

FIRST REGULAR SESSION

HOUSE BILL NO. 653

93RD GENERAL ASSEMBLY

INTRODUCED BY REPRESENTATIVE SUTHERLAND.

Read 1st time February 28, 2005 and copies ordered printed.

STEPHEN S. DAVIS, Chief Clerk

1405L.011

AN ACT

To repeal sections 390.030, 390.201, and 622.550, RSMo, and to enact in lieu thereof seven new sections relating to commercial motor vehicles.

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

Section A. Sections 390.030, 390.201, and 622.550, RSMo, are repealed and seven new sections enacted in lieu thereof, to be known as sections 304.233, 304.234, 390.030, 390.201, 622.550, 622.552, and 622.554, to read as follows:

304.233. Notwithstanding any other law, order, ordinance, or regulation of any political subdivision of this state, no local law enforcement officer or local agency shall perform commercial motor vehicle enforcement as described in sections 304.170 to 304.230. The enforcement of the commercial vehicle violations described in sections 304.070 to 304.230 shall be exclusively enforced by the state and its duly authorized agencies. No county, city, town, village, municipality, or other political subdivision of this state shall adopt any order, ordinance, or regulation relating in any way to the enforcement of commercial motor vehicle laws. The provisions of this section do not preclude a county, city, town, village, municipality, or other political subdivision from adopting any order, ordinance, or regulation which restricts the commercial vehicle equipment, size, travel, weight, or height on roads which are not state or federal designated roads or on roads which are not maintained with state or federal moneys.

304.234. The state director of the highway patrol shall apply for all federal funding which is currently available or may become available which has been formerly allocated or granted to local political subdivisions for the enforcement of commercial motor vehicle

EXPLANATION — Matter enclosed in bold-faced brackets [thus] in the above bill is not enacted and is intended to be omitted from the law. Matter in **bold-face** type in the above bill is proposed language.

4 **enforcement with existing staff. The state agency or department which is responsible for**
5 **the granting of federal funding for the purpose of commercial motor vehicle enforcement**
6 **shall make every effort to assist the state director of the highway patrol in the receipt of**
7 **such grants for the purpose of commercial motor vehicle enforcement with existing staff.**

390.030. 1. The provisions of this chapter shall not apply to:

- 2 (1) School buses;
- 3 (2) Taxicabs;
- 4 (3) Motor vehicles while being used exclusively to transport;
 - 5 (a) Stocker and feeder livestock from farm to farm, or from market to farm,
 - 6 (b) Farm or dairy products including livestock from a farm or dairy,
 - 7 (c) Agricultural limestone or fertilizer to farms,
 - 8 (d) Property from farm to farm,
 - 9 (e) Raw forest products from farm, or
 - 10 (f) Cotton, cottonseed, and cottonseed hulls;
- 11 (4) Motor vehicles when operated under contract with the federal government for
12 carrying the United States mail and when on a trip provided in the contract;
- 13 (5) Motor vehicles used solely in the distribution of newspapers from the publisher to
14 subscribers or distributors;
- 15 (6) The transportation of passengers or property performed by a carrier pursuant to a
16 contract between the carrier and the state of Missouri or any civil subdivision thereof, where the
17 transportation services are paid directly to the carrier by the state of Missouri or civil
18 subdivision;
- 19 (7) Freight-carrying motor vehicles duly registered and licensed in conformity with the
20 provisions of chapter 301, RSMo, for a gross weight of six thousand pounds or less;
- 21 (8) The transportation of passengers or property wholly within a municipality, or
22 between contiguous municipalities, [or within a commercial zone as defined in section 390.020,
23 or within a commercial zone established by the division of motor carrier and railroad safety
24 pursuant to the provisions of subdivision (4) of section 390.041;] provided[,] the exemption in
25 this subdivision shall not apply to motor carriers of persons operating to, from or between points
26 located wholly or in part in counties now or hereafter having a population of more than three
27 hundred thousand persons, where such points are not within the same municipality and to motor
28 carriers of commodities in bulk to include liquids, **and** in tank or hopper type vehicles[, and in
29 a commercial zone as defined herein or by the division];
- 30 (9) Street railroads and public utilities other than common carriers as defined in section
31 386.020, RSMo;
- 32 (10) Motor vehicles whose operations in the state of Missouri are interstate in character

33 and are limited exclusively to a municipality and its commercial zone;

34 (11) Motor vehicles, commonly known as tow trucks or wreckers, designed and
35 exclusively used in the business of towing or otherwise rendering assistance to abandoned,
36 disabled or wrecked vehicles;

37 (12) Motor vehicles while being used solely by a group of employees to commute to and
38 from their place or places of employment, except that the motor vehicle must be driven by a
39 member of the group.

