

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: The Professional Staff of the Appropriations Committee on Transportation, Tourism, and Economic Development

BILL: CS/SB 754

INTRODUCER: Transportation Committee and Senator DiCeglie

SUBJECT: Regulation of Commercial Motor Vehicles

DATE: February 7, 2024

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Shutes</u>	<u>Vickers</u>	<u>TR</u>	<u>Fav/CS</u>
2.	<u>Wells</u>	<u>Jerrett</u>	<u>ATD</u>	<u>Pre-Meeting</u>
3.	<u> </u>	<u> </u>	<u>FP</u>	<u> </u>

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 754 makes various statutory revisions relating to the regulation and operation of commercial motor vehicles (CMVs). Specifically, the bill updates the date of adoption of federal regulations and rules for CMVs from December 31, 2020, to December 31, 2023, updates federal references, and removes an expired exemption for CMV operators. Additionally, the bill adopts requirements related to the federal Drug and Alcohol Clearinghouse program. States must be compliant with this program by November 18, 2024, or risk losing certain federal grant funding.

The bill will have an insignificant, negative fiscal impact the Department of Highway Safety and Motor Vehicles. See Section V., Fiscal Impact Statement.

The bill takes effect July 1, 2024.

II. Present Situation:

According to the Department of Highway Safety and Motor Vehicles (DHSMV), driving a CMV requires a higher level of knowledge, experience, skills, and physical abilities than that required

to drive a non-commercial vehicle. Since April 1, 1992, drivers have been required to have a Commercial Driver License (CDL) in order to drive CMVs.¹

Federal CMV Regulations

The primary mission of the Federal Motor Carrier Safety Administration (FMCSA), an agency within the U.S. Department of Transportation, is to prevent CMV-related fatalities and injuries.²

Section 316.003(14), F.S., defines “commercial motor vehicle” as any self-propelled or towed vehicle used on public highways in commerce to transport passengers or cargo, if such vehicle:

- Has a gross vehicle weight rating of 10,000 pounds or more;
- Is designed to transport more than 15 passengers, including the driver; or
- Is used in the transportation of materials found to be hazardous for the purposes of the Hazardous Materials Transportation Act,³ as amended.

Section 316.302(1)(a), F.S., provides that all owners and drivers of a CMV operating on the state’s public highways while engaged in *interstate* commerce are subject to rules and regulations contained in the following parts of the Federal Motor Carrier Safety Regulations⁴:

Part	Heading
382	Controlled Substances and Alcohol Use and Testing
383	Commercial Driver’s License Standards; Requirements and Penalties
385	Safety Fitness Procedures
386	Rules of Practice for FMCSA Proceedings
390	Federal Motor Carrier Safety Regulations; General
391	Qualifications of Drivers and Longer Combination Vehicle (LCV) Driver Instructors
392	Driving of Commercial Motor Vehicles
393	Parts and Accessories Necessary for Safe Operation
395	Hours of Service Drivers
396	Inspection, Repair, and Maintenance
397	Transportation of Hazardous Materials; Driving and Parking Rules

Section 316.302(1)(b), F.S., provides that owners or drivers of CMVs engaged in *intrastate* commerce are subject to the same federal regulations, unless otherwise provided in s. 316.302, F.S., as such regulations existed on December 31, 2020.

States generally have three years to adopt such rules to remain compatible with federal regulations. States that remain incompatible after the compliance date risk losing federal grant funding.

During the most recent Annual Program Review of the DHSMV’s compliance with these regulations, the FMCSA noted that Florida law does not expressly subject the DHSMV to

¹ DHSMV, *2024 Legislative Bill Analysis: SB 754* (December 12, 2023) at p. 2.

² FMCSA, *About Us*, available at <https://www.fmcsa.dot.gov/mission/about-us> (last visited December 20, 2023).

³ 49 U.S.C. ss. 1801 et seq.

