

**HOUSE OF REPRESENTATIVES
FINAL BILL ANALYSIS**

BILL #:	CS/HB 411	FINAL HOUSE FLOOR ACTION:	
SPONSOR(S):	Highway & Waterway Safety Subcommittee; Beshears and others.	116 Y's	0 N's
COMPANION BILLS:	CS/SB 1046	GOVERNOR'S ACTION:	Approved

SUMMARY ANALYSIS

CS/HB 411 passed the House on March 4, 2016, as CS/SB 1046. The bill provides that under specified conditions, "covered farm vehicles," are exempt from federal regulations relating to controlled substances and alcohol use and testing; commercial driver licenses; physical qualifications and examinations; hours of service of drivers; and vehicle inspection, repair, and maintenance. These exemptions were authorized in federal law in June 2012, but are not included in state law.

The Department of Highway Safety and Motor Vehicles (DHSMV) estimates approximately 176 programming hours or \$10,040 in FTE and contracted resources will be required to implement the bill, which can be absorbed within existing resources.

The bill was approved by the Governor on March 25, 2016, ch. 2016-115, L.O.F., and will become effective on July 1, 2016.

I. SUBSTANTIVE INFORMATION

A. EFFECT OF CHANGES:

Current Situation

Current state and federal law, the former of which is heavily but not entirely predicated on the latter, contain requirements relating to interstate and intrastate operation of commercial motor vehicles (CMVs).¹ Both federal and state law also contain a number of exemptions specifically applied to agricultural-related CMV operation. The federal MAP-21 Act exempts “covered farm vehicles” (CFVs) and their drivers from specified federal regulations. These exemptions are not currently authorized in state law.

State Application of Federal Law and Relevant State Exemptions

Generally, CMVs operated in interstate or intrastate commerce are subjected to various provisions of federal law in state statute, specifically:

- Part 382, Controlled Substance and Alcohol Use and Testing.
- Part 383, Commercial Driver’s License Standards.
- Part 385, Safety Fitness Procedures.
- Part 390, General Federal Motor Carrier Safety Regulations.
- Part 391, Physical Qualifications and Examinations.^{2, 3}
- Part 392, Driving of Commercial Motor Vehicles.
- Part 393, Parts and Accessories Necessary for Safe Operation.
- Part 395, Hours of Service of Drivers.⁴
- Part 396, Inspection, Repair, and Maintenance.
- Part 397, Transportation of Hazardous Materials; Driving and Parking Rules.⁵

Driver Licensing and Agricultural-Related Exemptions

Every person driving a motor vehicle⁶ must hold a valid driver license.⁷ However, a person is exempt from this requirement while driving or operating any road machine, farm tractor,⁸ or implement of husbandry⁹ temporarily operated or moved on a highway.¹⁰

¹See s. 316.302, F.S.

² Except that a person operating a CMV solely in intrastate commerce not transporting hazard materials that require placarding need not comply with 49 C.F.R., Subpart G, s. 391.11(b)(1) , which generally requires a CMV driver to be at least 21 years of age. Section 316.302(2)(a), F.S.

³ Section 316.302 (3), F.S., authorizes a person who has not attained 18 years of age to operate a CMV with a gross vehicle weight of less than 26,001 pounds while transporting agricultural products, including horticultural or forestry products, from farm or harvest place to storage or market.

⁴ Except that a person operating a CMV solely in intrastate commerce not transporting hazard materials that require placarding need not comply with 49 C.F.R. s. 395.3(a) and (b), relating to maximum driving times for property carrying vehicles. Section 316.302(2)(a), F.S. Such operators also need not comply with the duty status record-keeping (“log book”) requirements of 49 C.F.R. s. 395.8. Section 316.302(2)(d), F.S.

⁵ *Supra* note 2. While s. 316.302(1)(a), F.S., does not expressly apply 49 C.F.R. Part 383, relating to CDLs, to interstate CMV drivers, federal CDL requirements are enforced in state law through Chapter 322, F.S.

