

BILL ANALYSIS

Senate Research Center

H.B. 2093
By: Hill (Carona)
Transportation & Homeland Security
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Engrossed

AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

Under current law, the Texas Department of Transportation (TxDOT) has the authority to investigate and assess penalties for motor carrier registration and consumer protection violations. However, after assessing penalties, TxDOT does not have the authority to revoke or deny a motor carrier registration for multiple violations or for 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 continued violation of the law. Furthermore, 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 is required to be scheduled. Often, the motor carrier does not appear at the hearing to protest the sanction. The current system is time consuming for TxDOT, the attorney general's office, and the State Office of Administrative Hearings, all of which are required to prepare for a hearing that never takes place.

H.B. 2093 authorizes TxDOT to revoke a motor carrier registration for violating certain provisions of statute regarding overweight vehicles, a rule adopted under that statute, or for failing to pay penalties imposed for violating that statute or a rule. This bill further provides for a single efficient hearing process, eliminating alternative hearing processes based on the type of violation. H.B. 2093 also provides for penalties and revocations for overweight and oversize permit violations and corrects citations to help with enforcement procedures. This bill authorizes TxDOT to investigate and impose sanctions on shippers who provide false information on a shipper's certificate of weight and sets forth criteria for which a shipper is required to meet in order for the certificate to be considered valid. Finally, this bill authorizes carriers to provide an incorrect shipper's certificate of weight as a defense to sanctions.

RULEMAKING AUTHORITY

Rulemaking authority previously granted to the Texas Department of Transportation is modified in SECTION 16 (Section 645.003, Transportation Code) of this bill.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Section 623.144, Transportation Code, as follows:

Sec. 623.144. REGISTRATION OF VEHICLE. Authorizes a permit under this subchapter (Oil Well Servicing and Drilling Machinery) to be issued only if the vehicle is registered under Chapter 502 (Registration for Vehicles) for the maximum gross weight applicable to the vehicle under Section 621.101 (Maximum Weight of Vehicle or Combination) or has the distinguishing license plates as provided by Section 504.504 (Certain Farm Vehicles and Drilling and Construction Equipment), rather than Section 502.276, if applicable to the vehicle.

SECTION 2. Amends Section 623.149(a), Transportation Code, to make a conforming change.

SECTION 3. Amends Section 623.194, Transportation Code, to make a conforming change.

SECTION 4. Amends Section 623.199(a) Transportation Code, to make a conforming change.

SECTION 5. Amends Section 623.001, Transportation Code, as follows:

Sec. 623.001. New heading: DEFINITIONS. Defines "shipper" and "shipper's certificate of weight." Makes nonsubstantive changes.

SECTION 6. Amends Chapter 623, Transportation Code, by adding Subchapter N, as follows:

SUBCHAPTER N. ADMINISTRATIVE SANCTIONS

Sec. 623.271. ADMINISTRATIVE ENFORCEMENT. (a) Authorizes the Texas Department of Transportation (TxDOT) to investigate and impose an administrative penalty or revoke an oversize or overweight permit issued under this chapter (Permits for Oversize or Overweight Vehicles) if the person or holder of the permit, as applicable, commits certain acts or violations.

(b) Provides that the notice and hearing requirements of Section 643.2525 apply to the imposition of an administrative penalty or the revocation of a permit under this section as if the action were being taken under that section.

(c) Provides that the person or holder of a permit having relied on the shipper's certificate of weight is an affirmative defense to administrative enforcement under this section.

(d) Provides that the amount of an administrative penalty imposed under this section is calculated in the same manner as the amount of an administrative penalty imposed under Section 643.251 (Administrative Penalty).

(e) Prohibits a person who has been ordered to pay an administrative penalty under this section and the vehicle that is the subject of the enforcement order from being issued a permit under this chapter until the amount of the penalty has been paid to TxDOT.

Sec. 623.272. ADMINISTRATIVE PENALTY FOR FALSE INFORMATION ON CERTIFICATE. (a) Authorizes TxDOT to investigate and impose an administrative penalty on a shipper who provides false information on a shipper's certificate of weight that the shipper delivers to a person transporting a shipment.

(b) Provides that the notice and hearing requirements of Section 643.2525 apply to the imposition of an administrative penalty under this section as if the action were being taken under that section.

