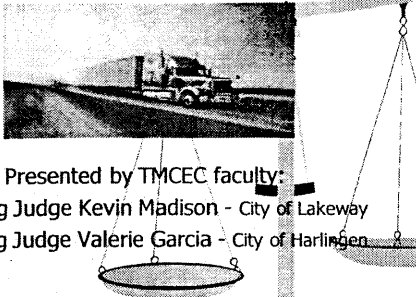


Unmasking Commercial Drivers License "Masking"



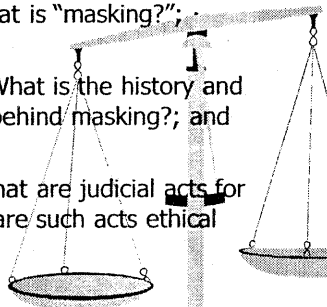
Presented by TMCEC faculty:
 Presiding Judge Kevin Madison - City of Lakeway
 Presiding Judge Valerie Garcia - City of Harlingen

Learning Objectives

(1) Explain: What is "masking?"

(2) Describe: What is the history and public policy behind masking?; and

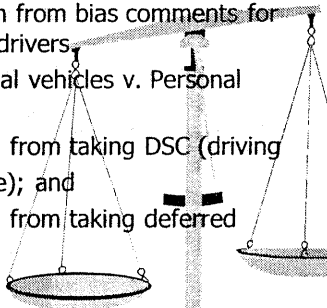
(3) Identify: What are judicial acts for masking and are such acts ethical violations?



I. Disclaimer on Personal Opinions

A. Please refrain from bias comments for or against CDL drivers

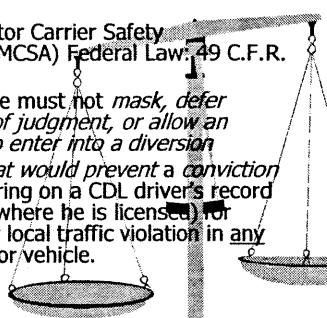
1. Commercial vehicles v. Personal vehicles ;
2. Prohibited from taking DSC (driving safety course); and
3. Prohibited from taking deferred disposition.



II. The Definition of "masking"

A. Federal Motor Carrier Safety Administration (FMCSA) Federal Law: 49 C.F.R. §384.226:

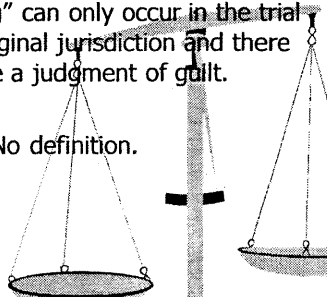
(1) The state must not *mask, defer imposition of judgment, or allow an individual to enter into a diversion program that would prevent a conviction from appearing on a CDL driver's record (no matter where he is licensed) for any state or local traffic violation in any type of motor vehicle.*




Cont. – Definition of "masking"

(2) "Masking" can only occur in the trial courts of original jurisdiction and there first must be a judgment of guilt.

B. Texas Law: No definition.

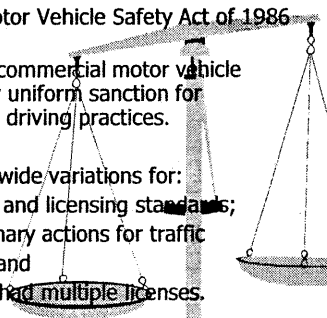


III. Federal Motor Carrier Safety Administration (FMCSA)



A. Commercial Motor Vehicle Safety Act of 1986 (enacted):

1. To subject commercial motor vehicle drivers to new uniform sanction for certain unsafe driving practices.
2. States had wide variations for:
 - (a) Testing and licensing standards;
 - (b) Disciplinary actions for traffic violations; and
 - (c) Drivers had multiple licenses.

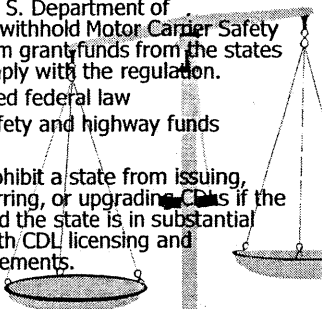


B. Motor Carrier Safety Improvement Act (MCSIA) of 1999:

1. Requires the U. S. Department of Transportation to withhold Motor Carrier Safety Assistance program grant funds from the states if they do not comply with the regulation.

a. Texas adopted federal law
-highway safety and highway funds

2. FMCSA may prohibit a state from issuing, renewing, transferring, or upgrading CDLs if the agency determined the state is in substantial noncompliance with CDL licensing and sanctioning requirements.

