

By: Hill

H.B. No. 2093

Substitute the following for H.B. No. 2093:

By: Krusee

C.S.H.B. No. 2093

A BILL TO BE ENTITLED

AN ACT

1
2 relating to the enforcement of motor carrier registration and
3 overweight and oversize permits.

4 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

5 SECTION 1. Section 623.144, Transportation Code, is amended
6 to read as follows:

7 Sec. 623.144. REGISTRATION OF VEHICLE. A permit under this
8 subchapter may be issued only if the vehicle is registered under
9 Chapter 502 for the maximum gross weight applicable to the vehicle
10 under Section 621.101 or has the distinguishing license plates as
11 provided by Section 504.504 [~~502.276~~] if applicable to the vehicle.

12 SECTION 2. Section 623.149(a), Transportation Code, is
13 amended to read as follows:

14 (a) The department may establish criteria to determine
15 whether oil well servicing, oil well clean out, or oil well drilling
16 machinery or equipment is subject to registration under Chapter 502
17 or eligible for the distinguishing license plate provided by
18 Section 504.504 [~~502.276~~].

19 SECTION 3. Section 623.194, Transportation Code, is amended
20 to read as follows:

21 Sec. 623.194. REGISTRATION OF VEHICLE. A permit under this
22 subchapter may be issued only if the vehicle to be moved is
23 registered under Chapter 502 for the maximum gross weight
24 applicable to the vehicle under Section 621.101 or has the

1 distinguishing license plates as provided by Section 504.504
2 [~~502.276~~] if applicable to the vehicle.

3 SECTION 4. Section 623.199(a), Transportation Code, is
4 amended to read as follows:

5 (a) The department may establish criteria to determine
6 whether an unladen lift equipment motor vehicle that because of its
7 design for use as lift equipment exceeds the maximum weight and
8 width limitations prescribed by statute is subject to registration
9 under Chapter 502 or eligible for the distinguishing license plate
10 provided by Section 504.504 [~~502.276~~].

11 SECTION 5. Section 623.001, Transportation Code, is amended
12 to read as follows:

13 Sec. 623.001. DEFINITIONS [~~DEFINITION~~]. In this chapter:

14 (1) "Department" [~~,"department"~~] means the Texas
15 Department of Transportation.

16 (2) "Shipper" means a person who consigns the movement
17 of a shipment.

18 (3) "Shipper's certificate of weight" means a document
19 described by Section 623.274.

20 SECTION 6. Chapter 623, Transportation Code, is amended by
21 adding Subchapter N to read as follows:

22 SUBCHAPTER N. ADMINISTRATIVE SANCTIONS

23 Sec. 623.271. ADMINISTRATIVE ENFORCEMENT. (a) The
24 department may investigate and impose an administrative penalty or
25 revoke an oversize or overweight permit issued under this chapter
26 if the person or the holder of the permit, as applicable:

27 (1) provides false information on the permit

1 application or another form required by the department for the
2 issuance of an oversize or overweight permit;

3 (2) violates this chapter, Chapter 621, or Chapter
4 622;

5 (3) violates a rule or order adopted under this
6 chapter, Chapter 621, or Chapter 622; or

7 (4) fails to obtain an oversize or overweight permit
8 if a permit is required.

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

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

16 (d) The amount of an administrative penalty imposed under
17 this section is calculated in the same manner as the amount of an
18 administrative penalty imposed under Section 643.251.

19 (e) A person who has been ordered to pay an administrative
20 penalty under this section and the vehicle that is the subject of
21 the enforcement order may not be issued a permit under this chapter
22 until the amount of the penalty has been paid to the department.

23 Sec. 623.272. ADMINISTRATIVE PENALTY FOR FALSE INFORMATION
24 ON CERTIFICATE. (a) The department may investigate and impose an
25 administrative penalty on a shipper who provides false information
26 on a shipper's certificate of weight that the shipper delivers to a
27 person transporting a shipment.

