



Oregon

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Department of Transportation

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DATE: February 15, 2013

TO: House Committee on Transportation and Economic Development

FROM: Amy Joyce, Legislative Liaison

SUBJECT: House Bill 2262—Commercial Driver License federal compliance

INTRODUCTION

HB 2262 amends current laws to comply with updated federal regulations on commercial driver licenses (CDL) and commercial learner permits (CLP). Failure to comply with federal regulations can result in significant loss of highway funds and decertification of Oregon's program.

BACKGROUND

The Commercial Motor Vehicle Safety Act of 1986 established national standards for commercial motor vehicle operations with the goal of greater consistency among states and reduction of truck- and bus-involved fatalities. Each state, including Oregon, administers a commercial licensing program based on federal laws and regulations that set standards for testing, licensing, and disqualifying operators of commercial motor vehicles. Among other things, the regulations require particular types of driving privileges and list specific offenses that require prescribed lengths of suspension of driving privileges. The Federal Motor Carrier Safety Administration frequently updates the regulations, so nearly every session the department is before the legislature proposing to align Oregon statutes with federal regulations.

Failure to comply with federal regulations can jeopardize highway funds and program grants. That means a loss of \$2.6 million annually for Oregon's Motor Carrier Safety Assistance Program, of which \$1.5 million goes to Oregon State Police. The state of Oregon also would lose 5% of certain highway funds the first year of non-compliance and 10% each subsequent year (estimated loss of \$12.7 million first year, \$25.5 million annually thereafter). Continued non-compliance would result in federal decertification of Oregon's CDL program.

WHAT THE BILL DOES

The bill proposes changes necessary to bring Oregon into compliance with the federal regulations. The most significant change is to synchronize Oregon's existing Commercial Instruction Permit with the federal regulations' new provisions for a Commercial Learner Permit (CLP). Oregon has had a commercial instruction permit for years, but must make changes to meet the federally imposed requirements. For example, the permit must identify the classification of vehicle the permittee may operate, and allows for specific endorsements or restrictions based on knowledge testing. Also, all CLP-holders are restricted from operating certain vehicles in some situations. For example they may not transport hazardous materials, may not operate a double- or triple- trailer, may operate a tank vehicle only when empty, and may not carry passengers on a bus. And a person must have a CLP for at least 14 days before testing for a CDL.

The bill authorizes the department to adopt administrative rules designating the “serious traffic violations” that result in suspension of commercial driving privileges. The federal government lists those offenses in regulation and frequently updates the list. Having the ability to amend rules rather than seek statutory change will be more efficient for the agency, the legislature, and the industry.

The federal regulations, and therefore this bill, require the state to treat a driver with a CLP in the same way it treats a driver with a CDL when convicted of certain offenses. To maintain that consistency the bill defines “commercial driving privileges” to encompass both the CDL and the CLP, and uses that term in place of “commercial driver license” throughout the bill when referring to suspensions.

To align with the federal regulations the bill defines “holds commercial driving privileges” to include not only a current, valid commercial driver license or learner permit, but also in some circumstances a CDL that has expired or commercial driving privileges even if suspended, canceled or revoked. The purpose, as directed by the federal regulation, is to count certain offenses against the person in the event they want to reinstate their commercial driver license or learner permit. The bill also provides a path out for a person who no longer wants to “hold commercial driving privileges.”

The bill also updates definitions of terms relevant to commercial driving privileges (e.g. “commercial motor vehicle” and “tank vehicle”), requires that multiple suspensions of commercial driving privileges run consecutively rather than concurrently, adds new restrictions and endorsement requirements to a CDL and makes many other minor changes to bring Oregon’s law into federal compliance.

SUMMARY

The changes proposed in HB 2262 are necessary to keep Oregon in compliance with federal law. Failure to do so can result in loss of a large amount of federal funds and even decertification of the state commercial driving privilege program, either of which would have tremendous negative impacts to the trucking industry and the state as a whole.

Attachment: Detail of each bill section’s effect with federal regulation citation

HB 2262 Section by Section Analysis

Sections 1, 14, 31

Specifies placement of sections of the bill within the ORS.

