

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: The Professional Staff of the Judiciary Committee

BILL: CS/SB 2492

INTRODUCER: Judiciary Committee, Senator Crist, and others

SUBJECT: Contract Carriers

DATE: April 23, 2008

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Eichin</u>	<u>Meyer</u>	<u>TR</u>	Favorable
2.	<u>Treadwell</u>	<u>Maclure</u>	<u>JU</u>	Fav/CS
3.	_____	_____	<u>TA</u>	_____
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____
6.	_____	_____	_____	_____

I. Summary:

This bill requires contract carriers transporting railroad employees to maintain liability insurance. In addition, drivers for these carriers are required to hold a commercial driver’s license, submit to drug and alcohol testing, comply with specified hours of service requirements, and maintain driver logs.

The bill authorizes the Department of Transportation to adopt rules for the implementation and administration of the requirements, and requires the department to inform contract carriers of the applicable requirements and statutes.

This bill substantially amends section 316.302, Florida Statutes.

II. Present Situation:

Train Crew Hours of Service

The Hours of Service Act of 1907¹ (the act) imposed a limit on the maximum hours of service a train crew can continuously operate trains while on duty. The purpose of the statute was to promote safety in operating trains by preventing the excessive mental and physical strain that usually results from remaining too long at an exacting task.² A maximum shift consists of 12 hours. The act also imposed mandatory time off duty before an employee can resume his or her operating duties. An employee who worked a continuous 12-hour shift would receive 10

¹ 45 U.S.C. ss. 61-66 (repealed in 1964).

² *Chicago & A.R. Co. v. United States*, 38 S. Ct. 442, 443 (1918).

consecutive hours off duty. In addition, no employee could be called to operations duty unless he had received eight continuous hours of off-duty time in the preceding 24-hour interval.³

Because of the itinerant nature of railroad operations, the limitation on a train crew's hours of service presents special problems to railroads. When a train crew reaches its 12-hour maximum, it must cease operating its assigned train. If the train has not yet reached its destination, the "expired" or "outlawed" crew must "park" the train and wait for transportation to its designated terminal. The railroad must then transport another crew to the parked train to operate the train until it reaches its destination.

"Deadheading" and "Dogcatching"

Transportation to or from a parked train is called "deadhead" transportation. The transportation may be in the form of a railroad-owned van, another train going to the crew's designated terminal, or a third-party contract carrier hired to transport crew members to or from a parked train. Because of the lucrative nature of the business, cab companies and other carriers offer this service to railroads, often under a specific contract. The practice is known in the business as "dogcatching." Dogcatching is a service that may be required on a round-the-clock basis. Due to the efficiency of integrated communications and standardized practices, a small number of businesses have specialized in providing this service to railroads.

Commercial Motor Vehicles

Current law defines a commercial motor vehicle (CMV) 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,⁴ as amended.⁵

The regulation of CMVs and their drivers occurs through a combination of federal and state laws. Under the Motor Carrier Safety Improvement Act of 1999, the Federal Motor Carrier Safety Administration (FMCSA) was established within the United States Department of Transportation (USDOT) to reduce crashes, injuries, and fatalities involving large trucks and buses. Federal regulations adopted by the FMCSA provide general applicability, definitions, requirements, and information for persons subject to ch. 316, F.S. Specifically, the federal motor carrier safety regulations ascribes applicability to "all employers, employees, and commercial motor vehicles, which transport property or passengers in interstate commerce."⁶

The federal regulations have been codified in Florida law, specifically s. 316.302, F.S., which subjects all owners and drivers of CMVs engaged in interstate commerce and operated on public

³ 45 U.S.C. s. 62(a)(2).

⁴ 49 U.S.C. ss. 1801 et seq.

⁵ Section 316.003(66), F.S.

⁶ 49 C.F.R. s. 390.3.

roadways to the rules and regulations contained in 49 Code of Federal Regulations Parts 382, 385, and 390 through 397.

