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(FORM UPDATED: 08/11/2010)

WISCONSIN STATE LEGISLATURE ... PUBLIC HEARING - COMMITTEE RECORDS

2005-06

(session year)

Senate

(Assembly, Senate or Joint)

Committee on Natural Resources and Transportation...

COMMITTEE NOTICES ...

- Committee Reports ... **CR**
- Executive Sessions ... **ES**
- Public Hearings ... **PH**

INFORMATION COLLECTED BY COMMITTEE FOR AND AGAINST PROPOSAL

- Appointments ... **Appt** (w/Record of Comm. Proceedings)
- Clearinghouse Rules ... **CRule** (w/Record of Comm. Proceedings)
- Hearing Records ... bills and resolutions (w/Record of Comm. Proceedings)
(**ab** = Assembly Bill) (**ar** = Assembly Resolution) (**ajr** = Assembly Joint Resolution)
(**sb** = Senate Bill) (**sr** = Senate Resolution) (**sjr** = Senate Joint Resolution)
- Miscellaneous ... **Misc**

* Contents organized for archiving by: Stefanie Rose (LRB) (June 2012)

Senate

Record of Committee Proceedings

Committee on Natural Resources and Transportation

Assembly Bill 762

Relating to: exempting from motor carrier regulations certain vehicle combinations operated in intrastate commerce.

By Representatives Nerison, Ainsworth, Petrowski, Hahn, Ott, Lamb, Davis, Gronemus, Vruwink, Albers, M. Williams, Loeffelholz, Towns, Ballweg, Bies, Boyle, Freese, Gunderson, Gundrum, Hines, Hundertmark, Kestell, Kleefisch, LeMahieu, Musser, Owens, Pettis, Pridemore, Schneider, Townsend, Ward and Wood; cosponsored by Senators Harsdorf, Kapanke, Brown, Olsen, A. Lasee and Grothman.

November 01, 2005 Referred to Committee on Natural Resources and Transportation.

November 3, 2005 **PUBLIC HEARING HELD**

Present: (5) Senators Kedzie, Stepp, Kapanke, Wirch and Breske.
Absent: (0) None.

Appearances For

- Representative Lee Nerison

Appearances Against

- None.

Appearances for Information Only

- Lt. Charles Teasdale — WI Department of Transportation

Registrations For

- Jeff Wiswell — Wisconsin Sheriff's & Deputy Sheriffs Association
- Senator Sheila Harsdorf — 10th Senate District
- Sabrina Gentile — Wisconsin Farm Bureau
- Senator Alan Lasee — 1st Senate District
- Ron Kuehn — WI Pork Association, WI Cattlemen's Association
- Senator Dan Kapanke — 32nd Senate District

Registrations Against

- None.

December 5, 2005 EXECUTIVE SESSION - POLLING

Moved by Senator Kedzie that **Senate Amendment 1** be recommended for adoption.

Ayes: (2) Senators Kedzie and Stepp.

Noes: (3) Senators Kapanke, Wirch and Breske.

ADOPTION OF SENATE AMENDMENT 1 NOT RECOMMENDED, Ayes 2, Noes
3

Moved by Senator Kedzie that **Assembly Bill 762** be recommended for concurrence.

Ayes: (5) Senators Kedzie, Stepp, Kapanke, Wirch and Breske.

Noes: (0) None.

CONCURRENCE RECOMMENDED, Ayes 5, Noes 0

Dan Johnson
Committee Clerk



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96TH ASSEMBLY DISTRICT

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Assembly Bill 762
Testimony of Rep. Lee Nerison
Senate Cmte. On Transportation and Natural Resources
November 3, 2005

Dear Chairman Kedzie and Committee Members:

It's getting mighty tough these days just to take your cow to town, so thank you for holding a hearing on Assembly Bill 762.

My bill would exempt vehicles with farm and dual purpose plates from requirements of the Federal Motor Carrier Safety Code. The requirement that farm trucks display US DOT numbers, just like the big rigs you see up on the interstate, is the most visible of those requirements.

If you are a farmer with a pickup truck and a cattle trailer, then your gross vehicle weight is over 10,000 lbs. and you are regulated like a regular over-the-road trucker in many ways. As it turns out, that's been the rule for quite some time, but the DOT has only recently begun enforcing those rules on farm vehicles.