⁴ 49 C.F.R. ch III, subchapter B.

comply with the provisions of 49 CFR part 384, relating to State Compliance with Commercial Driver's License Program.⁵

Commercial Driver Licenses and the Drug and Alcohol Clearinghouse

Owners and drivers of a CMV operating on the state's public highways are subject to rules and regulations contained in the Federal Motor Carrier Safety Regulations, which includes specific regulations on controlled substances and alcohol use, testing, and reporting.⁶

The Drug and Alcohol Clearinghouse is an online database that provides employers of CMV drivers, FMCSA, State Driver Licensing Agencies, and State law enforcement personnel real-time information about drug and alcohol program violations of CMV operators.⁷ The Clearinghouse helps to identify CMV drivers who are prohibited from operating a CMV based on federal drug and alcohol program violations, and to ensure such drivers receive required drug or alcohol evaluation and treatment following a violation.⁸

Effective November 18, 2024, the FMCSA requires states use the Clearinghouse to check the status of a commercial driver license (CDL) or commercial learner permit (referred to in Florida as a commercial instructional permit, or CIP) before performing any licensing functions.⁹ This federal regulation prohibits states from issuing, renewing, upgrading, or transferring a CDL or CIP if the individual is restricted from operating a CMV due to any drug and alcohol program violations.

Additionally, the FMCSA requires states to establish procedures for "downgrading" a CDL or CIP, which means removing the privilege to operate a CMV from the driver license.¹⁰ If the state receives notification¹¹ that an individual is prohibited from operating a CMV due to federal alcohol or controlled substances rules, the state must downgrade the CDL or CIP and record such downgrade on the Commercial Driver's License Information System (CDLIS) driver record.¹²

Federal regulations also provide information on reinstatement of the CDL or CIP following completion of return-to-duty requirements, or reinstatement of the CDL or CIP and expunction of the downgrade from the CDLIS driving record for Clearinghouse error corrections.¹³

⁵ DHSMV, *supra* note 3, at 3.

⁶ Section 316.302(1), F.S. and *see* 49 C.F.R. Part 382 - Controlled Substances and Alcohol Use Testing.

⁷ FMCSA, *About the Clearinghouse - What is the FMCSA Commercial Driver's License Drug and Alcohol Clearinghouse?* <https://clearinghouse.fmcsa.dot.gov/About> (last visited December 20, 2023).

⁸ *Id.*

⁹ 49 C.F.R. s. 383.73.

¹⁰ *Id.* and 49 CFR s. 383.5(4).

¹¹ Pursuant to 49 C.F.R. s. 382.501(a).

¹² CDLIS is "a nationwide computer system that enables state driver licensing agencies...to ensure that each commercial driver has only one driver license and one complete driver record." States use this system to transmit out-of-state convictions and withdrawals, transfer CDL driver records to another state, or to respond to requests for driver status and history. See AAMVA, *Commercial Driver's License Information System (CDLIS)*, <https://www.aamva.org/technology/systems/driver-licensing-systems/cdlis> (last visited December 20, 2023).

¹³ 49 C.F.R. s. 383.73.

States are required to adopt compatible CMV driving prohibitions to remain eligible to receive Motor Carrier Assistance Program (MCSAP) grant funds.¹⁴ According to the DHSMV, Florida's current MCSAP federal grant share is \$21.4 million.¹⁵

Driver License Suspension - Informal Review Request

Florida law permits an individual to request an informal review when his or her driver license is suspended in certain instances.¹⁶ The informal review is conducted by a hearing officer designated by the DHSMV, and does not require the presence of a law enforcement officer or a witness. The review consists solely of an examination by the DHSMV of materials submitted by a law enforcement or correctional officer and the person whose license is suspended. Following the examination, a notice is sent to the individual providing the DHSMV's decision to sustain, amend, or invalidate the license suspension.

Section 322.21(9)(a), F.S., provides that for such reviews, the applicant must pay a \$25 filing fee, which is deposited into the Highway Safety Operating Trust Fund.

Section 322.31, F.S., provides that the DHSMV's final orders and rulings wherein any person is denied a license, or where a license has been canceled, suspended, or revoked, shall be reviewable as provided by the Florida Rules of Appellate Procedure only by a writ of certiorari issued by the circuit court in the county where the person resides.

An applicant for reinstatement of his or her CDL following a disqualification to operate a CMV, must pay a \$75 reinstatement fee in addition to the cost of the license.¹⁷

Florida has nearly 600,000 CDL holders subject to these regulations.¹⁸

III. Effect of Proposed Changes:

Adoption of Federal CMV Regulations

The bill amends s. 316.302, F.S., to provide that all owners and drivers of CMVs engaged in *intrastate* commerce are subject to CMV rules and regulations, unless otherwise specified, as they existed on December 31, 2023. According to the DHSMV, the FMCSA has adopted or amended six rules between December 31, 2020, and December 31, 2022, which impact the DHSMV.

