

## **BILL ANALYSIS**

S.B. 1184  
By: Deuell  
Law Enforcement  
Committee Report (Amended)

### **BACKGROUND AND PURPOSE**

Chapter 644 of the Texas Transportation Code, Commercial Motor Vehicle Safety Standards, imposes a variety of rules and regulations on owners and operators of commercial motor vehicles and provides penalties for violations. However, it does not provide an efficient hearing process or enforcement mechanism for those penalties. Senate Bill 1184 provides for notification to the violator when a penalty is imposed, an informal hearing, an administrative hearing processes, and the disposition of commercial vehicles impounded as a result of delinquent penalties.

### **RULEMAKING AUTHORITY**

It is the committee's opinion that this bill does not expressly grant any additional rulemaking authority to a state officer, department, agency, or institution.

### **ANALYSIS**

SECTION 1. Amends Section 548.001(1), Transportation Code, to redefine "commercial motor vehicle" to include vehicles that meet the basic definition of commercial motor vehicle and are used to transport more than 15 passengers, including the driver.

SECTION 2. Amends Sections 644.001(1) and (5), Transportation Code, to redefine "commercial motor vehicle" by reference to 49 C.F.R. Section 390.5, if operated interstate, and by reference to Section 548.001, Transportation Code, if operated intrastate. Redefines "federal motor carrier safety regulation" to include regulations in Subtitle A, Title 49, Code of Federal Regulations.

SECTION 3. Amends Sections 644.103(a)-(d), 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 on a highway or at a port of entry within the territory of the municipality. Authorizes a sheriff or deputy sheriff to stop or enter a motor vehicle subject to this chapter on a highway or at a port of entry within the territory of the county.
- (c) Replaces the word "officer" with "person" to authorize any person who detains 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 4. Amends Section 644.153, Transportation Code, as follows:

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

(d) Removes the requirement that a penalty under this section shall be administered in the same manner as an administrative penalty for lack of proper registration under Section 643.251, except that the amount of a penalty shall be determined by DPS rule.

(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.

(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 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 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 of the violation, 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 placing the amount of the penalty in escrow or filing a supersedeas bond with the court, or to request the court to stay enforcement of the penalty by filing an affidavit stating the person is financially unable to pay.

(n) Authorizes DPS, before the sixth day after the date the director receives a copy of an affidavit stating that a person is financially unable to pay the amount of the penalty, 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 refer the matter to the attorney general for collection, initiate an impoundment proceeding under Subsection(g), or both.

(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. Provides that Chapter 683 (Abandoned Motor Vehicles), Transportation Code, applies to such vehicles, except that DPS is entitled to receive the amount of the delinquent penalty from the proceeds of a sale of an abandoned vehicle.

(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(Administrative Procedure), Government Code.

SECTION 5. Amends Section 644.155, Transportation Code, by requiring DPS to implement and enforce a compliance review for any person who owns or operates a commercial motor vehicle that is domiciled in this state.

SECTION 6. Amends Section 683.002(a), Transportation Code, by expanding the definition of “abandoned motor vehicle” to include a vehicle which is considered abandoned by Section 644.153(r), Transportation Code, as added by this Act.

SECTION 7. Amends Section 683.012(b), Transportation Code, to require the notice of abandonment required by 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 vehicle is a commercial motor vehicle impounded under Section 644.153(g).

SECTION 8. 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 9. Effective date.

### **EFFECTIVE DATE**

This Act takes effect September 1, 2003.

### **EXPLANATION OF AMENDMENTS**

Committee Amendment No. 1 amends the original by modifying SECTION 4, Subsection (j), making the section pursuant to Section 2001.058(e) of the Government Code, which provides that a state agency is allowed to change a finding of fact or conclusion of law by the administrative law judge, or may vacate or modify an order issued by the administrative judge, only if the agency determines:

- that the administrative law judge did not properly apply or interpret applicable law, agency rules, written policies provided under Subsection (c), or prior administrative decisions;
- that a prior administrative decision on which the administrative law judge relied is incorrect or should be changed; or
- that a technical error in a finding of fact should be changed.