

SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

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

BILL: CS/SB 420

SPONSOR: Banking and Insurance Committee and Senator Geller

SUBJECT: Commercial Motor Vehicles

DATE: March 5, 2004

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Davis	Meyer	TR	Favorable
2.	Knudson	Deffenbaugh	BI	Favorable/CS
3.	Erickson	Cannon	CJ	Favorable
4.				
5.				
6.				

I. Summary:

Committee Substitute for Senate Bill 420 provides that any person who is engaged in creating dump trucks by retrofitting, rebuilding, or modifying commercial trucks, truck tractors, or heavy trucks must have evidence of being insured under a commercial liability insurance policy with limits of at least \$1 million per accident and \$1 million annual aggregate. Evidence of the insurance policy must be available at all reasonable hours for inspection by any law enforcement officer.

The bill also mandates that the creation of dump trucks through retrofitting, rebuilding, or modification must comply with the federal safety standards provided in 49 C.F.R. 393.

Any person who fails to meet the liability insurance requirements or fails to comply with the safety standards commits a second-degree misdemeanor. A second violation is a first-degree misdemeanor and a third or subsequent violation is a third-degree felony.

This bill creates section 316.570 of the Florida Statutes.

II. Present Situation:

Some of the dump trucks currently on Florida's roads are rebuilt and retrofitted trucks that have been converted into dump trucks. Converting a truck into a dump truck is inexpensive when compared to the cost of purchasing a new dump truck. However, if the conversion is not done in accordance with proper safety standards the likelihood of accidents involving such vehicles is likely to be greater because of potential inadequacies in braking, suspension, and steering. To make a converted dump truck, the trailer frame of a tractor-trailer cab is extended and another set of wheels is added to support the additional load. Then the dump apparatus is attached, creating

the new dump trucks. An investigative report conducted by NBC Channel 6 News in Miami/Ft. Lauderdale found that 9 of 10 dump truck crashes in South Florida in 2001 involved converted trucks¹. The report estimates that there are thousands of converted dump trucks in South Florida alone. A young student at the University of Florida was killed when a converted dump truck ran her down after the driver lost control.² An expert in heavy-duty trucks who examined photos of the scene and reviewed the conversion stated that the converted dump truck was not designed to hold heavy loads.³

The federal safety and equipment requirements for commercial motor vehicles are contained in Title 49, Part 393 of the Code of Federal Regulations (CFR). Title 49, Part 393 C.F.R., regulates lighting and reflective requirements, electrical systems, braking requirements, tires, coupling devices, mirrors, emergency equipment, load securement, front and structure, suspension systems, frames, steering wheel systems, and other equipment and safety requirements for commercial motor vehicles. The CFR requires every employer and employee to understand and comply with the requirements and specifications provided in the CFR. No employer may operate a commercial motor vehicle, or cause or permit it to be operated, unless it is equipped in accordance with the requirements and specifications of the CFR.

Section 316.302, F.S., provides that all owners and drivers of commercial motor vehicles that are operated on the public highways of this state while engaged in interstate commerce are subject to the requirements of 49 C.F.R. parts 382 (drug and alcohol testing), 385 (safety fitness procedures), and 390-397 (general safety and hazardous materials requirements).

When a vehicle is converted from a truck-tractor into a dump truck there is no inspection to ensure such vehicles comply with federal safety standards. Newly manufactured commercial motor vehicles also are not inspected by any government agency prior to being sold. However, the manufacturer is responsible for ensuring the vehicle is in compliance with federal safety requirements.

The point when defects would be detected in a commercial motor vehicle is when such vehicle is inspected by an officer from the Office of Motor Carrier Compliance (OMCC). The OMCC is charged with enforcing federal and state commercial motor vehicle and driver safety regulations by performing vehicle inspections. The OMCC's safety enforcement responsibility also includes inspections of hazardous materials vehicles and passenger buses. These inspections are conducted both on the roadside and at OMCC's weigh stations throughout the state. This allows the officers to detect possible vehicle defects and driver deficiencies that could lead to commercial motor vehicle crashes. The Department of Transportation also relies on annual inspection stickers to monitor the safety of trucks, but mechanics and truck owners can fill out the inspection stickers themselves and they are easily purchased.⁴

¹ See www.nbc6.net/news/1798266/detail.html (Original airdate Nov. 19, 2002).

² See id.

³ See id.

⁴ See id.

III. Effect of Proposed Changes:

The bill creates s. 316.570, F.S. Paragraph (a) of subsection (1) of that section defines a “dump truck” to be any motor vehicle with a net weight of more than 5,000 pounds which is registered on the basis of gross vehicle weight in accordance with s. 320.08(4), F.S., and is properly equipped with a container used for transporting and dumping materials. Paragraph (b) of subsection (1) defines “person” to be any form of a corporation, limited liability company, partnership, association, cooperative, joint venture, business trust, sole proprietorship, or self-employed person who conducts business in this state.

Subsection (2) of s. 316.570, F.S., requires any person engaged in retrofitting, rebuilding, or modifying commercial trucks, truck tractors, or heavy trucks (as defined in s. 320.01, F.S.) to have evidence that he or she is insured under a commercial liability insurance policy with limits of at least \$1 million per accident and \$1 million annual aggregate. Evidence of the insurance policy must be available for inspection by any law enforcement officer at all reasonable hours.

Subsection (3) of s. 316.570, F.S., mandates that the creation of dump trucks through retrofitting, rebuilding, or modification must comply with the federal safety standards provided in 49 C.F.R. 393.

Subsection (4) of s. 316.570, F.S., provides that “[a]ny person who violates subsection (2) or subsection (3) commits a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083. Any person who violates subsection (2) or subsection (3) a second time commits a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083. Any person who violates subsection (2) or subsection (3) a third or subsequent time commits a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.”

Subsections (2) and (3) set forth requirements, rather than proscribe acts or indicate that acts are unlawful. Presumably, the “violation” is not acting in accordance with the requirements of subsection (2) or subsection (3). This penalty construction is similar to the penalty construction in some other statutes. See, e.g., s. 106.08, F.S. (political contributions), s. 161.053, F.S. (coastal construction and excavation), and s. 202.31, F.S. (dealer of communications services’ tax liability).

Based on this penalty construction, it is a second-degree misdemeanor for any person to violate the requirements of having a garage liability insurance policy or compliance with 49 C.F.R. s. 393. A second violation is a first-degree misdemeanor and a third or subsequent violation of either provision is a third-degree felony.

There is no guilty knowledge or *mens rea* element specified in the text relevant to the offense. The Florida Supreme Court has stated: “... [W]e will ordinarily presume that the Legislature intends statutes defining a criminal violation to contain a knowledge requirement absent an express indication of a contrary intent. An express provision dispensing with guilty knowledge will always control, of course, since in that instance the Legislature will have made its intent clear.” *State v. Giorgetti*, 2004 WL 396212 (Fla. March 4, 2004).

The bill will take effect on October 1, 2004.

IV. Constitutional Issues:**A. Municipality/County Mandates Restrictions:**

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Economic Impact and Fiscal Note:**A. Tax/Fee Issues:**

None.

B. Private Sector Impact:

Any persons engaged in the business of retrofitting, rebuilding, or modifying commercial trucks, truck tractors, or heavy trucks, as defined in s. 320.01, F.S., into dump trucks must have evidence such person is insured under a commercial liability insurance policy the required minimum limits. This will likely result in higher premiums for such businesses throughout the state.

C. Government Sector Impact:

Indeterminate.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Amendments:

None.