

BILL ANALYSIS

C.S.H.B. 2093
By: Hill
Transportation
Committee Report (Substituted)

BACKGROUND AND PURPOSE

TxDOT has the authority to investigate and assess penalties for motor carrier registration and consumer protection violations. However, after assessing penalties, the department does not have the authority to revoke or deny a motor carrier registration for multiple violations or failing to pay assessed penalties. This inability to revoke or deny renewal registration allows violators to maintain their registration and continue practices that led to the original violation. Additionally, TxDOT does not have the ability to pursue shippers who provide false information to motor carriers, resulting in the motor carrier being in violation of the law.

In addition, the hearing process for motor carrier violations is not consistent. In cases involving insurance violations the motor carrier is notified of the pending administrative action and is given an opportunity to request an administrative hearing. In administrative penalty cases, if the matter is not resolved or the motor carrier does not respond an administrative hearing must be scheduled. Often the motor carrier does not appear at the hearing to protest the sanction. This system is time consuming for the department, Attorney General's office, and the State Office of Administrative Hearings, all of which must prepare for a hearing that never takes place.

C.S.H.B. 2093 provides the Department of Transportation (Department) the authority to revoke a motor carrier registration for violating certain provisions of statute dealing with overweight vehicles, a rule adopted under that statute or for failing to pay penalties imposed for violating that statute or a rule. It further provides for one efficient hearing process, eliminating the alternatives based on the type of violation. C.S.H.B. 2093 also provides for penalties and revocations for overweight and oversize permit violations and corrects citations to help with enforcement procedures. It also allows TxDOT to investigate and impose sanctions on shippers who provide false information on a shipper's certificate of weight and provides criteria for the certificate to be valid. It allows motor carriers to provide an incorrect shipper's certificate of weight as defense to sanctions.

RULEMAKING AUTHORITY

It is the committee's opinion that rulemaking authority is expressly granted to the Texas Department of Transportation in SECTION 9 and SECTION 16 of this bill.

ANALYSIS

SECTION 1. Amends Section 623.144, Transportation Code, by changing the citation to correctly reference the specialty plates issued for certain farm vehicles, drilling, or construction equipment.

SECTION 2. Amends Section 623.149(a), Transportation Code, by changing the citation to correctly reference the specialty plates issued for certain farm vehicles, drilling, or construction equipment.

SECTION 3. Amends Section 623.194, Transportation Code, by changing the citation to correctly reference the specialty plates issued for certain farm vehicles, drilling, or construction equipment.

SECTION 4. Amends Section 623.199(a), Transportation Code, by changing the citation to correctly reference the specialty plates issued for certain farm vehicles, drilling, or construction equipment.

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SECTION 5. Amends Section 623.001, Transportation Code, to define "shipper" and "shipper's certificate of weight."

SECTION 6. Amends Chapter 623, Transportation Code, by adding Subchapter N regarding administrative sanctions. This new subchapter authorizes the department to investigate and impose administrative penalties against overweight/oversize permit holders or revoke permits for violations of Chapter 621, Chapter 622 or Chapter 623, Transportation Code; for violations of a rule or order adopted under those chapters; for providing false information on the permit application or other forms required by the department or not obtaining a permit. Allows the department to investigate and impose administrative penalties on shippers who provide false information on a shipper's certificate of weight. Provides that it is an affirmative defense to administrative enforcement if the permit holder relied on the shipper's certificate of weight. Provides that administrative penalties may be imposed on motor carriers and shippers under the process in Section 643.251. Provides for the administrative hearing process motor carriers and shipper detailed in Section 643.2525. Prevents an individual from obtaining future overweight/oversize permits if they fail to pay an administrative penalty ordered under this subchapter. Authorizes injunctive relief from violations of the chapter or rules adopted under the chapter. Allows the department to prescribe a form to be used for a shipper's certificate of weight. Establishes criteria for a certificate to be valid. Allows the attorney general and the department to recover reasonable expenses incurred in obtaining injunctive relief.

