

CDL/License & Weights/CMVE

Judge Karen F. Diaz
Justice of the Peace - Pct. 4
San Patricio County
judgekarendiaz@yahoo.com

1

The Law is very clear in stating that both a Driver Safety Course (45.0511) and a Deferred Disposition (45.051(f)) are ___ ___ to any CDL License/Permit holder even if in their personal vehicle, if the offense charged relates to Motor Vehicle Control.

Period!

2

The Law is very clear in stating that both a Driver Safety Course (45.0511) and a Deferred Disposition (45.051(f)) are ___ ___ to any CDL License/Permit holder even if in their personal vehicle, if the offense charged relates to Motor Vehicle Control.

Period!

3

Prohibition on "MASKING" Convictions

The State must not mask, defer imposition of judgment, or allow an individual to enter into a diversion program that would prevent a CDL driver's conviction for ANY violation, in any type of motor vehicle, of a state or local traffic control law (except parking) from appearing on the driver's record, whether the driver was convicted for an offense committed in the state where the driver is licensed or in any other state.

49CFR 384.226

4

Deferred and DSC for CDL License Holders

Deferred disposition may not be granted on any offense relating to motor vehicle control, other than parking, committed by a person who holds a CDL or who held one at the time of the offense.

Art. 45.051(f) CCP

****There is no statutory definition of "relating to motor vehicle control." ****

Some offenses fall into a gray area and it is up to the judge to determine whether he/she thinks it is.

5

Masking (con't)

What if your prosecutor says we won't agree to DD/DSC but we will amend the speeding charge to burned out taillight or any other lesser charge?

How many counties have this problem?

And will you /your judge grant the prosecutor's recommendation?

6

Disciplinary Rules of Professional Conduct

Rule 3.8 - Special Responsibilities of a Prosecutor

*The Prosecutor in a criminal case shall:

** (a) refrain from prosecuting a charge that the **prosecutor knows** is not supported by probable cause.

78 Fordham L.R. 2961 - May 2010 - Baseless Pleas: A Mockery of Justice

7

Disciplinary Rules of Professional Conduct

Intentionally changing a charge to an offense, for which there is no factual basis, in order to avoid adjudication or MASK an offense is unethical

*** There is also ethical implications if Judges allow diversions, masking or changing citations to reflect offenses with no factual basis ***

8

Iowa Supreme Court Attorney Disciplinary Bd. V. Howe 706 N.W. 2nd 360 (Iowa 2005)

* A prosecutor cannot ethically file charges not supported by probable cause. It is improper for a prosecuting atty. and a defendant's atty. to enter into a plea agreement under which a prosecutor files charges that are not supported by underlying facts and to which the defendant agrees to plea or is expected to plea guilty.

9

Judicial Code of Conduct - 1

Canon 2 A - A judge **shall comply with the law** and should act at **all times** in a manner that promotes public confidence in the integrity and impartiality of the judiciary.

Canon 2 B - A Judge shall not allow any relationship to influence judicial conduct or judgment. A judge shall not lend the prestige of the office to advance the private interest of the judge or others; nor shall a judge convey or permit others to convey that they are in a special position to influence the judge.

10

Judicial Code of Conduct - 2

Canon 3-Rule C-2 - Judges should require their **staff and court officials** subject to their direction and control to **observe the standards** of fidelity and diligence that **apply to Judges**.

11

So What Does That Mean?

DSC

- Holder of a CDL can't have DSC dismissal for any offense in any type of vehicle

Pretrial Diversion

- Doesn't violate the masking law, but does violate the ethical spirit of the law.

What about on appeal

- They can't have it on appeal either, but not your circus, not your monkeys.

12

Why Does Federal Law Affect State Court

13

644.051-TTC Authority to Adopt Rules

- (a) The director shall, after notice and a public hearing, adopt rules regulating:
- (1) the safe transportation of hazardous materials; and
 - (2) the safe operation of commercial motor vehicles.

(b) A rule adopted under this section must be consistent with federal regulations, including federal safety regulations.

(DPS has incorporated FMCSR, Title 49, Parts 40, 380, 382, 383, 385-387, 390-393 and 395-397, including all interpretations as amended through July 1, 2019)
(392.71 – Radar Detectors)

14

Goals of the Commercial Motor Vehicle Safety Act

- To subject Commercial Motor Vehicle drivers to new uniform sanctions for unsafe driving practices.
- To ensure all CMV drivers demonstrate the minimum levels of knowledge, experience, skills and physical abilities needed to safely operate commercial motor vehicles before being licensed.
- ____ traffic violations committed by a CDL holder can affect their ability to maintain their CDL Certification.

