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House Bill 5662 (Substitute H-1 as passed by the House)
House Bill 5663 (Substitute H-4 as passed by the House)
Sponsor: Representative Jack O'Malley (H.B. 5662)
Representative Tim Sneller (H.B. 5663)
House Committee: Transportation
Senate Committee: Transportation and Infrastructure

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CONTENT

House Bill 5662 (H-1) would amend the Driver Education Provider and Instruction Act to do the following:

- Replace references to "truck driver training" with "commercial vehicle driver training".
- Require a driver education provider that conducted commercial vehicle driver training to be registered with the Federal Motor Carrier Safety Administration (FMCSA) through the training provider registry (TPR).
- Require the Secretary of State (SOS) to deny automatically a driver education provider's or instructor's application or revoke a provider's or instructor's certificate without notice and an opportunity for a hearing if for any reason a driver education provider or instructor was removed from the FMCSA's TPR.
- Require an applicant for a driver education provider certificate that intended to use a multiple vehicle driving facility to make certain that the facility range was large enough to accommodate any driver skills testing maneuver required by Federal law.
- Require a driver education provider classified to provide entry-level driver training to issue a driver education course certificate of completion to a student who successfully passed theory or behind-the-wheel training prescribed in Federal law.
- Allow the SOS to issue a person a behind-the-wheel commercial vehicle driver instructor certificate for behind-the-wheel instruction if the person met the requirements of a behind-the-wheel instructor as defined in Federal law.
- Require the SOS, if an investigation under the Act found reason to believe that a written knowledge test or entry-level driver training was not administered in accordance with Federal standards, to cancel the course completion reported by the provider and any license subsequently issued unless a student retook and passed the test within 30 days.

House Bill 5663 (H-4) would amend the Michigan Vehicle Code to do the following:

- Require an applicant for a vehicle group designation to complete the entry-level driver training required under Federal law, beginning February 7, 2022.
- Require an individual, beginning February 7, 2022 and before operating a commercial motor vehicle carrying hazardous materials on which a placard was

required, to complete the entry-level driver training to procure the appropriate vehicle group designation and an H (hazardous) vehicle endorsement.

- Require an applicant for a P (passenger) or S (school) vehicle endorsement, beginning February 7, 2022, to complete the entry-level driver training.**
- Require an individual, beginning February 7, 2022, to complete an entry-level driver training before being issued a vehicle group designation or endorsement.**
- Allow the SOS to waive, beginning February 7, 2022, the entry-level driver training for an individual, who at the time of application, certified and provided evidence satisfactory to the SOS that the individual met one of the exceptions for taking a driving skills test under Federal law.**
- Allow the SOS to enter into an agreement with another public or private corporation or agency to provide the entry-level driver training.**
- Require an applicant to retake and successfully pass an entry-level driver training if the SOS determined through a governmental investigation that there was reason to believe that a commercial driver license or endorsement was issued because of fraudulent or improper conduct.**

House Bill 5662 (H-1)

Commercial Vehicle Driver Training Certificate

Under the Driver Education Provider and Instruction Act, a person may apply to the SOS for certain education provider certifications. Among other certifications, a person may apply to the SOS for a driver education provider certificate in truck driver training. Instead, the bill would allow a person to apply to the SOS for a driver education provider certificate in *commercial vehicle driver training*.

"Truck driver training" means instruction that is provided to operate a commercial motor vehicle as that term is defined in Section 7a of the Motor Vehicle Code. The bill would delete this term and replace the Act's references to it with references to commercial vehicle driver training.

The bill would define "commercial vehicle driver training" as instruction equivalent to or exceeding entry-level driver training in 49 CFR Part 380 that is provided to operate a commercial motor vehicle as that term is defined in Section 7a of the Michigan Vehicle Code. (Generally, 49 CFR Part 380 requires an individual applying for a commercial vehicle license to complete driver training from a provider listed on the TPR as established by 49 CFR Part 380 and to complete certain endorsement training if the individual is seeking to obtain endorsements associated with commercial vehicle licenses.)

Section 7a of the Michigan Vehicle Code defines "commercial motor vehicle" as a motor vehicle or combination of motor vehicles used in commerce to transport passengers or property if one or more of the following apply: 1) it is designed to transport 16 or more passengers; 2) it has a gross vehicle weight rating or gross vehicle weight, whichever is greater, of 26,001 pounds or more; 3) it has a gross combination weight rating or gross combination weight, whichever is greater, of 26,001 pounds or more; 4) it is a motor vehicle carrying hazardous material and on which is required to be posted a placard.)

