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BILL ANALYSIS



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House Bills 5215 (Substitute H-1) and 5216
 Sponsor: Representative Eric Bush
 House Committee: Transportation
 Senate Committee: Transportation and Tourism

Date Completed: 12-6-95

SUMMARY OF HOUSE BILLS 5215 (Substitute H-1) and 5216 as passed by the House:

House Bill 5215 (H-1) would amend the Motor Carrier Safety Act to do the following:

- Adopt updated Federal regulations concerning hazardous material and motor carrier safety.
- Rescind rules promulgated by the Department of State Police under the Act.
- Replace driver qualification provisions, and require a driver transporting hazardous material to be at least 21 years old.
- Revise provisions concerning "grandfather rights" granted to drivers driving since June 1984; give the Department of State Police one year to continue issuing grandfather cards; sunset all cards on December 31, 2014; and provide that grandfather rights would apply only to preexisting conditions.
- Revise or add exemptions from the Act for mechanics, public utility service employees, and implements of husbandry.
- Exempt government-owned vehicles from the Act, except for Federal regulations concerning controlled substances and alcohol use and testing, and driver qualifications.
- Require the Motor Carrier Division to issue a compliance order if the operation of a commercial motor vehicle posed an unreasonable risk or an imminent hazard to the public safety.
- Allow the Motor Carrier Division to petition the circuit court for a shut down

order if a person failed to comply with a compliance order.

- Require notice to the Motor Carrier Division of certain hazardous material occurrences.
- Require various devices on vehicle combinations transporting a combustible liquid.
- Regulate the transfer of hazardous materials from a tank.
- Require hazardous materials vehicle inspection and repair facilities to submit documents to motor carrier officers upon demand.
- Allow motor carrier officers to inspect cargo without a warrant.
- Delete provisions allowing the Motor Carrier Division to establish and maintain a voluntary motor carrier safety inspection program.
- Provide that local ordinances could not be inconsistent with the Act.

House Bill 5216 would amend the Michigan Vehicle Code to do the following:

- Rewrite current vehicle height, length, and combination restrictions.
- Revise provisions governing the transport of flammable liquid.
- Specify that commercial motor vehicles transporting hazardous materials would have to comply with the Motor Carrier Safety Act.
- Require vehicles carrying hazardous materials to stop at least 10, rather than 15, feet from railroad tracks.

- **Provide that a stop could not be made at an “exempt” industrial or spur line railroad grade crossing.**
- **Repeal a section concerning compliance with rules promulgated under other laws.**

House Bill 5215 (H-1)

Federal Regulations/Definitions

The bill would repeal a section of the Act that adopts provisions of Title 49 of the Code of Federal Regulations, “as of February 28, 1990, on file with the office of the secretary of state except where modified by this act, to provide for the safe transportation of persons and property with the intent of following the policies and procedures of the United States department of transportation’s federal highway administration as they relate to title 49...and the North American standard uniform out of service criteria and inspection procedures...” (MCL 480.15). The bill would reenact this language without reference to the 1990 date. The adopted provisions pertain to hazardous material regulations, and motor carrier safety regulations.

The bill specifies that when a commercial motor vehicle was operated entirely within this State and not otherwise involved with the movement of interstate property or possessions in commerce, the definitions in the Motor Carrier Safety Act would apply. The definitions contained in the adopted Federal regulations would apply to the Act except for the definitions in the Act as added or modified.

The Act permits the Department of State Police to promulgate rules and regulations reasonably necessary to the accomplishment of the purposes of the Act. The bill provides that the administrative rules promulgated under this authority that were filed with the Secretary of State on June 22, 1984, and any subsequent revision to those rules would be rescinded on the bill’s effective date.

Driver Qualifications

The bill would replace many of the provisions that prescribe qualifications for persons who drive commercial motor vehicles. Under the bill, a person would be qualified to drive a commercial motor vehicle if he or she met all of the requirements in Federal regulations except as provided below.