Until this spring, I can't think of a farmer who was aware of this and let me tell you, it has come as quite a shock to them.

In my district, they are getting pulled over while hauling cattle from their farms to local sale barns. Until a press release put out by DOT earlier this summer, contact with a State Trooper is the first time these farmers have known that special requirements applied to them. It's the first time that they *could* have known.

And it isn't just on the way to the sale barn that you have to worry about having a US DOT number. Any time that you are working, you are engaged in commerce and the rules apply on all of our public roads. If you are hauling cattle from your heifer barn to the milking barn or just bringing a bag of lime home from town with your pickup and a trailer, you are subject to these federal rules that have been adopted as state regulations.

It's amazing to think that this happened in the dairy state without our farmers' knowledge!

On any given day a farmer may have to be a professional businessman, biologist, chemist, mechanic, veterinarian, and now it looks like we have to add trucker to that list.

There is no federal law that requires Wisconsin to enforce these regulations. It looks like we have been doing it because the WI DOT initially believed that receiving our FMCSA depended on it.

Our fiscal estimate now shows that there will be no impact. That is because we were able to get confirmation from the Federal Motor Carrier Safety Administration in Washington that the bill will have no impact on federal funding of our safety enforcement programs.

Our neighbors in MN do not require the DOT numbers and their funding is not affected. There is no reason that I have found to believe that MN farm trucks are somehow less safe ours.

The issue of *safety* really didn't come up during our hearing in the Assembly. Farm pickup trucks have to be safe and secure under the same rules that apply to the same trucks when they pull snowmobiles, campers, and boats. You can be pulled over if a trooper sees that something is not working.

It is my preference to pass this bill in its current form. Amendments at this point could slow the progress of this bill and that would be a concern because:

Farmers are anxiously waiting for resolution. They are afraid of being pulled over and want to know for certain whether-or-not they will need the number.

The letter upon which our fiscal estimate is based is written specifically to AB 762 and the letter took months and required congressional intervention to secure.

The hauling that will generally be exempted under this bill is for farmers hauling their own property. Intuitively, they are not like other haulers because they are transporting their own property, are not for hire, and are not making long interstate trips.

Farmers are the only group which has expressed a desire for this exemption.

I apologize that some of my constituents could not make it down for this second hearing but I hope you will consider the bind they have found themselves in. They tell troubling stories about being pulled over and inspected when there was no way they could reasonably have known they were subject to special regulations. There is a great deal of confusion about what rules apply to them and it has been very upsetting.

Thank you for listening to me and for hearing from my constituents today. I look forward to continuing to work with the committee and resolving the issue as soon as we can because right now is when farmers are wondering what to do.

Sincerely,

Lee Nerison
State Representative
96th Assembly District

Attachments



capitol update

Farmers Need Federal ID Numbers

with Joan Sanstadt

on Their Pickups

and they didn't have them on trailers then. I said I'd go get one and put it on and I've done that now.

"Then he wrote me down as having my trailer out of service and followed me home to my door step to be sure I didn't go anywhere with my trailer," Kevin said. The citation he received was Number F1229616 and was for \$164.20. "The good news was I didn't lose any points," Kevin added. To avoid having to deal with the issue any further, Kevin said he paid for the ticket right away with a personal check.

All in all Kevin said the officer was "rather decent about it - but once they stop you they can check you for everything else - and he did."

Kevin said the officer told him "if you want the law changed, go to your congressman and get it changed."

When he got back in the house, Kevin said he called the Department of Transportation and asked a couple of questions. "The guy that answered the phone said I was lucky I hadn't been stopped 'by that lady,' because if she stops you she gives you the whole works."

Nerison says "Wisconsin transportation officials are using a grant of federal money from the Motor Carrier Safety Assistance Program to pay for officer overtime to increase the frequency of vehicle inspections. Around the state, officers have been pulling farm trucks over to do just that."

In addition to the federal ID numbers and name plates on truck cab doors, the pickups must have flares, safety triangles fire extinguishers "and a lot of things we don't think of," Nerison said.

Nerison, a farmer-legislator, pointed out all the things a farmer has to do to make his farm business work including "having a business sense, being part biologist, chemist, mechanic and whatever else comes up that day.

"But farmers shouldn't have to be professional, over-the-road truckers just to take a couple of their own cows to market," he added.

But that is exactly the way they are being treated - at least for now.