¹⁴ See 86 FR 55718, *Controlled Substances and Alcohol Testing: State Driver's Licensing Agency Non-Issuance/Downgrade of Commercial Driver's License* (October 7, 2021), available at <https://www.federalregister.gov/documents/2021/10/07/2021-21928/controlled-substances-and-alcohol-testing-state-drivers-licensing-agency-non-issuancedowngrade-of> (last visited December 20, 2023).

¹⁵ Email from Jonas Marquez, Legislative Affairs Director, DHSMV, RE: SB 754 - (December 20, 2023) (on file with the Senate Committee on Transportation).

¹⁶ See ss. 322.2615(4) and (5), 322.2616(5) and (6), and 322.64(4) and (5), F.S.

¹⁷ Section 322.21(8), F.S. An original or renewal commercial driver license is \$75, except the fee is \$48 (same as a Class E driver license) for an applicant who has completed training and is applying for employment or is currently employed in a school system that requires the commercial license. Section 322.21(1)(a) and (b), F.S.

¹⁸ DHSMV, *2024 Legislative Bill Analysis: SB 754* (December 12, 2023) at p. 3.

This update results in the following changes:

- Removes a duplicative requirement that drivers prepare and submit a list of traffic violations annually to their employer;¹⁹
- Increases the area on the interior of a CMV windshield where vehicle safety technology devices may be mounted;²⁰
- Expands the definition of “vehicle safety technology” to include, “systems and items of equipment to promote driver, occupant, and roadway safety,” including “systems and devices that contain cameras, lidar, radar, and/or video”;²¹
- Permits individuals who do not satisfy certain vision standards to be physically qualified by an ophthalmologist or optometrist annually to operate a CMV;²²
- Requires rear impact guards be examined as part of the required CMV annual inspection and updates certification and labeling requirements for rear impact protection guards;²³ and
- Requires compliance with regulations related to the Drug and Alcohol Clearinghouse (this issue is described in detail below).

The bill also makes changes in the following sections related to CMVs:

- Amends s. 316.302(1)(a) and (b), F.S., to provide that all owners and drivers of CMVs are subject to the rules and regulations contained in 49 C.F.R. part 384, which requires state compliance with the federal CDL program.
- Removes s. 316.302(1)(e), F.S., which is now obsolete. The paragraph allowed a delay in compliance with the requirements of electronic logging devices and hours of service supporting documents until December 31, 2019.
- Amends s. 316.302(2)(d), F.S., to update to the appropriate federal references.
- Amends s. 322.02, F.S., to provide that the DHSMV is charged with the enforcement and administration of 49 C.F.R. parts 382-386 and 390-397.
- Clarifies in s. 322.05, F.S., that the DHSMV is prohibited from issuing a commercial license to any person who is ineligible to operate a CMV pursuant to 49 C.F.R. part 383.
- Clarifies in s. 322.31, F.S., that the right of review of CDL and CIP downgrades are to be included when there are appeals of final orders.

Drug and Alcohol Clearinghouse Requirements

The bill creates s. 322.591, F.S., which requires the DHSMV to check the Clearinghouse to ensure a driver is not prohibited from operating a motor vehicle any time a person applies for or seeks to renew, transfer, or make any other change to a CDL or CIP. Additionally, the DHSMV may not issue, renew, transfer, or revise the types of authorized vehicles that may be operated or the endorsements applicable to a CDL or CIP for any person for whom DHSMV receives notification pursuant to 49 C.F.R. s. 382.501, that the person is removed from the safety-sensitive function of operating a CMV because of conduct related to federal drug and alcohol prohibitions.

¹⁹ 87 FR 13192 (March 9, 2022).

²⁰ 49 C.F.R. s. 393.60(e)(1).

²¹ 49 C.F.R. s. 393.5.

²² 49 C.F.R. s. 391.44.

²³ 86 FR 62105 (November 9, 2021).

If the DHSMV receives such notification that a CDL or CIP holder is prohibited from operating a CMV, the DHSMV must downgrade the CDL or CIP. Section 322.01, F.S., defines “downgrade” as defined in 49 C.F.R. s. 383.5(4), which means the state removes the CDL or CIP privilege from the driver’s license. The DHSMV must complete and record the downgrade in the Commercial Driver’s License Information System (CDLIS) within 60 days following receipt of the notification. If the downgraded driver is otherwise qualified to be issued a Class E (non-commercial) driver license, the DHSMV will issue the Class E license valid for the length of the driver’s unexpired license period at no cost.