40 2. Nothing contained in this section shall be deemed to exempt the vehicles of driveaway
41 operators.

42 3. Except for the provisions of subdivision (5) of section 390.041, the provisions of this
43 chapter shall not apply to private carriers.

44 4. No agency of state government nor any county or municipality or their agencies shall
45 discriminate against any motor carrier or private carrier or deny any such carrier operating a
46 motor vehicle public access to any building, facility or area owned by or operated for the public
47 unless such discrimination or denial is based solely on reasonable vehicle size or weight
48 considerations. The provisions of this subsection shall only apply in cities not within a county
49 and first class counties with a charter form of government which adjoin any city not within a
50 county.

390.201. Subject to any exceptions which are applicable under section 307.400, RSMo,
2 or subsection 6 of section 390.063, the officers and commercial motor vehicle inspectors of the
3 state highway patrol, the enforcement personnel of the division of motor carrier and railroad
4 safety, and other authorized peace officers of this state and any civil subdivision of this state,
5 may enforce any of the provisions of Parts 350 through 399 of Title 49, Code of Federal
6 Regulations, as those regulations have been and may periodically be amended, as they apply to
7 motor vehicles and drivers operating in interstate or intrastate commerce within this state; except
8 that the enforcement personnel of the [division of motor carrier and railroad safety] **state**
9 **highways and transportation commission and other authorized peace officers of this state**
10 **and any civil subdivision of this state** shall be authorized to enforce those regulations wholly
11 within the terminals of motor carriers and private carriers by motor vehicle.

622.550. Subject to any exceptions which are applicable under section 307.400, RSMo,
2 or subsection 6 of section 390.063, RSMo, the officers and commercial motor vehicle inspectors
3 of the state highway patrol, the enforcement personnel of the division of motor carrier and
4 railroad safety, and other authorized peace officers of this state and any civil subdivision of this
5 state, may enforce any of the provisions of Parts 350 through 399 of Title 49, Code of Federal
6 Regulations, as those regulations have been and may periodically be amended, as they apply to
7 motor vehicles and drivers operating in interstate or intrastate commerce within this state; except

8 that the enforcement personnel of the [division of motor carrier and railroad safety] **state**
9 **highways and transportation commission and other authorized peace officers of this state**
10 **and any civil subdivision of this state** shall be authorized to enforce those regulations only
11 within the terminals of motor carriers and private carriers by motor vehicle.

622.552. 1. Motor carriers may voluntarily request an educational compliance
2 **contact to be conducted by the state highways and transportation commission under**
3 **section 390.201, RSMo, and section 622.550 to determine whether the motor carrier is**
4 **currently in compliance with all relevant statutes, rules, and regulations. If deficiencies are**
5 **discovered by the commission during the voluntary educational compliance contact, the**
6 **carrier shall not be subject to fines or penalties. The following restrictions apply to such**
7 **educational compliance contacts:**

- 8 (1) **Audits are to be conducted with existing staff;**
9 (2) **Motor carriers may request only one educational compliance contact per five-**
10 **year period;**
11 (3) **No motor carrier may have a second voluntary educational compliance contact**
12 **unless a compliance review has been performed;**
13 (4) **A request for an educational compliance contact shall not be a rationale for the**
14 **state highways and transportation commission to perform a compliance review; and**
15 (5) **No motor carrier who is the subject of a current complaint investigation or has**
16 **a pending prosecution case with the state highways and transportation commission shall**
17 **be eligible for an educational compliance audit.**