Agri-View spoke with Kevin Clark, who farms with his parents near Richland Center. A couple of weeks ago Kevin was on his way back home from taking a cow to the Equity Market at Richland Center.

He was traveling on State Highway 80 in Rockbridge Township, about five miles north of Center. "Officer David Cahoon stopped me and said it was because I didn't have a sign or ID number on my truck and I was over 10,000 pounds.

"While I stopped, the officer also did a safety check and said I had a tire with too low a tread on the trailer - and it was because of that low tread that he said he was giving me the ticket. He also said it was the cheapest thing he could get me for that day," Kevin related.

"He also found I didn't have a brake controller on my trailer - well I bought it new in 1987

Agri-View asked Mike Dummer, chair of the board of Agriculture, Trade and Consumer Protection and who also works for Equity, about the federal ID numbers.

"I had no idea a federal ID number was needed for a farm truck pulling a livestock trailer - pulling the farmer's own personal belongings (cattle) to market," Dummer said.

Agri-View did make several calls to the Department of Transportation - but it was difficult to find someone who knew about this safety code available to talk about it. We did speak to a Lt. Chuck Teasdale, the program coordinator for motor safety assistance program grants. He was certainly cordial and willing to listen. He even said he found it hard to believe a farmer would be ticketed for not having the required federal ID number. (As Kevin related, he was stopped for not having the number but ticketed for the low tread on the tire, a safety violation.)

Lt. Teasdale also said the department had circulated information about the requirement but as far as this reporter could tell that had not included farm groups or farm publications in that process.

Nerison is drafting legislation that would exempt trucks with farm plates from the requirements of this Federal Motor Carrier Safety Code.

Agri-View will keep you posted about this legislation and especially when there is a public hearing on it. In the meantime stay in touch with your farm organizations and let your elected representatives (state and federal) know how you feel about having your farm truck treated like an 18-wheel-

A farmer in the southwest part of the state got quite a prise a few weeks ago when was stopped by the State rol on Highway 80. The rea he was pulled over was ause he didn't have a federal ntification number on his ck, the state trooper told

A federal ID number? For a truck?

That's right - the only prob is that there hasn't been a effective effort to commu te that information to farm-

Agri-View spoke with Scott mans, legislative aide to . Lee Nerison (R-Westby) now holds the seat held for y years by DuWayne nsrud.

Loomans said the federal ID ber was an issue Johnsrud begun working on and that ison has taken up. *Agri- v* has learned that another maker, Rep. Barbara nemus (D-Whitehall), has gotten complaints on the er.

n essence, farmers who : a pickup and a stock trail- re being treated like semi- ks. The problem began n Wisconsin adopted the eral Motor Carrier safety ram Code (49 CFC 350). gned to guarantee the safe- f commercial vehicles on highways, privately owned up trucks pulling livestock ers fall under the require- s of the same code.

Subject: Wisconsin Assembly Substitute Amendment
To 2005 Assembly Bill 342

From: Charles Medalen October 11, 2005
Attorney Advisor, Office of Chief Counsel
Federal Motor Carrier Safety Administration (FMCSA)

To: Mark Jefferson
Office of Assembly Majority Leader Michael D. Huebsch
Wisconsin State Assembly

You called FMCSA's Office of Chief Counsel on Friday, October 7, to request a review of a bill pending in the Wisconsin Assembly, the Substitute Amendment to 2005 Assembly Bill 342. Deputy Chief Counsel Judith Rutledge asked me to handle the matter, and you sent me a copy of the bill that afternoon. Your cover e-mail noted that the Assembly is trying to ensure that the exemption described in the bill "will not violate federal requirements or jeopardize federal funding."

The Substitute Amendment is completely consistent with Federal law and would not endanger the Motor Carrier Safety Assistance Program (MCSAP) grants otherwise available to the State of Wisconsin.

Sec. 1 of the bill amends s. 110.075(6) of the Wisconsin statutes to provide, among other things, that:

Nothing in this section shall permit the department to promulgate any rule under which the provisions of 49 CFR 393 and 396 are applicable to, or enforceable with respect to, any farm truck or dual purpose farm truck combined with any semitrailer or farm trailer, or any vehicle combined with a horse trailer, if the vehicle combination's gross combination weight rating, registered weight, and actual gross weight do not exceed 26,000 pounds, the vehicle combination does not include a commercial motor vehicle described in s. 340.01(8)(c) or (d), and the vehicle combination is operated solely in intrastate commerce.

