

HOUSE OF REPRESENTATIVES STAFF FINAL BILL ANALYSIS

BILL #: CS/HB 405 Regulation of Commercial Motor Vehicles

SPONSOR(S): Transportation & Modals Subcommittee, Melo

TIED BILLS: **IDEN./SIM. BILLS:** CS/SB 754

FINAL HOUSE FLOOR ACTION: 110 Y's 0 N's **GOVERNOR'S ACTION:** Approved

SUMMARY ANALYSIS

CS/HB 405 passed the House on March 1, 2024, and subsequently passed the Senate on March 1, 2024.

The Drug and Alcohol Clearinghouse (Clearinghouse) is a secure online database that gives employers, the Federal Motor Carrier Safety Administration (FMCSA), state driver licensing agencies (SDLAs), and state law enforcement personnel real-time information about violations of the U.S. Department of Transportation drug and alcohol testing program by holders of commercial driver's licenses and commercial learner's permits. Under current law, employers are required to query the Clearinghouse for current and prospective employees' drug and alcohol violations before permitting those employees to operate a commercial motor vehicle (CMV) on public roads. They must also annually query the Clearinghouse for each driver they currently employ.

On October 7, 2021, the FMCSA published a final rule establishing requirements for an SDLA's access to and use of driver-specific drug and alcohol program violation information contained in the Clearinghouse. States have until November 18, 2024, to comply with these requirements. Therefore, the bill makes the statutory changes necessary for the Department of Highway Safety and Motor Vehicles (DHSMV) to enforce and administer the Clearinghouse provisions of the federal rule.

Additionally, the bill makes the following changes relating to the regulation of CMVs:

- Adopts updated FMCSA regulations for CMVs engaged in intrastate commerce as such regulations existed on December 31, 2023;
- Updates language to appropriately reference provisions of federal regulations that apply to a CMV not transporting hazardous materials but which is operating intrastate within a 150 air-mile radius of the location where the CMV is based; and
- Deletes an expired, and therefore obsolete, exemption for CMV operators related to the requirements of electronic logging devices and hours of service supporting documents.

The bill has an indeterminate fiscal impact on state revenues and expenditures. See Fiscal Analysis section.

The bill as approved by the Governor on May 6, 2024, ch. 2024-151, L.O.F., and will become effective on July 1, 2024.

I. SUBSTANTIVE INFORMATION

A. EFFECT OF CHANGES:

Federal Commercial Vehicle Regulations

Current Situation

Florida law provides that all owners and drivers of commercial motor vehicles¹ (CMVs) operating on Florida's public highways, while engaged in *interstate* commerce, are subject to the following Federal Motor Carrier Safety Administration (FMCSA)² regulations:³

49 C.F.R. Part	Title/Subject
382	Controlled Substance and Alcohol Use 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 Driver Instructors
392	Driving of Commercial Motor Vehicles
393	Parts and Accessories Necessary for Safe Operation
395	Hours of Service of Drivers
396	Inspection, Repair, and Maintenance
397	Transportation of Hazardous Materials; Driving and Parking Rules

Florida law provides that all owners and drivers of CMVs engaged in *intrastate* commerce are subject to the above FMCSA regulations as they existed on December 31, 2020.⁴

When the FMCSA adopts rule changes, states have three years to adopt them in order to continue receiving federal highway grant funding. Since the last adoption, FMCSA has adopted or amended six rules which impact the Department of Highway Safety and Motor Vehicles (DHSMV).⁵ During an Annual Program Review of DHSMV's compliance with FMCSA's regulations, the FMCSA noted instances where DHSMV lacks statutory authority for certain required regulations.⁶

Effect of the Bill

The bill provides that all owners and drivers of CMVs engaged in intrastate commerce are subject to the federal regulations contained in 49 C.F.R. parts 382, 383, 384, 385, 386, and 390-397 as they exist on December 31, 2023. The addition of Part 384 to the list of federal regulations applicable to all CMVs reflects state compliance with changes to the Commercial Driver's License Program as required by November 18, 2024.

