

By: Deuell

S.B. No. 1184

A BILL TO BE ENTITLED

AN ACT

relating to the enforcement of commercial motor vehicle safety standards.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. 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 [~~4801~~] et seq.).

SECTION 2. Subdivisions (1) and (5), Section 644.001, Transportation Code, are amended to read as follows:

1 (1) "Commercial motor vehicle" means:

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

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

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

9 SECTION 3. Subsections (a) through (d), Section 644.103,
10 Transportation Code, are amended to read as follows:

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

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

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

25 (d) A noncommissioned employee of the department who is
26 certified for the purpose by the director and who is supervised by
27 an officer of the department may, at a fixed-site facility, stop,

1 enter, or detain a motor vehicle that is subject to this chapter.
2 If the employee's inspection shows that an enforcement action, such
3 as the issuance of a citation, is warranted, the noncommissioned
4 employee may take enforcement action only if the employee is under
5 the supervision of an [supervising] officer of the department [must
6 ~~take the action]~~.

7 SECTION 4. Section 644.153, Transportation Code, is amended
8 to read as follows:

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

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

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

17 (c) The department shall:

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

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

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

24 [~~1~~] may not exceed the maximum penalty provided for
25 a violation of a similar federal safety regulation~~, and~~

26 [~~2~~] ~~shall be administered in the same manner as a~~
27 ~~penalty under Section 643.251, except that the amount of a penalty~~

1 ~~shall be determined under Subdivision (1)].~~

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

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

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

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

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

27 (h) If the person requests an administrative hearing, the

1 department shall set a hearing and give notice of the hearing to the
2 person. The hearing shall be held by an administrative law judge of
3 the State Office of Administrative Hearings. The administrative
4 law judge shall make findings of fact and conclusions of law and
5 promptly issue to the director a proposal for a decision as to the
6 occurrence of the violation and the amount of a proposed penalty.

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

13 (j) Based on the findings of fact, conclusions of law, and
14 proposal for a decision, the director by order may find that a
15 violation has occurred and impose a penalty or may find that no
16 violation occurred. The director may increase or decrease the
17 amount of the penalty recommended by the administrative law judge
18 within the limits prescribed by this chapter.

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

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

26 (1) pay the amount of the penalty;

27 (2) pay the amount of the penalty and file a petition

1 for judicial review contesting:

2 (A) the occurrence of the violation;

3 (B) the amount of the penalty; or

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

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

8 (A) the occurrence of the violation;

9 (B) the amount of the penalty; or

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

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

14 (1) stay enforcement of the penalty by:

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

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

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

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

27 (B) sending a copy of the affidavit to the

1 director by certified mail.

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

10 (1) pay the amount of the penalty; and

11 (2) file the supersedeas bond.

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

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

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

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

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

27 (q) [~~f~~] The department shall impound any commercial motor

1 vehicle owned or operated by a person in violation of Subsection (p)
2 [~~(e)~~] after the department has first served the person with a notice
3 of claim. Service of the notice may be by certified mail,
4 registered mail, personal delivery, or any other manner of delivery
5 showing receipt of the notice.

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

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

22 (t) A proceeding under this section is subject to Chapter
23 2001, Government Code.

24 SECTION 5. Section 644.155, Transportation Code, is amended
25 to read as follows:

26 Sec. 644.155. COMPLIANCE REVIEW AND SAFETY AUDIT PROGRAM.
27 The department shall implement and enforce a compliance review and

1 safety audit program similar to the federal program established
2 under 49 C.F.R. Part 385 for any person who owns or operates a
3 commercial motor vehicle that is domiciled in this state.

4 SECTION 6. Subsection (a), Section 683.002, Transportation
5 Code, is amended to read as follows:

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

8 (1) is inoperable, is more than five years old, and has
9 been left unattended on public property for more than 48 hours;

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

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

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

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

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

24 SECTION 7. Subsection (b), Section 683.012, Transportation
25 Code, is amended to read as follows:

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

27 (1) be sent by certified mail not later than the 10th

1 day after the date the agency:

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

4 (B) receives the report under Section 683.031;

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

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

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

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

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

18 (5) state that failure of the owner or lienholder to
19 claim the item during the period specified by Subdivision (4) is:

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

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

24 SECTION 8. Section 683.015, Transportation Code, is amended
25 by adding Subsection (e) to read as follows:

26 (e) If the vehicle is a commercial motor vehicle impounded
27 under Section 644.153(q), the Department of Public Safety is

1 entitled from the proceeds of the sale to an amount equal to the
2 amount of the delinquent administrative penalty and costs.

3 SECTION 9. (a) This Act takes effect September 1, 2003.

4 (b) The changes in law made in Section 4 of this Act apply
5 only to an administrative penalty for a violation that occurs on or
6 after the effective date of this Act.

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