

Amend CSHB 3588 by adding the following ARTICLE to the bill, appropriately numbered, and renumbering existing ARTICLES accordingly:

ARTICLE ____ . COMMERCIAL MOTOR VEHICLE

SAFETY STANDARDS

SECTION ____ .01. Subdivision (1), Section 548.001, Transportation Code, is amended to read as follows:

(1) "Commercial motor vehicle" means a self-propelled or towed vehicle, other than a farm vehicle with a gross weight, registered weight, or gross weight rating of less than 48,000 pounds, that is used on a public highway to transport passengers or cargo if:

(A) the vehicle, including a school activity bus as defined in Section 541.201, or combination of vehicles has a gross weight, registered weight, or gross weight rating of more than 26,000 pounds;

(B) the vehicle, including a school activity bus as defined in Section 541.201, is designed or used to transport more than 15 passengers, including the driver; or

(C) the vehicle is used to transport hazardous materials in a quantity requiring placarding by a regulation issued under the Hazardous Materials Transportation Act (49 U.S.C. Section 5101 [~~1801~~] et seq.).

SECTION ____ .02. Subdivisions (1) and (5), Section 644.001, Transportation Code, are amended to read as follows:

(1) "Commercial motor vehicle" means:

(A) a commercial motor vehicle as defined by 49 C.F.R. Section 390.5, if operated interstate; or

(B) a commercial motor vehicle as defined [~~described~~] by Section 548.001, if operated intrastate.

(5) "Federal motor carrier safety regulation" means a federal regulation in Subtitle A, Title 49, or Subchapter B, Chapter III, Subtitle B, Title 49, Code of Federal Regulations.

SECTION ____ .03. Subsections (a) through (d), Section 644.103, Transportation Code, are amended to read as follows:

(a) An officer of the department may stop, enter, or detain on a highway or at a port of entry a motor vehicle that is subject to

this chapter.

(b) A municipal police officer who is certified under Section 644.101 may stop, enter, or detain on a highway or at a port of entry within the territory of the municipality a motor vehicle that is subject to this chapter. A sheriff or deputy sheriff who is certified under Section 644.101 may stop, enter, or detain on a highway or at a port of entry within the territory of the county a motor vehicle that is subject to this chapter.

(c) A person [~~An officer~~] who detains a vehicle under this section may prohibit the further operation of the vehicle on a highway if the vehicle or operator of the vehicle is in violation of a federal safety regulation or a rule adopted under this chapter.

(d) A noncommissioned employee of the department who is certified for the purpose by the director and who is supervised by an officer of the department may, at a fixed-site facility, stop, enter, or detain a motor vehicle that is subject to this chapter. If the employee's inspection shows that an enforcement action, such as the issuance of a citation, is warranted, the noncommissioned employee may take enforcement action only if the employee is under the supervision of an [~~supervising~~] officer of the department [~~must take the action~~].

SECTION _____.04. Section 644.153, Transportation Code, is amended to read as follows:

Sec. 644.153. ADMINISTRATIVE PENALTY. (a) The department may impose an administrative penalty against a person who violates:

- (1) a rule adopted under this chapter; or
- (2) a provision of Subchapter [~~Subtitle~~] C that the department by rule subjects to administrative penalties.

(b) To be designated as subject to an administrative penalty under Subsection (a)(2), a provision must relate to the safe operation of a commercial motor vehicle.

(c) The department shall:

(1) designate one or more employees to investigate violations and conduct audits of persons subject to this chapter;
and

(2) impose an administrative penalty if the department discovers a violation that is covered by Subsection (a) or (b).

(d) A penalty under this section~~[+~~

~~[(1)]~~ may not exceed the maximum penalty provided for a violation of a similar federal safety regulation~~[, and~~

~~[(2) shall be administered in the same manner as a penalty under Section 643.251, except that the amount of a penalty shall be determined under Subdivision (1)].~~

(e) If the department determines to impose a penalty, the department shall issue a notice of claim. The department shall send the notice of claim by certified mail, registered mail, personal delivery, or another manner of delivery that records the receipt of the notice by the person responsible. The notice of claim must include a brief summary of the alleged violation and a statement of the amount of the recommended penalty and inform the person that the person is entitled to a hearing on the occurrence of the violation, the amount of the penalty, or both the occurrence of the violation and the amount of the penalty. ~~[(d)]~~ A person who is subject to an administrative penalty imposed by the department under this section ~~[subchapter]~~ is required to pay the penalty ~~[administrative penalties]~~ or respond to the department within 20 days of receipt of the department's notice of claim.

