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 BILL ANALYSIS

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House Bill 4852 (Substitute S-2 as reported)
House Bill 4857 (as reported without amendment)
House Bill 4858 (Substitute S-2 as reported)
Sponsor: Representative Tom Casperson (H.B. 4852)
Representative Philip LaJoy (H.B. 4857)
Representative Glenn Anderson (H.B. 4858)
House Committee: Transportation
Senate Committee: Transportation

Date Completed: 9-30-05

RATIONALE

The Code of Federal Regulations sets forth 22 conditions that a state must meet in order to receive "basic program funds" under the Motor Carrier Safety Assistance Program (MCSAP) (49 CFR 350.201). These conditions include, among others, adopting and enforcing safety laws and regulations that are compatible with specific Federal regulations; adopting and maintaining consistent, effective, and reasonable sanctions for violations of commercial motor vehicle (CMV), driver, and hazardous materials regulations; and enforcing requirements related to the licensure of CMV drivers. According to Director of the State Police Motor Carrier Division, Michigan's basic MCSAP grant is approximately \$6.0 million; if the criteria for a basic grant are met, the State then receives additional funding, for a total of \$8.0 million to \$9.0 million, or about one-third of the Division's annual budget.

In Michigan, the operation of commercial motor vehicles is governed by the Motor Carrier Safety Act. Federal regulations concerning motor carrier safety also are adopted under the Motor Bus Transportation Act, and the Michigan Vehicle Code contains licensure requirements and other provisions that apply to commercial vehicles and CMV drivers. According to the Motor Carrier Division Director, amendments to these statutes are needed to bring the State into compliance with Federal regulations and ensure the continued receipt of MCSAP funds.

CONTENT

House Bill 4852 (S-2) would amend the Motor Carrier Safety Act to do the following:

- **Adopt specified parts of Title 49 (Transportation) of the Code of Federal Regulations.**
- **Delete the exemption of certain vehicles from the Act and rules promulgated under it, and add an exemption for school buses.**
- **Revise provisions concerning the application for a waiver of the physical qualifications to drive a commercial motor vehicle.**
- **Provide that grandfather rights under the Act would remain valid until December 31, 2014, rather than December 31, 2032.**
- **Allow vehicle combinations weighing 26,000 pounds or less to be equipped with surge brakes for intrastate operation.**
- **Prohibit a vehicle transporting certain amounts of hazardous materials from being equipped with surge brakes for intrastate operation.**
- **Revise the entities subject to various penalties for violations of the Act.**
- **Require an officer to have probable cause, rather than reasonable cause, in order to stop and inspect a vehicle.**
- **Prescribe the penalty for operating a CMV in violation of an out-of-service order, and increase the penalty for operating a CMV with a serious safety defect.**

- **Require the Motor Carrier Division to set a deadline for a person to comply with a compliance order.**
- **Establish procedures for the enforcement of a civil infraction committed by a non-Michigan resident.**
- **Repeal sections pertaining to the qualifications to drive CMVs, vehicle and transportation facility safety standards, medical examination certificates, driver qualification files, investigations of a driver's past employment, override guards, and maximum driving time.**

House Bill 4857 would amend the Motor Bus Transportation Act to adopt Federal regulations pertaining to routing and applications for operating authority.

House Bill 4858 (S-2) would amend the Michigan Vehicle Code to do the following:

- **Prohibit a person from transporting a hazardous material for which a placard is required under the Code of Federal Regulations unless the person had a hazardous material endorsement on his or her license; and prescribe a misdemeanor penalty for a violation.**
- **Revise the requirements for identifying information to be painted on or attached to the sides of vehicles.**
- **Authorize a peace officer to require a driver to stop and submit to a vehicle weighing, and specify the misdemeanor penalty for failure to stop.**
- **Add an effective date of January 1, 2006, to requirements concerning the fine for an overweight load.**
- **Revise a provision pertaining to the penalty for bypassing a weigh station.**
- **Delete a requirement that \$1.8 million be transferred annually from the Traffic Law Enforcement and Safety Fund (TLESF) to the Trooper Recruit School Fund.**
- **Allow the State Police Director to transfer any amount in the TLESF to the Trooper Recruit School Fund.**

The bills are tie-barred to each other. They are described below in further detail.

House Bill 4852 (S-2)

Adoption of Federal Regulations

The Motor Carrier Safety Act states that this State adopts certain provisions of Title 49 of the Code of Federal Regulations (CFR), on file with the Office of the Secretary of State except where modified by this Act. Hazardous materials regulations (49 CFR Parts 100 through 180) are included in the regulations that the State has adopted, except for the transportation of agricultural products for which an exception under Federal regulations is authorized. The bill would retain these provisions.

The Act also adopts motor carrier safety regulations 49 CFR Parts 382, 387, 390 through 393, 395 through 397, and 399 including the appendices 1, D, E, and G, except the terms "U.S. Department of Transportation", "Federal Highway Administration", "Federal Highway Administrator", "Director", Bureau of Motor Carrier Safety", "Research and Special Projects Administration", and "Associate Administrator for Hazardous Materials Safety" all refer to the Michigan Department of State Police (MSP). Under the bill, if the term were being used for the purposes of 49 CFR 397 (Transportation of Hazardous Materials; Parking and Driving Rules) as it relates to routing and movement of hazardous materials, it would refer to the Michigan Department of Transportation (MDOT).