15

Commercial Motor Vehicle Sec 383.3 - FMCSR

A motor vehicle or combination of motor vehicles, used in commerce, to transport passengers or property.

Sec 502.001- TTC eff: 9-1-13

(7) "Commercial Motor Vehicle" means motor vehicle, other than a motorcycle, designed or used primarily to transport property. Including a passenger car reconstructed and used primarily for delivery purposes.

16

Types of CDL Licenses

* Who is required to be Licensed?

* Any person who operates a **C**ommercial **M**otor **V**ehicle

(49 U.S.C. 31301)

(49 CFR 383.3)

17

Class A CDL

Any combination of vehicles with a gross combination weight of 26,001 pounds or more, if the gross vehicle weight rating (GVWR) of the towed vehicle or vehicles exceeds 10,000 pounds

18

Class B CDL

- Any single vehicle with a GVWR of 26,001 or more, a single vehicle with a GVWR of 26,001 pounds or more; or
- Any such vehicle towing a vehicle(s) with a GVWR 10,000 pounds or less: or
- Any vehicle designed to transport 24 passengers or more, including the driver. (School Bus)

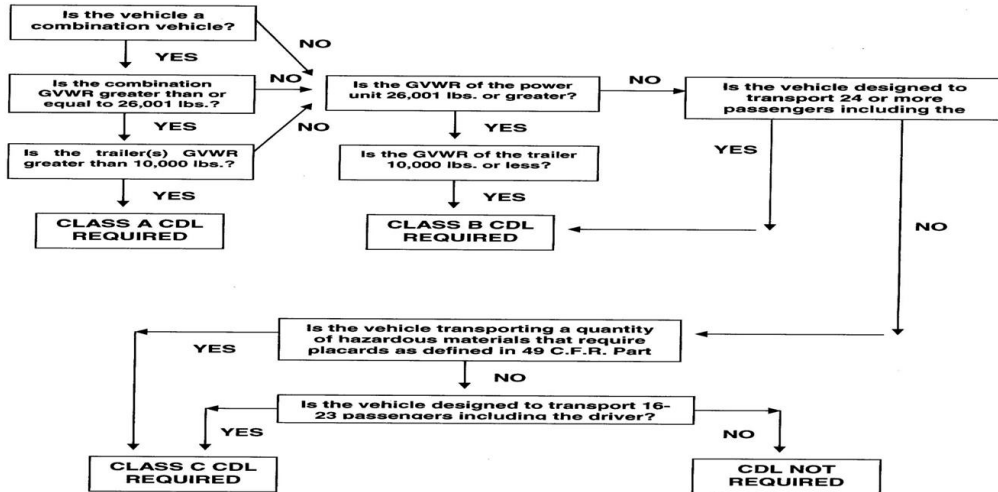
19

Class C CDL

- Any single vehicle or combination of vehicles that meets neither the definition of Class A or Class B;
- Is designed to transport 16-23 passengers, including the driver; or
- Is used in the transportation of hazardous materials that require placards

20

CDL Flow Chart



* REMINDER: THERE ARE EXEMPTIONS TO TEXAS CDL FOUND IN TRC SEC. 522.004
 ** NOTE: IF THE GVWR CANNOT BE DETERMINED, THEN THE GROSS REGISTERED WEIGHT OR THE GROSS ACTUAL WEIGHT, WHICHEVER IS GREATER MAY BE USED FOR CDL REQUIREMENTS.

21

Sec. 522.011 - Failure to display CDL

Person must not drive CMV unless

- (a) has CDL in possession
- (b) is not disqualified or out of service
- Offense is a Class C Misdemeanor

DEFENSE TO PROSECUTION

- It is a "defense to prosecution" that the person produces for the court a valid CDL in the "appropriate class" that was valid when offense was committed
- Dismissal Fee not to exceed \$ ____

22

CDL License INTERstate VS. INTRAsate

Interstate commerce means trade, traffic or transportation:

- Within the U.S. between a place in a state and a place outside of such state or outside of the U.S., or
- Between two places in a state, through another state or outside of the U.S. (such as _____, Canada, etc)

23

CDL License INTERstate VS. INTRAsate

Intrastate commerce is the:

- Transportation of property (a commodity) where the point of origin and destination are within one state and the state line, or
- International boundary is not crossed.