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

4 (c) The amount of an administrative penalty imposed under
5 this section is calculated in the same manner as the amount of an
6 administrative penalty imposed under Section 643.251.

7 Sec. 623.273. INJUNCTIVE RELIEF. (a) The attorney general,
8 at the request of the department, may petition a district court for
9 appropriate injunctive relief to prevent or abate a violation of
10 this chapter or a rule or order adopted under this chapter.

11 (b) Venue in a suit for injunctive relief under this section
12 is in Travis County.

13 (c) On application for injunctive relief and a finding that
14 a person is violating or has violated this chapter or a rule or
15 order adopted under this chapter, the court shall grant the
16 appropriate relief without bond.

17 (d) The attorney general and the department may recover
18 reasonable expenses incurred in obtaining injunctive relief under
19 this section, including court costs, reasonable attorney's fees,
20 investigative costs, witness fees, and deposition expenses.

21 Sec. 623.274. SHIPPER'S CERTIFICATE OF WEIGHT. (a) The
22 department shall prescribe a form to be used for a shipper's
23 certificate of weight. The form must provide space for the maximum
24 weight of the shipment being transported.

25 (b) For a shipper's certificate of weight to be valid, the
26 shipper must:

27 (1) certify that the information contained on the form

1 is accurate; and

2 (2) deliver the certificate to the motor carrier or
3 other person transporting the shipment before the motor carrier or
4 other person applies for an overweight permit under this chapter.

5 SECTION 7. Section 643.001, Transportation Code, is amended
6 by adding Subdivision (7-a) to read as follows:

7 (7-a) "Unified carrier registration system" means a
8 motor vehicle registration system established under 49 U.S.C.
9 Section 13908 or a similar federal registration program that
10 replaces that system.

11 SECTION 8. Section 643.002, Transportation Code, is amended
12 to read as follows:

13 Sec. 643.002. EXEMPTIONS. This chapter does not apply to:

14 (1) motor carrier operations exempt from registration
15 by the Unified Carrier Registration Act of 2005 or a motor vehicle
16 registered under the single state registration system established
17 under 49 U.S.C. Section 14504(c) when operating exclusively in
18 interstate or international commerce;

19 (2) a motor vehicle registered as a cotton vehicle
20 under Section 504.505 [~~502.277~~];

21 (3) a motor vehicle the department by rule exempts
22 because the vehicle is subject to comparable registration and a
23 comparable safety program administered by another governmental
24 entity;

25 (4) a motor vehicle used to transport passengers
26 operated by an entity whose primary function is not the
27 transportation of passengers, such as a vehicle operated by a

1 hotel, day-care center, public or private school, nursing home, or
2 similar organization;

3 (5) a vehicle operating under a private carrier permit
4 issued under Chapter 42, Alcoholic Beverage Code; or

5 (6) a vehicle operated by a governmental entity.

6 SECTION 9. Section 643.251(a), Transportation Code, is
7 amended to read as follows:

8 (a) The department may impose an administrative penalty
9 against a motor carrier required to register under Subchapter B
10 that violates this chapter [~~Subchapter B or C or Section 643.151,~~
11 ~~643.152, 643.153(a)-(f), or 643.155~~] or a rule or order adopted
12 under this chapter [~~those provisions or Section 643.003. The~~
13 ~~department shall designate one or more employees to investigate~~
14 ~~violations and administer penalties under this section~~].