The bill would add the following parts of Title 49 of the Code of Federal Regulations to those that the State has adopted:

- Part 40 (Procedures for Transportation Workplace Drug and Alcohol Testing Programs).
- Part 356 (Motor Carrier Routing Regulations).
- Part 365 (Rules Governing Applications for Operating Authority).
- Part 368 (Application for a Certificate of Registration to Operate in Municipalities in the United States on the United States-Mexico Border or within the Commercial Zones of Such Municipalities).
- Parts 371, 372, and 373 (Brokers of Property; Exemptions, Commercial Zones, and Terminal Areas; and Receipts and Bills, respectively).

- Part 375 (Transportation of Household Goods in Interstate Commerce; Consumer Protection Regulations).
- Part 376 (Lease and Interchange of Vehicles).
- Part 379 (Preservation of Records).
- Part 385 (Safety Fitness Procedures).
- Part 398 (Transportation of Migrant Workers).

The bill also would adopt appendices of each specified part.

The bill would refer to the "Motor Carrier Safety Administration", rather than the "Federal Highway Administration"; the "Motor Carrier Safety Administrator", rather than the "Federal Highway Administrator"; and the "Pipeline and Hazardous Materials Administration", instead of the "Research and Special Projects Administration".

CMV Driver Qualifications

Under the Act, in the case of intrastate transportation, a person is qualified to drive a CMV if he or she meets all the requirements of 49 CFR Part 391 except for the following circumstances:

- The person is at least 18 years old when transporting intrastate property or passengers; is at least 16 when acting as a farm vehicle driver; or is at least 21 when transporting hazardous materials in a quantity that requires the vehicle to be marked or placarded pursuant to 49 CFR Parts 100 through 180.
- The person is eligible for and displays a valid medical waiver card or grandfather rights card issued in accordance with the Act.

The bill would delete the provision pertaining to a person at least 16 years old who acts as a farm vehicle driver. The bill also would delete a provision exempting a vehicle eligible for and displaying valid farm plates with a maximum gross vehicle weight (GVW) of 40,000 pounds if the driver is at least 18, from the provision pertaining to the transportation of hazardous materials.

(Under 49 CFR Part 391, a person who meets the following criteria is qualified to drive a CMV:

- He or she is at least 21 years old.

- He or she can read and speak English sufficiently to converse with the general public, to understand highway traffic signs and signals in the English language, to respond to official inquiries, and to make entries on reports and records.
- He or she can, by reason of experience, training, or both, safely operate the motor vehicle he or she drives.
- He or she is physically qualified in accordance with the Code of Federal Regulations.
- He or she has a currently valid CMV operator's license issued only by one state or jurisdiction.
- He or she has prepared and furnished the motor carrier that employs him or her with the list of violations or the certificate as required by 49 CFR 391.27.
- He or she is not disqualified to drive a CMV under the Code of Federal Regulations.
- He or she has successfully completed a driver's road test or has presented an operator's license or a certificate of road test that the motor carrier that employs him or her has accepted as equivalent to a road test.

Under 49 CFR 391.27, at least every 12 months, each motor carrier must require each driver it employs to prepare and furnish it with a list of all violations of motor vehicle traffic laws (except parking violations) of which the driver has been convicted or on account of which he or she has forfeited bond or collateral during the preceding 12 months. The motor carrier must retain this information as part of the driver's qualification file.)

Waiver of Physical Qualifications

Under the Act, a person who is not physically qualified to drive under 49 CFR 391.41 and who is otherwise qualified may drive a CMV if the Motor Carrier Division of the MSP or the Motor Carrier Safety Appeal Board grants a waiver. An application for a waiver must be submitted jointly by the person seeking the waiver and by the motor carrier that will employ him or her if the application is granted.

(Under 49 CFR 391.41, a person who meets the following criteria is physically qualified to drive a CMV:

- He or she has not lost a foot, leg, hand, or arm, or has been granted a skill performance evaluation certificate under the Code of Federal Regulations.
- He or she has no impairment of a hand or finger that interferes with prehension or power grasping; or of an arm, foot, or leg that interferes with the ability to perform normal tasks associated with operating a CMV, or has been granted a skill performance evaluation certificate.

Section 41 also provides that a person with no established medical history or current clinical diagnosis of various specified conditions and diseases that might interfere with his or her ability to operate a CMV safely is physically qualified. Additionally, Section 41 requires a prospective CMV driver to meet certain visual and hearing standards and prohibits the use of certain controlled substances, unless prescribed by a licensed medical practitioner.)

Currently, an application for a waiver must contain a description of all of the following:

- The type, size, and special equipment, if any, of the vehicles the applicant intends to drive.
- The general area and type of roads the applicant intends to traverse while driving.
- The maximum distances the applicant intends to drive.
- The periods of time he or she will be on duty and driving.
- The nature of the commodities or cargo the applicant intends to transport.
- The methods the applicant or any other person will use to load and secure the commodities or cargo.
- The nature and extent of the applicant's experience at operating CMVs of the type he or she intends to drive.