(c) Provides that the amount of an administrative penalty imposed under this section is calculated in the same manner as the amount of an administrative penalty imposed under Section 643.251.

Sec. 623.273. INJUNCTIVE RELIEF. (a) Authorizes the attorney general, at the request of TxDOT, to petition a district court for appropriate injunctive relief to prevent or abate a violation of this chapter or a rule or order adopted under this chapter.

(b) Establishes Travis County as the venue in a suit for injunctive relief under this section.

(c) Requires the court to grant the appropriate relief without bond on application for injunctive relief and a finding that a person is violating or has violated this chapter, or a rule or order adopted under this chapter.

(d) Authorizes the attorney general and TxDOT to recover reasonable expenses incurred in obtaining injunctive relief under this section, including certain expenses.

Sec. 623.274. SHIPPER'S CERTIFICATE OF WEIGHT. (a) Requires TxDOT to prescribe a form to be used for a shipper's certificate of weight. Requires the form to provide space for the maximum weight of the shipment being transported.

(b) Sets forth certain requirements for a shipper to complete in order for his or her certificate of weight to be valid.

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, as follows:

Sec. 643.002. EXEMPTIONS. Provides that this chapter (Motor Carrier Registration) does not apply to motor carrier operations exempt from registration by the Unified Carrier Registration Act of 2005 or a motor vehicle registered as a cotton vehicle under Section 504.505 (Cotton Vehicles), rather than Section 502.277.

SECTION 9. Amends Section 643.251(a), Transportation Code, as follows:

(a) Authorizes TxDOT to impose an administrative penalty against a motor carrier required to register under Subchapter B (Registration) that violates this chapter (Motor Carrier Registration), rather than certain other sections, or a rule or order adopted under this chapter, rather than certain provisions or Section 643.003. Deletes existing text requiring TxDOT to designate one or more employees to investigate violations and administer penalties under this section.

SECTION 10. Amends the heading to Section 643.252, Transportation Code, to read as follows:

Sec. 643.252. ADMINISTRATIVE SANCTIONS.

SECTION 11. Amends Section 643.252(a), Transportation Code, as follows:

(a) Authorizes TxDOT to deny a registration issued under this chapter if a motor carrier commits certain actions or violations. Authorizes TxDOT to suspend, revoke, or deny a registration issued under this chapter or place on probation a motor carrier whose registration is suspended if a motor carrier violates any provision of this chapter or violates a rule or order adopted under this chapter. Deletes existing text authorizing TxDOT to suspend or revoke a registration issued under this chapter or place on probation a motor carrier whose registration is suspended if a motor carrier violates a rule adopted under Section 643.063 (Vehicles Operated Under Short-Term Lease and Substitute Vehicles). Makes nonsubstantive changes.

SECTION 12. Amends Subchapter F, Chapter 643, Transportation Code, by adding Section 643.2525, as follows:

Sec. 643.2525. ADMINISTRATIVE HEARING PROCESS. (a) Requires TxDOT, if it determines that a violation has occurred for which an enforcement action is being taken under Section 643.251 or 643.252 (Suspension and Revocation of License), to give written notice to the motor carrier by first class mail to the carrier's address as shown in the records of TxDOT.

(b) Requires a notice required by Subsection (a) to include certain information.

(c) Requires TxDOT, if not later than the 26th day after the date the notice is mailed TxDOT receives a written request for a hearing, to set a hearing and give notice of the hearing to the carrier. Requires the hearing to be conducted by an administrative law judge of the State Office of Administrative Hearings.

(d) Provides that TxDOT's decision becomes final on the expiration of the period described by Subsection (c) if the motor carrier does not timely request a hearing under Subsection (c).

(e) Requires the administrative law judge to make findings of fact and conclusions of law and promptly issue to the director of TxDOT (director) a proposal for a decision as to the occurrence of the violation and the administrative penalties or sanctions.

(f) Requires the administrative law judge, in addition to a penalty or sanction proposed under Subsection (e), to include in the proposal for a decision a finding setting out costs, fees, expenses, and reasonable 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.

(g) Authorizes the director by order, based on the findings of fact, conclusions of law, and proposal for a decision, to find that a violation has occurred and impose the sanctions or find that a violation has not occurred.

