



## Legislative Fiscal Bureau

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Joint Committee on Finance

Paper #666

### Private Motor Carrier Definition (Transportation -- State Patrol)

[LFB 2015-17 Budget Summary: Page 455, #6]

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#### CURRENT LAW

Under current law, "private motor carrier" means any person except a common or contract motor carrier engaged in the transportation of property by motor vehicle other than an automobile or trailer used therewith, upon the public highways. The current definition of private motor carrier does not include the transportation of passengers.

#### GOVERNOR

Modify the definition of "private motor carrier" to mean any person who provides transportation of property or passengers by commercial motor vehicle and is not a contract motor carrier. Specify that this change would be initially applicable to motor carrier operations on the general effective date of the bill.

#### DISCUSSION POINTS

1. The Department of Transportation (DOT) indicates that rather than the modification in the bill, the intent was to define a "private motor carrier" as any person who provides transportation of property or passengers by a commercial motor vehicle as described in 49 CFR Part 390.5 of the Code of Federal Regulations and is not a for-hire motor carrier. [This section of the code defines the various types of motor vehicles considered "commercial" under federal law, based on factors such as vehicle weight, capacity, and use.]

2. The intended modification reflects DOT's effort to comply with a Federal Motor Carrier Safety Administration (FMSCA) audit report, which advised that the state's current definition of private motor carrier is incompatible with federal law. The Department indicates that to

be considered in compliance, FMSCA recommended that the state adopt a definition of private motor carrier as provided in the intended modification. The Department believes that continued noncompliance with federal law could result in the loss of \$4.5 million in federal aid used for motor carrier enforcement. DOT indicates that the State of South Dakota is currently being sanctioned by FMCSA for a similar finding of noncompliance.

3. According to the Department, the intended modification would result in the following effects: (a) inclusion of the transportation of "passengers" under the definition of private motor carrier; (b) clarifying that the vehicles used by private motor carriers are commercial vehicles and defined in the related federal code; (c) tying the statutory definition of "private motor carrier" to the related federal code generally, so that the proposed state statute would remain compatible with federal law if that law is modified; and (d) requiring that vehicles carrying nine to 15 passengers for indirect compensation, with gross vehicle weight ratings of 10,000 pounds or less, must obtain and display a United States Department of Transportation number (for which there is no fee), and adhere to the other operating laws applying to such vehicles. [For example, operators of these vehicles must maintain a record of accidents and may not use handheld cellular phones or "text" while driving.]

4. According to FMCSA, "direct compensation" means "payment made to the motor carrier by the passengers or the individual acting on behalf of the passengers for the transportation services provided, and not included in a total package charge or other assessment for highway transportation services." By inference, "not for direct compensation" (or "indirect compensation") means compensation for highway transportation services included in a total package charge or other assessment.

5. Although vehicles described under (d) are defined as commercial, a commercial driver license is not required by state or federal law for operation of these vehicles.

6. The Department indicates that no other vehicle types would be affected by the intended modification. According to DOT, vehicles used for transportation of passengers that do not receive direct or indirect compensation, that meet the passenger capacity definition, and which are below the gross vehicle weight rating threshold specified under (d), would not be subject to any additional requirements.

## **ALTERNATIVES**

1. Approve the Governor's recommendation, as modified to reflect the Department's intent, to define a "private motor carrier" as any person who provides transportation of property or passengers by a commercial motor vehicle as described in 49 CFR Part 390.5 and is not a for-hire motor carrier.

2. Delete provision.

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