

MICROFILM DIVIDER

OMB/RECORDS MANAGEMENT DIVISION

SFN 2053 (2/85) 5M



ROLL NUMBER

DESCRIPTION

2087

2001 SENATE TRANSPORTATION

SB 2087

2001 SENATE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. 2087

Senate Transportation Committee

☐ Conference Committee

Hearing Date 1-18-01

Tape Number	Side A	Side B	Meter #
1	x		0.0-43.8
1-25-01 1		x	16.0-18.1
Committee Clerk Signature <i>Suzette Schaefer</i>			

Minutes: SB 2087 relates to intrastate exemptions from federal hours of service provisions for intrastate drivers.

Doyle Schulz: (Motor Carrier Operations Director/NDHP; Supports) See attached testimony.

Senator Mutch: In reference to Motor Carriers Association Program, how much money are we talking about and what do you spend the money on?

Doyle Schulz: \$500,000 lost per year. The money is spent on the support of the inspections employees. Basically pays for Motor Carrier Operations every year.

Curt Peterson: (Association of General Contractors; Neutral) States that the elimination of this is not necessary to do now because federal government law doesn't require it. Also that this is important to contractors because of intensity of short construction season.

Dennis Kramer: (Northern Improvement; Opposes) Gives a detailed explanation of how the 24 hour law works. Also states that contractors are not the same as intrastate drivers in the sense that they do not drive continuously.

Doyle Schulz: Returns to podium and gives more support and summary of the bill. Also states that oil and construction industry is already granted under federal regulations.

Dan Cushing: (NDHP; Supports) Explains the difference between interstate drivers and intrastate drivers. Also gives a copy of federal regulations exempting oil field and construction industries to the committee.

Leroy Eringstad: (ND Motor Association; Supports) States that he supports bill now that he sees the current federal regulations exempting oil and construction businesses.

Senator Bercier: "Dennis, would you be in objection to us striking subsection 3?"

Dennis Kramer: No.

Hearing closed.

Committee meeting on SB 2087 on 1-25-01.

Senator Stenehjem: Doyle Schulz (Motor Carrier Operations Director) is present today to answer any questions we may have. (None asked)

Senator Espegard: The contract and oil people are fine with this bill now.

Senator O'Connell moved to pass SB 2087. Senator Espegard seconded. Roll call vote taken 6-0-0.

1-25-01

208-1

Committee

or

Legislative Council Amendment Number

Do Pass

e By Sen. O'Connell

By

zen Espeland

[illegible]

6

Sen. Mutch

If the vote is on an amendment, briefly indicate intent:

REPORT OF STANDING COMMITTEE (410)
January 25, 2001 3:00 p.m.

Module No: SR-13-1651
Carrier: Mutch
Insert LC: . Title: .

REPORT OF STANDING COMMITTEE

SB 2087: Transportation Committee (Sen. Stenehjem, Chairman) recommends DO PASS
(6 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). SB 2087 was placed on the
Eleventh order on the calendar.

2001 HOUSE TRANSPORTATION

SB 2087

2001 HOUSE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. SB 2087

House Transportation Committee

☐ Conference Committee

Hearing Date February 15, 2001

Tape Number	Side A	Side B	Meter #
1	x		125
Committee Clerk Signature <i>Lauren L. Fink</i>			

Minutes: Rep. Weisz - Chairman opened the hearing on SB 2087: A BILL for an Act to amend and reenact section 39-32-02 of the North Dakota Century Code, relating to intrastate exemptions from federal hours of service provisions for intrastate drivers.

Doyle Shulz: I am Director for Motor Carrier Operations for the North Dakota Highway Patrol. I have copies of my prepared written testimony to handout here. A copy of his written testimony is attached.

Rep. Weisz - Chairman (304) Who will this affect?

Doyle Schulz: This will affect any truly intrastate operations. I discussed this with Mr. Ernst of The North Dakota Motor Carrier Association. He didn't feel that his would affect very many at all.

No one has contacted me on this. I don't feel the impact will be very great at all.

Rep. Weisz - Chairman (385) being there is no one wishing to testify for or against SB 2087 the Hearing is closed.

Rep. Hawken: (506) I move a 'Do Pass' on SB 2087.