⁶ Defined for purposes of Chapter 322, F.S, as any self-propelled vehicle, including a motor vehicle combination, not operated upon rails or guideway, excluding vehicles moved solely by human power, motorized wheelchairs, and motorized bicycles as defined in s. 316.003. Section 322.01(27), F.S.

⁷ Section 322.03, F.S.

⁸ Defined for purposes of Ch. 322, F.S., as a motor vehicle that is operated principally on a farm, grove, or orchard in agricultural or horticultural pursuits and that is operated on the roads of this state only incidentally for transportation between the owner’s or operator’s headquarters and the farm, grove, or orchard or between one farm, grove, or orchard and another OR designed and used primarily as a farm implement for drawing plows, mowing machines, and other implements of husbandry. Section 322.01(20), F.S.

⁹The term is not defined in Ch. 322, F.S., but is defined in s. 316.003(16), F.S., as any vehicle designed and adapted exclusively for agricultural, horticultural, or livestock-raising operations or for lifting or carrying an implement of husbandry *and in either case not subject to registration if used upon the highways.*

¹⁰ Section 322.04(1)(b), F.S.

Every person driving a CMV in this state is required to hold a valid commercial driver license (CDL),¹¹ with certain exceptions. Farmers transporting agricultural products, farm supplies, or farm machinery to or from their farms and within 150 miles of their farms are exempt from the CDL requirement if the transporting vehicle is not used in the operations of a common or contract motor carrier.¹²

Hours of Service and Agricultural-Related Exemptions

In addition, with specified exceptions, *intrastate* CMV operators not transporting hazardous materials that require placarding¹³ may not drive:

- More than 12 hours following 10 consecutive hours off duty, or for any period after the end of the 16th hour after coming on duty following 10 consecutive hours off duty;¹⁴ or
- After having been on duty more than 70 hours in any period of seven consecutive days, or more than 80 hours in any period of eight consecutive days if the motor carrier operates every day of the week, with 34 consecutive hours off duty constituting the end of any such period of seven or eight consecutive days.¹⁵

The latter weekly limit does not apply to a person operating solely within the state while transporting during harvest periods any unprocessed agricultural products or unprocessed food or fiber that is subject to seasonal harvesting, from place of harvest to the first place of processing or storage or from place of harvest directly to market or while transporting livestock, livestock feed, or farm supplies directly related to growing or harvesting agricultural products.¹⁶

Further, a person who operates a CMV solely within the state is generally exempt from compliance with parts 382, 385, and 390 through 397 of Title 49 while transporting agricultural products from farm or harvest place to the first place of processing or storage, or from farm or harvest place directly to market.¹⁷ However, such person must comply with parts 382, 392,¹⁸ and 393,¹⁹ and with ss. 396.3(a)(1)²⁰ and 396.9.²¹

Vehicle Registration and Agricultural-Related Exemptions

In general, Ch. 320, F.S., requires every owner or person in charge of a motor vehicle to register the vehicle, pay license taxes, and display a license plate. However, exempt from these requirements are:

- Motor vehicles operated principally on a farm, grove, or orchard in agricultural or horticultural pursuits and which are operated on the roads of this state only incidentally in going from the owner's or operator's headquarters to such farm, grove, or orchard and returning therefrom or in going from one farm, grove, or orchard to another.
- Vehicles without motive power which are used principally for the purpose of transporting plows, harrows, fertilizer distributors, spray machines, and other farm or grove equipment and which uses the roads of this state only incidentally.²²

¹¹ Section 322.53, F.S.

¹² See also s. 322.53(3), F.S., which requires all drivers of for-hire CMVs to hold a valid CDL.

¹³ The Code of Federal Regulations lists and classifies those materials which the U.S.D.O.T. has designated as hazardous materials for purposes of transportation. Any person who offers a hazardous material for transportation, and each carrier by air, highway, rail, or water who transports a hazardous material, is required to comply with requirements for shipping papers, package marking, labeling, and *transport vehicle placarding* applicable to the shipment and transportation of those hazardous materials. See 49 C.F.R. part 172.

