

Amendment No. 1 to HB2146

Howell
Signature of Sponsor

AMEND Senate Bill No. 2399

House Bill No. 2146*

by deleting all language after the enacting clause and substituting the following:

SECTION 1. Tennessee Code Annotated, Section 55-50-102(11), is amended by adding the language "or 'CDL'" after the language "Commercial driver license".

SECTION 2. Tennessee Code Annotated, Section 55-50-102, is amended by adding the following as new subdivisions:

() "Commercial learner's permit" or "CLP" means a permit issued to an individual by the department that, when carried with a valid driver license issued by the department, authorizes the individual to operate a class of a commercial motor vehicle when accompanied by a holder of a valid CDL for purposes of behind-the-wheel training. When issued to a CDL holder, a CLP serves as authorization for accompanied behind-the-wheel training in a commercial motor vehicle for which the holder's current CDL is not valid;

() "FMCSA" means the federal motor carrier safety administration, an agency within the United States department of transportation;

SECTION 3. Tennessee Code Annotated, Title 55, Chapter 50, Part 4, is amended by adding the following as new sections:

55-50-415. Third-party skill testing program.

(a) As used in this section, unless the context otherwise requires:

(1) "Entity" means:

(A) A private corporation with at least one (1) employee, licensed to do business by the secretary of state, but not an individual person; or

(B) A local, county, or state government, or subdivision thereof, including, but not limited to, kindergarten through grade twelve (K-12) public schools and institutions of higher education;

(2) "Third-party skills test" means the skills test required to obtain a commercial driver license that is administered by a third-party skills test examiner and that includes, but is not limited to, the pre-trip inspection, basic skills, and road skills;

(3) "Third-party skills test company" means an entity that contracts with and is certified by the department to provide third-party skills tests performed by third-party skills test examiners; and

(4) "Third-party skills test examiner" means an individual who has been authorized by the department to perform third-party skills tests.

(b) There is established a third-party skills testing program administered by the department for the purpose of facilitating the testing and licensure of commercial drivers.

In furtherance of the program:

(1) The department may contract with one (1) or more third-party skills test companies, subject to applicable contracting statutes and regulations; and

(2) The department may charge a third-party skills test company an annual fee not to exceed five hundred dollars (\$500) to cover the costs of administering the program. The department shall establish the annual fee by rule in accordance with the Uniform Administrative Procedures Act, compiled in title 4, chapter 5. The department may allow the fee to be waived for a public entity that becomes a third-party skills test company.

(c) An entity applying to be a third-party skills test company:

(1) Must have access to an appropriate testing area within this state that the department approves for conducting third-party skills tests;

(2) Must agree to charge a test taker no more than two hundred fifty dollars (\$250) per third-party skills test, including the test itself and all associated fees and charges;

(3) Must agree to issue to a successful test taker an indicator of passage on the skills test, either on a form developed by the department or by other means authorized by the department, which may include electronic means;

(4) Must initiate and maintain a bond in an amount determined by the department to be sufficient to pay for retesting drivers in the event that the third-party skills test company or one (1) or more of its third-party skills test examiners working for the company is involved in fraudulent activities related to testing applicants for a CDL. A third-party skills test company that is a government entity is not required to maintain a bond; and

(5) Must satisfy other eligibility criteria as the department may establish by rule in accordance with the Uniform Administrative Procedures Act, compiled in title 4, chapter 5.

(d) An individual applying to be a third-party skills test examiner:

(1) Must be at least twenty-one (21) years of age;

(2) Must possess a valid CDL with the classification and endorsement commensurate with the third-party skills test that the individual is applying to administer;

(3) Must possess a valid medical card or certificate;

(4) Must provide the individual's ten-year driving history. If the individual's entire driving history is shorter than ten (10) years, then the individual must provide the individual's entire driving history;

(5) Must not have been convicted of:

(A) A misdemeanor within the past ten (10) years resulting from the applicant driving while intoxicated;

(B) A felony within the past ten (10) years; or

(C) A crime involving fraudulent activities;

(6) Must complete the department's initial training program; and

(7) Must satisfy other eligibility criteria as the department may establish by rule in accordance with the Uniform Administrative Procedures Act, compiled in title 4, chapter 5.