"Driver education provider" or "provider" means a person who maintains or obtains the facilities and certified instructors to give instruction in the driving of a motor vehicle or maintains or obtains the facilities and certified instructors to prepare an applicant for an exam given by the SOS for a license or a vehicle endorsement. The Act specifies that the term does not include a person who provides instruction on an unpaid, casual basis to a relative or a friend. The bill specifies that the term would not include a person who provided instruction on

an unpaid, casual basis to a relative or friend, that excluded commercial vehicle use or instruction.

The Act requires an applicant for a driver education provider certificate to provide a statement indicating whether the applicant will use a multiple vehicle driving facility in a driver education course, and if so, the Act specifies that the following apply:

- The statement must include a detailed description of the facility as determined necessary by the SOS.
- A multiple vehicle driving facility review and approval fee of \$125 must accompany the applicant's application.

Under the bill, in addition to the requirements described above, if the applicant intended to use a multiple vehicle driving facility, the facility range would have to be large enough to accommodate any driver skills testing maneuver required by 49 CFR Part 380 and the facility range would have to be reset between maneuvers as necessary to complete all required maneuvers. (Generally, 49 CFR Part 380 requires a training program to include basic maneuvers, such as backing, lane positioning and path selection, merging situations, and parking.)

The Act allows the SOS to issue an original or renewal driver education provider certificate if the SOS is satisfied that the applicant meets the Act's requirements. The bill would require a driver education provider that conducted commercial vehicle driver training to be registered with the FMCSA through the TPR.

Driver Education Instructor Certificate

The Act allows the SOS to issue to a person a driver education instructor certificate if the person meets certain requirements. Under the bill, the SOS could issue a person an *adult or teen* driver education instructor certificate if the person met certain requirements.

The Act requires the SOS to deny automatically a driver education provider or instructor application or revoke a provider's or instructor's certificate without notice and an opportunity for hearing, except as otherwise provided by the Act. Instead, under the bill, except as otherwise provided, the SOS would have to deny automatically a driver education provider's or instructor's application or revoke a provider's or instructor's certificate without notice and an opportunity for a hearing if for any reason a driver education provider or instructor was removed from the FMCSA's TPR under 49 CFR 380.721 and 380.723.

(The FMCSA may remove a provider from the TPR when the provider fails to meet or maintain any of the requirements established under 49 CFR 380.721 to 380.723. Among other requirements, the provider must maintain documentation of state certification, deliver accurate and regular reports to the FMCSA, allow the FMCSA to audit or investigate certain conduct, and maintain certain passage rates for applicants who complete the provider's training for commercial motor vehicles licensure.)

Conditional Driver Education Instructor Certificate

The Act prohibits a person from participating in a practicum course conducted by a college or university or by a person approved by the SOS unless the person possesses a conditional driver education instructor certificate. A person must apply to the SOS to obtain the certificate and the SOS may issue a person a conditional certificate if the person meets certain requirements. The Act specifies that these provisions do not apply to an applicant for a driver education certificate that is limited to the truck driver training classification. Under the bill,

the provisions above would not apply to an applicant for a driver education certificate that was limited to the *commercial vehicle* driver training classification.

Entry-Level Driver Training

Under the bill, a driver education provider classified to provide entry-level driver training would have to issue a driver education course certificate of completion to a student who successfully passed theory or behind-the-wheel training prescribed in 49 CFR Part 380, appendices A to F. A certificate of completion issued to an entry-level driver training student would have to contain the information outlined in 49 CFR 380.513 and 380.717.

(Appendices A through F of 49 CFR Part 380 specify the standard curriculum requirements for theory instruction and basic behind-the-wheel driving skills for certain commercial vehicle licenses and endorsements. Generally, 49 CFR 380.513 to 380.717 provide the information that a certificate of completion must contain, including the name of the driver, the commercial vehicle license number, and the full name of the training entity, among other things.)

"Driver education course certificate of completion" means a written or electronic authorization issued by a certified driver education provider to a student who has successfully completed segment 1 or segment 2 of a driver education course offered by the provider. Under the bill, the term also would include an authorization issued to a student who successfully completed entry-level driver training.