¹⁴ Section 316.302(2)(b), F.S.

¹⁵ Section 316.302(2)(c), F.S.

¹⁶ *Id.*

¹⁷ Section 316.302(2)(e), F.S.

¹⁸ Relating to matters such as driving CMVs at railroad crossings, emergency signals for stopped CMVs, fueling precautions, and prohibited practices.

¹⁹ Relating to parts and accessories necessary for safe operation.

²⁰ Relating to systematic inspection, repair, and maintenance requirements for motor carriers and intermodal equipment providers.

²¹ Containing additional requirements relating to inspection of motor vehicles and intermodal equipment in operation.

²² Section 320.51, F.S. This description of the exempt vehicles is virtually identical to the definition of "farm tractor" for purposes of driver licensing in Chapter 322, F.S.

Maximum Width, Height, and Length Limitations/Implements of Husbandry and Farm Equipment, Agricultural Trailers, Forestry Equipment

Generally, the total outside width of any vehicle or the load thereon may not exceed 102 inches, exclusive of safety devices determined to be necessary for safe and efficient operation. A vehicle may generally not exceed a height of 13 feet, 6 inches, inclusive of the load carried. General vehicle length limitations vary depending on the type of vehicle; i.e., straight trucks, semitrailers, and tandem trailer trucks.²³

However, a person engaged in the production of such products, or a custom hauler, is authorized to transport peanuts, grains, soybeans, citrus, cotton, hay, straw, or other perishable farm products from their point of production to the first point of change of custody or of long-term storage, and for the purpose of returning to such point of production, or for the purpose of moving tractors, movers, and implements from one point of agricultural production to another, by means of the following vehicles, if such vehicles otherwise comply with the requirements of s. 316.515, F.S.:

- Straight trucks, agricultural tractors, citrus harvesting equipment, citrus fruit loaders, and cotton module movers, not exceeding 50 feet in length.
- Any combination of up to and including three implements of husbandry, including the towing power unit.
- Any single agricultural trailer with a load thereon.
- Any agricultural implements attached to a towing power unit.
- A self-propelled agricultural implement.
- An agricultural tractor.²⁴

In addition, a person engaged in the harvesting of forestry products is authorized to transport from one point of harvest to another point of harvest equipment not exceeding 136 inches in width if the equipment is:

- Not capable of exceeding 20 miles per hour.
- Not transported more than 10 miles in distance.
- Used exclusively for harvesting forestry products, not to exceed 10 miles.
- Operated during daylight hours only, and with specified safety requirements.²⁵

Further, the width and height limitations of s. 316.515, F.S., do not apply to farming or agricultural equipment, whether self-propelled, pulled, or hauled, when temporarily operated during daylight hours on a non-limited access facility, which limitations may be exceeded by such equipment without a special permit if the equipment is operated within a 50-mile radius of the real property owned, rented, managed, harvested, or leased by the equipment owner.²⁶

MAP-21 Exemptions

Federal MAP-21 Act defined a new category of vehicles, “covered farm vehicles,” (CFVs) and authorized driver operation of such vehicles under certain circumstances. If the required provisions of the definition are met, and if the driver operates a CFV as specified, the CFV and the driver are exempt from federal regulations relating to controlled substances and alcohol use and testing; commercial driver licenses; physical qualifications and examinations; hours of service of drivers; and vehicle inspection, repair, and maintenance.²⁷ A “covered farm vehicle” is:

- A straight truck²⁸ or articulated vehicle²⁹ that is:

²³ See s. 316.515, F.S.

²⁴ Section 316.515(5)(a), F.S.

²⁵ Section 316.515(5)(b), F.S.

²⁶ Section 316.515(5)(c), F.S.

²⁷ 49 C.F.R. Parts 382; 383; 391, subpart E; 395; and 396, respectively.

²⁸ Straight trucks include commonly recognized vehicles such as pick-up trucks, flat-bed trucks, box trucks, and the like. The truck’s power unit and cargo unit are located on the same vehicle frame. See also s. 316.003(70), F.S.