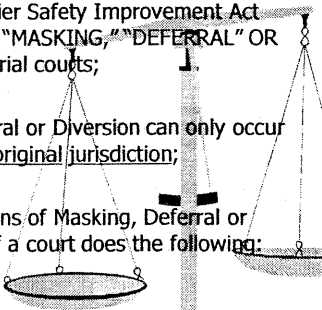


C. Top 8 Concepts – Motor Carrier Safety Act of 2005:

1. The Motor Carrier Safety Improvement Act (MCSIA) prohibits "MASKING," "DEFERRAL" OR "DIVERSION" by trial courts;

2. Masking, Deferral or Diversion can only occur in a trial court of original jurisdiction;

3. Prohibited actions of Masking, Deferral or Diversion occurs if a court does the following:



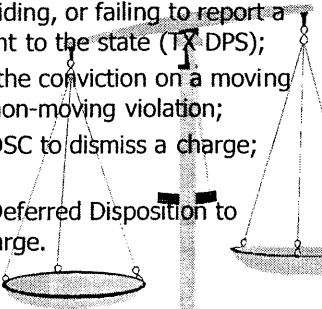
Top 8 Concepts – Motor Carrier Safety Act of 2005--- continued:

◇ Holding, hiding, or failing to report a final judgment to the state (TX DPS);

◇ Changing the conviction on a moving violation to non-moving violation;

◇ Granting DSC to dismiss a charge; and

◇ Granting Deferred Disposition to dismiss a charge.

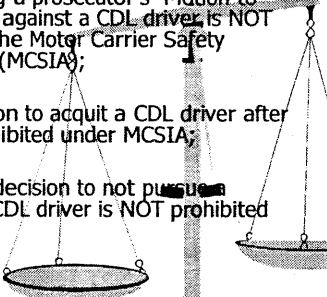


Top 8 Concepts – Motor Carrier Safety Act of 2005--- continued:

4. A court granting a prosecutor's "Motion to Dismiss" a charge against a CDL driver is NOT prohibited under the Motor Carrier Safety Improvement Act (MCSIA);

5. A court's decision to acquit a CDL driver after a trial is NOT prohibited under MCSIA;

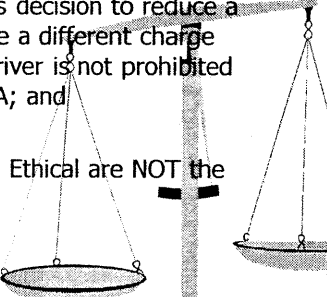
6. A prosecutor's decision to not pursue a charge against a CDL driver is NOT prohibited under MCSIA;




Top 8 Concepts – Motor Carrier Safety Act of 2005--- continued:

7. A prosecutor's decision to reduce a charge or pursue a different charge against a CDL driver is not prohibited under the MCSIA; and

8. **Legal** and Ethical are NOT the same!

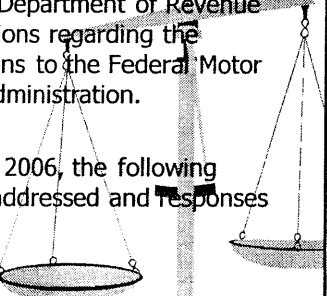


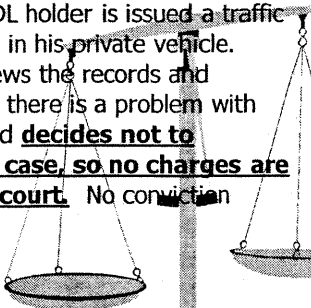
What the "Show me State" can show Texas"



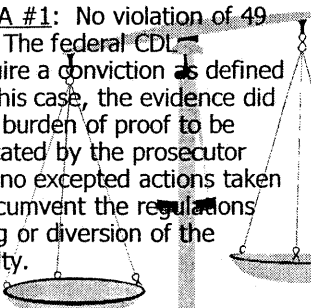
A. The Missouri Department of Revenue submitted questions regarding the masking provisions to the Federal Motor Carrier Safety Administration.

