

House Bill 2093
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HOUSE VERSION

No equivalent provision.

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SECTION 1. LEGISLATIVE FINDINGS AND PURPOSE. The legislature finds that as the economy of this state continues its steady growth, significant increases in the amount of freight moving on the roadways of this state have followed suit; that the demand for oversize and overweight permits issued by the motor carrier division of the Texas Department of Transportation has long since surpassed the department's capacity to keep pace; and that the department's inability to service the needs of the trucking industry has resulted in extreme delays in the issuance of permits by the motor carrier division, which negatively impact not only the motor carriers involved but also the shipping public they serve. The purposes of this Act are to increase the fees charged for permits issued by the motor carrier division of the Texas Department of Transportation, to address enforcement efforts against violators of the motor vehicle size and weight laws of this state, and to provide a significant increase in revenue realized by this state from increased permit fees, a portion of which will be used to address the growing problem of the untimely issuance of oversize and overweight permits by retaining an increased number of appropriate private sector service providers to perform necessary bridge and route inspections and a portion of which will be used to add at least 25 full-time employees to the number employed by the motor carrier division.

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No equivalent provision.

SECTION 2. Section 621.353(c), Transportation Code,

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is amended to read as follows:

(c) The comptroller shall send each fee collected under Section 623.0111 [~~623.0112~~] for an excess weight permit to the counties designated on the application for the permit, with each county shown on the application receiving an amount determined according to the ratio of the total number of miles of county roads maintained by the county to the total number of miles of county roads maintained by all of the counties designated on the application.

No equivalent provision.

SECTION 3. Section 623.0111, Transportation Code, is amended by amending Subsection (a) and adding Subsection (c) to read as follows:

(a) When a person applies for a permit under Section 623.011, the person must:

(1) designate in the application each county in which the vehicle will be operated; and

(2) pay in addition to other fees an annual fee in an amount determined according to the following table:

(c) Of the fees collected under Subsection (a) the following amounts shall be deposited to the general revenue fund and the remainder shall be deposited to the credit of the state highway fund:

No equivalent provision.

SECTION 4. Section 623.076, Transportation Code, is amended by amending Subsections (a) and (c) and adding Subsection (a-1) to read as follows:

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(a) An application for a permit under this subchapter must be accompanied by a permit fee of:

- (1) \$60 [~~\$30~~] for a single-trip permit;
- (2) \$120 [~~\$60~~] for a permit that is valid for a period not exceeding 30 days;
- (3) \$180 [~~\$90~~] for a permit that is valid for a period of 31 days or more but not exceeding 60 days;
- (4) \$240 [~~\$120~~] for a permit that is valid for a period of 61 days or more but not exceeding 90 days; or
- (5) \$270 [~~\$135~~] for a permit issued under Section 623.071(c)(1) or (2).

(a-1) The following amounts collected under Subsection (a) shall be deposited to the general revenue fund and the remainder deposited to the credit of the state highway fund:

(c) An application for a permit under Section 623.071(c)(3) or (d) must be accompanied by the permit fee established by the commission for the permit, not to exceed \$7,000 [~~\$3,500~~]. Of each fee collected under this subsection, the department shall send:

- (1) the first \$1,000 to the comptroller for deposit to the credit of the general revenue fund; and
- (2) any amount in excess of \$1,000 to the comptroller for deposit to the credit of the state highway fund.

No equivalent provision.

SECTION 5. Section 623.077(a), Transportation Code, is amended to read as follows:

(a) An applicant for a permit under this subchapter, other than a permit under Section 623.071(c)(3), must

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also pay a highway maintenance fee in an amount determined according to the following table:

No equivalent provision.

SECTION 6. Sections 623.096(a) and (b), Transportation Code, are amended to read as follows:

(a) The department shall collect a fee of \$40 [~~\$20~~] for each permit issued under this subchapter. Of each fee, \$19.70 [~~30 cents~~] shall be deposited to the credit of the general revenue fund and the remainder deposited to the credit of the state highway fund.

(b) The department shall adopt rules concerning fees for each annual permit issued under Section 623.095(c) at a cost not to exceed \$3,000 [~~\$1,500~~]. [~~Two percent of any fee adopted shall be deposited to the credit of the state highway fund.~~]

No equivalent provision.

SECTION 7. Section 623.124, Transportation Code, is amended to read as follows:

Sec. 623.124. FEE. (a) An application for a permit must be accompanied by a fee of \$15 [~~\$7.50~~].

(b) The department shall send each fee collected under this section to the comptroller. Of each fee received from the department, the comptroller shall deposit \$7.50 to the credit of the general revenue fund and \$7.50 to the credit of the state highway fund.

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

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

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

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

No equivalent provision.

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SECTION 8. Same as House version.

SECTION 9. Same as House version.

SECTION 10. Section 623.182, Transportation Code, is amended to read as follows:

Sec. 623.182. PERMIT FEE. (a) The fee for a permit under this subchapter is \$100 [~~\$50~~].