(f) Before the 21st day after the date the person receives the notice of claim, the person may:

(1) accept the determination and pay the recommended penalty; or

(2) make a written request for an informal hearing or an administrative hearing on the occurrence of the violation, the amount of the penalty, or both the occurrence of the violation and the amount of the penalty.

(g) At the conclusion of an informal hearing requested under Subsection (f), the department may modify the recommendation for a penalty.

(h) If the person requests an administrative hearing, the department shall set a hearing and give notice of the hearing to the person. The hearing shall be held by an administrative law judge of the State Office of Administrative Hearings. The administrative law judge shall make findings of fact and conclusions of law and promptly issue to the director a proposal for a decision as to the

occurrence of the violation and the amount of a proposed penalty.

(i) If a penalty is proposed under Subsection (h), the administrative law judge shall include in the proposal for a decision a finding setting out costs, fees, expenses, and reasonable and necessary attorney's fees incurred by the state in bringing the proceeding. The director may adopt the finding and make it a part of a final order entered in the proceeding.

(j) Based on the findings of fact, conclusions of law, and proposal for a decision, the director by order may find that a violation has occurred and impose a penalty or may find that no violation occurred. The director may pursuant to Section 2001.058(e), Government Code, increase or decrease the amount of the penalty recommended by the administrative law judge within the limits prescribed by this chapter.

(k) Notice of the director's order shall be given to the affected person in the manner required by Chapter 2001, Government Code, and must include a statement that the person is entitled to seek a judicial review of the order.

(l) Before the 31st day after the date the director's order becomes final as provided by Section 2001.144, Government Code, the person must:

(1) pay the amount of the penalty;

(2) pay the amount of the penalty and file a petition for judicial review contesting:

(A) the occurrence of the violation;

(B) the amount of the penalty; or

(C) both the occurrence of the violation and the amount of the penalty; or

(3) without paying the amount of the penalty, file a petition for judicial review contesting:

(A) the occurrence of the violation;

(B) the amount of the penalty; or

(C) both the occurrence of the violation and the amount of the penalty.

(m) Within the 30-day period under Subsection (l), a person who acts under Subsection (l) may:

(1) stay enforcement of the penalty by:

(A) paying the amount of the penalty to the court for placement in an escrow account; or

(B) filing with the court a supersedeas bond approved by the court for the amount of the penalty that is effective until all judicial review of the director's order is final; or

(2) request the court to stay enforcement of the penalty by:

(A) filing with the court an affidavit of the person stating that the person is financially unable to pay the amount of the penalty and is financially unable to give the supersedeas bond; and

(B) sending a copy of the affidavit to the director by certified mail.

(n) Before the sixth day after the date the director receives a copy of an affidavit filed under Subsection (m)(2), the department may file with the court a contest to the affidavit. The court shall hold a hearing on the facts alleged in the affidavit as soon as practicable and shall stay the enforcement of the penalty if the court finds that the alleged facts are true. The person who files an affidavit under Subsection (m)(2) has the burden of proving that the person is financially unable to:

(1) pay the amount of the penalty; and

(2) file the supersedeas bond.

(o) If the person does not pay the amount of the penalty and the enforcement of the penalty is not stayed, the director may:

(1) refer the matter to the attorney general for collection of the amount of the penalty;

(2) initiate an impoundment proceeding under Subsection (q); or

(3) refer the matter to the attorney general and initiate the impoundment proceeding.

(p) [~~e~~] A person who fails to pay, or becomes delinquent in the payment of an administrative penalty[~~, the administrative penalties~~] imposed by the department under this subchapter may [~~shall~~] not operate or direct the operation of a commercial motor vehicle on the highways of this state until [~~such time as~~] the

administrative penalty has [~~penalties have~~] been remitted to the department.