In the case of intrastate transportation, the person would have to be at least 18 years old when

transporting property or passengers, except that someone would have to be at least 16 when acting as a farm vehicle driver. A driver would have to be at least 21 when transporting hazardous materials in a quantity that required the vehicle to be marked or placarded pursuant to Federal regulations; this provision would not apply to a vehicle eligible for and displaying valid farm plates with a gross vehicle weight of 40,000 pounds or less if the driver were at least 18.

In the case of interstate transportation, the driver would have to be eligible for and display a valid medical waiver card or grandfather rights card issued in accordance with the Act.

The bill would delete provisions under which each motor carrier must maintain a driver’s qualification file for each driver it employs.

Grandfather Rights

Currently, the Act’s provisions pertaining to an intrastate driver’s medical qualifications do not apply to any driver who has been a regularly employed driver of a motor carrier for a continuous period beginning on or before June 10, 1984; has continued to be a regularly employed driver of that motor carrier; is otherwise qualified to drive a commercial motor vehicle; has applied to the appeal board claiming grandfather rights; and has received a waiver of medical qualification from the Motor Carrier Division of the Department of State Police. The driver must carry a “medical waiver - grandfather rights” card at all times while operating a motor vehicle.

The bill specifies that, notwithstanding this language, the provisions of the Act pertaining to random, reasonable cause, and postaccident drug testing would apply to all drivers granted grandfathering rights. The bill would require the Department of State Police to discontinue the issuance of grandfather cards under the Act one year after the bill’s effective date. Grandfather cards issued before that date would remain valid until December 31, 2014.

The bill also specifies that the exemption from medical qualifications under these provisions would apply only to preexisting conditions before June 10, 1984. Any medical condition that would normally disqualify a driver under the Act would automatically void any grandfather rights. Any driver who developed a normally disqualifying medical condition after being issued a grandfather card would have to return the card to the appeal

board and apply for a medical waiver as provided in the Act.

Exemptions from the Act

The Act provides that it does not apply to a mechanic who services motor carrier equipment during the intrastate operation of the equipment when the vehicle or combinations are not being used to transport passengers or property or any for hire or compensated transportation, and the mechanic is not otherwise being used as a regularly employed driver. The bill also would require the mechanic to be test driving a loaded commercial motor vehicle within 10 miles of the repair facility.

The Act does not apply to utility, telephone, and cable television company service employees if they are not otherwise being used as a regularly employed driver, and are not used to operate a bus or a motor vehicle exceeding certain weight limits or carrying hazardous material requiring a placard. The Act specifies that this provision does not include a vehicle used exclusively to transport personal possessions or family members for nonbusiness purposes; the bill would delete that exemption.

The Act provides that specific Federal rules apply to all drivers of commercial motor vehicles except farm vehicle drivers; mechanics; utility, telephone, and cable television company service employees; and drivers of public utility service vehicles being used in cases of emergency. The bill would delete the exemption for mechanics and utility, telephone, and cable television company service employees. The bill would retain the exemption for farm vehicle drivers and drivers of public utility service vehicles used in an emergency. The bill would define "emergency" as any instance of loss of public utility service due to an unforeseen circumstance, a natural disaster, or an act of God. A declaration of emergency by a public official would not be required to constitute an emergency under this provision.

The bill would create an exemption to the Act and rules promulgated under it for a commercial motor vehicle owned and operated by a unit of government or its employees, except as otherwise provided in the Act, and except for specific parts of Title 49 (pertaining to controlled substances and alcohol use and testing; driver qualifications; driving motor vehicles; and parts and accessories necessary for safe operation). (Currently, the Act specifies that it does not apply to a unit of

government or its employees, officers, or representatives or to a motor vehicle owned by a unit of government, except as provided in the Michigan Vehicle Code.)