(e) An application to become a third-party skills test company or a third-party skills test examiner must be submitted to the department on a form and in a manner as the department may prescribe.

(f) A CDL applicant shall remit payment for the administration of a third-party skills test to the third-party skills test company, regardless of whether the skills test was administered by a third-party skills test examiner who is an employee of the company or a contractor for the company.

(g)

(1) A third-party skills test examiner must perform a minimum of thirty (30) third-party skills tests per year. A third-party skills test counts toward this requirement whether or not the test was administered to a person employed by or attending a training program sponsored by the third-party skills test company with which the examiner is associated. If a third-party skills test examiner does not meet this requirement, then the third-party skills test examiner must either take a refresher training course administered by the department or have a state-employed CDL examiner co-score the next third-party skills test that the third-party skills test examiner administers.

(2)

(A) Notwithstanding subdivision (g)(1), a third-party skills test examiner who is unable to perform the required thirty (30) third-party skills

tests per year may apply to the department of safety for a waiver of this requirement.

(B) The commissioner or the commissioner's designee may grant the waiver upon good cause shown.

(C) If the waiver is denied, then compliance with subdivision (g)(1) is required.

(h) Each third-party skills test company and each area where third-party skills tests are administered must be inspected by the department on initial application. Thereafter, inspections may occur at the discretion of the department or the FMCSA.

(i) Third-party skills test companies and third-party skills test examiners must keep accurate records of all skills tests administered and the results of the tests administered, including whether an applicant passed or failed each portion of the skills test. These records must be available during normal business hours for audit or inspection by the department or the FMCSA. Failure to comply with department records requirements may result in disciplinary action up to and including termination of the third-party testing company's contract with the department. A CDL driver whose testing cannot be verified because a third-party skills test company or a third-party skills test examiner failed to keep or produce accurate records may be required to undergo a re-examination of one (1) or more aspects of the skills test by the department.

(j) A third-party skills test examiner may apply to the department to be authorized to perform school bus (S) endorsement skills testing pursuant to rules promulgated by the department in accordance with the Uniform Administrative Procedures Act, compiled in title 4, chapter 5.

(k)

(1) A third-party skills test company is not an agent of the department.

(2) A third-party skills test examiner must be an employee or a contractor of a third-party testing company, and a third-party skills test examiner is not an agent or employee of the department for any purpose.

55-50-416. Entry-level driver training.

(a) As used in this section, unless the context otherwise requires:

(1) "Approved FMCSA training provider" means an entity that is listed on the FMCSA training provider registry; and

(2) "Entry-level driver training" means training that a driver receives from an entity listed on the FMCSA training provider registry prior to the driver:

(A) Taking a skills test required to receive a Class A or Class B driver license for the first time;

(B) Taking a skills test required to upgrade to a Class A or Class B driver license;

(C) Taking a skills test required to obtain a passenger (P) endorsement for the first time;

(D) Taking a skills test required to obtain a school bus (S) endorsement for the first time; or

(E) Taking a test required to obtain a hazardous materials (H) endorsement for the first time.

(b)

(1)

(A) Prior to being issued a Class A or Class B driver license for the first time or upgrading to a Class A or Class B driver license, an applicant must complete entry-level driver training that includes driving theory and behind-the-wheel instruction on an open range and on public roads.

(B) Prior to being issued a passenger (P), school bus (S), or hazardous materials (H) endorsement for the first time, an applicant must complete the entry-level driver training appropriate for that endorsement.