Section 2

Adds definition of commercial driving privileges to statute. Encompasses commercial driver license and the new commercial learner permit to ensure both are treated the same as required by 49 CFR 383.51, particularly in cases of conviction of certain offenses.

Section 3

Defines who “holds commercial driving privileges,” covering both the commercial learner permit and commercial driver license. (Replaces ORS 801.307, which defined “holds a commercial driver license.”) Adds specific situations where the person’s CDL or CLP is expired, canceled, suspended, etc. But also provides for voluntary downgrade to a non-commercial license for those who wish to no longer hold commercial driving privileges.

Sections 4-11, generally

Reorganization and clarification of current ORS 809.404, 809.413, 813.403, and 813.404. Covers suspensions mandated by federal regulations, and organized similarly to 49 CFR 383.51 governing most suspensions of commercial driving privileges. Also, suspensions authorized in sections 4, 7 and 8 will run consecutively to any other suspension in sections 7, 8, and 18 (ORS 809.407), provided they do not arise out of the same incident.

Section 4

Suspensions of commercial driving privileges for convictions of traffic crimes and refusal or failure of blood alcohol tests (current ORS 813.403 and 813.404), with no changes to existing suspension periods. (49 CFR 383.51) The -1 amendment adds the word “commercial” to (1) (c), because only prior violations that occurred in a commercial motor vehicle count toward a suspension under section 4.

Section 5

Suspension of commercial driving privileges for failure to appear or comply with a court in another state, and for disqualification by Federal Motor Carrier Safety Administration (FMCSA, the US DOT agency that writes these regulations)(current ORS 809.413 (8), (9) and (10)). Given its own section to ensure the suspensions do not run consecutively to suspensions in section 4, 7, 8, and 18 (See 49 CFR 383.51). The -1 amendment adds vehicle defect violations to (1) (c) as a violation for which failure to appear or comply will *not* result in suspension of commercial driving privileges (49 CFR 384.107).

Section 6

Lifetime suspensions (current ORS 809.404) (49 CFR 383.51). Under the bill, the department will not impose these suspensions consecutively to any other suspension.

Section 7

Commercial driving privileges suspensions for serious traffic violations (replaces ORS 809.413(6)). Gives the department authority to define in rule which traffic violations constitute a “serious violation,” and provides the rules will match the offenses in federal regulation. (Correspondingly Section 12 repeals the definition of serious violations in ORS 801.477.) Most recently, FMCSA has added two new serious traffic offenses - both related to the use of communication devices while driving. The lengths of suspension remain the same as in current statute. (49 CFR 383.51)

The -1 amendment revises (5) to make it clear that a suspension under section 7 will be consecutive to suspensions under sections 7, as well as 4 or 8 (if the suspensions did not arise out of the same incident).

Section 8

This section replaces 809.413(7), suspensions for violation of an out of service order. Lengths of suspension are the same as in current statute. (49 CFR 383.51)

The -1 amendment corrects (3) (b) to match current ORS 809.413 (7) (c) and federal regulations in requiring a three-year suspension if the current violation of an out of service order is the second within 10 years. The amendment also revises (5) to make it clear that a suspension under section 8 will be consecutive to suspensions under section 8, as well as 4 or 7 (if the suspensions did not arise out of the same incident).

Section 10

This section makes it clear that the department has the authority to suspend a person’s right to apply for commercial driving privileges if the person did not have commercial driving privileges but was driving a commercial motor vehicle at the time of the offense or if the person’s commercial driving privileges expire during the suspension period. This authority is currently stated in multiple statutes and will now reside in its own statute.

The -1 amendment corrects language to be clear that the department will not impose an additional suspension if the person’s commercial driving privilege expires during the suspension.

Section 11

This section provides for the appropriate due process concerning the imposition of commercial driving privileges suspensions. Currently, information about due process is contained in each separate statute that provides authority for the department to impose commercial driving privileges suspensions. (49 CFR 383.51)

The -1 amendment revises language to make it clear that all commercial driving privileges suspensions for breath test failure and refusal are entitled to a hearing.

Section 12

Repeals current statutes providing for commercial driver license suspensions. ORS 801.477 repealed in lieu of Section 7 (granting rule-writing authority to the Department for “serious

violations,” 49 CFR 383.51). ORS 809.404 and 809.413, repealed in lieu of sections 4, 5, and 6, containing most of the suspension authority for commercial driving privileges. ORS 809.403 and 809.404 repealed in lieu of sections 4 and 6, providing suspension authority for DUII-related suspensions of commercial driving privileges.