Behind-the-Wheel Instruction

Under the bill, the SOS could issue a person a behind-the-wheel commercial vehicle driver instructor certificate for behind-the-wheel instruction if, as prescribed by the SOS, the person presented satisfactory evidence that he or she met the requirements of a behind-the-wheel instructor as defined in 49 CFR 380.605. The SOS also could issue a person a theory commercial driver instructor certificate for theory instruction if, as prescribed by the SOS, the person presented satisfactory evidence that the he or she met the requirements of a theory instructor as defined in 49 CFR 380.605. (Under 49 CFR 380.605, "theory instructor" means an individual who provides knowledge instruction on the operation of a commercial motor vehicle and holds a certain class of commercial driver license with certain endorsements. The instructor also must have at least two years of behind-the-wheel experience.)

"Behind-the-wheel instruction" means instruction in which a student is in control of a motor vehicle on a public street or highway in real and varied traffic situations and a driver education instructor is the only other occupant in the front passenger seating area with the student. Under the bill, the term also would mean instruction in which an entry-level driver has actual control of a motor vehicle's power unit during a lesson conducted on a range.

"Theory instruction" would mean that term as defined in 49 CFR 380.605: knowledge instruction on the operation of a CMV and related matters provided by a theory instructor through lectures, demonstrations, audio-visual presentations, computer-based instruction, driving simulation devices, online training, or similar means.

SOS Investigation

The Act allows the SOS to make a reasonable and necessary investigation within or outside the State and gather evidence against a person who violated, allegedly violated, or is about to violate the Act, a rule promulgated under the Act, or an order issued under the Act, concerning whether a person, an applicant, a driver education provider, or a driver education instructor is in compliance with the Act. Under the bill, if an investigation found reason to

believe that a written knowledge test or entry-level driver training was not administered in accordance with the standards prescribed in 49 CFR Part 380, the SOS would have to cancel the course completion reported by the provider and any license subsequently issued unless the student retook and passed the test within 30 days.

House Bill 5663 (H-4)

Commercial Learner's Permit

Section 306 of the Michigan Vehicle Code generally allows the SOS to issue a commercial learner's permit that entitles an individual to drive a vehicle requiring a vehicle group designation or endorsement if certain requirements are met.

An individual issued a commercial learner's permit, or an equivalent commercial learner's permit issued by another jurisdiction, may operate a vehicle requiring a vehicle group designation if certain conditions are met, including the following:

- The individual has the permit and a valid driver license in his or her possession while operating the vehicle.
- The individual is accompanied by an instructor certified under the Driver Education Provider and Instruction Act or an adult with a valid driver license and all of the following apply: a) the instructor or licensed adult has in his or her possession a valid license with a vehicle group designation and any endorsement necessary to operate the vehicle, b) the instructor or licensed adult at all times physically present in the front seat of the vehicle next to the operator or, in the case of a passenger vehicle, directly behind the operator in the first row behind the operators, and c) the instructor or licensed adult has the operator under observation and direct supervision.
- If the individual has a permit to operate a vehicle designed to carry 16 or more passengers or a school bus, the individual may not operate the vehicle or bus with any passengers other than the instructor or licensed adult, Federal or State auditors or inspectors, test examiners, or other trainees.

The bill would refer to operating the vehicle on a public roadway. Also, the bill would delete references to "an adult with a valid operator's or chauffer's license" and "licensed adult".

Commercial Vehicle Group Designation & Qualifications

Section 312e of the Code requires a person to obtain the required vehicle group designation before operating a commercial motor vehicle. An applicant for a vehicle group designation must take the knowledge and driving skills tests that comply with the minimum Federal standards prescribed in 48 CFR Part 383 as required under the Act. Under the bill, beginning February 7, 2022, an applicant also would have to complete the entry-level driver training described and required under 49 CFR Part 380.

Section 312e also requires an individual, before operating a commercial motor vehicle carrying hazardous materials on which a placard is required under 49 CFR Parts 100 to 199 (Pipeline and Hazardous Materials SAFETY Administration, Department of Transportation), to procure the appropriate vehicle group designation and an H vehicle endorsement. Under the bill, this requirement would apply until February 6, 2022. Beginning February 7, 2022, an individual, before operating a commercial motor vehicle carrying hazardous materials on which a placard was required under 40 CFR Parts 100 to 199, would have to complete the entry level driver training described and required under 49 CFR Part 380 to procure the appropriate vehicle group designation and an H vehicle endorsement.

