



Senate Fiscal Agency
P. O. Box 30036
Lansing, Michigan 48909-7536



BILL ANALYSIS

Telephone: (517) 373-5383
Fax: (517) 373-1986
TDD: (517) 373-0543

House Bill 6084 (Substitute H-1 as passed by the House)
Sponsor: Representative Philip LaJoy
House Committee: Transportation
Senate Committee: Transportation

Date Completed: 6-13-06

CONTENT

The bill would amend the Michigan Vehicle Code to do the following:

- Revise criminal history check requirements for an applicant for a vehicle dealer or salvage vehicle agent license.
- Restrict the Secretary of State's (SOS's) use and disclosure of an applicant's criminal history check information, and prescribe criminal penalties for a person who used this information improperly.
- Extend an exemption from a requirement to obtain a driver license under the Code to certain military personnel and commercial driver license (CDL) holders.
- Revise requirements concerning publication by the SOS of reciprocal driving privileges between countries.
- Prohibit the SOS from issuing a license to a person whose CDL application was canceled because it contained false information.
- Require a person to be at least 21 years old before obtaining a hazardous material indorsement.
- Revise provisions regarding a vehicle group designation or indorsement for a vehicle used only for farming purposes.
- Revise provisions regarding the expiration of a driver license.
- Require the SOS to suspend for one year a commercial motor vehicle (CMV) driver's vehicle group designations and indorsements for certain traffic violations committed in a noncommercial motor vehicle.

- Require the SOS to suspend or revoke a person's privilege to operate a CMV as directed by the Federal government.
- Require the SOS to suspend the vehicle group designations or indorsements of a person who violated an out-of-service order, and prescribe a civil fine for a violation.
- Prohibit an employer from knowingly allowing or requiring a driver to operate a CMV in violation of provisions related to railroad crossings, or an out-of-service order, and prescribe a civil fine.
- Require a person whose CDL application was voided or canceled because it contained false information to wait at least 60 days before reapplying.
- Designate the Department of History, Arts, and Libraries (HAL) as the entity in charge of administering funds from the sale of lighthouse preservation specialty plates.

The bill is described below in further detail.

Vehicle Dealers & Salvage Vehicle Agents

The Code requires the SOS to investigate the criminal history of each person required to be named on an application for a vehicle dealer or salvage vehicle agent license. Each person required to be named must submit to the SOS two sets of fingerprints, along with the fees to conduct the checks. The SOS must forward one set to the Michigan Department of State Police (MSP) and one set to the Federal Bureau of

Investigation (FBI) for the purpose of receiving the information maintained by those agencies on the person's conviction and nonconviction criminal history record.

The bill would delete this language. Instead, the SOS would be prohibited from licensing a person as a vehicle dealer or salvage vehicle agent before requesting a criminal history check of the person and receiving a criminal history report on him or her from both the MSP and the FBI. Each required criminal history check would have to be requested, and a report would have to be obtained, from both the MSP and the FBI.

Each person required to be named on an application would have to submit his or her fingerprints to the MSP in a format as prescribed by the Department. The fees required by the MSP or FBI, as applicable, to conduct the check would have to accompany the request.

The MSP would have to conduct a check and provide the SOS with a report within 45 days after receiving a proper request and the required fee. The report would have to contain public criminal history record information concerning the person who was the subject of the request that was maintained by the MSP.

If a criminal arrest fingerprint card subsequently were submitted to the MSP and matched against a fingerprint submitted under the bill and stored in the Department's Automated Fingerprint Identification System database, the MSP would have to notify the Department of State.

Except as otherwise provided in the Code, the SOS could not approve an original vehicle dealer or salvage vehicle agent license before receiving and reviewing the applicable criminal history reports from the MSP and the FBI.

The SOS would have to use the criminal history record information to evaluate an applicant's qualifications to receive a license. The SOS could discuss a criminal history report and its contents only with the following people:

- SOS staff who were involved in determining whether an applicant's vehicle dealer or salvage vehicle agent

license should be denied, suspended, or revoked.

- MSP staff.
- A person who was involved in the prosecution or defense of a criminal matter noted in a report.
- The applicant or his or her attorney.

A person who used criminal history record information in violation of this provision would be guilty of a misdemeanor punishable by a maximum fine of \$10,000.

(Under the bill, "criminal history record information" would mean name; date of birth; fingerprints; photographs, if available; personal descriptions, including identifying marks, scars, amputations, and tattoos; aliases and prior names; Social Security number, driver's license number, and other identifying numbers; and information on juvenile offense arrests and adjudications or convictions.)