(C) Except for a driver seeking a hazardous materials (H) endorsement for the first time, the theory instruction and the behind-the-wheel instruction portions of the driver's entry-level driver training must be completed within one (1) year of each other.

(2) The following applicants are not required to comply with the requirements of subdivision (b)(1):

(A) An applicant who is eligible for a skills test waiver pursuant to § 55-50-322(b)(2); and

(B) An applicant who is seeking to remove a restriction in accordance with 49 CFR 383.135(b)(7).

(3) An applicant for a CDL, CLP, or an endorsement for a CDL or CLP must comply with the requirements of 49 CFR § 380.600 et seq. in addition to other federal or state regulations, and all subsequent amendments promulgated, approved, and adopted by the FMCSA.

55-50-417. Federal clearinghouse.

(a) As used in this section, unless the context otherwise requires:

(1) "CDLIS" means the commercial driver license information system maintained by the FMCSA;

(2) "Clearinghouse" means the drug and alcohol clearinghouse maintained by the FMCSA; and

(3) "Downgrade":

(A) Means:

(i) To change a driver's self-certification to interstate, but operating exclusively in transportation or operations excepted

from 49 CFR Part 391, as provided in 49 CFR 390.3(f), 49 CFR 391.2, 49 CFR 391.68, or 49 CFR 398.3;

(ii) To change a driver's self-certification to intrastate only, if the driver qualifies under the department's physical qualification requirements for intrastate only;

(iii) To change a driver's self-certification to intrastate, but operating exclusively in transportation or operations excepted from all or part of the driver qualification requirements; or

(iv) To remove a CLP or CDL privilege from a driver license; and

(B) Includes recording the change on the driver's CDLIS driver record.

(b) Beginning November 1, 2024, and prior to the issuance of a new CLP or CDL, a renewal of a CLP or CDL, a transfer of a CLP or CDL to another state, or an upgrade to a different class of CDL, the department shall request the driver's record from the clearinghouse.

(c) If the department receives notification from the clearinghouse that pursuant to federal regulations the driver is prohibited from operating a commercial motor vehicle, regardless of whether that notification is received in response to a request under subsection (b), then the department shall not issue, renew, transfer, or upgrade the driver's CLP or CDL. The department shall downgrade a driver's CLP or CDL within sixty (60) days of the department's receipt of the notification.

(d)

(1) If the department receives notification from the clearinghouse that a driver is no longer prohibited from operating a commercial motor vehicle before the department has finished downgrading the driver's CLP or CDL, then the department shall not downgrade the driver's CLP or CDL.

(2) If the department receives notification from the clearinghouse that a driver is no longer prohibited from operating a commercial motor vehicle after the department has finished downgrading the driver's CLP or CDL, then the department shall make the driver eligible for reinstatement of the driver's CLP or CDL privilege.

(3) If the department receives notification from the clearinghouse that the driver was erroneously identified as being prohibited from operating a commercial motor vehicle after the department has finished downgrading the driver's CLP or CDL, then the department shall:

(A) Reinstatement the CLP or CDL privilege to the driver's license as expeditiously as possible; and

(B) Expunge any reference related to the driver's erroneous prohibited status from the CDLIS driver record and, if applicable, the driver's motor vehicle record.

55-50-418. Audits; research partnership.

(a) The department shall periodically audit CDL skills tests conducted by department employees. The audit may include, but is not limited to, overt observation of skills examinations, covert observations of skills examinations, and co-scoring of skills examinations.

(b) By January 1, 2023, the department shall prepare informational materials for individuals preparing to take the CDL skills tests.

(c) The department is authorized to partner with institutions of higher education to conduct research related to commercial drivers and CDLs, strategies to promote driving careers in the commercial trucking industry, and strategies to better enable drivers to obtain and retain CDLs.