The Florida Department of Transportation's (FDOT) Motor Carrier Compliance Office (MCCO) enforces state and federal laws and agency rules to ensure trucks and buses operating in Florida:

- are mechanically sound,
- are properly licensed,
- do not exceed size and weight limits, and
- are driven by properly qualified, licensed drivers operating their vehicles in a safe manner.⁷

Currently, FDOT is authorized to conduct compliance reviews for the purpose of determining whether CMVs are compliant with all safety requirements contained in Florida law.⁸ The MCCO officers perform vehicle safety inspections to determine whether commercial drivers are appropriately licensed, are not under the influence of drugs or alcohol, have maintained required logbooks of their hours of service, and are not operating their vehicles in an unsafe manner. Safety inspections can include examination of vehicle parts such as brakes, lights, and safety equipment and, if carried onboard, the packaging and labeling of hazardous materials. Section 316.302, F.S., also requires the display of certain information (placarding) on the side of the power unit of certain commercial vehicles to comply with federal and state hazardous material requirements.

Commercial Driver Licenses (CDL)

Drivers of CMVs in excess of 26,000 pounds, those transporting placardable amounts of hazardous materials, or drivers of vehicles designed to transport more than 15 persons including the driver must obtain a commercial driver's license (CDL), and obey all federal and state regulations relating to commercial drivers, including "hours of service" regulations that set a required amount of non-driving rest time for commercial drivers.

III. Effect of Proposed Changes:

The bill adds several safety requirements, specific to contract carriers employed by railroad companies only, to requirements existing in current law governing (or applicable to) commercial motor vehicles. Such contract carriers would also be subject to the general laws adopted by the state and currently included in the federal motor carrier safety regulations⁹ and the hazardous materials transportation regulations,¹⁰ as they apply to highway transportation.

Specifically, the bill:

- Requires contract carrier drivers to hold commercial driver's licenses;

⁷ Section 316.302, F.S.

⁸ Section 316.302, F.S.

⁹ 49 C.F.R. ss. 390-397.

¹⁰ 49 C.F.R. ss. 100-180.

- Requires contract carriers to perform alcohol and drug testing on drivers prior to employment, on suspicion of drug or alcohol use, and at least once a year at random;
- Limits duties of contract carrier operators to a maximum of 14 hours per shift, with a total of 12 hours of driving. This provision also requires a minimum 10-hour rest period between shifts;
- Requires contract carriers to record hours of service, driving time, and total time worked per shift on a weekly basis. This provision also requires that logs be retained for a minimum of three years; and
- Requires commercial for-hire carrier companies to maintain liability insurance coverage of \$1.5 million per vehicle and underinsured and uninsured motorists coverage at an equal amount.

The bill authorizes the Florida Department of Transportation (FDOT) to adopt rules for the implementation and administration of the regulation of contract carriers employed by Florida railroad companies. Furthermore, FDOT must inform contract carriers and railroad companies in this state of the applicable requirements and statutes.

The bill provides an effective date of July 1, 2008.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

Any carrier contracting with railroads for the transportation of train crews and not currently meeting the bill's requirements would be required to obtain liability and uninsured/underinsured policies. Likewise, drivers for such carriers would be required to obtain a commercial driver's license at a cost of \$50.

C. Government Sector Impact:

The Florida Department of Transportation may incur costs related to developing rules regulating contract carriers, as well as costs associated with informing contract carriers and railroad companies of the applicable requirements and statutes.

VI. Technical Deficiencies:

On line 37, the bill provides that the Department of Transportation “*may*” adopt rules to implement the legislation. However, on line 4, the title indicates that the bill *requires* the department to adopt rules. The Legislature may wish to conform these two provisions based on whether it intends for rule-making to be discretionary or mandatory.

VII. Related Issues:

A number of state legislatures, including Texas, Alabama, and Missouri, have recently adopted or are currently considering similar legislation.

VIII. Additional Information:**A. Committee Substitute – Statement of Substantial Changes:**
(Summarizing differences between the Committee Substitute and the prior version of the bill.)**CS by Judiciary on April 21, 2008:**

The committee substitute:

- Clarifies that the requirements for contract carriers apply only to the transportation of railroad employees.
- Deletes section 2 of the original bill, which directs the Department of Transportation (FDOT) to notify contract carriers of applicable requirements and statutes, as well as to adopt rules regulating contract carriers, expressly restating the contract carrier requirements from section 1.
- Incorporates rule-making authority for FDOT and the notification provision to be codified in s. 316.302, F.S., so that the rule-making authority is always consistent with any future changes to the underlying statutory criteria.

B. Amendments:

None.