

AN ACT

relating to the enforcement of motor vehicle safety standards.

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

SECTION 1. Subsection (b), Section 542.202, Transportation Code, is amended by adding Subdivision (3) to read as follows:

(3) "Regulating" means criminal, civil, and administrative enforcement against a person, including the owner or operator of a motor vehicle, in accordance with a state law or a municipal ordinance.

SECTION 2. 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

1 materials in a quantity requiring placarding by a regulation issued
2 under the Hazardous Materials Transportation Act (49 U.S.C. Section
3 5101 [~~1801~~] et seq.).

4 SECTION 3. Subdivisions (1) and (5), Section 644.001,
5 Transportation Code, are amended to read as follows:

6 (1) "Commercial motor vehicle" means:

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

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

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

14 SECTION 4. Subsections (a) through (d), Section 644.103,
15 Transportation Code, are amended to read as follows:

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

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

26 (c) A person [~~An officer~~] who detains a vehicle under this
27 section may prohibit the further operation of the vehicle on a

1 highway if the vehicle or operator of the vehicle is in violation of
2 a federal safety regulation or a rule adopted under this chapter.

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

12 SECTION 5. Section 644.153, Transportation Code, is amended
13 to read as follows:

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

16 (1) a rule adopted under this chapter; or

17 (2) a provision of Subchapter [Subtitle] C that the
18 department by rule subjects to administrative penalties.

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

22 (c) The department shall:

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

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

1 (d) A penalty under this section~~[+]~~
2 ~~[(1)]~~ may not exceed the maximum penalty provided for
3 a violation of a similar federal safety regulation~~[, and~~
4 ~~[(2) shall be administered in the same manner as a~~
5 ~~penalty under Section 643.251, except that the amount of a penalty~~
6 ~~shall be determined under Subdivision (1)]~~.

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

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

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

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

1 the amount of the penalty.

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

5 (h) If the person requests an administrative hearing, the
6 department shall set a hearing and give notice of the hearing to the
7 person. The hearing shall be held by an administrative law judge of
8 the State Office of Administrative Hearings. The administrative
9 law judge shall make findings of fact and conclusions of law and
10 promptly issue to the director a proposal for a decision as to the
11 occurrence of the violation and the amount of a proposed penalty.

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

18 (j) Based on the findings of fact, conclusions of law, and
19 proposal for a decision, the director by order may find that a
20 violation has occurred and impose a penalty or may find that no
21 violation occurred. The director may, pursuant to Section
22 2001.058(e), Government Code, increase or decrease the amount of
23 the penalty recommended by the administrative law judge within the
24 limits prescribed by this chapter.

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

1 seek a judicial review of the order.

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

5 (1) pay the amount of the penalty;

6 (2) pay the amount of the penalty and file a petition
7 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; or

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

14 (A) the occurrence of the violation;

15 (B) the amount of the penalty; or

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

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

20 (1) stay enforcement of the penalty by:

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

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

27 (2) request the court to stay enforcement of the

1 penalty by:

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

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

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

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

17 (2) file the supersedeas bond.

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

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

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

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

26 (p) [~~e~~] A person who fails to pay, or becomes delinquent
27 in the payment of an administrative penalty[, ~~the administrative~~

1 ~~penalties~~] imposed by the department under this subchapter may
2 [~~shall~~] not operate or direct the operation of a commercial motor
3 vehicle on the highways of this state until [~~such time as~~] the
4 administrative penalty has [~~penalties have~~] been remitted to the
5 department.

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

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

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

1 (t) A proceeding under this section is subject to Chapter
2 2001, Government Code.

3 SECTION 6. Section 644.155, Transportation Code, is amended
4 to read as follows:

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

10 SECTION 7. Subsection (a), Section 683.002, Transportation
11 Code, is amended to read as follows:

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

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

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

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

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

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

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

3 SECTION 8. Subsection (b), Section 683.012, Transportation
4 Code, is amended to read as follows:

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

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

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

10 (B) receives the report under Section 683.031;

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

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

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

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

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

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

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

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

3 SECTION 9. Section 683.015, Transportation Code, is amended
4 by adding Subsection (e) to read as follows:

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

9 SECTION 10. (a) This Act takes effect September 1, 2003.

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

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

President of the Senate

Speaker of the House

I hereby certify that S.B. No. 1184 passed the Senate on April 25, 2003, by a viva-voce vote; and that the Senate concurred in House amendments on May 31, 2003, by a viva-voce vote.

Secretary of the Senate

I hereby certify that S.B. No. 1184 passed the House, with amendments, on May 28, 2003, by a non-record vote.

Chief Clerk of the House

Approved:

Date

Governor