B. On March 20, 2006, the following scenarios were addressed and responses published:

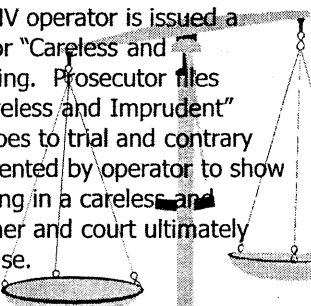





Scenario #1: CDL holder is issued a traffic citation for DWI in his private vehicle. Prosecutor reviews the records and determines that there is a problem with the evidence and **decides not to prosecute the case, so no charges are filed with the court.** No conviction entered.



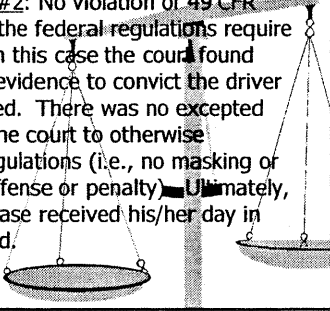
Response FMCSA #1: No violation of 49 CFR §383/384. The federal CDL regulations require a conviction as defined by §383.5. In this case, the evidence did not support the burden of proof to be properly adjudicated by the prosecutor and there were no excepted actions taken to otherwise circumvent the regulations (i.e., no masking or diversion of the offense or penalty).




Scenario #2: CMV operator is issued a traffic citation for "Careless and Imprudent" driving. Prosecutor files charges for "Careless and Imprudent" driving. Case goes to trial and contrary evidence is presented by operator to show he was not driving in a careless and imprudent manner and court ultimately dismisses the case.

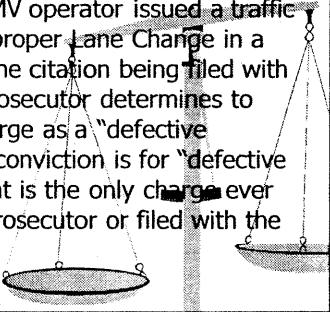



Response FMCSA #2: No violation of 49 CFR §383/384. Again the federal regulations require a conviction and in this case the court found flawed or lacking evidence to convict the driver on the offense cited. There was no excepted actions taken by the court to otherwise circumvent the regulations (i.e., no masking or diversion of the offense or penalty). Ultimately, the driver in this case received his/her day in court and prevailed.





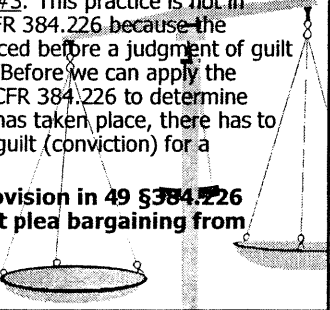
Scenario #3: CMV operator issued a traffic citation for "Improper Lane Change in a CMV." Prior to the citation being filed with the court the prosecutor determines to only file the charge as a "defective muffler." Final conviction is for "defective muffler" and that is the only charge ever signed by the prosecutor or filed with the court.






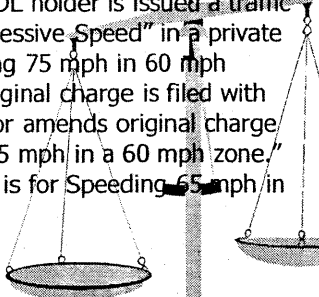
Response FMCSA #3: This practice is not in violation of 49 §CFR 384.226 because the violation was reduced before a judgment of guilt was pronounced. Before we can apply the conditions in 49 §CFR 384.226 to determine whether masking has taken place, there has to be a judgment of guilt (conviction) for a violation.


The masking provision in 49 §384.226 does not prevent plea bargaining from taking place.



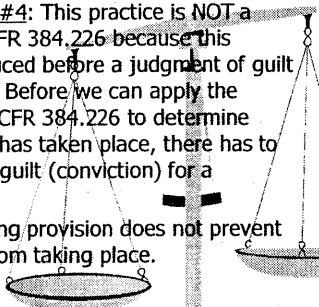



Situation #4: CDL holder is issued a traffic citation for "Excessive Speed" in a private vehicle (speeding 75 mph in 60 mph zone). After original charge is filed with court, prosecutor amends original charge to " Speeding 65 mph in a 60 mph zone." Final conviction is for Speeding 65 mph in a 60 mph zone.