SECTION 4. Tennessee Code Annotated, Section 55-50-302(c)(1), is amended by deleting the subdivision and substituting instead:

(1)

(A) The applicant must be at least twenty-one (21) years of age; provided, however, the department is authorized to issue interstate CDLs to persons at least eighteen (18) years of age but less than twenty-one (21) years of age if such issuance is approved and authorized by the FMCSA and the department follows all FMCSA regulations regarding the issuance of interstate CDLs to persons at least eighteen (18) years of age but less than twenty-one (21) years of age; or

(B) Notwithstanding subdivision (c)(1)(A), an applicant who is at least eighteen (18) years of age is eligible for a Class A or B license if:

(i) The applicant does not require a special endorsement;

(ii) A commercial vehicle operated by the applicant will be operated solely within this state;

(iii) The applicant has met all other requirements for a CDL under this chapter; and

(iv) Issuing a Class A or B license to the applicant is not prohibited under 49 CFR Parts 383 and 391, or federal rules;

SECTION 5. Tennessee Code Annotated, Title 41, Chapter 21, Part 5, is amended by adding the following as a new section:

41-21-517. Commercial driver license training.

The department of correction, in consultation with the department of safety, is authorized to create a commercial driver license training program for purposes of training offenders who, upon release from incarceration, may be suitable for careers in the transportation industry. A training program created pursuant to this section must conform to the requirements in title 55, chapter 50; rules promulgated by the department of safety; and rules promulgated by the federal motor carrier safety administration. The departments of correction and safety are authorized to promulgate rules to effectuate

this section, in accordance with the Uniform Administrative Procedures Act, compiled in title 4, chapter 5.

SECTION 6. Tennessee Code Annotated, Section 55-50-302, is amended by adding the following as a new subsection:

() An individual who holds a school bus (S) endorsement must attend annual training as required by the department in order to maintain the endorsement.

SECTION 7. Tennessee Code Annotated, Section 12-2-403, is amended by adding the following as a new subsection:

() Notwithstanding any law to the contrary, a surplus commercial motor vehicle in possession of a state agency may, with payment of reasonable financial consideration and following notice to the commissioner of general services, be transferred to the department of safety for use in the department's commercial driver license testing program. A surplus vehicle transferred under this section must be sold as provided in this section when the vehicle is no longer in use by the department of safety.

SECTION 8. Tennessee Code Annotated, Section 49-6-2107(e)(1), is amended by deleting the language "no person shall be issued a certificate to drive a school bus in this state who, within five (5) years of the person's request for a certificate" and substituting instead the language "a person shall not be issued a certificate to drive a school bus in this state or authorized as a third-party skills test examiner for a school bus (S) endorsement pursuant to § 55-50-415 who, within the preceding five (5) years".

SECTION 9. Tennessee Code Annotated, Section 49-6-2107, is amended by adding the following as a new subsection:

() Notwithstanding subsection (a), an individual authorized as a third-party skills test examiner for school bus (S) endorsement skills testing pursuant to § 55-50-415 is not required to submit a certificate from the county board of education, unless the individual is also providing transportation services for a school.

SECTION 10. Tennessee Code Annotated, Section 55-50-407, is amended by adding the following as a new subsection:

() An applicant for renewal of a CDL whose license has been expired for more than one (1) renewal cycle as set forth in § 55-50-337 must successfully complete all appropriate examinations for the issuance of a new CDL.

SECTION 11. The headings to sections, chapters, and parts in this act are for reference purposes only and do not constitute a part of the law enacted by this act. However, the Tennessee Code Commission is requested to include the headings in any compilation or publication containing this act.

SECTION 12. If any provision of this act or the application of any provision of this act to any person or circumstance is held invalid or non-compliant with federal regulations, the invalidity does not affect other provisions or applications of the act that can be given effect without the invalid provision or application, and to that end, the provisions of this act are declared to be severable.

SECTION 13. For the purposes of promulgating rules, this act takes effect upon becoming a law, the public welfare requiring it. For all other purposes, this act takes effect July 1, 2022, the public welfare requiring it.