The application also must include an agreement that the motor carrier promptly will file with the Motor Carrier Division any reports that it requires, including reports about all of the following involving the individual applicant: driving activities; accidents; arrests; license suspensions, revocations, or withdrawals; and convictions.

The bill would delete the requirement that the application describe the periods of time the applicant will be on duty and driving,

and would require the motor carrier to submit only accident reports to the Motor Carrier Division.

Under the Act, the application must be accompanied by at least two reports of medical examinations, conducted within 60 days preceding the application date, including at least one that was conducted by a medical examiner selected and compensated by the motor carrier; both reports must include the medical examiner's opinion concerning the applicant's ability to operate safely a vehicle of the type the applicant intends to drive. The application also must be accompanied by a copy of the certificate of the driver's road test issued pursuant to 49 CFR 391.31, and a copy of the application for employment made pursuant to 49 CFR 391.21 or the Act. The bill would delete the requirement that at least one of the medical examinations be conducted by an examiner selected and compensated by the motor carrier. The bill also would delete the requirement for a copy of the driver's road test certificate.

(Under 49 CFR 391.31, a person may not drive a CMV unless he or she has successfully completed a road test and has been issued a certificate of driver's road test given by the motor carrier or a person designated by the motor carrier. Under 49 CFR 391.21, a person must complete and furnish the motor carrier that employs him or her with an application for employment meeting certain requirements in order to drive a CMV. The application must include specified personal information, as well as information about accidents, violations, license sanctions, and previous employment.)

Under the Act, the Motor Carrier Division may deny the application or approve it, in whole or in part, and issue a waiver subject to the terms, conditions, and limitations it considers consistent with safety and the public interest. A waiver is valid for up to two years, and may be renewed upon submission of a new application under the Act.

If the Motor Carrier Division grants a waiver, it must notify each applicant by a letter setting forth the terms, conditions, and limitations of the waiver. The motor carrier must retain the letter or a legible copy of it in the driver's qualification file as long as the

applicant is employed by that motor carrier and for three years afterward. The applicant must have the letter or legible copy in his or her possession when he or she drives a CMV or is otherwise on duty. The bill would require the motor carrier also to retain a copy of the medical waiver card in the driver's qualification file, and would require the applicant to have the current medical waiver card, rather than the letter or a legible copy, in his or her possession while driving a CMV or otherwise on duty.

Under the Act, the Motor Carrier Safety Appeal Board is required to hear and decide applications for waivers from physical requirements. The bill specifies that, notwithstanding any other provisions, the Appeal Board's determination would have no bearing on worker's compensation status.

Currently, the Appeal Board consists of the MSP Director, the Secretary of State, and the MDOT Director, or their designees, and two representatives of the motor carrier industry chosen jointly by the three department heads and the Michigan Trucking Association. Under the bill, the Board would include one representative of the motor carrier industry, selected in the same manner.

(The bill would repeal Sections 1b and 2k of the Act, which create the Appeal Board and provide for a waiver and the waiver application, but would re-enact those provisions as described above. The bill also would repeal and re-enact Section 2l, which permits an applicant to appeal the denial of his or her application for a waiver under the Act or conflict of medical evaluation under the Federal regulations.)

Grandfather Rights

The bill would repeal Sections 2n and 2o of the Act, but essentially would restore that language in Section 4. Under those sections, the provisions of the Act and 49 CFR 391.21 relating to applications for employment, 49 CFR 391.23 relating to investigations and inquiries of a driver's past employment, and 49 CFR 391.33 relating to road tests do not apply to a driver who has been a regularly employed driver of an intrastate motor carrier of property for a continuous period beginning on or before June 10, 1984, as long as he or she continues to be a regularly employed driver

of that motor carrier, or to a driver who has been a regularly employed driver of an intrastate motor carrier of passengers for a continuous period beginning on or before March 3, 1991, as long as he or she continues to be a regularly employed driver of that motor carrier and meets the Act's age requirements.

Those sections also provide that the Act's provisions pertaining to an intrastate driver's medical qualifications do not apply to a driver who:

- Has been a regularly employed driver of a motor carrier of property for a continuous period beginning on or before June 10, 1984, or a regularly employed driver of a motor carrier of passengers for a continuous period beginning on or before March 3, 1991.
- Continues to be a regularly employed driver of that motor carrier.
- Is otherwise qualified to drive a CMV under the Act.
- Has applied to the Appeal Board claiming grandfathering rights.
- Has received a grandfather rights card or a waiver of medical qualification from the Motor Carrier Division.

(The exemption from medical qualifications applies only to preexisting conditions before January 1, 1996.)

Currently, grandfather rights are to remain valid under December 31, 2032. Under the bill, grandfather rights would remain valid under December 31, 2014.

The bill also provides that the MSP would not be authorized to issue new grandfather cards after the bill's effective date.