Page 2
House Transportation Committee
Bill/Resolution Number SB 2087
Hearing Date February

Rep. Jensen: (513) I second the motion.

On a roll call vote the motion carried: 12 yeas 0 nays 2 absent.

Rep. Thorpe was designated to carry SB 2087 on the floor.

Date: 2/15
Roll Call Vote #:

2001 HOUSE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. SB 2087

House Transportation Committee

☐ Subcommittee on _____
or
☐ Conference Committee

Legislative Council Amendment Number _____

Action Taken Do Pass

Motion Made By Rep Hunker Seconded By Rep Jensen

Representatives	Yes	No	Representatives	Yes	No
Robin Weisz - Chairman	✓		Howard Grumbo	✓	
Chet Pollert - Vice Chairman	✓		John Mahoney	✓	
Al Carlson	✓		Arlo E. Schmidt	A	
Mark A. Dosch	✓		Elwood Thorpe	✓	
Kathy Hawken	✓				
Roxanne Jensen	✓				
RaeAnn G. Kelsch	✓				
Clara Sue Price	✓				
Dan Ruby	✓				
Laurel Thoreson	A				

Total (Yes) 12 No 0

Absent 2 A

Floor Assignment Rep Thorpe

If the vote is on an amendment, briefly indicate intent:

REPORT OF STANDING COMMITTEE (410)
February 15, 2001 12:07 p.m.

Module No: HR-28-3489
Carrier: Thorpe
Insert LC: . Title: .

REPORT OF STANDING COMMITTEE

SB 2087: Transportation Committee (Rep. Welsz, Chairman) recommends DO PASS
(12 YEAS, 0 NAYS, 2 ABSENT AND NOT VOTING). SB 2087 was placed on the
Fourteenth order on the calendar.

2001 TESTIMONY

SB 2087

Senate Bill 2087

Presented by

Mr. Doyle Schulz, Motor Carrier Operations Director/NDHP

Good morning, Mr. Chairman and members of the Senate Transportation Committee.

The 1997 Legislature created Chapter 39-32, Intrastate Commercial Drivers Hours of Service. The purpose was to utilize federally authorized variances from the Federal Motor Carrier Safety Regulations for state laws. These variances are listed in the FMCSR Part 350.341 "What specific variances from the FMCSRs are allowed for state laws and regulations governing motor carriers, CMV drivers, and CMVs engaged in intrastate commerce and not subject to Federal jurisdiction" We have adopted all these variances and one that we are not entitled to, that is subdivision 3 "Following twenty-four consecutive hours off, an intrastate driver begins a new seven day period and on duty time is reset to zero." This variance is not listed in Part 350.341 and has not been authorized by the Federal Motor Carrier Safety Administration.

In reviewing the initial testimony, it appears the construction industry, represented by Mr. Curt Peterson and various business and safety officials, testified in support of the bill. Their concern was driving time, on-duty time, and the twenty-four hour restart.

FMSCRs Part 395.1, Hours of Service of Drivers, lists various exceptions to the federal hours of service rules. Under (d) Oilfield operations and (m) Construction materials and equipment both are allowed to restart their seven-day clock following twenty-four or more successive hours off-duty.

The removal of subdivision 3 will not affect current construction or oilfield operations. I have discussed this with Mr. Peterson and also with Mr. Leroy Ernst the director of the North Dakota Motor Carrier Association.

Failure to pass this bill would put the state in non-compliance with the FMCSRs and subject to having 50 percent of our Motor Carrier Safety Assistance Program funding cut.