24

CDL Exemptions

- Farmers, ranchers, and their employees or family members using CMV class vehicle to transport agricultural products, farm machinery or supplies, used within 150 miles of farm, not for contract or common carrier
 - Firefighters and Emergency Personnel in _____vehicles
 - Military personnel in Military vehicles
 - Persons operating recreational vehicles for personal use
- *Not being used to transport goods for sale at craft shows, fairs, etc*

25

CDL Restrictions

L - Only operate CMV w/o air brakes

M - Only operate Intrastate (w/in _____)

P - Personal restrictions-operate only as per restriction on the driver's license

P-9 to **P-33** all deal w/CDL license issues

522.043 - Restrictions; Offense

Class C misdemeanor

\$1 - \$200

26

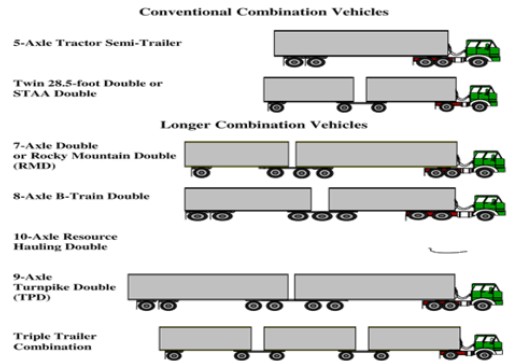
CDL Endorsements

T - Double/Triple Trailers

P - Passenger



N - Tank Vehicle



27

Sec. 643.054-TTC Dept. Issues Certificate (Registration)

- The department shall issue a certificate containing a single registration number to a motor carrier, regardless of the number of vehicles requiring registration the carrier operates

Sec. 643.057-Additional Vehicles and Fees

- A motor carrier may not operate an additional vehicle requiring registration unless the carrier pays a registration fee of \$10 for each and shows evidence of insurance in an amount set by the Dept.
- Registration is valid for ___ ___ 643.058-TTC

28

Sec 643.059-TTC-Cab Card

- (c) A motor carrier required to register under this subchapter **must** keep the **cab card** in the cab of each vehicle requiring registration the carrier operates.

Sec **643.253** Offenses and Penalties

An offense under this section is a Class C misdemeanor and is NOT DISMISSABLE (by the court)

29

Sec. 548.201 Commercial Motor Vehicle Inspection Program

(a) The commission shall establish an inspection program for commercial motor vehicles that:

- (1) meets the requirements of federal motor carrier safety regulations; and
- (2) requires a commercial motor vehicle registered in this state to pass an annual inspection of all safety equipment required by the federal motor carrier safety regulations.

30

Sec 548.256 Proof of Compliance w/ Inspection Requirements Required to Register Vehicle

(a) Except as provided by Subsection (b) or (c), before a vehicle may be registered, the Texas Department of Motor Vehicles or the county assessor-collector registering the vehicle shall verify that the vehicle complies with the applicable inspection requirements as indicated in the department's inspection database. If the database information is not available, the owner of the vehicle may present a vehicle inspection report issued for the vehicle.

31

Sec. 643.103 - Filing Evidence of Insurance

(a) A motor carrier that is required to register must file with the Department evidence of insurance in the amounts required or evidence of financial responsibility (self-insurance) in a form prescribed by the Department

(1) at the time of initial registration

(b) A motor carrier shall keep evidence of insurance in the cab of each vehicle.

An offense under this section is a Class C misdemeanor and is

NOT DISMISSABLE (by the court)

32

CDL Compliance Dismissals

	CMV	PV
Registration	w/ Motion from Prosecutor	Yes
Inspection	Will be part of Registration	Yes
Insurance	w/Motion from Prosecutor	Yes

33

Sec. 391.41 Physical Qualifications for Drivers 49CFR part 391, subpart E 391.41 (a)(2)

- (a) A person shall not drive a commercial motor vehicle unless he/she is physically qualified to do so
- CDL/CLP exception:
- Beginning January 30, 2015, a driver required to have a CDL, and who submitted a current medical examiner's certificate to the state documenting that he/she meets the physical qualification requirements, **no longer needs to carry the medical examiners certificate on his/her person**, or a copy for more than 15 days after the date it was issued as valid proof of such certification.
- An offense under this section is a Class C misdemeanor and is
 - **NOT DISMISSABLE (by the court)**