Immediately following receipt of notification that a driver is prohibited from operating a CMV, the DHSMV must:

- Immediately notify the driver that he or she is prohibited from operating a CMV;
- Provide in the notice to the driver that he or she may request an informal hearing within 20 days following receipt of the notice of the downgrade; and
- If a timely hearing request with the required filing fee (\$25) is not received, enter a final order directing the downgrade of the CDL or CIP; or
- If a hearing is requested with the required filing fee, schedule a hearing no later than 30 days after the request is received.

The informal hearing is exempt from the provisions of chapter 120, F.S., and must be conducted before a DHSMV-designated hearing officer who may conduct such hearing from any location in the state by means of communications technology.

The bill requires the federal notification indicating a driver is prohibited from operating a CMV be in the record for consideration by the hearing officer and in any proceeding pursuant to s. 322.31, F.S., relating to right of review. This notification is considered self-authenticating. The bill also provides that the basis for the federal notification received and the information in the Clearinghouse that resulted in such notification is not subject to challenge in the hearing or proceeding under s. 322.31, F.S.

If, prior to the entry of the final order to downgrade the CDL or CIP, the DHSMV receives notification that the driver is no longer prohibited from operating a CMV, the DHSMV must dismiss the action to downgrade the CDL or CIP. If, after entry of a final order that results in the downgrade of a CDL or CIP and the recording in the driver’s record that the driver is disqualified from operating a CMV, the DHSMV receives notification that the driver is no longer prohibited from operating a CMV, the DHSMV must reinstate the driver’s CDL or CIP upon reinstatement application, which requires a \$75 reinstatement fee. Once a person is erroneously identified as prohibited from driving a CMV, the FMCSA will notify the state and the state must promptly reinstate the commercial driving privilege of the affected driver and expunge the driver’s driving records accordingly.

The bill exempts the DHSMV from liability for a downgrade resulting from the discharge of the DHSMV’s duties related to newly created s. 322.591, F.S., which is the exclusive procedure for the downgrade of a CDL or CIP following notification that a driver is prohibited from operating a CMV.

Finally, the bill clarifies that the downgrade of a driver's CDL or CIP does not preclude the suspension of the driver license or disqualification from operating a CMV for driving under the influence and drug and alcohol testing refusal offenses under Florida law.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

This bill subjects specified individuals to *existing* fees for the DHSMV's informal review process and reinstatement of CDL and CIP driving privileges following a required license downgrade.

E. Other Constitutional Issues:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

The bill requires an individual requesting an informal review of a CDL or CIP downgrade to pay the existing \$25 filing fee. Similarly, an individual requesting the reinstatement of his or her CDL or CIP following a downgrade must pay the existing \$75 fee for license reinstatement.

B. Private Sector Impact:

None.

C. Government Sector Impact:

The Department estimates a fiscal impact of \$226,470 in FTE and contracted resources. The Department has requested and received grant funding to assist in the completion of this work.²⁴

The state may lose federal MCSAP grant funding if provisions of the bill related to federal CMV requirements are not adopted. This decrease can range from just under \$1 million annually for one year of incompatibility up to \$9.9 million annually if the state remained incompatible after four years of required compliance.²⁵

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 316.302, 322.01, 322.02, 322.05, 322.07, 322.21, 322.31, 322.34, and 322.61.

This bill creates section 322.591 of the Florida Statutes.

IX. Additional Information:**A. Committee Substitute – Statement of Changes:**

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

CS by Transportation on January 10, 2024:

The committee substitute provides that when the Drug and Alcohol Clearinghouse notifies a state that a driver was erroneously identified by the Clearinghouse as prohibited from driving a CMV, the Federal Motor Carrier Safety Administration will notify the state and the state must promptly reinstate the commercial driving privilege of the affected driver and expunge the driver's driving records accordingly.

It also clarifies that the right of review of commercial driver license downgrades are to be included when there are appeals of final orders.

B. Amendments:

None.

This Senate Bill Analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.

²⁴ DHSMV, *2024 Legislative Bill Analysis: SB 754* (December 12, 2023) at p. 8.

²⁵ Email from DHSMV, *supra* note 113.