Section 312e specifies that an applicant for a P vehicle endorsement must take the driving skills test in a vehicle designed to transport 16 or more passengers including the driver. An applicant for an S vehicle endorsement must take a driving skills test in a school bus designed to transport 16 or more passengers, including the driver, that represents the same type of vehicle that the applicant intends to operate as a school bus. Under the bill, an applicant for a P or S vehicle endorsement also would have to complete the entry level driver training described and required under 49 CFR Part 380, beginning February 7, 2022.

Under Section 312e, an applicant for an endorsement must take the knowledge and driving skills test described and required under 49 CFR Part 383. The bill also would require an applicant for an endorsement to complete the entry-level driver training described and required under 49 CFR Part 380, beginning February 7, 2022.

Hazardous Material Endorsement

Under Section 312f of the Code, an individual must be at least 18 years old before he or she is issued a vehicle group designation or endorsement, or at least 21 years old and has been approved by the Transportation Security Administration for a hazardous material endorsement before he or she is issued a hazardous material endorsement on a driver license. In addition, the individual must pass a knowledge and driving skills test that complies with Federal standards. The bill also would require the individual to complete the entry-level driver training described and required under 49 CFR Part 380, beginning February 7, 2022.

Except as otherwise provided, Section 312f also requires an individual to pass an examination that includes a driving skills test designed to test competency of the applicant for an original vehicle group designation and passenger endorsement on a driver license to drive that type or general class of vehicle upon the highways of the State with safety to people and property. Under the bill, beginning February 7, 2022, an individual also would have to complete an entry-level driver training.

Beginning February 7, 2022, the SOS could waive the entry-level driver training required under the bill for an individual, who at the time of application, certified and provided evidence satisfactory to the SOS that the individual met one of the exceptions for taking a driving skills test under 49 CFR Part 383. (Under 49 CFR Part 383, certain military drivers, farmers, firefighters, and emergency response vehicle drivers, among others, are exempt from taking a driving skills test.)

Provision of Driving Skills Tests

Section 312f allows the SOS to enter into an agreement with another public or private corporation or agency to conduct a driving skills test required under Sections 312f or 312e or 49 CFR Part 383. The bill also would allow the SOS to enter into an agreement with another public or private corporation or agency to provide the entry-level driver training described and required under 49 CFR Part 380.

Before the SOS authorizes an individual to administer a corporation's or agency's driver skills testing operations or authorizes an examiner to conduct a driver skills test, that individual or examiner must complete both a State and Federal Bureau of Investigation fingerprint-based criminal history check through the Michigan State Police. This provision also would apply before the SOS authorized an entry-level driving training provider that met the requirements of 49 CFR 380.700 to conduct an entry-level training.

Permit, Designation, or Endorsement Denial

Under Section 312f, the SOS may not issue a commercial learner's permit, a vehicle group designation, or a vehicle endorsement to an applicant for an original vehicle group designation or vehicle endorsement under Section 312e or may cancel a commercial learner's permit or all vehicle group designations or endorsements on an individual's driver license if one or more specified conditions applies.

Among these, if the SOS determines through a governmental investigation that there is reason to believe that a commercial driver license or endorsement was issued as a result of fraudulent or improper conduct in taking a knowledge test or driving skills test required under 49 CFR Part 383, the SOS must require the applicant to retake and successfully pass the test. Under the bill, this provision also would apply to fraudulent or improper conduct in completing the entry-level driver training described and required under 49 CFR Part 380.

MCL 256.623 et al. (H.B. 5662)
257.306a et al. (H.B. 5663)

Legislative Analyst: Tyler P. VanHuyse

FISCAL IMPACT

The bills would not directly affect the Department of State or local units of government. House Bill 5663 (H-4), however, would not allow the SOS to issue a commercial driver license to anyone who has not complied with the Federal regulation required after February 7, 2022. Accordingly, SOS would not be able to collect fee revenue for a commercial driver license. The amount of lost revenue for the State would be indeterminate and would depend on the number of actual commercial licenses that would not be issued as a result. Revenue from commercial licenses fees is deposited into the General Fund and is redistributed to counties and local municipalities for costs incurred to act as the examining officer for commercial licenses.

A failure to conform to Federal regulations could jeopardize Federal funding under the National Highway Performance Program. According to the Federal Funds Information for States website, the program will award Michigan \$760,792,000 in fiscal year (FY) 2022-23 and \$776,027,000 in FY 2023-24. A 4.0% loss in FY 2022-23 would mean a loss of \$30.4 million, and an 8.0% loss in FY 2023-24 would mean a loss of \$62.1 million in those respective fiscal years.

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