The bill also would create an exemption for a self-propelled implement of husbandry if it were an implement of husbandry as defined in the Michigan Vehicle Code; if the motor vehicle hauling the implement of husbandry did not exceed a maximum speed of 25 miles per hour if the drawn or self-propelled implement of husbandry being drawn were not equipped with brakes and/or coupling devices that met Federal standards; and if it did not exceed any other implement or component design maximum speed limitation.

The bill would delete exemptions for the occasional transport of personal property by individuals not for compensation or in the furtherance of a commercial enterprise; for the transportation of human corpses or sick and injured persons; and for the operation of an authorized emergency vehicle by a fire fighter who has met the driver training standards of the Michigan Firefighter's Training Council.

Penalties

Currently, it is a misdemeanor for any driver or operator to violate the Act or a rule promulgated under the Act, or for any owner or user of any bus, truck, truck tractor, or trailer, or certain other motor vehicles, to require or permit the driver or operator to operate or drive any bus, truck, etc. in violation of the Act. The bill specifies that the misdemeanor would be punishable by imprisonment for up to 90 days and/or a maximum fine of \$100. The bill also would create exceptions to this penalty, as described below. The bill would delete a provision under which a driver may be audited by the Motor Carrier Division for a third or subsequent violation within one year of the rules concerning hours or service and recording those hours in a daily log.

Under the bill, if the vehicle involved in a violation were transporting a package required to be marked or labeled under Federal regulations, the offense would be punishable by a maximum fine of \$500 for each conviction and/or imprisonment for up to 90 days. This penalty also would apply to the owner or user of any hazardous materials vehicle inspection or repair facility that violated a section of the Act, or a rule promulgated under it, related to the transportation of hazardous materials.

Compliance and Shut Down Orders

Upon a determination that the continued operation of commercial motor vehicles by a person upon the highways of this State posed an unreasonable risk or an imminent hazard to the public safety, the Motor Carrier Division would have to issue a compliance order. The order could direct a person to make certain changes, repairs, or alterations to the person's vehicles or operations, to comply with the laws of this State. In making an order, the Motor Carrier Division could not impose restrictions on any employee or person beyond those required to abate the hazard. Any vehicle or driver operating during the specified time period of the order would have to comply with all applicable laws and rules.

A compliance order would have to include the name and address of the person and the chief operating officer of the person, the reason or reasons for the order, and the requirements or conditions that had to be met for rescission of the order. The order also would have to state that the person had 30 days to comply with it. If the 30-day limit expired and the person were not in compliance, the Motor Carrier Division could seek a shut down order from a circuit court. ("Shut down order" would mean a court order issued to a motor carrier upon proof shown of unreasonable risk or an imminent hazard.)

Upon the Motor Carrier Division's petition, the circuit court could issue a shut down order. A shut down order would have to direct a vehicle or vehicles or employee or employees out of service from further operations, or direct a person to cease all or part of the person's commercial motor vehicle operation. Restrictions could not be imposed on any employee or person beyond those required to abate the hazard.

A shut down order would have to include the name and address of the person and the chief operating officer of the person, the reason or reasons for the order, the requirements or conditions that had to be met for rescission of the order, and a statement of the right to appeal.

An order to any person to cease all or part of its operation would not prevent vehicles in transit at the time the order was served from proceeding to their immediate destinations, unless the vehicle or person were specifically ordered out of service. Vehicles and drivers proceeding to their immediate destination would be subject, however, to compliance upon arrival. ("Immediate destination" would mean the next scheduled stop of a

commercial motor vehicle already in motion where the cargo on board could be safely secured.)

A person who failed to comply with a shut down order would be guilty of a misdemeanor, punishable by a maximum fine of \$1,000 for each violation, by imprisonment for up to 90 days, or both. A person or vehicle found operating on the highways of this State while under a shut down order would have to be immediately stopped, and impounded or arrested. The owner or lessee of the vehicle would be responsible for any costs incurred during impoundment. The vehicle would have to be released upon the court's determination that the order had been complied with.