Under the Code, the criminal history check provisions do not apply to a person whose criminal history previously has been investigated by the SOS and who is applying for renewal of a vehicle dealer license. Under the bill, the provisions also would not apply to a person who was applying for a renewal salvage vehicle agent license.

License Exemption

Under the Code, certain people are exempt from having to obtain a license under Chapter III (Operator's and Chauffeur's License). They include a person serving in the United States Armed Forces (USAF) if furnished with a driver's permit and operating an official motor vehicle in that service. The exemption does not apply to a civilian who is employed by the USAF. Under the bill, the exemption also would apply to a person who was a military driver and operated a CMV for a military purpose. The bill specifies that this exemption would apply to active duty military personnel, members of the military Reserves, active duty U.S. Coast Guard personnel, and members of the National Guard while on active duty, including personnel on full-time National Guard duty, personnel on part-time National Guard training, and National Guard military technicians who were civilians required to wear military uniforms. The exemption would not apply to U.S. Reserve technicians.

The bill also would exempt a person while operating a CMV who was not disqualified from operating a CMV and who held a CDL that was issued to him or her by another state or jurisdiction under Federal CDL regulations.

Notice of Reciprocal Driving Privileges

Under the Code, a nonresident vehicle operator who is licensed to operate a motor vehicle in the country in which he or she resides is not required to obtain a license to operate a passenger vehicle within Michigan if he or she does not receive compensation for the operation. This provision does not apply unless the SOS determines that the licensing standards of the other country correspond substantially to those of Michigan and the other country extends the same privileges to people licensed to operate vehicles by this State, and the SOS and the other country have exchanged letters confirming the reciprocal extension of operating privileges.

On May 1 and November 1 of each year, the SOS must publish a list of the countries for which reciprocal operating privileges have been extended and withdrawn. The list must be mailed to the courts, prosecuting attorneys, and law enforcement agencies of this State. The bill would delete the references to the specific dates and would require the SOS to publish the list on its public internet site. Additionally, the list would have to be mailed only if any changes were made.

Voided or Canceled CDL Application

Under the Code, a license for an operator or chauffeur issued upon an application that is untrue, or that contains false statements as to any material matters, is absolutely void from the date of issuance. The operator or chauffeur who was issued the license is considered unlicensed and the issued license must be returned upon request or order of the Department of State.

Under the bill, a person whose CDL application was voided or canceled under this provision could not reapply for at least 60 days after it was voided or canceled.

Concurrent License Action

Under the bill, except as otherwise provided in the Code, the suspension, revocation, denial, disqualification, or cancellation of an operator's or chauffeur's license or CDL by another state or the United States would run concurrently with a suspension, revocation, denial, disqualification, or cancellation of a license by Michigan that was imposed for the same offense.

Temporary Instruction Permit

Under the Code, the SOS may issue a temporary instruction permit to a person who is at least 18 years old, holds a valid unrestricted operator's or chauffeur's license, and has passed the knowledge test for an original vehicle group designation or indorsement, entitling the person, while carrying the permit, to drive a vehicle requiring a group designation or indorsement upon the streets and highways for 180 days, but only when accompanied by an adult operator or chauffeur who is licensed with the appropriate group designation or indorsement and who actually is sitting beside the driver, or behind the driver if the vehicle is a bus or school bus. Under the bill, this would be allowed except as prohibited under Federal law.

State Procedures Manual

The bill would require the State of Michigan to comply with the requirements of the American Association of Motor Vehicle Administrators' AAMVAnet, Incorporated's "Commercial Driver License Information System (CDLIS) State Procedures Manual" that the SOS determined were required for implementing and enforcing Federal law.

Farming Vehicle Indorsement & Designation

Under the Code, a person must obtain a B vehicle designation to operate a vehicle with a gross vehicle weight rating (GVWR) of at least 26,001 pounds, and an A vehicle designation to operate a combination of vehicles weighing that much, including a towed vehicle with a GVWR of more than 10,000 pounds. A person must obtain an F indorsement in order to operate a vehicle with a GVWR of 26,001 pounds on the power unit of a vehicle that is used under the all of the following conditions:

- The vehicle is controlled and operated by a farmer or an employee or family member of the farmer.
- The vehicle is used to transport agricultural products, farm machinery, and/or farm supplies to or from a farm.
- The vehicle is not used in the operation of a common or contract motor carrier.
- The vehicle is operated within 150 miles of the farm.