(h) Requires the director to provide written notice to the motor carrier of a finding made under Subsection (g) and include in the notice a statement of the right of the carrier to judicial review of the order.

(i) Authorizes the motor carrier, before the 31st day after the date the director's order under Subsection (g) becomes final as provided by Section 2001.144 (Decisions; When Final), Government Code, to appeal the order by filing a petition for judicial review contesting the order. Provides that judicial review is under the substantial evidence rule.

(j) Provides that a petition filed under Subsection (i) stays the enforcement of the administrative action until the earlier of the 550th day after the date the petition was filed or the date a final judgment is rendered by the court.

(k) Provides that if the motor carrier is required to pay a penalty or cost, failure to pay the penalty or cost before the 61st day after the date the requirement becomes final is a violation of this chapter and authorizes such to result in an additional penalty, revocation or suspension of a motor carrier registration, or denial of renewal of a motor carrier registration.

(l) Provides that a motor carrier that is required to pay a penalty, cost, fee, or expense under this section or Section 643.251 is not eligible for a reinstatement or a renewal of registration under this chapter until all required amounts have been paid to TxDOT.

(m) Authorizes TxDOT, if the suspension of a motor carrier's registration is probated, to require the carrier to report regularly to TxDOT on any matter that is the basis of the probation. Provides that any violation of the probation may result in the imposition of an administrative penalty or the revocation of the registration.

(n) Provides that all proceedings under this section are subject to Chapter 2001 (Administrative Procedure), Government Code.

SECTION 13. Amends Section 643.254(a), Transportation Code, to authorize, in order to investigate an alleged violation of this chapter or a rule or order adopted under this chapter, rather than an alleged violation of Subchapter B, C, or D, an officer or employee of TxDOT who has been certified for the purpose by the director to enter a motor carrier's premises to inspect, copy, or verify, rather than to copy or verify, the correctness of a document, including an operation log or insurance certificate.

SECTION 14. Amends Subchapter F, Chapter 643, Transportation Code, by adding Section 643.255, as follows:

Sec. 643.255. INJUNCTIVE RELIEF. (a) Authorizes the attorney general, at the request of TxDOT, to petition a district court for appropriate injunctive relief to prevent or abate a violation of this chapter or a rule or order adopted under this chapter.

(b) Establishes Travis County as the venue in a suit for injunctive relief under this section.

(c) Requires the court to grant the appropriate relief without bond on application for injunctive relief and a finding that a person is violating or has violated this chapter or a rule or order adopted under this chapter.

(d) Authorizes the attorney general and TxDOT to recover reasonable expenses incurred in obtaining injunctive relief under this section, including certain expenses.

SECTION 15. Amends Section 645.001, Transportation Code, as follows:

Sec. 645.001. New heading: FEDERAL MOTOR CARRIER REGISTRATION. Authorizes TxDOT to participate in a federal motor carrier registration program under the unified carrier registration system as defined by Section 643.001 (Definitions) or the single state registration system established under 49 U.S.C. Section 14504, rather than requiring TxDOT to participate in the single state registration system established under 49 U.S.C. Section 14504.

SECTION 16. Amends Section 645.003, Transportation Code, as follows:

Sec. 645.003. ENFORCEMENT RULES. Requires TxDOT to adopt rules that are consistent with federal law providing for administrative penalties and sanctions for a failure to register as required by the unified carrier registration system or single state registration system or for a violation of this chapter or a rule adopted under this chapter in the same manner as Subchapter F (Enforcement), Chapter 643. Deletes existing text requiring TxDOT to adopt rules that are consistent with federal law providing for suspension and revocation of registration in the same manner as Section 643.252.

SECTION 17. Repealers:

(1) Sections 643.251(d)-(r) (relating to administrative penalties), Transportation Code; and

(2) Sections 643.252(c)-(e) (relating to suspension and revocation of license), Transportation Code.

SECTION 18. (a) Makes application of Subchapter N, Chapter 623, Transportation Code, as added by this Act, prospective.

(b) Makes application of Section 643.2525, Transportation Code, as added by this Act, prospective.

(c) Makes application of the changes in law made by this Act relating to the amount or disposition of a fee collected by TxDOT in connection with a permit for an overweight or oversized vehicle prospective.

SECTION 19. Effective date: September 1, 2007.