Section 13

Dates at which the provisions in existing law control convictions and when the provisions in the bill control convictions (particularly important in making suspensions consecutive). Incidents that occur prior to the operative date are subject to current statute, and incidents that occur after the operative date are subject to this bill. The -1 amendment clarifies the date of the incident controls, rather than the date the department receives a report.

Sections 15, 17, 19, 20, 21, 22, 23, 24, 25, 26, 28, 30, 35, 36, 37, 39, 40, 42, 46
Conforming language.

Section 16

Deletes a provision from ORS 809.360, which is inserted in section 10 of the bill.

Section 18

With the -1 amendment, conforming language (commercial driving privileges) and maintains that the offense must occur while driving a commercial motor vehicle. Makes suspensions under this section consecutive to other suspensions imposed under this section, Sections 4, 7, or 8 of the bill, and to explicitly include out-of-state railroad crossing violations.

Section 27

With the -1 amendment, clarifies that a suspension of commercial driving privileges for driving while suspended or revoked is imposed only if the prior violations (that caused the underlying suspension) occurred in a commercial motor vehicle. (Existing DMV procedure.)

Section 29

With the -1 amendment, clarifies that if a person has commercial driving privileges at the time of an offense for refusing or failing a breath test, the department must suspend the person’s commercial driving privileges regardless of whether the officer indicates on the Implied Consent report that the driver has commercial privileges. (49 CFR 383.51 requires a suspension of commercial driving privileges if the driver refuses a blood alcohol test or has $\geq 0.04\%$ B.A.C. while driving a commercial motor vehicle.)

Section 32

New section describing commercial learner permit requirements (49 CFR 383.25 and 383.71). They include:

- U.S. citizen or lawful permanent resident;
- CLP holder may not operate: a vehicle carrying hazardous materials; a tank vehicle unless empty; a commercial passenger vehicle / bus when carrying passengers (with extremely limited exceptions); or a motor vehicle combination towing more than one vehicle.
- The permit must prominently show that it is a Commercial Learner Permit.

Section 33

Creates fee for commercial learner driver permit, which lasts one year. There is no associated renewal; instead a person would need to re-apply. (49 CFR 383.25)

Section 34

Adds “commercial learner driver permit” to the list of driving permits Oregon issues.

Section 38

Issuance of a commercial learner permit made a precondition for issuance of a CDL (49 CFR 383.25). Proof of citizenship or permanent legal resident of the U.S. required before issuance of a CDL (49 CFR 383.71).

Section 41

Requires a person to have a commercial learner permit at least 14 days before taking the drive test for a CDL (49 CFR 383.25).

Section 43

When the vehicle used for skills testing has certain equipment, the CDL must be restricted to use in vehicles that have the same equipment (air over hydraulic brakes, automatic transmission, or a non-fifth wheel coupling system). Also, a CLP must have an air brake restriction if applicant has not passed the air brake knowledge test. (49 CFR 383.25 and 383.95)

Section 44

Provides for issuing commercial learner permits for specific classes: Class A, B and C, described in section 32 of the bill (49 CFR 383.25).

Section 45

Deletes references to “commercial instruction permits” (replaced by commercial learner permits in section 32 of this bill). The term “permit” was changed to “instruction driver permit” for clarity and consistency.

Sections 47 & 48

-1 amendment removes these sections. Background checks of examiners are not yet mandatory under federal law. Following sections renumbered by the -1 amendment.

Section 49

Brings current the definition of hazardous materials in federal regulation.

Sections 50 & 51

Removed by -1 amendment. Definition exists elsewhere in ORS.

Section 52

Modifies definition of “commercial motor vehicle” to conform to federal regulation (49 CFR 383.5, published May 9, 2011). The revised definition now includes actual gross vehicle weight, in addition to manufacturer gross vehicle weight rating.

Section 53

Modifies definition of “tank vehicle” to conform to federal regulations (49 CFR 383.5) and federal guidance.

Section 54

Operative date matching current federal regulations’ latest date for states to comply.