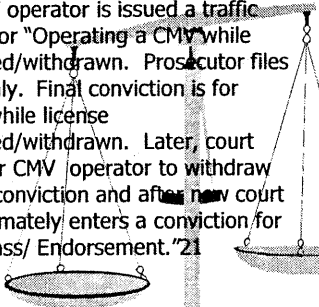


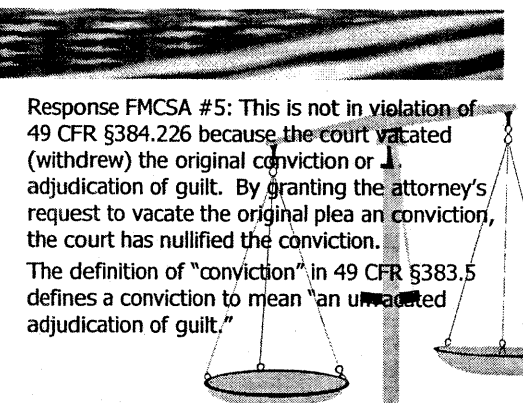
Response FMCSA #4: This practice is NOT a violation of 49 §CFR 384.226 because this violation was reduced before a judgment of guilt was pronounced. Before we can apply the conditions in 49 §CFR 384.226 to determine whether masking has taken place, there has to be a judgment of guilt (conviction) for a violation.
Again, the masking provision does not prevent plea bargaining from taking place.



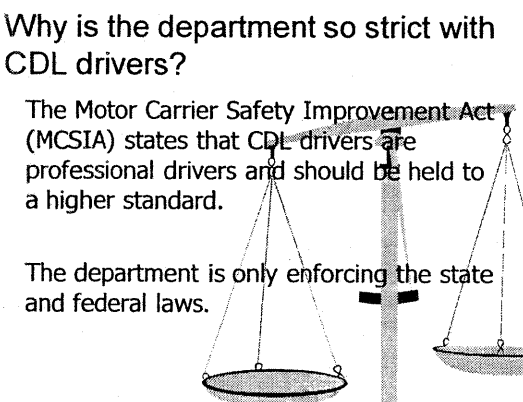


Scenario #5: CMV operator is issued a traffic violation citation for "Operating a CMV while suspended/revoked/withdrawn. Prosecutor files charges accordingly. Final conviction is for "Operating CMV while license suspended/revoked/withdrawn. Later, court allows attorney for CMV operator to withdraw original plea and conviction and after new court hearing, court ultimately enters a conviction for "improper CDL Class/ Endorsement."21





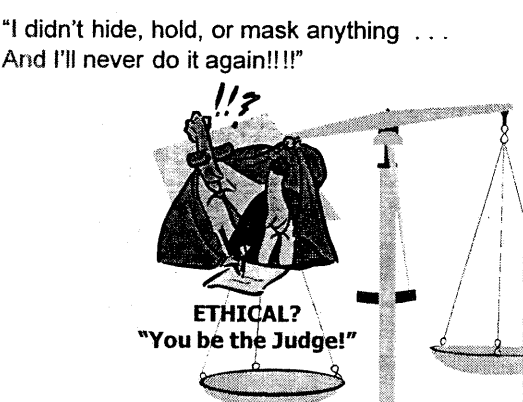
Response FMCSA #5: This is not in violation of 49 CFR §384.226 because the court vacated (withdrew) the original conviction or adjudication of guilt. By granting the attorney's request to vacate the original plea and conviction, the court has nullified the conviction. The definition of "conviction" in 49 CFR §383.5 defines a conviction to mean "an unvacated adjudication of guilt."



Why is the department so strict with CDL drivers?

The Motor Carrier Safety Improvement Act (MCSIA) states that CDL drivers are professional drivers and should be held to a higher standard.

The department is only enforcing the state and federal laws.



"I didn't hide, hold, or mask anything . . . And I'll never do it again!!!"

!!?

ETHICAL?
"You be the Judge!"