(q) [~~(f)~~] The department shall impound any commercial motor vehicle owned or operated by a person in violation of Subsection (p) [~~(e)~~] after the department has first served the person with a notice of claim. Service of the notice may be by certified mail, registered mail, personal delivery, or any other manner of delivery showing receipt of the notice.

(r) [~~(g)~~] A commercial motor vehicle impounded by the department under Subsection (q) [~~this section~~] shall remain impounded until [~~such time as~~] the administrative penalties imposed against the person are remitted to the department, except that an impounded commercial motor vehicle left at a vehicle storage facility controlled by the department or any other person shall be considered an abandoned motor vehicle on the 11th day after the date of impoundment if the delinquent administrative penalty is not remitted to the department before that day. Chapter 683 applies to the commercial motor vehicle, except that the department is entitled to receive from the proceeds of the sale the amount of the delinquent administrative penalty and costs.

(s) [~~(h)~~] All costs associated with the towing and storage of the commercial motor vehicle and load shall be the responsibility of the person and not the department or the State of Texas.

(t) A proceeding under this section is subject to Chapter 2001, Government Code.

SECTION ____ .05. Section 644.155, Transportation Code, is amended to read as follows:

Sec. 644.155. COMPLIANCE REVIEW AND SAFETY AUDIT PROGRAM. The department shall implement and enforce a compliance review and safety audit program similar to the federal program established under 49 C.F.R. Part 385 for any person who owns or operates a commercial motor vehicle that is domiciled in this state.

SECTION ____ .06. Subsection (a), Section 683.002, Transportation Code, is amended to read as follows:

(a) For the purposes of this chapter, a motor vehicle is abandoned if the motor vehicle:

(1) is inoperable, is more than five years old, and has

been left unattended on public property for more than 48 hours;

(2) has remained illegally on public property for more than 48 hours;

(3) has remained on private property without the consent of the owner or person in charge of the property for more than 48 hours;

(4) has been left unattended on the right-of-way of a designated county, state, or federal highway for more than 48 hours; [~~or~~]

(5) has been left unattended for more than 24 hours on the right-of-way of a turnpike project constructed and maintained by the Texas Turnpike Authority division of the Texas Department of Transportation or a controlled access highway; or

(6) is considered an abandoned motor vehicle under Section 644.153(r).

SECTION _____.07. Subsection (b), Section 683.012, Transportation Code, is amended to read as follows:

(b) The notice under Subsection (a) must:

(1) be sent by certified mail not later than the 10th day after the date the agency:

(A) takes the abandoned motor vehicle, watercraft, or outboard motor into custody; or

(B) receives the report under Section 683.031;

(2) specify the year, make, model, and identification number of the item;

(3) give the location of the facility where the item is being held;

(4) inform the owner and lienholder of the right to claim the item not later than the 20th day after the date of the notice on payment of:

(A) towing, preservation, and storage charges; or

(B) garagekeeper's charges and fees under Section 683.032 and, if the vehicle is a commercial motor vehicle impounded under Section 644.153(q), the delinquent administrative penalty and costs; and

(5) state that failure of the owner or lienholder to

claim the item during the period specified by Subdivision (4) is:

(A) a waiver by that person of all right, title, and interest in the item; and

(B) consent to the sale of the item at a public auction.

SECTION _____.08. Section 683.015, Transportation Code, is amended by adding Subsection (e) to read as follows:

(e) If the vehicle is a commercial motor vehicle impounded under Section 644.153(q), the Department of Public Safety is entitled from the proceeds of the sale to an amount equal to the amount of the delinquent administrative penalty and costs.

SECTION _____.09. (a) This Article takes effect September 1, 2003.

(b) The changes in law made in Section _____.04 of this Article apply only to an administrative penalty for a violation that occurs on or after the effective date of this article.

(c) An administrative penalty for a violation that occurred before the effective date of this article is governed by the law in effect at the time of the violation, and the former law is continued in effect for that purpose.