SECTION 7. Amends Section 643.001, Transportation Code by adding subdivision (7-a) to define "unified carrier registration system."

SECTION 8. Amends Section 643.002, Transportation Code, to provide that motor carrier operations exempt from registration by the Uniform Carrier Registration Act of 2005 are exempt from Chapter 643, Transportation Code, and amends statute to correctly reference vehicles registered as cotton vehicles.

SECTION 9. Amends Section 643.251(a), Transportation Code, by deleting references to specific statutes and creating a general violation for violating any provision of Chapter 643 or a rule or order adopted under the chapter. The language regarding the authority to investigate violations is deleted from this section.

SECTION 10. Amends Section 643.252, Transportation Code, by changing the title to "Administrative Sanctions."

SECTION 11. Amends Section 643.252(a), Transportation Code, to include denials of motor carrier registration as an administrative sanction. Adds as a reason for sanctions a violation of any provision of the chapter or a violation of any order adopted under the chapter.

SECTION 12. Amends Subchapter F, Chapter 643, Transportation Code by adding Section 643.2525 regarding the administrative hearing process. This new section establishes the administrative hearing process for all penalties and sanctions issued under Chapter 643. The new language requires an enforcement notice and requires that the motor carrier request a hearing to contest the enforcement action. Provides for an administrative hearing before SOAH judicial review and an eighteen month stay of any enforcement action during the appeal process. Provides that a motor carrier must appeal an order before the 31st day after the order becomes final. Requires the motor carrier pay penalties and costs by the 61st day to avoid additional enforcement actions. Provides that a motor carrier is not eligible for reinstatement or renewal of the carrier registration until all payments required under this subchapter are made to the department.

SECTION 13. Amends Section 643.254(a), Transportation Code, by authorizing the department to investigate any violation of Chapter 643 or a rule or order adopted under the chapter.

SECTION 14. Amends Subchapter F, Chapter 643, Transportation Code by adding Section 643.255 to authorize the department to seek injunctive relief against motor carriers who violate the provisions of the chapter or rules adopted under the chapter. Venue for the injunction will be

in Travis County. Authorizes the attorney general and the department to recover reasonable expenses incurred in obtaining injunctive relief.

SECTION 15. Amends Section 645.001, Transportation Code, to provide that TxDOT may participate in a federal motor carrier registration program as an option additional to the single state registration system.

SECTION 16. Amends Section 645.003, Transportation Code, by changing the reference to Subchapter F, Chapter 643 for enforcement procedures. Authorizes administrative penalties and sanctions for failing to register a vehicle as required, violating a provision of the chapter, or violating a rule adopted under the chapter.

SECTION 17. Repeals Sections 643.251(d)-(r) and 643.252(c)-(e). These sections provided two separate administrative hearing processes for enforcement actions. The provisions from these sections are combined under Section 643.2525, per SECTION 12 of C.S.H.B. 2093.

SECTION 18. Provides transition provisions for the application of new Subchapter N, Chapter 623, Transportation Code, and new Section 643.2525, Transportation Code, both of which are added by this Act.

SECTION 19. Provides that the bill takes effect September 1, 2007.

EFFECTIVE DATE

September 1, 2007.

COMPARISON OF ORIGINAL TO SUBSTITUTE

The substitute defines "shipper" and "shipper's certificate of weight." It allows motor carriers to use a valid shipper's certificate of weight as an affirmative defense to sanctions, establishes criteria for a valid certificate and allows TxDOT to prescribe the form for a certificate. C.S.H.B. 2093 adds language that refers to shippers and allows TxDOT to pursue sanctions against shippers that provide false information on a shipper's certificate of weight in addition to motor carriers. It allows the attorney general and TxDOT to recover reasonable expenses incurred in obtaining injunctive relief. C.S.H.B. 2093 defines "unified carrier registration system" and allows TxDOT to participate in the system. The substitute exempts motor carrier operations exempt from registration by the Unified Carrier Registration Act of 2005 from Chapter 643, Transportation Code, and changes a reference to cotton vehicles in current law to be more accurate. This substitute removes the provision allowing immediate effect.