¹ Section 316.003(14), F.S., defines "commercial motor vehicle" as any self-propelled or towed vehicle used on the 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, as amended (49 U.S.C. §§ 1801 et seq.).

² The FMCSA's primary mission is to prevent commercial motor vehicle-related fatalities and injuries. The FMCSA ensures safety in motor carrier operations through strong enforcement of safety regulations; targeting high-risk carriers and commercial motor vehicle drivers; improving safety information systems and commercial motor vehicle technologies; strengthening commercial motor vehicle equipment and operating standards; and increasing safety awareness. See FMCSA, *About Us*, <https://www.fmcsa.dot.gov/mission/about-us> (last visited Mar. 4, 2024).

³ S. 316.302(1)(a), F.S.

⁴ S. 316.302(1)(b), F.S.

⁵ DHSMV, Agency Analysis of 2024 House Bill 405, pp. 3-4 (Dec. 18, 2023).

⁶ *Id.*

The bill deletes an expired, and therefore obsolete, exemption for CMV operators related to the requirements of electronic logging devices and hours of service supporting documents.

The bill updates language to appropriately reference the provisions of 49 C.F.R. § 395.1(e)(1) that apply to a CMV not transporting hazardous materials but which is operating intrastate within a 150 air-mile radius of the location where the CMV is based.

Drug and Alcohol Clearinghouse

Current Situation

Drug and Alcohol Clearing House and FMCSA Requirements

The Drug and Alcohol Clearinghouse (Clearinghouse) is a secure online database that gives employers, the FMCSA, state driver licensing agencies (SDLAs), and state law enforcement personnel real-time information about violations of the U.S. Department of Transportation (DOT) drug and alcohol testing program by commercial driver's license (CDL) and commercial learner's permit (CLP) holders.⁷

The Clearinghouse contains records of violations of drug and alcohol prohibitions, including positive drug or alcohol test results and test refusals⁸, as reported by employers.⁹ A driver found in violation of the program must complete a follow-up testing plan administered by a substance abuse professional and receive a negative return-to-duty test result before they are able to resume operating a commercial vehicle. This information is also recorded in the Clearinghouse.¹⁰

Employers are required to query the Clearinghouse for current and prospective employees' drug and alcohol violations before permitting those employees to operate a CMV on public roads. They must also annually query the Clearinghouse for each driver they currently employ.¹¹

On October 7, 2021, the FMCSA published a final rule establishing requirements for an SDLA's access to and use of driver-specific drug and alcohol program violation information contained in the Clearinghouse.¹² The rule requires that:

- SDLAs must not issue, renew, upgrade, or transfer a CDL or CLP, as applicable, for any individual prohibited under FMCSA's regulations from performing safety-sensitive functions, including driving a CMV, due to one or more drug and alcohol program violations.
- SDLAs must, upon receipt of notification that a driver is prohibited from operating a CMV due to a drug and alcohol program violation, initiate established state procedures for downgrading to remove the CLP or CDL privilege from the driver's license within 60 days.

⁷ FMCSA, *Drug and Alcohol Clearinghouse*, <https://clearinghouse.fmcsa.dot.gov/FAQ/Topics/General> (last visited Mar. 4, 2024).

⁸ 49 C.F.R. § 382.601(b)(12).

⁹ 49 C.F.R. § 382.705 states that within two business days of determining or verifying a drug or alcohol test result, medical resource officers for employers (MROs) must report the information about a driver to the Clearinghouse. Employers have three days to report test results, violations, or refusals to the Clearinghouse.

¹⁰ 49 C.F.R. § 382.701(d).

¹¹ FMCSA, *Commercial Driver's License Drug and Alcohol Clearinghouse*, <https://www.fmcsa.dot.gov/regulations/commercial-drivers-license-drug-and-alcohol-clearinghouse> (last visited Mar. 4, 2024).

¹² Controlled Substances and Alcohol Testing: State Driver's Licensing Agency Non-Issuance/Downgrade of Commercial Driver's License, 86 Fed. Reg. 55718 (Oct. 7, 2021) (amending 49 C.F.R. Parts 382, 383, 384, 390, and 392).

