



## Legislative Fiscal Bureau

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Joint Committee on Finance

Paper #775

### **Commercial Driver's License -- Hazardous Material Endorsement (DOT -- Motor Vehicles)**

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#### **CURRENT LAW**

The Department of Transportation issues commercial driver's licenses that are valid for a period of eight years for the operation of certain vehicles defined as commercial motor vehicles. The issuance, renewal, and other regulatory matters associated with these licenses are distinct from the provisions associated with regular "Class D" licenses and, in many cases, are determined by federal law. A commercial driver's license may be "endorsed" to allow the operation of certain specific types of commercial motor vehicles, such as school buses, tank vehicles, and vehicles carrying hazardous materials. The issuance of each of these endorsements requires the applicant to demonstrate a particular set of skills and/or knowledge. Endorsements are generally valid for the same period as the commercial driver's license.

#### **GOVERNOR**

No provision.

#### **MODIFICATION**

Adopt the following modifications to provisions related to the issuance of a commercial driver's license endorsement for the operation of a vehicle carrying hazardous materials (an "H" endorsement) to comply with recent federal regulations promulgated under the federal USA PATRIOT Act of 2001:

Prohibit DOT from issuing or renewing an "H" endorsement to a commercial driver's license unless all of the following apply: (a) the applicant has submitted to the Department one of the following proofs of United States citizenship, or immigration status: (1) a United States passport; (2) a birth certificate that bears an official seal and was issued by a state, county, municipal authority, or outlying possession of the United States; (3) a certification of birth

abroad issued by the United States Department of State; (4) a certificate of naturalization; (5) a certificate of United States citizenship; (5) a permanent resident card or alien registration receipt card; or (6) other proof specified in 49 CFR 383.71 (a)(9); (b) if the applicant submits proof under numbers "(5)" or "(6)" above, the applicant also submits his or her Bureau of Citizenship and Immigration Services alien registration number; (c) the applicant has passed such knowledge test as the Department may require; and (d) the Department has received notice from the federal Transportation Security Administration that the applicant does not pose a security threat warranting denial of an "H" endorsement, or that the applicant has received a waiver under federal provisions that allow for such a waiver. Specify, notwithstanding these provisions, that the Department may renew a commercial driver's license with an "H" endorsement until such time as the Department receives from the federal Transportation Security Administration a final notice of threat assessment or a notice of no security threat concerning the applicant, or until April 29, 2004, whichever is earlier.

Require DOT to do all of the following actions within 15 days after receiving, from the federal Transportation Security Administration, a notice associated with the corresponding action: (a) update the Department's records to reflect the notice, the issuance, denial, or cancellation of an "H" endorsement and the endorsement's expiration date; (b) notify the commercial driver's license information system of the notice or action; (c) issue the "H" endorsement, if the Department received notice that the applicant does not pose a security threat warranting denial of an "H" endorsement, or that the applicant has received an appropriate waiver; and (d) cancel or deny the "H" endorsement, if the notice is of a final administrative determination that the applicant or licensee poses a security threat warranting denial of an "H" endorsement. Require DOT to keep, in a person's driver record file, any notice from the federal Transportation Security Administration related to the person's eligibility for an "H" endorsement.

Specify that the current law provisions providing for the right to an administrative hearing on agency actions do not apply to actions resulting in the cancellation or denial of an "H" endorsement under the newly-created provisions, reflecting a requirement in the federal regulations that specify that any such administrative hearings would be conducted by the Transportation Security Administration.

Specify that an "H" endorsement shall expire on the licensee's birthday four years after the date of issuance or renewal, except that the expiration date for an initial issuance of an "H" endorsement shall be the earlier of the following: (a) the date that the licensee's commercial driver's license expires, except that if the license expires less than 12 months from the date of the issuance of the endorsement and the licensee renews his or her commercial driver's license at the same time as the endorsement, then the expiration date shall be determined under "(b)"; or (b) the date four years before the date that the licensee's commercial driver's license expires.

Specify that the Department shall provide notice, at least 180 days prior to the expiration of an "H" endorsement, that the licensee must pass a security threat assessment screening by the federal Transportation Security Administration of the Department of Homeland Security as part of the application to renew the endorsement. Specify that the notice must: (a) inform the licensee that he or she may commence the federal security threat assessment screening at any

time, but no later than 90 days before the expiration of the endorsement; and (b) be mailed to the last-known address of the licensee. Specify that the failure to receive such a notice shall not be a defense to a charge of operating a motor vehicle without a valid operator's license. Specify that, for an endorsement that expires before May 1, 2004, the Department shall provide as much advance notice as practicable to the holder of the endorsement (in recognition of the fact that the period of time between the effective date of the provision [November 1, 2003] and the expiration of the endorsement would be less than 180 days).

