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This material is based upon work supported by the Federal Motor Carrier Safety Administration (FMCSA) under its Commercial Driver’s License (CDL) Program Implementation Grant CDL 0472 21 01 00 21 01 00. Any opinions, findings, conclusions or recommendations expressed in this publication are those of the author(s) and do not necessarily reflect the views of FMCSA or the United States Department of Transportation (USDOT).

**Memoranda and Overview: Application of the Federal Regulatory Code Governing Masking of Nevada Commercial Driver License Cases When**

**Converted from Criminal Offenses to Civil Infractions**

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**Background**

The latest federal infrastructure funding bill appropriated $2.5 billion over the next five (5) year period for Nevada state highways. Over the next year, this additional amount will create a

$83.5 million windfall for state highway funding, an increase of 21% from the prior years’ allocation. Additionally, for fiscal year 2026, funding is scheduled to increase to $520.7 million, a 31% increase over current funding levels; which is also the year the legislation expires. [[1]](#footnote-1)

Federal highway funds do not operate in a vacuum, but should be properly considered in context with and relationship to Code of Federal Regulations (CFR), section 384.226: Prohibition on Masking Convictions, which states:

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

This statute is “policed” or governed through an auditing mechanism wherein under federal authority, States, through the courts either have or are currently undergoing a rigorous review of CDL cases to determine if ‘Masking,’ in violation of 49 CFR 384.226 has occurred. The federal reviews may apply to all States[[2]](#footnote-2) and the penalties available for ‘Masking’ CDL cases for the first year, are:

1. A forfeiture of an amount up to 4% of the State Federal Highway funding for that year on the

first day of the next fiscal year; and

2. Elimination of the State’s authority to issue CDL licenses.

3. Federal Highway Funding reductions will increase to an 8% reduction after the first sanction and are not thereafter available to the sanctioned State.[[3]](#footnote-3)

4. A State determined in substantial non-compliance may be CDL decertified and lose the total ability to issue CDLs.[[4]](#footnote-4)

**Legal (discretionary) Implications for New Traffic Infractions**

Effective January 1, 2023, most, but not all, minor criminal traffic offenses (misdemeanors) were converted to civil infractions in the Nevada Revised Statutes (NRS).[[5]](#footnote-5) In fact, the new statute maintained the existing fine schedule and structure that existed in the current criminal statutes, however, traffic violations would no longer be categorized as criminal offenses, but rather civil infractions. Sections of AB 116 read as follows:

1. Sections 9, 11 and 12 of this bill provide that, for the purposes of a person’s driving record, the commission of a traffic or related violation that is punishable as a civil infraction pursuant to this bill is treated the same as a conviction for a traffic or related violation under existing law.
2. Section 24 of this bill requires each traffic enforcement agency in this State to provide civil infraction citations that a member of the traffic enforcement agency or, in certain circumstances, a prosecuting attorney, may issue to a person who has allegedly committed the civil infraction.
3. Section 34 of this bill: (3) authorizes a court to waive or reduce civil penalties and

administrative assessments imposed for a civil infraction or enter into a payment plan under certain circumstances; (4) “If, in lieu of a civil penalty, the court authorizes a person to successfully complete a course of traffic safety approved by the Department of Motor Vehicles, the court must order the person to pay the amount of the administrative assessment that corresponds to the civil penalty for which the defendant would have otherwise been responsible.”; and (5) “Reduce any moving violation for which a person was issued a civil infraction citation to a nonmoving violation if the court determines that any circumstances warrant such a reduction.” This discretion does not amend or affect the masking prohibitions applicable to CDL holders for the designated CFR incorporated CDL/CMV offenses.[[6]](#footnote-6)

1. Section 35 of this bill states: “Except where the imposition of a specific civil penalty is mandatory, a court may order a person who is found to have committed a civil infraction pursuant to sections 24 to 36.7, inclusive, of this act to perform community service that is supervised in accordance with subsection 2.”
2. Section 38.5 of this bill authorizes a person who was issued a civil infraction citation and certain peace officers to use a system established by a court or its traffic violations bureau to perform certain authorized actions such as making a plea, stating a defense or mitigating circumstances or submitting a written statement, as applicable, by mail, electronic mail, over the Internet or by other electronic means in lieu of taking such actions or making a statement at the hearing.
3. Section 36.3 of this bill authorizes a prosecuting attorney to elect to treat certain traffic and related offenses that are punishable as a misdemeanor instead as a civil infraction and establishes the actions a prosecuting attorney is required to take when making such an election.