Hazardous Materials Occurrences

Immediately after any of the following occurrences involving the transportation of hazardous materials, the owner, driver, or lessee, or representative of that person, would have to notify the Motor Carrier Division and the organized fire department of the area in which the incident occurred of the known details regarding the incident:

- A person was killed.
- A person was hospitalized due to any injury.
- A person was hospitalized due to hazardous material contamination or exposure.
- There was an unintentional release of hazardous materials that affected highway transportation safety or was caused, or believed to be caused, by a violation of the Act or a rule promulgated under it.

"Notify the motor carrier division" would include contacting the local State Police post, the operations section of the Department of State Police, or the Motor Carrier Division headquarters by telephone, facsimile machine, or other means.

Combustible Liquid

The bill would prohibit a truck tractor pulling a semitrailer and a trailer, or pulling two semitrailers, from transporting a combustible liquid unless the vehicle combination were equipped with a device that restricted the horizontal and vertical rotation of the dolly assemblage of the vehicle combination, and with stops in the spring hangers of each semitrailer and trailer in the combination, as described in the bill.

The owner of the semitrailer or trailer to which the rotation restriction device was attached would have to keep on file in the owner's principal place

of business the following information: specifications and plans of the device, the name of the device's manufacturer, the date of installation of the device, and an individual manufacturer identification number that was stamped or permanently affixed to the device. This information would have to be kept by the vehicle's owner and transferred to the new owner if the vehicle were sold, or could be destroyed if the vehicle were retired from service or scrapped. These requirements would apply to devices affixed to vehicles on or after the bill's effective date.

The bill specifies that commercial motor vehicles used to transport flammable liquids, flammable gases, or compressed flammable gases also would have to comply with a section of the Michigan Vehicle Code that regulates transporting flammable liquid (Section 722a).

Transferring Hazardous Material

A person, driver, owner, carrier, lessee, or lessor could not transfer or allow the transfer of a hazardous material from a cargo tank, portable tank, fuel tank, or any other container on a highway, road, street, or alley within this State. This prohibition would not apply, however, to the following transfer situations:

- Fueling machinery or equipment for construction, farm, and maintenance use.
- Fueling emergency vehicles.
- Under emergency conditions if the transfer were made in a safe manner. The local fire chief, the State Fire Marshal, or a hazardous materials officer of the Motor Carrier Division could prohibit a transfer pursuant to his or her authority under the Fire Prevention Code.

Other Provisions

The bill would require hazardous materials vehicle inspection and repair facilities to submit, upon demand, all of their transportation safety-related documents as required by the Act, such as hazardous materials tank certification and repair documents, and annual inspection certification documents to any motor carrier officer displaying a valid Michigan Department of State Police Motor Carrier Division identification card. ("Hazardous material vehicle inspection or repair facility" would mean a commercial enterprise that performed inspections, certification, testing, or repairs to commercial motor vehicles transporting hazardous materials as required by Federal regulations, and would include motor carriers that performed the

inspections, certification, testing, or repairs to vehicles owned or leased by the motor carrier.)

Under the bill, an officer of the Motor Carrier Division displaying valid identification could, without a warrant, require the cargo carrying portion of a vehicle to be opened for inspection of the cargo, and any object within that portion of the vehicle, or the interior of the vehicle or any compartment within the vehicle's interior.

The bill provides that a township, city, village, or county could not adopt or enforce an ordinance or resolution that was inconsistent with the Act or any rule promulgated under it. A State agency could not promulgate rules inconsistent with the Act; this provision would not apply, however, to rules promulgated under the Fire Prevention Code by the State Fire Safety Board with respect to the transportation of liquefied petroleum gas. ("Inconsistent" would mean a rule or ordinance that was more permissive than the Act, or was more restrictive, or required more action, equipment, or permits, or prevented or obstructed compliance with the Act.)