Thank you for your time. If there are any questions, I will attempt to answer them at this time.

that neither the GVW, GVWR, GCW, nor GCWR of the vehicle equals or exceeds 11,801 kg (26,001 lbs.). However, a State may not exempt a CMV from such laws or regulations if the vehicle:

- (1) Transports hazardous materials requiring a placard.
- (2) Is designed or used to transport 16 or more people, including the driver.
- (b) State laws and regulations applicable to intrastate commerce may not grant exemptions based upon the type of transportation being performed (e.g., for-hire, private, etc.).
- (c) A State may retain those exemptions from its motor carrier safety laws and regulations that were in effect before April, 1988, are still in effect, and apply to specific industries operating in intrastate commerce.
- (d) State laws and regulations applicable to intrastate commerce must not include exemptions based upon the distance a motor carrier or driver operates from the work reporting location. This prohibition does not apply to those exemptions already contained in the FMCSRs nor to the extension of the mileage radius exemption contained in 49 CFR 395.1(e) from 100 to 150 miles.
- (e) Hours of service—State hours-of-service limitations applied to intrastate transportation may vary to the extent of allowing the following:
 - (1) A 12-hour driving limit, provided driving a CMV after having been on duty more than 16 hours is prohibited.
 - (2) Driving prohibitions for drivers who have been on duty 70 hours in 7 consecutive days or 80 hours in 8 consecutive days.
- (f) Age of CMV driver—All CMV drivers must be at least 18 years of age.
- (g) Grandfather clauses—States may provide grandfather clauses in their rules and regulations if such exemptions are uniform or in substantial harmony with the FMCSRs and provide an orderly transition to full regulatory adoption at a later date.
- (h) Driver qualifications:
 - (1) Intrastate drivers who do not meet the physical qualification standards in 49 CFR 391.41 may continue to be qualified to operate a CMV in intrastate commerce if the following three conditions are met:
 - (i) The driver was qualified under existing State law or regulation at the time the State adopted physical qualification standards compatible with the Federal standards in 49 CFR 391.41.
 - (ii) The otherwise non-qualifying medical or physical condition has not substantially worsened.
 - (iii) No other non-qualifying medical or physical condition has developed.
 - (2) The State may adopt or continue programs granting variances to intrastate drivers with medical or physical conditions that would otherwise be non-qualifying under the State's equivalent of 49 CFR 391.41 if the variances are based upon sound medical judgment combined with appropriate performance standards ensuring no adverse affect on safety.

§350.343 How may a State obtain a new exemption for State laws and regulations for a specific industry involved in intrastate commerce?

The FMCSA strongly discourages exemptions for specific industries, but will consider such requests if the State submits documentation containing information supporting evaluation of the following 10 factors:

- (a) Type and scope of the industry exemption requested, including percentage of industry affected, number of vehicles, mileage traveled, number of companies involved.
- (b) Type and scope of the requirement to which the exemption would apply.
- (c) Safety performance of that specific industry (e.g., accident frequency, rates and comparative figures).
- (d) Inspection information (e.g., number of violations per inspection, driver and vehicle out-of-service information).
- (e) Other CMV safety regulations enforced by other State agencies not participating in the MCSAP.
- (f) Commodity transported (e.g., livestock, grain).
- (g) Similar variations granted and the circumstances under which they were granted.
- (h) Justification for the exemption.
- (i) Identifiable effects on safety.
- (j) State's economic environment and its ability to compete in foreign and domestic markets.

§350.345 How does a State apply for additional variances from the FMCSRs?

Any State may apply to the Administrator for a variance from the FMCSRs for intrastate commerce. The variance will be granted only if the State satisfactorily demonstrates that the State law, regulation or enforcement practice:

- (a) Achieves substantially the same purpose as the similar Federal regulation.
- (b) Does not apply to interstate commerce.

PART 394

[REMOVED AND RESERVED]

Editor's Note: Effective March 4, 1993, the Accident Reporting Requirements were deleted. An accident register is now required to be maintained in accordance with Sec. 390.15(b). DOT's definition of an "Accident" is contained in Sec. 390.5.

PART 395 — HOURS OF SERVICE OF DRIVERS

Sec.	
395.1	Scope of rules in this part.
395.2	Definitions.
395.3	Maximum driving time.
395.7	[Removed and reserved.]
395.8	Driver's record of duty status.
395.10	[Removed and reserved.]
395.11	[Removed and reserved.]
395.12	[Removed and reserved.]
395.13	Drivers declared out of service.
395.15	Automatic on-board recording devices.

AUTHORITY: 49 U.S.C. 31133, 31136, and 31502; sec. 345, Pub.L. 104-59, 109 Stat. 568, 613; and 49 CFR 1.48.

§395.1 Scope of rules in this part.