34

Sec. 621.002 Heavy Vehicle Registration Receipt

- A copy of a registration receipt issued under Section 502.178 (shows gross weight allowable) for a CMV, truck-tractor, trailer or semi-trailer shall be:
 - (1) carried on a vehicle when the vehicle is on a public highway; and
 - (2) presented to an officer authorized to enforce this chapter on request of the officer

SEC. 621.501 TC – Failure to carry a receipt is punishable by a fine up to \$200

35

Over “Registered” Weight is a

Violation

**NOT
A Weight Violation**

****Will be placed OOS until procedure
RECEIPT w/seal****

36

Helpful Websites - 1

- DPS - www.txdps.state.tx.us/cve (click on CMV Laws then Texas Laws)
- FMCSA - www.fmcsa.dot.gov - (Varies by what looking for)

OTHER HELPFUL SITES - you can use to check insurance and additional activity and stops elsewhere in Texas on the trucks. You can see when the Insurance was added to the truck fleet and policy or if it was suspended and added after the initial stop.

37

Helpful Websites - 2

- TXDOT #truck check : <http://apps.txdmv.gov/apps/mccs/truckstop/>
- USDOT #truck check: http://lipublic.fmcsa.dot.gov/LIVIEW/pkg_carrquery.prc_carrlist

The *Company Snapshot* is a concise electronic record of a company's identification, size, commodity information, and safety record, including the safety rating (if any), a roadside out-of-service inspection summary, and crash information. The Company Snapshot is available via an ad-hoc query (one carrier at a time) free of charge.

- <https://safer.fmcsa.dot.gov/CompanySnapshot.aspx>

38

Weight Laws

39

Sec. 621.101-Maximum Weight Single Axle

(a) A vehicle or combination of vehicles may not operate on a public highway if the vehicle or combination has:

(1) a single axle weight heavier than _____ lbs including all tolerances

40

Sec. 621.101-Maximum Weight Tandem Axle

(2) A tandem axle weight heavier than _____ lbs, including all tolerances

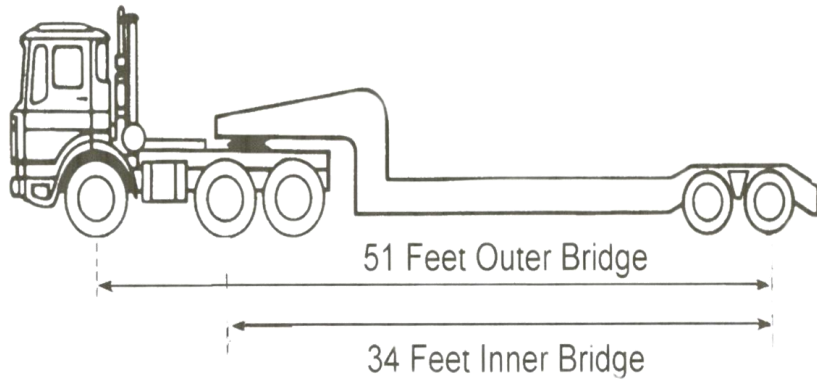
41

Sec. 621.101-Maximum Weight Tandem Axle

An overall Gross Weight on a group of two or more consecutive axles may not be heavier than _____ **lbs**, including all tolerances, regardless of tire rating, axle spacing (bridge) and number of axles.

42

Example



43

Helpful Websites - 2

(a) A vehicle or combination of vehicles may not operate on a public highway if the vehicle or combination has:

- (1) a single axle weight heavier than _____ lbs including all tolerances

44

**Sec. 621.506 - (effective 9-1-13)
Overweight Vehicle; Penalty**

- (b) An offense under this section is a misdemeanor punishable:
- (1) by a fine of not less than \$100 or more than \$250.
- (2) on conviction of an offense involving a vehicle having a

Single axle or Tandem axle weight

- Less than 2500.....\$100 - \$500
- 2,500-5,000.....\$500 - \$1,000
- More than 5,000.....\$1,000 - \$2,500

**Sec. 621.506 - (effective 9-1-13)
Overweight Vehicle; Penalty**

Gross weight - same as above +

- 5,001-10,000.....\$1,000 - \$2,500
- 10,001-20,000.....\$2,500 - \$5,000
- 20,001-40,000.....\$5,000 - \$7,000
- More than 40,000.....\$7,000 - \$10,000

Overweight Penalty - Sec 621.506 (g)

A governmental entity that collects a fine under this section for an offense that is more than _____ pounds heavier than the allowable weight shall send

____% of the "fine" to the State comptroller.

47

Load Zoned Roads

In addition to the restrictions in the CMV Weight Chart chart, some roads and bridges may be determined to require more strict weight restrictions. These restrictions may be imposed by either the county or by TxDOT, which create a "load zoned road" or "load zoned bridge."