- Drivers completing the return-to-duty process before the downgrade process is completed would no longer be prohibited from operating a CMV and thus would no longer be subject to a downgrade.¹³

The term “downgrade” is not currently defined in Florida law. The term is defined under federal law as when a state removes the CLP or CDL privilege from the driver’s license.¹⁴

States have until November 18, 2024, to comply with these requirements.¹⁵

Fees for Review Hearings and Reinstatement of Licenses

An applicant requesting a review authorized in ss. 322.222, 322.2615, 322.2616, 322.27, or 322.64, F.S., must pay a filing fee of \$25 to be deposited into the Highway Safety Operating Trust Fund (HSOTF).¹⁶

A person who applies for reinstatement following the suspension or revocation of the person’s driver license or who applies for reinstatement of a CDL following disqualification of the person’s privilege to operate a CMV must pay a service fee, in addition to the fee for a license, as follows:

	Definition	Service Fee <i>(In addition to the license fee)</i>
Reinstatement after revocation	“Revocation”: The termination of a licensee’s privilege to drive. ¹⁷	\$75 ¹⁸
Reinstatement after suspension	“Suspension”: The temporary withdrawal of a licensee’s privilege to drive a motor vehicle. ¹⁹	\$45 ²⁰
Reinstatement of CDL after disqualification	“Disqualification”: A prohibition, other than an out-of-service order, that precludes a person from driving a CMV. ²¹	\$75 ²²

If processed by DHSMV, the \$75 service fee for a CDL disqualification must be deposited in the following manner:

- \$35 to the General Revenue Fund; and
- \$40 to the HSOTF.

If the service fee is processed by a tax collector, then the tax collector retains \$20. The remaining amount will be transferred to DHSMV for deposit with \$20 transmitted to the HSOTF and \$35 to the General Revenue Fund.²³

¹³ FMCSA, *How will State Driver Licensing Agencies (SDLAs) use the Clearinghouse?*, <https://www.fmcsa.dot.gov/regulations/drug-alcohol-testing/how-will-state-driver-licensing-agencies-sdlas-use-clearinghouse-0> (last visited Mar. 4, 2024).

¹⁴ 49 C.F.R. § 383.5(4).

¹⁵ Controlled Substances and Alcohol Testing: State Driver’s Licensing Agency Non-Issuance/Downgrade of Commercial Driver’s License, 86 Fed. Reg. 55718 (Oct. 7, 2021) (amending 49 CFR §§ 382, 383, 384, 390, and 392).

¹⁶ S. 322.21(9)(a), F.S.

¹⁷ S. 322.01(37), F.S.

¹⁸ S. 322.21(8), F.S.

¹⁹ S. 322.01(41), F.S.

²⁰ *Id.*

²¹ S. 322.01(15), F.S.

²² *Id.*

²³ S. 322.21(8)(b), F.S.

Effect of the Bill

The bill makes the statutory changes necessary for DHSMV to enforce and administer the Clearinghouse provisions of the federal rule.

Related to driver licenses, the bill defines “downgrade” as when a state removes the CLP or CDL privilege from the driver's license, matching the federal definition of “CDL downgrade.”²⁴ The bill clarifies that the “cancellation,” “revocation,” and “suspension” of a driver’s license does not include a “downgrade.”

Under the bill, a CMV operator cannot be licensed by DHSMV to operate a CMV if deemed ineligible by the Clearinghouse, and DHSMV cannot issue a temporary CIP if DHSMV has been notified by the Clearinghouse that the applicant is prohibited from operating a CMV.

The bill provides that when a person applies for the reinstatement of a CDL following a downgrade of the person’s privilege to operate a CMV, he or she must pay the service fee of \$75 in addition to the fee for license. This matches the current process for when a person applies for the reinstatement of a CDL following a disqualification to operate a CMV.²⁵ If a person is requesting review of his or her downgrade status, the person must pay the \$25 filing fee currently required by s. 322.21(9)(a), F.S.

The bill creates a new statute describing the use and operation of the Commercial Driver's License Drug and Alcohol Clearinghouse and related requirements. This statute puts the state in compliance with the federal rule and creates a state-established procedure for downgrading a CDL or CIP.