A person operating a vehicle to be used only for farming purposes may obtain an A or B vehicle group designation or an F vehicle indorsement if he or she is at least 16 years old. Under the bill, this provision would apply instead to a person who was at least 18 years old, and a person who was at least 16 but younger than 18 operating a single unit vehicle to be used for farming purposes only could obtain an F indorsement.

Under the Code, except for a person who has held an operator's or chauffeur's license for less than one year, the SOS must waive the required knowledge and driving skills tests and issue a one-year seasonal restricted vehicle group designation to an otherwise qualified applicant to operate a group B or group C vehicle for a farm-related service industry if the following conditions are met:

- An applicant who has between one and two years of driving experience possesses a good driving record for his or her entire driving history, and an applicant who has more than two years of driving experience possesses a good driving record for the two years immediately preceding the application.
- The seasons for which the restricted vehicle group designation is issued are from April 2 to June 30 and from September 2 to November 30 only of a 12-month period, or at the option of the applicant, for not more than 180 days from the date of issuance in a 12-month period.
- The CMV for which the restricted vehicle group designation is issued is operated only on routes within 150 miles from the place of business to the farm or farms being served and does not transport a quantity of hazardous materials on which a placard is required, subject to certain exceptions.
- The CMV does not require the H, N, P, S, T, or X vehicle indorsement.

The bill would delete the requirement that the applicant possess a good driving record, and instead refer to an applicant who met the requirements of 49 CFR 383.77. (The bill also would delete the definition of "good driving record", which means the criteria required under those Federal regulations.) Additionally, with regard to the specified season or 180-day period, the bill would delete a requirement that the applicant's good driving record be confirmed before each.

(Under the Code, "farm-related service industry" means custom harvesters, farm retail outlets and suppliers, agri-chemical business, or livestock feeders.)

License Expiration & Renewal

Except as otherwise provided in the Code, an operator's license expires on the licensee's birthday in the fourth year following the date of issuance, unless suspended or revoked before that date. Under the bill, this provision also would apply to a chauffeur's license.

Currently, a person holding a license at any time within 45 days before the expiration may apply for a new license. The bill would delete a provision allowing a licensee to apply up to six months before his or her license expires if he or she will be out of the State during that 45-day period, or for other good cause shown cannot apply during that time period. The bill would allow any licensee to apply up to 12 months before his or her license expired. The bill specifies that a license renewed in this manner would be renewed for the time remaining on the license before its renewal combined with the four-year renewal period.

Under the Code, except for a vehicle group designation or indorsement or for a person required to register under the Sex Offenders Registration Act, the SOS may issue a renewal operator's or chauffeur's license for one additional four-year period by mail or by other SOS-prescribed methods. Under the bill, this provision also would not apply in a situation described under Section 314(5). Under that section, a person who will be out of State for more than 90 days beyond the expiration date of his or her operator's license may apply for a four-year renewal of his or her driving privileges. Under the bill, instead, except for a license with a

hazardous material indorsement, the SOS could issue a renewal license to a person who would be out of State for more than 180 days beyond the expiration date of his or her operator's or chauffeur's license, if the SOS had a digital image of him or her on file.

Currently, an applicant under Section 314(5) must submit a statement evidencing a vision examination. The bill would require a person also to submit any other statement required by the Code or Federal law. A person would not be eligible for consecutive renewals under this section.

Vehicle Group Designations

The Code requires the SOS to suspend for one year all vehicle group designations on the operator's or chauffeur's license of a person is convicted of or found responsible for any of the following:

- Various violations involving the operation of a CMV while under the influence of alcohol or a controlled substance.
- Leaving the scene of an accident involving a CMV operated by the person.
- A felony in which a CMV was used.
- A refusal of a request by a peace officer to submit to a chemical test of his or her blood, breath, or urine to determine the amount of alcohol and/or presence of a controlled substance while he or she was operating a CMV.

Additionally, the Code requires the SOS to revoke for life, with eligibility for reissue after at least 10 years and SOS approval, a group vehicle designation of a person convicted of or found responsible for two of the violations described above or a combination of any two of those violations arising from two or more separate incidents.

The bill also would refer to a noncommercial motor vehicle in these violations. Additionally, in regard to a felony in which a vehicle was used, the bill would exclude a felony described in 49 CFR 383.51(b)(9) (using a CMV in the commission of a felony involving manufacturing, distributing, or dispensing a controlled substance).