15 SECTION 10. The heading to Section 643.252, Transportation
16 Code, is amended to read as follows:

17 Sec. 643.252. ADMINISTRATIVE SANCTIONS [~~SUSPENSION AND~~
18 ~~REVOCAION OF REGISTRATION~~].

19 SECTION 11. Section 643.252(a), Transportation Code, is
20 amended to read as follows:

21 (a) The department may suspend, [~~or~~] revoke, or deny a
22 registration issued under this chapter or place on probation a
23 motor carrier whose registration is suspended if a motor carrier:

24 (1) fails to maintain insurance or evidence of
25 financial responsibility as required by Section 643.101(a), (b),
26 (c), or (d);

27 (2) fails to keep evidence of insurance in the cab of

1 each vehicle as required by Section 643.103(b);

2 (3) fails to register a vehicle requiring
3 registration;

4 (4) violates any other provision of this chapter;

5 (5) knowingly provides false information on any form
6 filed with the department under this chapter; or

7 (6) [~~5~~] violates a rule or order adopted under this
8 chapter [~~Section 643.063~~].

9 SECTION 12. Subchapter F, Chapter 643, Transportation Code,
10 is amended by adding Section 643.2525 to read as follows:

11 Sec. 643.2525. ADMINISTRATIVE HEARING PROCESS. (a) If the
12 department determines that a violation has occurred for which an
13 enforcement action is being taken under Section 643.251 or 643.252,
14 the department shall give written notice to the motor carrier by
15 first class mail to the carrier's address as shown in the records of
16 the department.

17 (b) A notice required by Subsection (a) must include:

18 (1) a brief summary of the alleged violation;

19 (2) a statement of each administrative sanction being
20 taken;

21 (3) the effective date of each sanction;

22 (4) a statement informing the carrier of the carrier's
23 right to request a hearing; and

24 (5) a statement as to the procedure for requesting a
25 hearing, including the period during which a request must be made.

26 (c) If not later than the 26th day after the date the notice
27 is mailed the department receives a written request for a hearing,

1 the department shall set a hearing and give notice of the hearing to
2 the carrier. The hearing shall be conducted by an administrative
3 law judge of the State Office of Administrative Hearings.

4 (d) If the motor carrier does not timely request a hearing
5 under Subsection (c), the department's decision becomes final on
6 the expiration of the period described by Subsection (c).

7 (e) The administrative law judge shall make findings of fact
8 and conclusions of law and promptly issue to the director a proposal
9 for a decision as to the occurrence of the violation and the
10 administrative penalties or sanctions.

11 (f) In addition to a penalty or sanction proposed under
12 Subsection (e), the administrative law judge shall include in the
13 proposal for a decision a finding setting out costs, fees,
14 expenses, and reasonable and necessary attorney's fees incurred by
15 the state in bringing the proceeding. The director may adopt the
16 finding and make it a part of a final order entered in the
17 proceeding.

18 (g) Based on the findings of fact, conclusions of law, and
19 proposal for a decision, the director by order may find that a
20 violation has occurred and impose the sanctions or may find that a
21 violation has not occurred.

22 (h) The director shall provide written notice to the motor
23 carrier of a finding made under Subsection (g) and shall include in
24 the notice a statement of the right of the carrier to judicial
25 review of the order.

26 (i) Before the 31st day after the date the director's order
27 under Subsection (g) becomes final as provided by Section 2001.144,

1 Government Code, the motor carrier may appeal the order by filing a
2 petition for judicial review contesting the order. Judicial review
3 is under the substantial evidence rule.

4 (j) A petition filed under Subsection (i) stays the
5 enforcement of the administrative action until the earlier of the
6 550th day after the date the petition was filed or the date a final
7 judgment is rendered by the court.

8 (k) If the motor carrier is required to pay a penalty or cost
9 under Subsection (f), failure to pay the penalty or cost before the
10 61st day after the date the requirement becomes final is a violation
11 of this chapter and may result in an additional penalty, revocation
12 or suspension of a motor carrier registration, or denial of renewal
13 of a motor carrier registration.

14 (l) A motor carrier that is required to pay a penalty, cost,
15 fee, or expense under this section or Section 643.251 is not
16 eligible for a reinstatement or renewal of a registration under
17 this chapter until all required amounts have been paid to the
18 department.

19 (m) If the suspension of a motor carrier's registration is
20 probated, the department may require the carrier to report
21 regularly to the department on any matter that is the basis of the
22 probation. Any violation of the probation may result in the
23 imposition of an administrative penalty or the revocation of the
24 registration.