S. 340.01(8)(c) and (d) of the Wisconsin statutes read as follows:

(8) "Commercial motor vehicle means a motor vehicle designed or used to transport passengers or property and having one or more of the following characteristics: . . .

(c) The vehicle is designed to transport or is actually transporting the driver and 15 or more passengers. If the vehicle is equipped with bench type seats intended to seat more than one person, the passenger carrying capacity shall be determined under s. 340.01(31) or, if the vehicle is a school bus, by dividing the total seating space measured in inches by 13.

(d) The vehicle is transporting hazardous materials requiring placarding or any quantity of a material listed as a select agent or toxin under 42 CFR 73.

Sec. 5 of the bill creates a new s. 198.38(2) providing that:

Nothing in this section shall permit the department to promulgate any rule under which the provisions of 49 CFR 390, 391, 392, 395, and 397 are applicable to, or enforceable with respect to, any farm truck or dual purpose farm truck combined with any semitrailer or farm trailer, or any vehicle combined with a horse trailer, if the vehicle combination's gross combination weight rating, registered weight, and actual gross weight do not exceed 26,000 pounds, the vehicle combination does not include a commercial motor vehicle described in s. 340.01(8)(c) or (d), and the vehicle combination is operated solely in intrastate commerce.

Other provisions of the bill are essentially identical.

In short, the Substitute Amendment would prohibit the Wisconsin Department of Transportation from applying State regulations compatible with 49 CFR Parts 390, 391, 392, 393, 395, and 397 to certain farm vehicles with weights of 26,000 pounds or less operating in intrastate commerce. Although the MCSAP rules in 49 CFR Part 350 generally require States to adopt regulations compatible with FMCSA regulations, the definition of compatibility for intrastate commerce [see § 350.105] is qualified by the variances allowed by § 350.341, including the following:

(a) A State may exempt a CMV [commercial motor vehicle] from all or part of its laws or regulations applicable to intrastate commerce, provided that neither the GVW [gross vehicle weight], GVWR [gross vehicle weight rating], GCW [gross combination weight], nor GCWR [gross combination weight rating] 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.

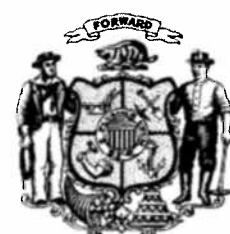
(2) Is designed or used to transport 16 or more people, including the driver.

49 CFR 350.341(a).

Because the exemptions allowed by the Substitute Amendment, as limited by the cross-reference to s. 340.01(8)(c) and (d), are entirely consistent with the variances allowed by § 350.341(a), Wisconsin may enact the bill without risking the loss of MCSAP funding.



WISCONSIN STATE LEGISLATURE





LEE NERISON
96TH ASSEMBLY DISTRICT

November 3, 2005

Assembly Bill 762 follow-up information
Senate Cmte. On Transportation and Natural Resources

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Dear Chairman Kedzie and Committee Members:

Thank you for taking the time this morning to discuss AB 762.

There was some discussion about how other states regulate farm trucks and I thought I would share some information that I already have thanks to help from the Federation of Cooperatives. This is just a quick, not an exhaustive, search.

Virginia Definition

Commercial motor vehicle" means, except for those vehicles specifically excluded in this definition, every motor vehicle, vehicle or combination of vehicles used to transport passengers or property which either: (i) has a gross vehicle weight rating of 26,001 or more pounds; or (ii) has a gross combination weight rating of 26,001 or more pounds inclusive of a towed vehicle with a gross vehicle weight rating of more than 10,000 pounds; or (iii) is designed to transport 16 or more passengers including the driver; or (iv) is of any size and is used in the transportation of hazardous materials as defined in this section. Every such motor vehicle or combination of vehicles shall be considered a commercial motor vehicle whether or not it is used in a commercial or profit-making activity.