House Bill 5216

Length/Height/Combinations

The bill would enact provisions to be known as "the normal length maximum", which would prescribe the maximum allowable length of single vehicles, articulated buses, vehicle combinations, and load extensions. The bill also would prohibit specific combinations and movements, and provides that any combination of vehicles not specifically authorized under these provisions would be prohibited. All vehicle combinations would have to employ connecting assemblies and lighting devices that were in compliance with the Motor Carrier Safety Act.

The bill also would require fifth wheel assemblies on pickup trucks to conform to standards prescribed in the Motor Carrier Safety Act, rather than specific motor carrier safety rules.

Flammable Gas/Liquid

The bill would delete provisions that govern the transport of flammable liquid by a truck, or a truck tractor pulling a semitrailer, having a water capacity over 9,500 gallons. The bill specifies that a truck pulling a trailer, a truck tractor pulling a semitrailer and trailer combination, or a truck tractor pulling two semitrailers could not transport a flammable gas or compressed flammable gas, in

bulk, as defined in Federal regulations, within this State.

The Code provides that a truck or a truck tractor pulling a semitrailer may not transport a flammable liquid, in bulk, that has a flash point at or below 70 degrees Fahrenheit in this State, if the truck or semitrailer was manufactured after July 1, 1982, or before July 1, 1982, but was not a vehicle registered in this State between January 1, 1985, and October 1, 1985, unless the truck or semitrailer has a water capacity under 13,800 gallons. The bill would retain this provision without reference to the manufacture or registration date. The bill specifies that this provision would not apply to those vehicles registered with the Motor Carrier Division of the Department of State Police by January 1, 1986.

Currently, the owner or driver of a vehicle that transports a flammable liquid in violation of the Code is guilty of a misdemeanor, punishable by a maximum fine of \$3,000 and/or imprisonment for up to 90 days. Under the bill, this penalty would apply to the owner or driver of a vehicle that transported, or a shipper who loaded a vehicle with a flammable liquid, flammable gas, or compressed flammable gas in violation of the Code.

The Act provides that these provisions governing the transport of flammable liquid may be enforced only by a police officer or an officer appointed by the Director of the Department of State Police. The bill provides that these provisions could be enforced only by a police officer.

The bill specifies that, for purposes of these provisions, "in bulk" would mean an amount of product or material of 3,500 water gallons or more in a single containment system.

Stopping at Railroad Tracks

Currently, the driver of a vehicle carrying hazardous materials on which a placard is required by Federal regulations must stop the vehicle at least 15 feet from the nearest rail. Under the bill, the driver would have to stop the vehicle within 50 feet but not less than 10 feet from the nearest rail.

The bill would delete a provision that a stop may not be made at a railroad track grade crossing on a freeway or limited access highway where the crossing is protected by a clearly visible signal, crossing gate, or barrier at a time when the signal, gate, or barrier is not activated. The bill provides that a stop could not be made at an industrial or spur line railroad grade crossing marked with a

sign reading "exempt". Exempt signs could be erected only by or with the consent of the State Transportation Department after notice to and an opportunity to be heard by all railroads operating over the industrial or spur line.

Repeal

Section 601a of the Code requires vehicles owned and operated by the State and by local authorities with a gross weight of 10,000 pounds or more, and all vehicles transporting hazardous materials, to comply with rules relating to drivers' physical qualifications and equipment requirements promulgated under the Motor Carrier Safety Act. Motor buses are required to comply with rules promulgated under the Motor Bus Transportation Act. The bill would repeal Section 601a.

MCL 480.11a et al. (H.B. 5215)
257.669 et al. (H.B. 5216)

Legislative Analyst: S. Margules

FISCAL IMPACT

By bringing the State into compliance with Federal regulations, the bills would protect the State's receipt of Federal funding.

Fiscal Analyst: B. Baker

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This analysis was prepared by nonpartisan Senate staff for use by the Senate in its deliberations and does not constitute an official statement of legislative intent.