25 (n) All proceedings under this section are subject to
26 Chapter 2001, Government Code.

27 SECTION 13. Section 643.254(a), Transportation Code, is

1 amended to read as follows:

2 (a) To investigate an alleged violation of this chapter or a
3 rule or order adopted under this chapter [~~Subchapter B, C, or D~~], an
4 officer or employee of the department who has been certified for the
5 purpose by the director may enter a motor carrier's premises to
6 inspect, copy, or verify the correctness of a document, including
7 an operation log or insurance certificate.

8 SECTION 14. Subchapter F, Chapter 643, Transportation Code,
9 is amended by adding Section 643.255 to read as follows:

10 Sec. 643.255. INJUNCTIVE RELIEF. (a) The attorney general,
11 at the request of the department, may petition a district court for
12 appropriate injunctive relief to prevent or abate a violation of
13 this chapter or a rule or order adopted under this chapter.

14 (b) Venue in a suit for injunctive relief under this section
15 is in Travis County.

16 (c) On application for injunctive relief and a finding that
17 a person is violating or has violated this chapter or a rule or
18 order adopted under this chapter, the court shall grant the
19 appropriate relief without bond.

20 (d) The attorney general and the department may recover
21 reasonable expenses incurred in obtaining injunctive relief under
22 this section, including court costs, reasonable attorney's fees,
23 investigative costs, witness fees, and deposition expenses.

24 SECTION 15. Section 645.001, Transportation Code, is
25 amended to read as follows:

26 Sec. 645.001. FEDERAL MOTOR CARRIER [~~SINGLE STATE~~]
27 REGISTRATION. The Texas Department of Transportation may [~~shall~~],

1 to the fullest extent practicable, participate in a federal motor
2 carrier registration program under the unified carrier
3 registration system as defined by Section 643.001 or the single
4 state registration system established under 49 U.S.C. Section
5 14504.

6 SECTION 16. Section 645.003, Transportation Code, is
7 amended to read as follows:

8 Sec. 645.003. ENFORCEMENT RULES. The department shall
9 adopt rules that are consistent with federal law providing for [+

10 [~~1~~] administrative penalties and sanctions for a
11 failure to register as required by the unified carrier registration
12 system or single state registration system or for a violation of
13 this chapter or a rule adopted under this chapter in the same manner
14 as Subchapter F, Chapter 643 [~~Section 643.251; and~~

15 [~~2~~] ~~suspension and revocation of registration in the~~
16 ~~same manner as Section 643.252~~].

17 SECTION 17. The following laws are repealed:

18 (1) Sections 643.251(d), (e), (f), (g), (h), (i), (j),
19 (k), (l), (m), (n), (o), (p), (q), and (r), Transportation Code; and

20 (2) Sections 643.252(c), (d), and (e), Transportation
21 Code.

22 SECTION 18. (a) Subchapter N, Chapter 623, Transportation
23 Code, as added by this Act, applies only to a violation that occurs,
24 or information that is provided to the Texas Department of
25 Transportation, on or after the effective date of this Act.

26 (b) Section 643.2525, Transportation Code, as added by this
27 Act, applies only to a violation for which an enforcement action

1 under Section 643.251 or 643.252, Transportation Code, is commenced
2 on or after the effective date of this Act, regardless of when the
3 violation occurred. An action commenced under Section 643.251 or
4 643.252, Transportation Code, before the effective date of this Act
5 is governed by the law in effect immediately before the effective
6 date of this Act, and the former law is continued in effect for that
7 purpose.

8 (c) The changes in law made by this Act relating to the
9 amount or disposition of a fee collected by the Texas Department of
10 Transportation in connection with a permit for an overweight or
11 oversize vehicle apply only to a permit that is applied for on or
12 after the effective date of this Act.

13 SECTION 19. This Act takes effect September 1, 2007.