²⁹ Articulated vehicles, in contrast to straight trucks, include those having a power unit coupled to the cargo-carrying unit. See also s. 316.003(60) and (71), F.S.

- Registered in a state with a license plate or other designation issued by the *state of registration* that allows law enforcement officials to identify it as a farm vehicle.
- Operated by the owner or operator of a farm or ranch, or an employee or family member of an owner or operator of a farm or ranch.
- Used to transport agricultural commodities, livestock, machinery or supplies to or from a farm or ranch.
- Not used in for-hire motor carrier operations, except that a tenant's use of a vehicle pursuant to a crop share farm lease agreement to transport the landlord's share of crops under that agreement is not treated as "for-hire motor carrier operations."

Drivers of vehicles meeting the above definition and having a gross vehicle weight or gross vehicle weight rating, *whichever is greater*, of:

- 26,001 pounds or less may operate anywhere in the United States.
- More than 26,001 pounds may operate anywhere in the state of registration or across state lines within 150 air miles of the farm or ranch with respect to which the vehicle is being operated.

Florida law does not currently authorize the new federal exemptions.

Effect of the Bill

The bill creates s. 316.003(94), F.S., defining "covered farm vehicle" in a manner that is virtually identical to the federal definition and has the same result.

The bill creates s. 316.302(3), F.S., providing that with respect to CFVs, notwithstanding any contrary provision in subsections (1) and (2).³⁰ This section of the bill exempts from the previously identified federal regulations a driver of a CFV and the CFV, as defined in s. 316.003, F.S., registered with a license plate or other designation issued by the state of registration when operating:

- Anywhere in this state if the CFV has a gross vehicle weight or gross vehicle weight rating, whichever is greater, of 26,001 pounds or less.
- Anywhere in the state of registration, or across state lines within 150 air miles of the farm or ranch with respect to which the vehicle is being operated, if the CFV has a gross vehicle weight or gross vehicle weight rating, whichever is greater, of more than 26,001 pounds.

The bill, consistent with Federal Motor Carrier Safety Administration's final rule on the matter,³¹ does not allow the federal exemptions if the vehicle is transporting hazardous materials in amounts that require placarding.³²

In some cases, vehicles used for agricultural-related purposes may qualify for more than one exemption. For example, a vehicle meeting the CFV requirements and qualifying for the MAP-21 federal exemptions might also qualify for the exemption for a person operating a CMV solely within the state from compliance with parts 382, 385, and 390 through 397 of Title 49, while transporting agricultural products from farm or harvest place to the first place of processing or storage, or from farm or harvest place directly to market.³³ On the other hand, a person qualifying for the latter exemption would not be able to qualify for the federal exemptions if, for example, that person is not an owner or operator of a farm or ranch, or an employee or family member of such owner or operator.

The bill amends s. 322.53(2), F.S., exempting the driver of a CFV, as defined in s. 316.003, F.S., from the requirement to hold a valid CDL.

³⁰ The MAP-21 exemptions do not include exemption from, for example, parts 392 and 393 of Title 49 of the C.F.R.; thus, CFVs must remain subject to those parts to retain compliance with federal law. As both subsections (1) and (2) of s. 316.302, F.S., require compliance with those parts, only *contrary* provisions in subsections (1) and (2) should be withstood.

³¹ See the Federal Register, Vol. 78, No. 50, Thursday, March 14, 2013, at p. 16190.

³² *Supra* note 14.

³³ *Supra* note 18.

The bill also conforms cross-references in ss. 316.302(9)(a), and 316.3025(3)(e), F.S.

The bill has an effective date of July 1, 2016.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

The bill does not appear to have a fiscal impact on state revenues.

2. Expenditures:

The Department of Highway Safety and Motor Vehicles (DHSMV) estimates approximately 176 programming hours or \$10,040 in FTE and contracted resources will be required to implement the bill, which can be absorbed within existing resources.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The bill does not appear to have a fiscal impact on the private sector.

D. FISCAL COMMENTS:

None.