Surge Brakes

The bill would permit a combination of vehicles with an actual combination GVW or a gross combination weight rating of 26,000 pounds or less to be equipped with surge brakes for intrastate operation as allowed by Section 705(1)(c) of the Michigan Vehicle Code, provided the trailer or semitrailer had an actual GVW or gross vehicle weight rating of 15,000 pounds or less. Vehicles of any size that were transporting hazardous materials in an amount that required placarding, or vehicles designed to transport more than eight passengers, including the

driver, would be prohibited from being equipped with surge brakes for intrastate operation.

(Section 705(1)(c) of the Vehicle Code requires a trailer or semitrailer with a gross weight of at least 15,001 pounds, when operated upon a highway, to be equipped with brakes operating on all wheels and designed to be applied by the driver of the towing motor vehicle from its cab.)

Vehicles Exempt from the Act & Rules

The bill would delete a provision stating that the Act and the rules promulgated under it do not apply to either of the following:

- A semitrailer or truck used exclusively for storage purposes.
- A CMV owned and operated by a unit of government or its employees, except as otherwise provided in the Act, and except for 49 CFR Parts 382 (Controlled Substances and Alcohol Use and Testing), 391 (Qualification of Drivers), 392 (Driving of Motor Vehicles), and 393 (Parts and Accessories Necessary for Safe Operation).

Currently, the Act and the rules do not apply to a self-propelled implement of husbandry or a drawn implement of husbandry if 1) the motor vehicle hauling it does not exceed 25 miles per hour if the implement of husbandry is not equipped with brakes or coupling devices that meet the standards in 49 CFR 40, and 2) the implement of husbandry does not exceed any other implement or component design maximum speed limitation. The bill provides, instead, that for intrastate transportation, the Act would not apply to a self-propelled implement of husbandry or an implement of husbandry being drawn by a farm tractor or another implement of husbandry.

Bus Exemption

Under the bill, the Act and the rules promulgated under it would not apply to a school bus as defined in the Pupil Transportation Act or a bus defined and certificated under the Motor Bus Transportation Act.

(Under the Pupil Transportation Act, "school bus" means a motor vehicle, other than a pupil transportation vehicle, with a

manufacturer's rated seating capacity of at least 11 passengers, including the driver, used for the transportation of pupils to and from school or school-related events that is owned by a school or is used to transport pupils under a contract or agreement with a school.

The Motor Bus Transportation Act defines "motor bus" as a self-propelled motor vehicle used in the transportation of passengers and their baggage for hire upon any public highway of this State with a maximum seating capacity of at least 16 people. The term does not include a self-propelled motor vehicle with a seating capacity of 15 passengers or fewer that is used by or on behalf of an employer to transport its employees to and from their place of employment.

Under the Motor Bus Transportation Act, MDOT must issue a certificate of authority to a motor carrier of passengers authorizing it to provide transportation services subject to the Department's jurisdiction under the Act, if MDOT finds that the carrier is fit, willing, and able to provide the transportation services.)

Transportation Safety Documents & Vehicle Inspection

The Motor Carrier Safety Act requires motor carriers and hazardous materials vehicle inspection and repair facilities to submit, upon demand, all of their transportation safety-related documents to any motor carrier officer displaying a valid MSP, Motor Carrier Division identification card. The bill would refer to an enforcement member of the Motor Carrier Division, rather than a motor carrier officer.

The Act requires a motor carrier that operates in Michigan but has main offices in another state or province to submit all transportation safety-related documents for inspection and copying within 10 working days after receiving formal notification requesting the documents. Under the bill, this requirement also would apply to a hazardous material vehicle inspection or repair facility that operated in Michigan and had main offices in another state or province.

Violation of the Act & Rules

Currently, except as provided in the Act, any person, driver, or operator who violates the Act or a rule promulgated under it, or an owner or user of a bus, truck, truck tractor, or trailer, or certain other motor vehicles or an officer or agent of an individual, partnership, corporation, or association or its lessee or court-appointed receiver that is the owner or user of a vehicle, who requires or permits the driver or operator to operate or drive a bus, truck, truck tractor, or trailer, or certain other motor vehicles in violation of the Act or a rule, is responsible for a civil infraction and may be ordered to pay a maximum fine of \$250 per violation. Under the bill, this provision would apply to any person, driver, or motor carrier as defined under the Code of Federal Regulations.

Currently, upon reasonable cause to believe that a motor vehicle is being operated in violation of the Act or a rule promulgated under it, a peace officer or Motor Carrier Division enforcement member may stop the vehicle and inspect it. If a violation is found, the officer may issue a notice to appear for the violation. The bill would require probable cause, rather than reasonable cause.

Violation of Out-of-Service Order

Under the bill, upon notification of a valid out-of-service order upon a motor carrier issued by the U.S. Department of Transportation (USDOT), by a state or a political subdivision of a state, by the Canadian or Mexican government, or by the government of a Canadian province, an enforcement member of the Motor Carrier Division could stop and detain any vehicle operated by the motor carrier and place the vehicle and driver out of service pursuant to the order. A driver or motor carrier operating a vehicle in violation of an out-of-service order would be responsible for a State civil infraction and would have to be assessed a fine of not more than \$500.

