

BILL ANALYSIS

Senate Research Center

S.B. 1184
By: Deuell
Infrastructure Development and Security
6/27/2003
Enrolled

DIGEST AND PURPOSE

Currently, the Transportation Code prevents the most efficient possible handling of commercial motor vehicle standards violations. S.B. 1184 provides for notification, informal hearing, and administrative hearing processes for persons who violate certain rules. It also provides for the disposition of impounded commercial vehicles with delinquent penalties.

RULEMAKING AUTHORITY

This bill does not expressly grant any additional rulemaking authority to a state officer, institution, or agency.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Subsection (b), Section 542.202, Transportation Code, by adding Subdivision (3) to define “regulating.”

SECTION 2. Amends Section 548.001(1), Transportation Code, to redefine “commercial motor vehicle.”

SECTION 3. Amends Sections 644.001(1) and (5), Transportation Code, to redefine “commercial motor vehicle” and “federal motor carrier safety regulation.”

SECTION 4. Amends Subsections (a) through (d), Section 644.103, Transportation Code, as follows:

- (a) Authorizes an officer of the Department of Public Safety (DPS) to stop a motor vehicle subject to this chapter.
- (b) Authorizes a municipal police officer to stop or enter a motor vehicle subject to this chapter. Authorizes a sheriff or deputy sheriff to stop or enter a motor vehicle subject to this chapter.
- (c) Authorizes a person, rather than an officer, who details a vehicle under this section to prohibit the further operation of the vehicle if the vehicle or vehicle operator is in violation of certain regulations or rules.
- (d) Authorizes a certified, supervised noncommissioned employee of DPS to stop or detain a vehicle subject to this chapter at a fixed-site facility. Authorizes the noncommissioned employee, if warranted, to take enforcement action only if supervised by a DPS officer.

SECTION 5. Amends Section 644.153, Transportation Code, as follows:

- (a) Makes a nonsubstantive change.

(b) No changes.

(c) Requires DPS to designate one or more employees to investigate violations and conduct audits of persons subject to this chapter, and impose an administrative penalty if DPS discovers a violation that is covered by Subsection (a) or (b).

(d) Redesignates Subsection (c) as (d) and removes a requirement related to a penalty under this section.

(e) Requires DPS, if it determines to impose a penalty, to issue a notice of claim. Requires DPS to send the notice by certified or registered mail, personal delivery, or another manner of delivery that records the receipt of the notice by the person responsible. Requires the notice of claim to 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. Makes nonsubstantive changes.

(f) Authorizes the person, before the 21st day after the date of receipt of the notice of claim, to accept the determination and pay the recommended penalty, or make a written request for an informal or administrative hearing on the occurrence of the violation, the amount of the penalty, or both.

(g) Authorizes DPS, at the conclusion of an informal hearing requested under Subsection (f), to modify the recommendation for a penalty.

(h) Requires DPS, if the person requests an administrative hearing, to set a hearing and give the person notice of the hearing. Requires the hearing to be held by an administrative law judge of the State Office of Administrative Hearings. Requires the judge to make findings of fact and conclusions of law and promptly issue to the director of public safety (director) a proposal for a decision as to the occurrence of the violation and the amount of a proposed penalty.

(i) Requires the judge, if a penalty is proposed under Subsection (h), to 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. Authorizes the director to adopt the finding and make it a part of a final order entered in the proceeding.

(j) Authorizes the director by order and based on the findings of fact, conclusions of law, and proposal for a decision, to find that a violation has occurred and impose a penalty, or to find that no violation occurred. Authorizes the director, under Section 2001.058(e), Government Code (pertaining to an agency vacating or modifying an order of an administrative judge) to increase or decrease the amount of the penalty recommended by the administrative law judge within the limits prescribed by this chapter.

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

(l) Requires the person, before the 31st day after the date the director's order becomes final as provided by Section 2001.144 (Decisions; When Final), Government Code, to pay the amount of the penalty; pay the amount of the penalty and file a petition for judicial review contesting the occurrence of the violation, the amount of the penalty, or both; or, without paying the penalty, file a petition for judicial review contesting the occurrence, the penalty, or both.

(m) Authorizes a person who acts under Subsection (l) within the 30-day period to stay enforcement of the penalty by performing certain tasks, or to request the court to stay enforcement of the penalty by performing certain tasks.

(n) Authorizes DPS, before the sixth day after the date the director receives a copy of an affidavit filed under Subsection (m)(2), to file with the court a contest to the affidavit. Requires the court to hold a hearing on the facts alleged in the affidavit as soon as practicable and to stay the enforcement of the penalty if the court finds that the alleged facts are true. Places the burden of proof of financial inability to pay the penalty on the person who files an affidavit under Subsection (m)(2).

(o) Authorizes the director, if the person does not pay the amount of the penalty and the enforcement of the penalty is not stayed, to follow certain referral or impoundment procedures.

(p) Redesignated from Subsection (e). Makes nonsubstantive changes.

(q) Redesignated from Subsection (f). Makes a conforming change.

(r) Redesignated from Subsection (g). Requires that an impounded commercial motor vehicle left at a vehicle storage facility controlled by DPS or any other person be considered an abandoned motor vehicle on the 11th day after the date of impoundment, if the delinquent administrative penalty is not remitted to DPS before that day.

(s) Redesignated from Subsection (h). Specifies that all costs associated with the towing and storage of the commercial motor vehicle and load shall be the responsibility of the person and not of DPS or the state.

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

SECTION 6. Amends Section 644.155, Transportation Code, as follows:

Sec. 644.155. New heading: COMPLIANCE REVIEW AND SAFETY AUDIT PROGRAM. Requires DPS to implement a compliance review for any person who owns or operates a commercial motor vehicle that is domiciled in this state.

SECTION 7. Amends Subsection (a), Section 683.002, Transportation Code, by redefining abandoned motor vehicle.

SECTION 8. Amends Subsection (b), Section 683.012, Transportation Code, to require the notice under Subsection (a) to 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 the delinquent administrative penalty and costs if the item is a commercial motor vehicle impounded under Section 644.153(g).

SECTION 9. Amends Section 683.015, Transportation Code, by adding Subsection (e) to entitle DPS, if the vehicle is a commercial motor vehicle impounded under Section 644.153(g), to the proceeds of the sale in an amount equal to the amount of the delinquent administrative penalties and costs.

SECTION 10. (a) Effective date: September 1, 2003.

(b) and (c) Make application of SECTION 4 of this Act prospective.