(a) **General.** (1) The rules in this part apply to all motor carriers and drivers, except as provided in paragraphs (b) through (n) of this section.

(2) The exceptions from Federal requirements contained in paragraphs (l) through (n) do not preempt State laws and regulations governing the safe operation of commercial motor vehicles.

(b) **Adverse driving conditions.** (1) Except as provided in paragraph (i)(2) of this section, a driver who encounters adverse driving conditions, as defined in §395.2, and cannot, because of those conditions, safely complete the run within the 10-hour maximum driving time permitted by §395.3(a) may drive and be permitted or required to drive a commercial motor vehicle for not more than 2 additional hours in order to complete that run or to reach a place offering safety for the occupants of the commercial motor vehicle and security for the commercial motor vehicle and its cargo. However, that driver may not drive or be permitted to drive—

(i) For more than 12 hours in the aggregate following 8 consecutive hours off duty; or

(ii) After he/she has been on duty 15 hours following 8 consecutive hours off duty.

(2) **Emergency conditions.** In case of any emergency, a driver may complete his/her run without being in violation of the provisions of the regulations in this part, if such run reasonably could have been completed absent the emergency.

(c) **Driver-salesperson.** The provisions of §395.3(b) shall not apply to any driver-salesperson whose total driving time does not exceed 40 hours in any period of 7 consecutive days.

(d) **Oilfield operations.** (1) In the instance of drivers of commercial motor vehicles used exclusively in the transportation of oilfield equipment, including the stringing and picking up of pipe used in pipelines, and

servicing of the field operations of the natural gas and oil industry, any period of 8 consecutive days may end with the beginning of any off-duty period of 24 or more successive hours.

(2) In the case of specially trained drivers of commercial motor vehicles which are specially constructed to service oil wells, on-duty time shall not include waiting time at a natural gas or oil well site; **provided**, that all such time shall be fully and accurately accounted for in records to be maintained by the motor carrier. Such records shall be made available upon request of the Federal Highway Administration.

(e) **100 air-mile radius driver.** A driver is exempt from the requirements of Section 395.8 if:

(1) The driver operates within a 100 air-mile radius of the normal work reporting location;

(2) The driver, except a driver salesperson, returns to the work reporting location and is released from work within 12 consecutive hours;

(3) At least 8 consecutive hours off duty separate each 12 hours on duty;

(4) The driver does not exceed 10 hours maximum driving time following 8 consecutive hours off duty; and

(5) The motor carrier that employs the driver maintains and retains for a period of 6 months accurate and true time records showing:

(i) The time the driver reports for duty each day;

(ii) The total number of hours the driver is on duty each day;

(iii) The time the driver is released from duty each day; and

(iv) The total time for the preceding 7 days in accordance with §395.8(j)(2) for drivers used for the first time or intermittently.

(f) **Retail store deliveries.** The provisions of §395.3 (a) and (b) shall not apply with respect to drivers of commercial motor vehicles engaged solely in making local deliveries from retail stores and/or retail catalog businesses to the ultimate consumer, when driving solely within a 100-air mile radius of the driver's work-reporting location, during the period from December 10 to December 25, both inclusive, of each year.

(g) **Sleeper berths.** Drivers using sleeper berth equipment as defined in §395.2 or who are off duty at a natural gas or oil well location, may cumulate the required 8 consecutive hours off duty, as required by §395.3, resting in a sleeper berth in two separate periods totaling 8 hours, neither period to be less than 2 hours, or resting while off duty in other sleeping accommodations at a natural gas or oil well location.

(h) **State of Alaska.** (1) The provisions of §395.3 shall not apply to any driver who is driving a commercial motor vehicle in the State of Alaska. A driver who is driving a commercial motor vehicle in the State of Alaska must not drive or be required or permitted to drive—

(i) More than 15 hours following 8 consecutive hours off duty;

(ii) After being on duty for 20 hours or more following 8 consecutive hours off duty;

period of 7 consecutive days, if the motor carrier for which the driver drives does not operate every day in the week; or

(iv) After having been on duty for 80 hours in any period of 8 consecutive days, if the motor carrier for which the driver drives operates every day in the week.

