

SECOND REGULAR SESSION

HOUSE BILL NO. 1437

92ND GENERAL ASSEMBLY

INTRODUCED BY REPRESENTATIVE SUTHERLAND.

Read 1st time February 10, 2004, and copies ordered printed.

STEPHEN S. DAVIS, Chief Clerk

3975L.011

AN ACT

To amend chapter 226, RSMo, by adding thereto two new sections relating to motor carrier safety.

Be it enacted by the General Assembly of the state of Missouri, as follows:

Section A. Chapter 226, RSMo, is amended by adding thereto two new sections, to be known as sections 226.195 and 226.197, to read as follows:

226.195. 1. Motor carriers may voluntarily request a compliance audit to be conducted by the highways and transportation commission of the department of transportation to determine whether the motor carrier is currently in compliance with all relevant statutes, rules, and regulations. If deficiencies are discovered by the commission during the voluntary compliance audit, the carrier shall not be subject to fines or penalties. The following restrictions apply to such voluntary compliance audits:

- (1) Audits are to be conducted with existing audit staff;**
- (2) Motor carriers may request only one compliance audit per five-year period;**
- (3) No motor carrier may have a second voluntary compliance audit unless a regular enforcement audit has been performed; and**
- (4) A request for such a compliance audit shall not be a rationale for the highways and transportation commission to perform an enforcement audit.**

2. The highways and transportation commission shall:

- (1) Keep a list of all motor carriers requesting a voluntary compliance audit and if more requests are made than audit slots available, the voluntary compliance audits shall be conducted on a first-come, first-serve basis;**

- (2) Start a new list of voluntary compliance audit requests each year starting on the first of September and set up a mechanism which manages the voluntary compliance audit**

19 requests in the most fiscally efficient and materially fair manner;

20 (3) Ensure that the commission does not exhibit a pattern of enforcement audit bias
21 against any motor carrier who has requested a voluntary compliance audit, but has failed
22 to receive one; and

23 (4) Implement rules and regulations as necessary to implement the provisions of
24 this section. No rule or portion of a rule promulgated pursuant to the authority of this
25 section shall become effective unless it has been promulgated pursuant to chapter 536,
26 RSMo.

27 (5) One-third of the total number of audits performed shall be based on the total
28 number of audits performed in the prior fiscal year.

29 3. The commission shall perform at a minimum one-third of all audits conducted
30 by the commission as voluntary compliance audits. The highways and transportation
31 commission may, in its discretion, increase the number of voluntary compliance audits to
32 fifty percent of the total audits performed in the prior fiscal year.

33 4. All records related to the request for a voluntary compliance audit shall be
34 considered open under chapter 610, RSMo.

35 5. Any pattern of abuse related to voluntary compliance audits conducted or
36 actions resulting from such audits by the highways and transportation commission is
37 admissible in the administrative hearing commission or courts as evidence of abuse of
38 administrative discretion. Upon such a finding the court may award attorney's fees.

39 6. If the highways and transportation commission discovers a violation that
40 presents a safety issue for the traveling public while conducting a voluntary compliance
41 audit under this section, the commission may shut down the operation of the motor carrier,
42 but the commission shall not impose a fine for the violation.

226.197. 1. The motor carrier shall have sixty days from the release of audit results
2 by the highways and transportation commission to appeal the decision of the commission
3 regarding the audit or any allegations of misconduct by the commission under section
4 390.067 to the administrative hearing commission. For purposes of this section, "audit"
5 includes enforcement audits and voluntary compliance audits.

6 2. The provisions of chapter 536, RSMo, shall apply to any complaints or actions
7 referred to the administrative hearing commission.

8 3. In resolving any deficiency in an audit or a complaint by a motor carrier, the
9 highways and transportation commission shall not offer a settlement agreement to a motor
10 carrier unless the commission has advised the motor carrier in writing of the right to file
11 a complaint concerning the findings of the audit with the administrative hearing
12 commission as proved by chapter 621, RSMo. Any settlement agreement offered by the

13 **highways and transportation commission shall be made within thirty days after the results**
14 **of the audit are issued.**

15 **4. Except on issues discovered in the process of a mechanical inspection regarding**
16 **safety of the actual operating equipment, the burden of proof in all other circumstances**
17 **shall be on the commission.**