CMV Operation with Serious Safety Defect

Currently, a driver, operator, owner, or user of any bus, truck, truck tractor, or trailer, or certain other motor vehicles or any officer or agent of an individual, partnership, corporation, or association or its lessee or court-appointed receiver that is the owner or

user of any vehicle, who requires or permits the driver or operator to operate a vehicle with a serious safety defect is subject to a civil fine of up to \$300. The bill would delete this language. Instead, a driver, person, or motor carrier who operated or required or permitted the driver to operate a CMV with a serious safety defect in violation of the Act or a rule promulgated under it would be responsible for a State civil infraction would have to be assessed a fine of up to \$500 for each violation.

(Under the Act, "serious safety defect" means a violation of the Act or a rule promulgated under it relative to brakes, tires, steering, coupling devices, headlights, taillights, brake lights, and turn signals that results in the vehicle being placed out of service.)

Hazardous Materials Violations

Currently, a driver or operator, or an owner or user of a bus, truck, truck tractor, or trailer, or certain other motor vehicles, or an officer or agent of an individual, partnership, corporation, or association, or its lessee or court-appointed receiver that owns or uses the vehicle, who requires or permits the driver or operator to operate or drive the vehicle in violation of the Act or a rule, if the vehicle is transporting a package required to be marked or labeled under 49 CFR Parts 100 to 180, is responsible for a State civil infraction and may be ordered to pay a maximum fine of \$500 for each violation. Under the bill, the penalty would apply to a person who operated or who required or permitted someone to operate a CMV in violation of the Act or a rule related to the transportation of hazardous materials if the vehicle were transporting a package required to be marked or labeled under the CFR.

The bill would delete a provision prohibiting a motor carrier from transporting, or requiring, permitting, or allowing to be transported, hazardous material for which a placard is required under 49 CFR Parts 100 to 199, in a CMV if the person transporting the material does not have a hazardous material endorsement on his or her operator's or chauffeur's license. The bill also would delete the penalty for this violation, which is a misdemeanor punishable by imprisonment for up to one year and/or a maximum fine of \$500 per

violation. (House Bill 4858 (S-2) would add this offense to the Vehicle Code.)

The bill would prohibit a person from overfilling a container, including a storage tank, during a transfer of a hazardous material from or into a vehicle, so that hazardous material was released from the package or container.

The bill also would prohibit a person, driver, owner, carrier, lessee, or lessor from transporting or allowing to be transported a vehicle carrying hazardous materials in an amount required to be placarded under Title 49 of the Code of Federal Regulations on a publicly maintained route as identified on the National Hazardous Materials Route Registry as determined by the USDOT under Title 49.

A violation of either of these provisions would be a State civil infraction punishable by a maximum fine of \$500.

Compliance Order

Under the Act, upon determination that the continued operation of CMVs by a person upon the State's highways poses an unreasonable risk or an imminent hazard to the public safety, the Motor Carrier Division must issue a compliance order. The order may direct a person to make certain changes, repairs, or alterations to the person's vehicles or operations, in order to comply with State laws. The order must state that the person has 30 days to comply with it. If the set time limit expires and the person is not in compliance, the Motor Carrier Division may seek a shut down order from a circuit court. The bill would delete the 30-day time limit, and instead require the order to state that the person had a set time limit to comply. The Motor Carrier Division would have to set the time limit for compliance to be at least 30 but not more than 180 days.

Civil Infraction Enforcement

Under the bill, a State civil infraction would have to be enforced in the manner provided for enforcement of State civil infractions in Chapter 88 of the Revised Judicature Act.

When a person who was not a Michigan resident was stopped for a State civil infraction under the Motor Carrier Safety Act

or any rule under it, the police officer making the stop would have to take security for the nonresident's appearance in court. The person stopped could recognize to the officer or to the court for his or her appearance by leaving with the officer or court a guaranteed appearance certificate or a sum of money not to exceed \$100.

If a magistrate were available for an immediate appearance, upon demand of the person stopped, the officer immediately would have to take the nonresident driver before the magistrate. If the defendant requested a hearing, it would have to be scheduled and the defendant would have to leave with the court the guaranteed appearance certificate or deposit as security for appearance at the scheduled informal or formal hearing.

The officer receiving a guaranteed appearance certificate or deposit of money would have to give the person stopped a receipt, together with the written citation.

At or before the completion of his or her tour of duty, a police officer taking a certificate or deposit of money would have to deliver the certificate or deposit and the citation either to the court named in the citation or to the police chief or person authorized by the police chief to receive certificates or deposits. The police chief or authorized person would have to deposit the certificate or the money and the citation with the court. Failure to deliver the money would be embezzlement of public money.

If a person who posted a certificate or deposit failed to appear as required in the citation or failed to appear for a scheduled informal or formal hearing, the court having jurisdiction and venue over the civil infraction would have to enter a default judgment against the person, and the guaranteed appearance certificate or money deposited would have to be forfeited and applied to any civil fine or costs ordered.