Specify that the Department may require any person who holds a valid "H" endorsement on November 1, 2003, to apply for renewal of that endorsement, if the endorsement expires after November 1, 2008 (to comply with a federal requirement that an existing "H" endorsement not be valid for a period longer than five years). Specify that, in such cases, the Department shall provide notice to the licensee of the security threat assessment requirement, as outlined above. Specify that the Department may cancel the "H" endorsement of any person who fails to renew within the period specified by the Department. Specify that these special provisions for the renewal of endorsements held on November 1, 2003, do not apply to endorsements that are issued or renewed after November 1, 2003.

Prohibit DOT from issuing or renewing an "X" endorsement (a combination of an "H" endorsement and a "N" endorsement for the operation of a tank container vehicle) after November 1, 2003.

Specify that the application form for an "H" endorsement shall include all of the information and statements required under 49 CFR 1572.5 (e), including the following: (a) the list of felony criminal offenses that result in the disqualification of the "H" endorsement that are listed under 49 CFR 1572.103 (b) [includes, in the interim federal rule, various violent crimes as well as other crimes, such as sedition, extortion, identity fraud, robbery, arson, bribery, smuggling, immigration crimes, and controlled substance crimes]; (b) a statement that all of the following apply to the individual signing the application: (1) has not been convicted, or found not guilty by reason of insanity, of any of the disqualifying felony criminal offenses listed on the application [under "(a)"] in any jurisdiction during the seven-year period preceding the date of the application; (2) has not been released from incarceration in any jurisdiction for committing any of the listed disqualifying felony criminal offenses within the five-year period preceding the date of the application; and (3) is not wanted or under indictment for any of the listed disqualifying criminal offenses; (c) a statement that the individual signing the application has been informed that state and federal law require an ongoing obligation to disclose to the Department within 24 hours if he or she is convicted, or found not guilty by reason of insanity, of any of the listed disqualifying felony criminal offenses, or has been adjudicated as a mental defective or committed to a mental institution, while he or she holds an "H" endorsement; and (d) space for the applicant's social security number. Specify that current law provisions that allow a license applicant to exclude his or her social security number from the application form for religious reasons do not apply in the case of the "H" endorsement application.

Require the holder of an "H" endorsement to notify the Department within 24 hours if he or she is convicted, or found not guilty by reason of insanity, of any of the disqualifying felony

criminal offenses listed on application form for an "H" endorsement, or if he or she was adjudicated as a mental defective or committed to a mental institution.

Require DOT, upon receiving a completed application form for an "H" endorsement, to immediately forward the application to the federal Transportation Security Administration. Require DOT to inform the applicant that he or she has a right to obtain a copy of his or her criminal history record by submitting a written request for that record to the federal Transportation Security Administration.

Require DOT to accept the voluntary surrender of an "H" endorsement and specify, upon accepting the surrender, that the Department shall immediately cancel the endorsement if the licensee is not eligible for the endorsement. Specify that, following such a cancellation, the Department shall update the Department's records to reflect the cancellation and notify the commercial driver's license information system of the cancellation. Specify that, following the voluntary surrender of an "H" endorsement from a person for whom the Department would not be prohibited from issuing an "H" endorsement, the Department may remove the "H" endorsement from the person's commercial driver's license as a temporary surrender, but prohibit DOT from then issuing an "H" endorsement to such a person unless the person applies for an initial issuance of an "H" endorsement.

Modify general provisions related to the transport of hazardous materials and "H" endorsements so that these provisions apply also to the transport of any quantity of material listed as a select agent or toxin under federal regulations related to potentially hazardous biological agents.

Prohibit the holder of a commercial driver's license instructional permit from transporting hazardous materials or any quantity of material listed as a select agent or toxin under federal regulations related to potentially hazardous biological agents.

Specify that these provisions take effect on November 1, 2003, or on the day after publication, whichever is later.

**Explanation:** These changes to statutory provisions related to the transport of hazardous materials are required under interim rules, published on May 5, 2003, that were promulgated pursuant to the federal USA PATRIOT Act of 2001. States that fail to adopt these provisions are subject to the loss of federal highway aid. DOT estimates that the loss of federal highway aid under these provisions would be \$19.6 million in federal fiscal year 2004 and \$40.0 million in federal fiscal year 2005.

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