that was more permissive than the act; was more restrictive; required more action, equipment, or permits; or prevented or obstructed compliance with the act. In addition, a state agency could not promulgate rules inconsistent with the act. These provisions would not apply to the Motor Carrier Safety Act or to rules promulgated under it by the motor carrier division.

Currently, the storage tank certification program administered by the state police applies to firms that maintain aboveground storage tanks fitting certain descriptions, and among the tanks regulated are those with a capacity of 1,000 gallons or more of flammable liquid with a flash point at or below 100 degrees Fahrenheit. Under the bill, these provisions would apply to tanks with a storage capacity above 1,100 gallons.

The act currently allows certain authorized persons to inspect vehicles that transport hazardous materials and to "condemn" out of service those vehicles found in violation of the act's safety provisions. The bill provides that, notwithstanding these provisions, an authorized person who inspected a commercial motor vehicle under the act could only order vehicles out of service as would be permitted under the provisions of House Bill 5215, and as permitted by "out-of-service" criteria issued under the authority of the commercial vehicle safety alliance.

FISCAL IMPLICATIONS:

The House Fiscal Agency says that, under House Bill 5214, revenues generated from the \$95 per tanker fee that applies to persons who transport hazardous materials under the PIN program would cease when the

program ended on October 1, 1996. After this date, the state would experience an annual decrease in restricted revenues of approximately \$392,600. (4-11-96) However, the Motor Carrier Division of the Department of State Police says that, once the PIN program is eliminated, the state will have access to up to \$3 million in federal grant funds, a portion of which it plans to use to support its regulatory oversight of persons who transport hazardous materials, as specified in House Bill 5215. The motor carrier division also says neither House Bill 5215 nor House Bill 5216 would affect state or local budget expenditures. (4-3-96)

ARGUMENTS:

For:

House Bill 5215 would bring the state's Motor Carrier Safety Act into line with current federal rules and, thus, would ensure that Michigan continues to receive necessary federal funding for its transportation needs. The act was last updated in 1991 when Public Act 339 of 1990 took effect, similarly updating the law. However, since PA 339 was enacted, the federal government enacted what is known as ISTEA (the Intermodal Surface Transportation Efficiency Act), which requires states to update their commercial motor vehicle laws at least once every three years. Michigan has been operating under a "good faith agreement" with the federal government that requires it to adopt current federal rules before the end of this year or face the loss of federal highway funding. Except for provisions intended to accommodate problems specific to Michigan's commercial truckers, House Bill 5215 generally follows federal rules and has the support of the Department of State Police Motor Carrier Division and trucking groups.

For:

House Bill 5215 would require the owner, driver, lessee, or someone representing one of these persons--immediately following an accident involving hazardous materials in which someone was killed or had to be hospitalized, or if a release of materials endangered the safety of other highway users--to notify the state police motor carrier division by telephone, fax machine, or other means about the incident. These provisions are similar to reporting requirements established in federal rules.

For:

The Michigan Vehicle Code currently regulates the lengths and types of commercial motor vehicle combinations that may be operated in the state. Apparently, however, some truckers and motor carriers have complained to state police motor carrier officials

that the act is confusing about what it allows and does not allow. Thus, the division has requested legislation (House Bill 5216) that would delete all of the current language and replace it with new language that would make it easier to determine exactly what the state's "normal length maximum" restrictions were. The bill also includes other amendments that would eliminate obsolete language from the act relative to testing requirements for commercial motor vehicles that transport flammable liquid, and would add language to allow persons to transport small amounts of flammable and compressed flammable gas (i.e., propane) in a tank for residential or business heating purposes. In addition, the bill would revise a provision in current law that prohibits certain commercial vehicles from stopping at railroad crossings along high-speed roadways to accommodate one particular problem involving a railroad crossing on a stretch of U.S. 2 that passes through Escanaba.

Against:

The provision in House Bill 5216 that would prohibit motor carrier buses or vehicles transporting hazardous materials from stopping at a railroad crossing marked with an "exempt" sign would pose a danger to drivers and passengers of such vehicles and to those operating trains at crossings where such signs were erected. Although there currently are no exempt signs at railroad crossings anywhere in the state, the bill would give the Department of Transportation explicit authority to allow such signs to be erected at any railroad crossing in the state, as long as railroads having jurisdiction over these crossings were notified of such a proposal. What could possibly be safe about prohibiting these kinds of vehicles from stopping at certain railroad crossings?

Response:

This provision is aimed at resolving a problem that has developed along a portion of U.S. 2 in the Upper Peninsula that runs through Escanaba. Reportedly, state police have recorded numerous traffic accidents at this railroad crossing that have occurred apparently because a bus or hazardous materials vehicle stopped before proceeding across the tracks--along a stretch of highway where vehicles may legally travel up to 55 miles per hour. The amendment is intended to address this particular problem, although a spokesman for the Department of State Police says there are other crossings in the state that could qualify for having an exempt sign erected. However, only MDOT would be authorized to allow the placement of such signs (after notifying and consulting with the railroad with jurisdiction over the crossing), and it seems reasonable to assume it would take extreme caution to determine if erecting an exempt sign could, in fact, make some railroad crossings such as this one less dangerous than they currently are.

Reply:

Even so, this provision needs to be amended to clarify that exemption from stopping would not apply when the signal, crossing gate, or barrier located at an "exempt" crossing were activated.

For:

The state police motor carrier division currently oversees the product identification number (PIN) program, which regulates persons who commercially transport hazardous materials using trucks. Under this program, those who haul hazardous materials in bulk pay a \$95 per truck fee annually to the division, and the revenue generated from these fees is used to support the inspection program and for motor carrier enforcement of laws governing the safe transport of hazardous materials. However, the existence of this program, and the state's ability to impose a fee to support it, prevents Michigan from qualifying for up to \$3 million in federal grant funds that the motor carrier division says could be used to pay for inspection and enforcement purposes. Moreover, the industry feels the fee is too high and that some state inspection procedures go beyond federal requirements. House Bill 5214 would resolve these problems by ending the PIN program on October 1, 1996, which would free up federal funds to pay for the division's oversight of hazardous materials inspection and enforcement as specified in House Bill 5215.

For:

House Bill 5214 includes language to prohibit a local government unit, or a state agency other than the motor carrier division, from adopting or enforcing a local ordinance, or promulgating rules, that were either more permissive or restrictive than the act's provisions. This provision is necessary because some local governments apparently have adopted local ordinances which deviate from the act's requirements.

For:

The storage tank certification program applies to firms maintaining above-ground storage tanks fitting certain descriptions. Among the tanks regulated are those with a capacity of 1,000 gallons or more of flammable liquid with a flash point at or below 100 degrees Fahrenheit. According to the motor carrier division, this 1,000 gallon standard is inconsistent with national standards and federal regulations, which refer to tanks of 1,100 gallons or more. House Bill 5214 would eliminate this inconsistency.

■ This analysis was prepared by nonpartisan House staff for use by House members in their deliberations, and does not constitute an official statement of legislative intent.