"Guaranteed appearance certificate" would mean a card or certificate containing a printed statement that a surety company authorized to do business in this State guaranteed the appearance of the person whose signature appeared on the card or certificate and that, if the person failed to appear in court at the time of a scheduled informal or formal hearing or to pay any fine

or costs imposed, the company would pay any fine, costs, or bond forfeiture imposed on the person in a total amount not to exceed \$200.

Regulations Inconsistent with Act

The Act prohibits a township, city, village, or county from adopting or enforcing an ordinance or resolution that is inconsistent with the Act or any rule promulgated under it. The bill would include a State agency in this provision.

The Act also prohibits a State agency from promulgating rules inconsistent with the Act, and specifies that this provision does not apply to rules promulgated under the Fire Prevention Code by the State Fire Safety Board with respect to the transportation of liquefied petroleum gas. The bill would delete these provisions.

Mud Flaps

The bill would require a truck, truck tractor, trailer, semitrailer, or any combination of these, when used on a highway, to be constructed, equipped, or operated to prevent water or other road surface substances from being thrown from the rear wheels of the vehicle or combination at tangents exceeding 22-½ degrees measured from the road surface. If a flap type of device were used, it could not have attached any type of lamp, breakable reflective material, or reflecting buttons, and could not extend beyond the maximum width of the vehicle or combination.

(These provisions currently are found in Section 714a of the Vehicle Code, which House Bill 4858 (S-2) would repeal.)

Repealed Sections

Qualifications to Drive Certain Motor Vehicles. The bill would repeal Section 2a, which prohibits a person from driving, and an individual, partnership, association, corporation, or its lessee or court-appointed receiver from employing, engaging, hiring, or contracting for hire any person to operate, drive, or maintain any bus, truck, truck tractor, or trailer, or certain other motor vehicles unless the person meets the qualifications set forth in the Act and by the MSP under the authority of the Act.

Vehicle Safety Standards. The bill would repeal Section 2b, which prohibits an individual, partnership, association, corporation, or its lessee or court-appointed receiver from operating any truck, truck tractor, or trailer or permitting any person to drive any bus, truck, or truck tractor, or certain other motor vehicles that do not meet driver or operator safety standards, safety standards for equipment and devices on the specified vehicles, and their loading and unloading under the Act and rules promulgated by the MSP.

Transportation Facility Safety Standards. The bill would repeal Section 2c, which prohibits an individual, partnership, association, corporation, or its lessee or court-appointed receiver from operating or maintaining any facility used in connection with the transportation of persons or property by any bus, truck, truck tractor, or trailer that does not meet safety standards for the operation and maintenance of the facility as set forth in the Act or rules promulgated under it by the MSP.

Medical Examination. Section 2i prohibits a person from driving a CMV unless he or she is physically qualified to do so and, except as provided by the Act, has on his or her person the original, or a photocopy, of a valid medical examiner's certificate that he or she is physically qualified to drive a CMV. Section 12j requires the following people to be medically examined and certified in the accordance with 49 CFR 391.43 as physically qualified to drive a CMV:

- Any person who has not been medically examined and certified as physically qualified to drive a CMV.
- Any driver who has not been medically examined and certified as qualified to drive a CMV during the preceding 24 months.
- Any driver whose ability to perform his or her normal duties has been impaired by a physical or mental injury or disease.

The bill would repeal these sections.

Driver Qualification File. The bill would repeal Section 2m, which requires that particular documents be contained in the qualification file for an intrastate driver who has been a regularly employed driver of a motor carrier of property for a continuous period beginning on or before June 10,

1984, and the file for a driver who has been a regularly employed driver of a motor carrier of passengers for a continuous period beginning on or before March 3, 1991; the qualification file for a regularly employed driver who was employed by a motor carrier of property after June 10, 1984, and a regularly employed driver of a motor carrier of passengers who has not been regularly employed by the motor carrier for a continuous period beginning on before March 3, 1991; the qualification file for an intermittent, casual, or occasional driver; and the qualification file for a driver who is regularly employed by another motor carrier. Section 2m also requires each driver's qualification file to be kept at the motor carrier's principal place of business for as long as the driver is employed by the carrier and for the next three years.

Investigation of Past Employment. Under Section 2p, certain Federal regulations relating to the investigation of a driver's safety performance history in past employment do not apply to a person who becomes a driver for a motor carrier after being a full-time employee of the motor carrier for at least three years before becoming a driver. The bill would repeal this section.

Exemptions. The bill would repeal Section 2r, which states that the provisions of the Act, except 49 CFR Part 382 (Controlled Substances and Alcohol Use and Testing), do not apply to a mechanic who services motor carrier equipment during the intrastate operation of the equipment when all of the following conditions are met:

- The vehicle or combinations are not being used to transport passengers or property or any for hire or compensated transportation, including paid haulage when the units are empty.
- The mechanic is not otherwise being used as a regularly employed driver.
- The mechanic is test driving a loaded CMV within 10 miles of the repair facility.