18 **2. The highways and transportation commission shall:**

- 19 (1) **Keep a list of all motor carriers requesting an educational compliance contact**
20 **and if more requests are made than educational compliance contact slots available, the**
21 **educational compliance contacts shall be conducted on a first-come, first-serve basis;**
22 (2) **Start a new list of educational compliance contact requests each year starting**
23 **on the first of October and set up a mechanism which manages the educational compliance**
24 **contact requests in the most fiscally efficient and materially fair manner;**
25 (3) **Ensure that the state highways and transportation commission does not exhibit**
26 **a pattern of enforcement audit bias against any motor carrier who has requested an**
27 **educational compliance contact, but has failed to receive one; and**
28 (4) **Implement rules and regulations as necessary to implement the provisions of**
29 **this section. Any rule or portion of a rule, as that term is defined in section 536.010, RSMo,**
30 **that is created under the authority delegated in this section shall become effective only if**
31 **it complies with and is subject to all of the provisions of chapter 536, RSMo, and, if**
32 **applicable, section 536.028, RSMo. This section and chapter 536, RSMo, are nonseverable**

33 and if any of the powers vested with the general assembly pursuant to chapter 536, RSMo,
34 to review, to delay the effective date, or to disapprove and annul a rule are subsequently
35 held unconstitutional, then the grant of rulemaking authority and any rule proposed or
36 adopted after August 28, 2005, shall be invalid and void;

37 (5) One-third of the total number of educational compliance contacts performed
38 shall be based on the total number of compliance reviews performed in the prior fiscal
39 year.

40 3. The highways and transportation commission may, in its discretion, increase the
41 number of educational compliance contacts to fifty percent of the total compliance reviews
42 performed in the prior fiscal year.

43 4. All records related to the request for educational compliance contacts shall be
44 considered open under chapter 610, RSMo.

45 5. Any pattern of abuse related to educational compliance contacts conducted or
46 actions resulting from such contacts by the state highways and transportation commission
47 is admissible in the administrative hearing commission or courts as evidence of abuse of
48 administrative discretion. Upon such a finding the court may award attorney's fees.

49 6. If the highways and transportation commission discovers a violation that
50 presents a safety issue for the traveling public while conducting an educational compliance
51 contact under this section, the commission may take any legal actions necessary to shut
52 down the operation of the motor carrier, but the commission shall not impose a fine for the
53 violation.

622.554. 1. The motor carrier shall have sixty days from the written release of
2 compliance review findings or educational compliance contact findings sent by certified
3 mail from the state highways and transportation commission to appeal the decision of the
4 commission regarding the compliance review findings, educational compliance contact
5 findings, or any other allegations of misconduct by the commission, to the administrative
6 hearing commission. All written findings shall contain a clearly visible message in at least
7 sixteen-point type as follows: "YOU HAVE THE RIGHT TO CONTEST THESE
8 FINDINGS TO THE ADMINISTRATIVE HEARING COMMISSION (include current
9 address, phone, and e-mail) WITHIN SIXTY DAYS, WHICH IS (include exact date), THE
10 ADMINISTRATIVE HEARING COMMISSION WILL PROVIDE YOU AN
11 OPPORTUNITY TO APPEAL THIS DECISION AND GIVE YOU A PROCEEDING
12 WITH DUE PROCESS."

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

15 3. In resolving any deficiency in compliance review findings or educational

16 compliance contact findings, the state highways and transportation commission shall not
17 offer a settlement agreement to a motor carrier unless the commission has advised the
18 motor carrier in writing of the right to file a complaint concerning the findings of the audit
19 with the administrative hearing commission as provided by chapter 621, RSMo. All offers
20 of settlement shall contain a clearly visible message in at least sixteen-point type as follows:
21 **IF YOU CHOOSE TO CONTEST THIS SETTLEMENT YOU MAY APPEAL TO THE**
22 **ADMINISTRATIVE HEARING COMMISSION** (include current address, phone, and e-
23 mail) **WITHIN** (expressed algebraically as the certified mail settlement offer send date
24 minus the certified mail compliance review or educational compliance contact findings
25 send date) **DATE** or (calculate and include the exact date) **THE ADMINISTRATIVE**
26 **HEARING COMMISSION WILL PROVIDE YOU AN OPPORTUNITY TO APPEAL**
27 **THIS DECISION AND GIVE YOU A PROCEEDING WITH DUE PROCESS."**. Any
28 settlement agreement offered by the state highways and transportation commission shall
29 be made within thirty days after the written findings are sent by certified mail.

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