Sections 74 and 75 of this bill grants to justice and municipal courts jurisdiction to hear and dispose of violations of law that are punishable as civil infractions pursuant to this bill.

**Nevada CFR Masking Enforcement**

Recently and pursuant to internal auditing, several cases which appear to verify ‘masking’ behavior and violations of 40 CFR 384.226 ,were identified by the Judicial Outreach Trooper. One specific example included a violation that was amended or reduced for the specific purpose of changing the offense point violations for a cited CDL holder.

NRS 706.171 authorizes the Nevada Departments of Public Safety and Motor Vehicles to make necessary and reasonable regulations and enforcement of their responsible provisions and to adopt, by reference, “any appropriate rule or regulation, as it exists at the time of adoption, issued by the United States Department of Transportation, the Surface Transportation Board, any other agency of the Federal Government or the National Association of Regulatory Utility Commissioners.”

NRS 171.173, sec. 1 reads: “The Authority, the Department of Motor Vehicles or the Department of Public Safety may, by regulation applicable to common, contract and private motor carriers of passengers and property, adopt standards for safety for drivers and vehicles.

Nevada Administrative Code (NAC) contains all permanent regulations pertaining to State of Nevada Agencies and was adopted in NRS 233B. NAC 706.2472 is the adoption and enforcement of the federal regulations for motor carrier safety by the Nevada Department of Public Safety and reads as follows:

“**1.** The Department of Public Safety hereby adopts by reference the regulations contained in 49 C.F.R. Parts 40, 382, 383, 385, 387, 390 to 393, inclusive, 395, 396 and 397, 49 C.F.R. § 386.72 and Appendices B and G of 49 C.F.R. Chapter III, Subchapter B, as those regulations existed on the effective date, and as subsequently revised by the United States Department of Transportation unless the Director of the Department of Public Safety gives notice pursuant to subsection 4 that a revision is not suitable for this State, with the following exceptions:(a) References to the Federal Motor Carrier Safety Administration are amended to refer to the Department of Public Safety.(b) References to the Administrator of the Federal Motor Carrier Safety Administration are amended to refer to the Director of the Department of Public Safety.(c) Section 391.11(b)(1) applies only to drivers of commercial motor vehicles who:(1) Operate in interstate transportation;(2) Transport passengers intrastate; or(3) Transport hazardous material, as defined in NRS 459.7024…”[[7]](#footnote-7)

**Conclusion**

The primary purpose of AB 116 was to provide the authority to convert several classes of existing criminal misdemeanor offenses to civil infractions under Nevada traffic laws. Nothing within AB 116 should be interpreted as providing additional infraction discretion resulting in direct violation of the NAC’s proper incorporation of 49 CFR 384.226, the ‘Masking’ prohibition for CDL holders traffic convictions in Nevada. This position is further buttressed by the absence of a simultaneous amendment to the law as promulgated within NAC 706.2472 as well as the undisturbed receipt of federal highway funds by our great Silver State!

The new NRS infraction discretions granted to a Nevada judge are, just as contemplated, discretionary. Said discretion should not be utilized to (1) violate the federal regulations which govern masking violations for CDL holders and, as adopted within the Nevada codes and statutes; and (2) expose Nevada to the potentiality of reduced state highway funding and/or forfeiture of the ability to issue Commercial Driver Licenses as a result of federal regulatory violations.

1. NV Dept. of Transportation (NDOT); 23 USC 104 (b)(1) & (2) [↑](#footnote-ref-1)
2. 49 CFR 384.301; 49 USC 31311(a) [↑](#footnote-ref-2)
3. 49 CFR 384.401 [↑](#footnote-ref-3)
4. 49 CFR 384.405 [↑](#footnote-ref-4)
5. NRS 481.105; AB 116 (2021, eff. 1 Jan 2023) [↑](#footnote-ref-5)
6. NAC 706.2472; NRS 233B [↑](#footnote-ref-6)
7. Added to NAC by Pub. Safety by R062-17AP, eff. 2/27/2018 [↑](#footnote-ref-7)