The following shall be excluded from the definition of commercial motor vehicle: any vehicle when used by an individual solely for his own personal purposes, such as personal recreational activities; or any vehicle which (i) is controlled and operated by a farmer, whether or not it is owned by the farmer, and which is used exclusively for farm use, as defined in § 46.2-698, (ii) is used to transport either agricultural products, farm machinery or farm supplies to or from a farm, (iii) is not used in the operation of a common or contract motor carrier, and (iv) is used within 150 miles of the farmer's farm; or any vehicle operated for military purposes by (a) active duty military personnel, (b) members of the military reserves, (c) members of the national guard on active duty, including personnel on full-time national guard duty, personnel on part-time national guard training, and national guard military technicians (civilians who are required to wear military uniforms), but not U.S. Reserve technicians, and (d) active duty U.S. Coast Guard personnel; or emergency equipment operated by a member of a firefighting, rescue, or emergency entity in the performance of his official duties.

South Dakota

Exceptions from definitions of motor carrier and commercial vehicle. For the purposes of this chapter, the following do not come within the definition of "motor carriers" or "commercial vehicles" if used in intrastate operations:

- (5) A motor vehicle registered in South Dakota, owned by a farmer of this state and used by or for the farmer to transport property for the farmer's farming operation, to transport farm property from farm to farm or from a community or market to the farm or from the farm to a community or market, to transport livestock in a vehicle or combination of vehicles registered at twenty-six thousand pounds or less without monetary compensation, or to transport farm property when the vehicles are used as reimbursement in the ordinary exchange of farm work;

Oregon

Has a farm vehicle certification program—Farm vehicles registered under this program are generally exempt from the commercial motor carrier regulation

Kentucky

Also exempts farmers from DOT numbers and other provisions. Uses definition of Farm-to-market to exempt farmers from several sections of the commercial motor vehicle requirements.

601 KAR 1:005. Safety administrative regulation.

(3) "Farm-to-market agricultural transportation" means the operation of a motor vehicle that is controlled and operated by a farmer who, as a private motor carrier, is using a vehicle:

- (a)1. To transport agricultural products from his or her farm;
2. To transport farm machinery or farm supplies to his or her farm; or
3. Generally thought of as farm machinery; and

(b) Which is not transporting hazardous materials of a type or quantity that requires the vehicle to be marked or placarded in accordance with 601 KAR 1:025.

Kansas

CFR Title 49 Part 390.5 As adopted by KAR 82-4-3 defines a (Farmer) as: Any person who operates a farm or is directly involved in the cultivation of land, crops, or livestock which:

- Are owned by that person; or
- Are under the direct control of that person

The Kansas Statutes Annotated (K.S.A.) exempts intrastate farm operations from all the federal safety compliance regulations under:

- **K.S.A. 66-1,129 (c)** Any rules and regulations of the commission, adopted pursuant to this section, shall not apply to the following, while engaged in the carriage of intrastate commerce in this state:
- **(c)(1)** The owner of livestock or producer of farm products transporting livestock of such owner or farm products of such producer to market in a motor vehicle of such owner or producer, or the motor vehicle of a neighbor on the basis of barter or exchange for service or employment, or to such owner or producer transporting supplies for the use of such owner or producer, or in the motor vehicle of a neighbor on the basis of barter or exchange for service or employment:

Intrastate farm operations must comply with all the applicable state laws relating to motor vehicles.

Minnesota

Subd. 6. **Vehicle identification rule.** (a) The following carriers shall display the carrier's name and address on the power unit of each vehicle:

(1) motor carriers, regardless of the weight of the vehicle, except that this requirement does not apply to a limousine as defined in section 168.011, subdivision 35, that is equipped with "LM" license plates;

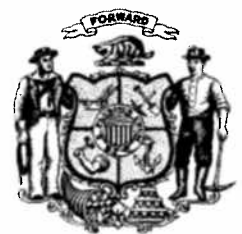
(2) interstate and intrastate private carriers operating vehicles with a gross vehicle weight of more than 10,000 pounds; and

(3) vehicles providing transportation described in section 221.025 with a gross vehicle weight of more than 10,000 pounds except those providing transportation described in section 221.025, clauses (1), (3), and (4).

Vehicles described in clauses (2) and (3) that are operated by farmers or farm employees and have four or fewer axles are not required to comply with the vehicle identification rule of the commissioner.



WISCONSIN STATE LEGISLATURE



AB762

11-3-05

f Already passed Assembly f

Rep. Nerison - (Favor)

- Added farm plates + dual plate
- Added all trailers
- Only In State

Lt. Teasdale (oppose) SB 213
(Info.) AB762

AB762

Sen. Sepp Concerned
w/ # miles travelled -