The bill also would repeal Sections 12q, 12s, and 12u, but essentially would restore the language in Section 5. Those sections grant exemptions from certain provisions of Title 49 relating to application for employment, investigations and inquiries of a driver's past employment, road tests, hours of service, and medical qualification, as well as

specified provisions of the Act. The exemptions apply to farm vehicle drivers, public utility employees, and public utility service vehicle drivers.

Underride Guard. The bill would repeal Section 2t, which states that, in addition to the requirements of 49 CFR 393.86, a truck tractor and semitrailer combination with a semitrailer length longer than 50 feet whose frame or body extends more than 36 inches beyond the rear of its rear axle and is more than 30 inches above the roadway may not be operated on the State's highways unless equipped with an underride guard on the extreme rear of the frame or body. Section 2t requires the underride guard to meet specific criteria.

Section 2t also provides that a CMV constructed and maintained so that its body chassis or other parts afford the rear end protection contemplated by the section is in compliance with it. An asphalt hauling vehicle is exempt from Section 2t if the underride guard prevents the vehicle from being attached to an asphalt paving machine.

(Under 49 CFR 393.86, each trailer and semitrailer with a GVW rating of at least 4,536 kilograms (10,000 pounds) and manufactured on or after January 26, 1998, must be equipped with a rear impact guard that meets certain Federal requirements.)

Maximum Driving Time. The bill would repeal Section 12v, which prohibits a motor carrier from permitting or requiring a CMV driver, regardless of the number of motor carriers using the driver's services, to drive for any period after having been on duty 60 hours in any seven consecutive days if the employing motor carrier does not operate every day in the week, or having been on duty 70 hours in any period of eight consecutive days if the employing motor carrier operates CMVs every day of the week, subject to certain exceptions. Section 12v also grants an exemption from these limits to certain drivers whose total driving time does not exceed 40 hours in a period of seven consecutive days.

The bill also would repeal Section 12w, which provides that a Federal requirement concerning 12 consecutive hours on duty does not apply to the following intrastate drivers of CMVs who return to the work

reporting location, and are released from work within 15 consecutive hours of being on duty:

- Any driver delivering home heating fuel from October through April in a CMV under 40,000 pounds GVW.
- Any driver of a CMV engaged in seasonal construction-related activities within a 100-air mile radius of the normal work reporting location.
- Any driver of a CMV that is being used in the delivery of beverages to retail businesses.

House Bill 4857

The bill would amend the Motor Bus Transportation Act to adopt Parts 356 and 365 of Title 49 of the Code of Federal Regulations.

Part 356 pertains to motor carrier routing regulations, and Part 365 pertains to applications for operating authority.

House Bill 4858 (S-2)

Hazardous Material Transportation Penalty

The bill would prohibit a person from transporting or requiring, permitting, or allowing to be transported a hazardous material for which a placard is required under 49 CFR Parts 100 to 199 in a commercial motor vehicle if the vehicle operator did not have a hazardous material endorsement on his or her operator's or chauffeur's license. A person who violated this provision would be guilty of a misdemeanor punishable by imprisonment for up to one year and/or a maximum fine of \$500. (As noted above, this offense currently is in the Motor Carrier Safety Act.)

Identification Requirements

Subject to certain exceptions, the Michigan Vehicle Code requires all motor trucks or truck tractors over 5,000 pounds registered weight, and all towing or platform bed wrecker road service vehicles in operation upon the public highways of the State to have the name, city, and state or the registered logo or emblem of the vehicle's registered owner, and the lessee of the vehicle if applicable, painted or permanently attached on each side of the cab on a motor truck or truck tractor in letters at least three

inches tall, not lower than the bottom edge of the door.

The bill would delete the references to motor trucks and truck tractors. Under the bill, the identification requirements would apply commercial vehicles with a single or combination gross weight rating or total gross weight over 5,000 pounds, as well as towing or platform bed wreckers. The information would have to be on each side of the vehicle, rather than the cab.

The bill provides that a vehicle in compliance with the identification requirements of the Federal motor carrier safety regulations, 49 CFR Parts 390 through 399, would be considered to be in compliance with the Code's identification requirements.

Currently, a truck eligible for and registered under a farm or manufacturer license plate is exempt from the identification requirements. Under the bill, the truck would have to have a GVW under 10,000 pounds in order to be exempt.

Vehicle Weighing

Under the Code, if a police officer or duly authorized agent of MDOT or a county road commission has reason to believe that the weight of a vehicle and load is unlawful, the officer or agent may require the driver to stop and submit to a weighing of the vehicle by either portable or stationary scales approved and sealed by the Michigan Department of Agriculture as a legal weighing device, and may require that the vehicle be driven to the nearest MDOT weigh station to allow the officer or agent to determine whether the vehicle is loaded in conformity with the Code.

A driver or owner of a vehicle who knowingly fails to stop when requested or ordered to do so is guilty of a misdemeanor.

The bill would authorize a peace officer also to require a driver to stop and submit to a weighing. The bill specifies that the penalty for a violation would be imprisonment for up to 90 days and/or a maximum fine of \$100. The bill also provides that a driver or person who dumped his or her load when ordered to submit to a weigh or who otherwise attempted to commit or committed an act to avoid a vehicle weigh would be in violation of the Code.

