

SECOND REGULAR SESSION

HOUSE BILL NO. 1592

92ND GENERAL ASSEMBLY

INTRODUCED BY REPRESENTATIVE CRAWFORD.

Read 1st time March 1, 2004, and copies ordered printed.

STEPHEN S. DAVIS, Chief Clerk

4800L.011

AN ACT

To amend chapters 226 and 304, RSMo, by adding thereto four new sections relating to commercial motor vehicles, with a penalty provision.

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

Section A. Chapters 226 and 304, RSMo, are amended by adding thereto four new sections, to be known as sections 226.195, 226.197, 304.233, and 304.245, RSMo, 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**

18 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. Any rule or portion of a rule, as that term is defined in section 536.010, RSMo,
25 that is created under the authority delegated in this section shall become effective only if
26 it complies with and is subject to all of the provisions of chapter 536, RSMo, and, if
27 applicable, section 536.028, RSMo. This section and chapter 536, RSMo, are nonseverable
28 and if any of the powers vested with the general assembly pursuant to chapter 536, RSMo,
29 to review, to delay the effective date, or to disapprove and annul a rule are subsequently
30 held unconstitutional, then the grant of rulemaking authority and any rule proposed or
31 adopted after August 28, 2004, shall be invalid and void.

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

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

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

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

44 6. If the highways and transportation commission discovers a violation that
45 presents a safety issue for the traveling public while conducting a voluntary compliance
46 audit under this section, the commission may shut down the operation of the motor carrier,
47 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, RSMo, to the administrative hearing commission. For purposes of this section,
5 "audit" 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 provided 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.**

304.233. The general assembly hereby occupies and preempts the entire field of
2 **legislation touching in any way the enforcement of state commercial vehicle laws to the**
3 **complete exclusion of any order, ordinance, or regulation by any political subdivision of**
4 **this state. No local law enforcement officer or local agency shall perform commercial**
5 **motor vehicle enforcement and is hereby restricted from enforcing commercial motor**
6 **vehicle equipment, size, height, and weight violations described in sections 304.170 to**
7 **304.230. The enforcement of the commercial vehicle violations described in sections**
8 **304.170 to 304.230 shall be exclusively enforced by the state and its duly authorized**
9 **agencies. No county, city, town, village, municipality, or other political subdivision of this**
10 **state shall adopt any order, ordinance, or regulation concerning in any way the**
11 **enforcement of commercial motor vehicle laws. Any existing or future orders, ordinances,**
12 **or regulations in this field are hereby and shall be null and void.**

304.245. 1. A person who weighs goods before or after unloading or a person who
2 **loads or unloads goods on the basis of liquid volume measure shall keep a written record**
3 **of the origin, weight, and composition of each shipment, the date of loading or receipt, the**
4 **name and address of the shipper, the total number of axles on the vehicle or combination**
5 **of vehicles, and the registration number of the power unit or some other means of**
6 **identification by which the shipment was transported. The record shall be retained for**
7 **fourteen days and shall be open to inspection and copying by a state law highway patrol**
8 **or commercial vehicle inspection officers, upon demand. No search warrant is required**
9 **to inspect or copy the record. This subsection does not apply to a person weighing goods**
10 **who is not involved in the shipping, receiving, and transporting of those goods.**

11 **2. A document evidencing the receipt of goods issued by the person consigning the**
12 **goods for shipment or a person engaged in the business of transporting or forwarding**
13 **goods, which states a gross weight of the vehicle and load or the weight of the load when**

14 combined with the empty weight of the vehicle that is in excess of the prescribed maximum
15 weight limitation permitted by sections 304.180 to 304.220, is relevant evidence that the
16 weight of the vehicle and load is in violation of those sections. For the purposes of this
17 section, a document required to be kept under this section indicating a unit of measure
18 that, when converted to weight and combined with the weight of an empty vehicle,
19 indicates a gross weight in excess of the prescribed maximum weight limitation permitted
20 by this chapter, is relevant evidence that the weight of the vehicle and load is unlawful.
21 The provisions of this section shall not limit the introduction of other competent evidence
22 bearing upon the question of whether or not there is a violation of the prescribed maximum
23 weight limitations permitted by this chapter. As used in this section, the term "document"
24 includes, but is not limited to, a bill of lading, freight bill, weight certification, or other
25 similar document.

26 3. A person may not load, or cause to be loaded, a vehicle for operation on a public
27 highway of this state that exceeds the weight limitations for operation of that vehicle
28 provided by this chapter. A penalty for excessive weight under section 304.240 may be
29 imposed based on a record of a shipment under this section. The penalties provided for
30 in section 304.240 may be assessed against the shipper or loader of the goods or the owner
31 or operator of the commercial motor vehicle, solely or in part, depending upon the
32 involvement of each party in causing an overweight movement in violation of this chapter.
33 A court shall determine the extent of liability of the driver, carrier, shipper, or other party
34 shown to be liable. It is a defense if a party can show that the party had no access to or
35 control of the loading of an overweighted load. If a person who is an owner, a driver, a
36 carrier, or a shipper specifically or directly orders or assigns a particular shipment to be
37 loaded, the person shall be considered to have had control of the loading within the
38 meaning of this section.

39 4. A person who fails to keep, maintain, or open for inspection and copying, those
40 documents as required in subsection 1 of this section is guilty of a class A misdemeanor.
41 A person who does not accurately record the information required to be contained in those
42 documents required in subsection 1 of this section is guilty of a class A misdemeanor.