(2) A driver who is driving a commercial motor vehicle in the State of Alaska and who encounters adverse driving conditions (as defined in §395.2) may drive and be permitted or required to drive a commercial motor vehicle for the period of time needed to complete the run. After he/she completes the run, that driver must be off duty for 8 consecutive hours before he/she drives again.

(i) **State of Hawaii.** The rules in §395.8 do not apply to a driver who drives a commercial motor vehicle in the State of Hawaii, if the motor carrier who employs the driver maintains and retains for a period of 6 months accurate and true records showing—

(1) The total number of hours the driver is on duty each day; and

(2) The time at which the driver reports for, and is released from, duty each day.

(j) **Travel time.** When a driver at the direction of the motor carrier is traveling, but not driving or assuming any other responsibility to the carrier, such time shall be counted as on-duty time unless the driver is afforded at least 8 consecutive hours off duty when arriving at destination, in which case he/she shall be considered off duty for the entire period.

(k) **Agricultural operations.** The provisions of §395.3 shall not apply to drivers transporting agricultural commodities or farm supplies for agricultural purposes in a State if such transportation:

(1) Is limited to an area within a 100 air mile radius from the source of the commodities or the distribution point for the farm supplies, and

(2) Is conducted during the planting and harvesting seasons within such State, as determined by the State.

(l) **Ground water well drilling operations.** In the instance of a driver of a commercial motor vehicle who is used primarily in the transportation and operations of a ground water well drilling rig, any period of 7 or 8 consecutive days may end with the beginning of any off-duty period of 24 or more successive hours.

(m) **Construction materials and equipment.** In the instance of a driver of a commercial motor vehicle who is used primarily in the transportation of construction materials and equipment, any period of 7 or 8 consecutive days may end with the beginning of any off-duty period of 24 or more successive hours.

(n) **Utility service vehicles.** In the instance of a driver of a utility service vehicle, any period of 7 or 8 consecutive days may end with the beginning of any off-duty period of 24 or more successive hours.

[57 FR 33647, July 30, 1992, as amended at 58 FR 33777, June 21, 1993; 60 FR 38748, July 26, 1995; 63 FR 33279, June 18, 1998]

As used in this part, the following words and phrases are construed to mean:

Adverse driving conditions means snow, fog, other adverse weather conditions, a highway covered with snow or ice, or unusual road conditions, none of which were apparent on the information known to the person dispatching at the time it was begun.

Automatic on-board recording device means electric, electronic, electromechanical, or mechanical device capable of recording driver's duty status accurately and automatically as required by §395.15. The device must be integrally synchronized with specific operations of the commercial motor vehicle in which it is installed. At a minimum, the device must record engine use, road speed, miles driven, date, and time of day.

Driver-salesperson means any employee employed solely as such by a private carrier of property by commercial motor vehicle, who is engaged in selling goods, services, or the use of goods, and in providing by commercial motor vehicle the goods or services provided or upon which the services are performed who does so entirely within a radius of 100 miles from the point at which he/she reports for duty, who devotes more than 50 percent of his/her hours on duty to selling time. The term **selling goods** for purposes of this section shall include in all cases solicitation or obtaining of reorders or new accounts, and may also include other selling or merchandising activities designed to retain the customer or to increase the sale of goods or services, in addition to solicitation or obtaining of reorders or new accounts.

Driving time means all time spent at the controls of a commercial motor vehicle in operation.

Eight consecutive days means the period of 8 consecutive days beginning on any day at the time designated by the motor carrier for a 24-hour period.

Ground water well drilling rig means any vehicle, machine, tractor, trailer, semi-trailer, or special mobile equipment propelled or drawn by mechanical power and used on highways to transport water field operating equipment, including water well drilling and pump service rigs equipped to access water.

Multiple stops means all stops made in any place, town, or city may be computed as one.

On duty time means all time from the time a driver begins to work or is required to be in readiness to work until the time the driver is relieved from work and has no responsibility for performing work. **On-duty time** shall include:

(1) All time at a plant, terminal, facility, or property of a motor carrier or shipper, or on any other property, waiting to be dispatched, unless the driver has been relieved from duty by the motor carrier.

(2) All time inspecting, servicing, or conditioning a commercial motor vehicle at any time;