Violation of these restrictions may be charged under several different offenses, depending on the circumstance.

48

621.301 - County's Authority to set Maximum Weights - (ZONED ROADS)

(a) The Commissioner's Court of a county may establish load limits for any county road or bridge only with the concurrence of TXDOT.

(b) The Commissioner's Court may limit the maximum weights to be moved over a county road, bridge, or culvert.

621.507 - Penalty

Fine amount \$__ - \$__

(DO NOT USE OVERWEIGHT CHART)

(No matter how many pounds overweight)

49

Processing payments without a plea from the Driver/Defendant

•You should ____ take a check or payment in person from a Motor carrier company for payment of an offense by one of their driver's that is not accompanied by a written plea from the driver or have the driver present to enter plea.

•Recommendation is to ____ take a mailed in check either unless accompanied by written plea from driver (defendant).

50

Texting and Mobile Phone Use

383.51 - Disqualification of Drivers

(9)Violating a state or local law or ordinance prohibiting **TEXTING** and driving*(2)

(10)Violating a state or local law or ordinance prohibiting the use of a **hand-held mobile phone** while driving a CMV *(2)

*(2)Driving for the purpose of this disqualification means operating a CMV on a highway, including while temporarily stationary because of traffic or traffic devices. Does not include if moved to the side of or off the highway and has halted motion in a location where the vehicle can safely remain stationary.

FMCSR 383.5 and TTC Sec. 545.4251

51

CMV-FMCSR VS. PV-TTC

Texting Penalties

- CDL holders subject to the Federal rule (FMCSR 383.51) only when driving a **CMV**. **Fine \$__ - \$__**
- CDL in **Personal Vehicle** - (TTC-545.4251). **Fine \$__ - \$__**

Mobile Phone Use Penalties

- **CMV** - **Fine \$__ - \$__**
- **PV** - **you should not get this offense** as it would only be a violation of a "CITY" ordinance.

52

Disqualification - Multiple violations of the prohibition of using a hand-held mobile phone while driving a CMV can result in a driver disqualification by FMCSA. Multiple violations of State laws prohibiting use of a mobile phone while driving a CMV is a "serious traffic violation" that could result in a disqualification by a State of drivers required to have a Commercial Drivers License.

53

- Research commissioned by FMCSA shows that the odds of being involved in a safety-critical event (e.g., crash, near-crash, unintentional lane deviation) are 6 times greater for CMV drivers who engage in dialing a mobile phone while driving than for those who do not. Dialing drivers took their eyes off the forward roadway for an average of 3.8 seconds. At 55 mph (or 80.7 feet per second), this equates to a driver traveling 306 feet, the approximate length of a football field, without looking at the roadway! **WOWZA!**

54

Sec 522.003 Definition of "Disqualify"

(9) "Disqualify" means to withdraw the privilege to drive a CMV, including to suspend, cancel, or revoke that privilege under a State or Federal law.

55

List of Disqualifying offenses

- Driving a CMV while under the influence of Alcohol
- Driving while alcohol concentration is 0.04% or more
- Driving a CMV while under influence of drug or controlled substance
- Leaving scene of accident involving CMV
- Using CMV to commit a felony
- Two serious traffic violations w/in 3 year period
- Violations that regulate CMV at railroad grade crossings
- Refusing to submit to testing to determine if alcohol or drugs in system
- Causing death of someone due to negligent operation of CMV
- Driving CMV while CDL revoked, suspended, cancelled or disqualified

56

One last look at why WE have to respect the laws regarding following too close especially where CMV's are concerned.

57

The cops were traveling down the highway at 1:00 am in Tulsa, OK. They found this laying on the road.

58

A Highway Patrolman stopped a truck some miles down the highway and saw the following image.

59

Notice the motorcycle driver has no shoes on from the impact and being dragged over 4 miles down the road.

60

This is a side view of the motorcycle driver's head caught in the back of the semi

61

Witnesses and State Police say he had to have been traveling at over 120 mph when he ran into the back of a moving semi-truck.

62

Believe it or not...

He Survived!!!

Questions???