Fines for Overweight Loads

Under the Code, if a court determines that a motor vehicle or combination of vehicles was operated in violation of the Code's weight limits, the court must impose a fine. If the court determines that the vehicle or vehicle combination was operated so that the gross weight would not be lawful by a proper distribution of the load upon all the axles, the court must impose a fine according to a schedule based on the excess load. If the court determines that the gross weight would be lawful by a proper distribution of the load upon all the axles, but that at least one axle exceeded the maximum allowable axle weight by 4,000 pounds or less, the court must impose a fine of \$200 per axle. If the court determines that the gross weight would be lawful by a proper distribution upon all the axles, but that at least one axle exceeded the maximum allowable weight by more than 4,000 pounds, the court must impose a fine according to the schedule.

Under the bill, these requirements would apply beginning January 1, 2006.

Bypassing a Weigh Station

Under the Code, if a driver or owner of a vehicle, a truck or truck tractor, a truck or truck tractor with other vehicles in combination, or special mobile equipment knowingly fails to stop at or knowingly bypasses any scales or weighing station, he or she is guilty of a misdemeanor.

Under the bill, this provision would apply to the driver or owner of a CMV with other vehicles or trailers in combination, rather than a vehicle. The bill also would delete the element of "knowingly".

Repealed Sections

The bill would repeal Section 714a of the Code, which essentially requires commercial vehicles to be equipped with mud flaps. (As noted above, House Bill 4852 (S-2) would add this provision to the Motor Carrier Safety Act.)

The bill also would repeal Section 714b, which governs the fuel systems of trucks over 10,000 pounds, truck tractors, road tractors, and buses.

MCL 480.11a et al. (H.B. 4852)
474.131 (H.B. 4857)
257.683 et al. (H.B. 4858)

ARGUMENTS

(Please note: The arguments contained in this analysis originate from sources outside the Senate Fiscal Agency. The Senate Fiscal Agency neither supports nor opposes legislation.)

Supporting Argument

By bringing Michigan statutes into compliance with Federal regulations, the bills would enable the State to continue receiving between \$8.0 million and \$9.0 million in Federal grants. Since this money represents about one-third of the Motor Carrier Division's budget, the loss of the funding would jeopardize positions within the Division and its ability to function properly. In addition to adopting necessary changes to the Motor Carrier Safety Act, House Bill 4852 (S-2) would repeal sections of the statute that either duplicate or are inconsistent with Federal regulations. The bill also would reorganize the Act to make it more efficient for the Division's training and enforcement purposes. Together, House Bills 4852 (S-2) and 4858 (S-2) would move the provision regarding a hazardous material license endorsement from the Motor Carrier Safety Act to the Michigan Vehicle Code, which deals with licensure, and would move the mud flap provision from the Code to the Act.

Supporting Argument

House Bill 4852 (S-2) would authorize police officers to require nonresidents drivers to post bond for civil infraction violations of the Motor Carrier Safety Act or rules. Currently, when officers issue a citation, they cannot require the driver to leave a deposit or post bond, which means that courts often have trouble getting nonresidents to pay a fine. Although the Secretary of State ultimately can suspend a driver's privilege to operate in this State, that remedy does not help with the collection of fines and it is particularly ineffective if the citation is issued to an out-of-State company, rather than an individual. Under the bill, the police officer stopping a nonresident would have to take security to assure his or her appearance in court. The person would have to leave either a monetary deposit of up to \$100 or a certificate stating that a surety would guarantee the person's appearance or pay

up to \$200. Thus, if the person failed to appear, the court would be able to collect at least a portion of the fine and costs due.

Fiscal Analyst: Bruce Baker
Mike Hansen

Opposing Argument

House Bill 4852 (S-2) would delete a provision under which a person who is at least 16 years old may operate a CMV if it is a farm vehicle. This amendment could harm the State's agriculture industry, which depends on young employees to help during busy seasons, such as the harvest.

Response: The amendment is necessary to comply with Federal law and omitting it could jeopardize the State's funding. Evidently, the Federal government will not allow states to modify the age requirement.

Legislative Analyst: Suzanne Lowe

FISCAL IMPACT

House Bill 4852 (S-2)

The bill, together with House Bills 4857 and 4858 (S-2), would enable the State to continue to receive between \$8.0 million and \$9.0 million in Federal motor carrier enforcement grants.

The bill also would establish certain physical requirement waiver procedures that would result in minimal costs to the State, which could be assumed by existing resources.

House Bill 4857

The bill would have no fiscal impact on State or local government.

House Bill 4858 (S-2)

The bill would have an indeterminate fiscal impact on State and local government. There are no data available to indicate how the proposed changes would affect the number of misdemeanors and civil infractions. Local units incur the cost of misdemeanor probation and incarceration in local facilities, both of which vary by county. Any change in revenue from penal and civil infraction fines would have an effect on public libraries.

The bill also would make voluntary a currently required annual deposit by the Department of State Police into the Trooper Recruit School Fund.

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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.