Beginning November 18, 2024:

- When a person applies for or seeks to renew, transfer, or make any other change to a CDL or temporary CIP, DHSMV must obtain the person’s driving record from the Clearinghouse. DHSMV may not issue, renew, or transfer, or revise the types of authorized vehicles that may be operated or the endorsements applicable to, a CDL or temporary CIP for any person for whom DHSMV receives notification from the Clearinghouse that the person is prohibited from operating a commercial vehicle.
- DHSMV must downgrade the CDL or temporary CIP of a person if DHSMV receives notification from the Clearinghouse that the person is prohibited from operating a CMV. Any such downgrade must be completed and recorded by DHSMV within 60 days.
- Upon notification from the Clearinghouse that a person is prohibited from operating a CMV, DHSMV must immediately notify the person who is the subject of such notification that he or she is prohibited from operating a CMV and, upon his or her request, must afford him or her an opportunity for an informal hearing.
- A person for whom DHSMV receives notification from the Clearinghouse that a person is prohibited from operating a CMV may, if otherwise qualified, be issued a Class E driver license valid for the length of his or her unexpired license period, at no cost.

When a person receives notice of the downgrade, he or she has 20 days to request an informal hearing and pay the \$25 filing fee. If the person does not request the hearing and pay the fee in time, and DHSMV has not received notification from the Clearinghouse that the person is no longer prohibited from operating a CMV, DHSMV must downgrade the CDL or temporary CIP.

If a person does request an informal hearing, it must be scheduled and held within 30 days of the request. The informal hearing is exempt from the provisions of the Administrative Procedures Act,²⁶ must be conducted before a hearing officer designated by DHSMV, and may be conducted by means of communications technology. The notification received by DHSMV from the Clearinghouse must be in

²⁴ 49 C.F.R. § 383.5(4).

²⁵ S. 322.21(8), F.S.

²⁶ Ch. 120, F.S.

the record for consideration by the hearing officer and in any further proceedings and is not subject to challenge.

Final orders and rulings related to a downgrade of a CDL or temporary CIP are reviewable in the same manner as current law for DHSMV's final orders relating to a driver license denial, cancelation, suspension, or revocation.

Following a final order that results in the downgrade of a person's CDL or temporary CIP, DHSMV must record immediately in the person's driving record that the driver is disqualified from operating a CMV. If after the final order DHSMV receives notification from the Clearinghouse that:

- The person is no longer prohibited from operating a CMV, then DHSMV must reinstate the CDL or temporary CIP upon application for such person.
- The person was erroneously identified as being prohibited from operating a CMV, then DHSMV must notify the person; reinstate, without payment of the reinstatement fee, the person's commercial driver license or commercial instruction permit as expeditiously as possible; and remove any reference to the person's erroneous prohibited status from the Commercial Driver's License Information System and the person's record.

DHSMV is not liable for any CDL or temporary CIP downgrade resulting from the discharge of its duties.

The downgrade of a CDL or temporary CIP does not preclude a person from other suspensions, disqualifications, or penalties relating to unlawful operation of a CMV or driving under the influence.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

DHSMV estimates a negligible positive impact to state revenues related to the \$25 filing fee for a review of a downgraded status and the \$75 service fees for a CDL reinstatement due to a disqualification.

2. Expenditures:

The bill requires DHSMV to:

- Provide outreach to stakeholders and update procedures, which may include updates to the CDL License Handbook.
- Provide programming to connect to the Clearinghouse and downgrade a CDL or temporary CIP based upon a notification from the Clearinghouse.
- Provide additional Bureau of Administrative Reviews staff and hearing officers if informal hearings increase due to downgrades of CDLs or temporary CIPs.²⁷

DHSMV estimates that the expenditures associated with increased staffing and technology to be \$226,470. However, DHSMV has received grant funding to assist with these expenditures.²⁸

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

²⁷ DHSMV, *supra* note 5 at pp. 6 and 8.

²⁸ DHSMV, *supra* note 5 at pp. 8.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

If the bill does not become law, the state may lose portions of its federal aid highway funds or the ability to issue CDLs as a penalty for noncompliance.²⁹

²⁹ *Id.*