Violation of Out-of-Service Order

Under the bill, except as otherwise provided, the SOS immediately would have to suspend

all vehicle group designations on the operator's or chauffeur's license of a person convicted of violating a driver or vehicle out-of-service order. If the violation occurred while the person was transporting nonhazardous material, the vehicle group designations would have to be suspended as follows:

- For a first violation, for at least 90 days or up to one year.
- If the violation were the person's second within a 10-year period, for between one and five years.
- If the violation were the person's third or subsequent violation within a 10-year period, for between three and five years.

If the violation occurred while the person was transporting hazardous materials required to be placarded under Federal regulations or while operating a vehicle designed to transport at least 16 passengers, including the driver, the vehicle group designations would have to be suspended as follows:

- For a first violation, for between 180 days and two years.
- For a second or subsequent violation within a 10-year period, for between three and five years.

A person who violated an out-of-service order also would have to be ordered to pay a civil fine of at least \$1,100 but not more than \$2,750.

Employer Violations

The Code prohibits an employer from knowingly allowing, permitting, authorizing, or requiring a driver to operate a CMV in violation of various State and Federal regulations prescribing procedures for railgrade crossings, and Federal transportation security regulations regarding who may operate a CMV used to transport hazardous material. The bill would add Section 670 or a Federal, State, or local law or regulation pertaining to railroad-highway grade crossings; and an out-of-service order.

(Under Section 670, a person may not operate or move a caterpillar tractor, shovel, derrick, roller, boiler, machinery, or other structure or object upon rollers, or other equipment or structure, that, because of its

limited power, or weight, character, or load, has a normal maximum operating speed of four miles per hour, or that has a vertical load or body clearance of less than nine inches above the level surface of the roadway, upon or across the tracks of a railroad at grade level without first stopping between 15 and 50 feet from the nearest rail of the track and listening and looking in both directions for an approaching train and signals indicating the approach of the train. A person who violates this provision is responsible for a civil infraction.)

Also, under the bill, an employer who allowed or required a driver to violate any of the listed sections of the Vehicle Code pertaining to railroad grade crossings, or a Federal, State, or local law or regulation pertaining to railroad-highway grade crossings, would be responsible for a civil infraction and liable to pay a civil fine of up to \$10,000. An employer who allowed or required a driver to violate an out-of-service order would be responsible for a civil infraction and liable to pay a civil fine of between \$2,750 and \$11,000.

(Under the bill, "out-of-service order" would mean a declaration by an authorized enforcement officer that a CMV driver or a motor carrier operation was out of service pursuant to 49 CFR 386.72, 392.5, 395.13, or 396.9, or the North American Uniform Out-of-Service Criteria, or a law or local ordinance of a state, the United States, Canada, Mexico, or a local jurisdiction of any of those entities substantially corresponding to those Federal regulations or the criteria.

The specified Federal regulations provide for an order suspending or restricting the transportation of hazardous material if an imminent hazard exists, prohibit a driver from using alcohol while or within four hours before operating a CMV, prescribe the maximum number of hours that a CMV driver may be on duty and allow a driver to be declared "out of service", and provide for motor vehicle inspections and allow a CMV to be declared "out of service" if it is determined to be likely to cause an accident or a breakdown.)

Lighthouse Preservation Specialty Plates

The SOS currently may issue a lighthouse preservation fund-raising plate and matching collector plate, for which the

service fees are deposited into the Lighthouse Preservation Grant Fund within the Department of Treasury.

Under the bill, HAL, rather than the SOS, would administer the Fund, and could spend money through discretionary historical grants to preserve Michigan lighthouses. Currently, the SOS may use not more than 10% of the funds for costs that occur from Fund administration and grant project coordination; the bill would retain this provision for HAL.

The bill also provides that HAL, rather than the SOS, could award grants for the preparation of plans and specifications for restoration and stabilization, rehabilitation, or other preservation work on a Michigan lighthouse, and would have to allocate grant funds pursuant to eligibility and scoring requirements that HAL would establish. The bill would require the SOS to continue transferring the fund-raising donations to the State Treasurer for credit to the Fund.

MCL 257.248f et al.

Legislative Analyst: Julie Koval

FISCAL IMPACT

The bill would amend the Michigan Vehicle Code in order to achieve compliance with Federal law. Proposed new fines are included based on Federal recommendations. Additional fine revenue would be allocated to public libraries. According to the Department of State, the bill would not result in new administrative costs.

Fiscal Analyst: Bill Bowerman

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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.