(b) The department shall send each fee collected under this subchapter to the comptroller. Of each fee received from the department, the comptroller shall deposit \$50 to the credit of the general revenue fund and \$50 to the credit of the state highway fund.

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

Sec. 623.194. **REGISTRATION OF VEHICLE.** A permit under this subchapter may be issued only if the vehicle to be moved is registered under Chapter 502 for the maximum gross weight applicable to the vehicle under Section 621.101 or has the distinguishing license plates as provided by Section 504.504 [~~502.276~~] if applicable to the vehicle.

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

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

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

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

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

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

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SECTION 11. Same as House version.

SECTION 12. Same as House version.

SECTION 13. Same as House version.

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

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

SUBCHAPTER N. ADMINISTRATIVE SANCTIONS
Sec. 623.271. ADMINISTRATIVE ENFORCEMENT.

(a) The department may investigate and impose an administrative penalty or revoke an oversize or overweight permit issued under this chapter if the person or the holder of the permit, as applicable:

(1) provides false information on the permit application or another form required by the department for the issuance of an oversize or overweight permit;

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

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

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

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

(d) The amount of an administrative penalty imposed under this section is calculated in the same manner as the

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SECTION 14. Chapter 623, Transportation Code, is amended by adding Subchapter N to read as follows:

SUBCHAPTER N. ADMINISTRATIVE SANCTIONS
Sec. 623.271. ADMINISTRATIVE ENFORCEMENT.

(a) The department may investigate and, **except as provided by Subsection (f)**, may impose an administrative penalty or revoke an oversize or overweight permit issued under this chapter if the person or the holder of the permit, as applicable:

(1) provides false information on the permit application or another form required by the department for the issuance of an oversize or overweight permit;

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

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

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

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

(d) The amount of an administrative penalty imposed under this section is calculated in the same manner as the

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amount of an administrative penalty imposed under Section 643.251.

(e) 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 may not be issued a permit under this chapter until the amount of the penalty has been paid to the department.

Sec. 623.272. ADMINISTRATIVE PENALTY FOR FALSE INFORMATION ON CERTIFICATE. (a) The department may 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) 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) The amount of an administrative penalty imposed under this section is calculated in the same manner as the

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amount of an administrative penalty imposed under Section 643.251.

(e) 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 may not be issued a permit under this chapter until the amount of the penalty has been paid to the department.

(f) This subsection applies only to a vehicle or combination that is used to transport agricultural products or timber products from the place of production to the place of first marketing or first processing. In connection with a violation of a vehicle or combination weight restriction or limitation in this chapter, Chapter 621, or Chapter 622, the department may not impose an administrative penalty against a person or the holder of an overweight permit if the weight of the vehicle or combination involved in the violation did not exceed the allowable weight by more than three percent.

Sec. 623.272. ADMINISTRATIVE PENALTY FOR FALSE INFORMATION ON CERTIFICATE. (a) The department may 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) 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) The amount of an administrative penalty imposed under this section is calculated in the same manner as the

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amount of an administrative penalty imposed under Section 643.251.

Sec. 623.273. INJUNCTIVE RELIEF. (a) The attorney general, at the request of the department, may 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) Venue in a suit for injunctive relief under this section is in Travis County.

(c) 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, the court shall grant the appropriate relief without bond.

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

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

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

(1) certify that the information contained on the form is accurate; and

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

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amount of an administrative penalty imposed under Section 643.251.

Sec. 623.273. INJUNCTIVE RELIEF. (a) The attorney general, at the request of the department, may 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) Venue in a suit for injunctive relief under this section is in Travis County.

(c) 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, the court shall grant the appropriate relief without bond.

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

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

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

(1) certify that the information contained on the form is accurate; and

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

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this chapter.

SECTION 7. Section 643.001, Transportation Code, is amended by adding Subdivision (7-a) to read as follows:
(7-a) "Unified carrier registration system" means a motor vehicle registration system established under 49 U.S.C. Section 14504a or a similar federal registration program that replaces that system.

SECTION 8. Section 643.002, Transportation Code, is amended to read as follows:
Sec. 643.002. EXEMPTIONS. This chapter does not apply to:

- (1) motor carrier operations exempt from registration by the Unified Carrier Registration Act of 2005 or a motor vehicle registered under the single state registration system established under 49 U.S.C. Section 14504(c) when operating exclusively in interstate or international commerce;
- (2) a motor vehicle registered as a cotton vehicle under Section 504.505 [~~502.277~~];
- (3) a motor vehicle the department by rule exempts because the vehicle is subject to comparable registration and a comparable safety program administered by another governmental entity;
- (4) a motor vehicle used to transport passengers operated by an entity whose primary function is not the transportation of passengers, such as a vehicle operated

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this chapter.

SECTION 15. Same as House version.

SECTION 16. Section 643.002, Transportation Code, is amended to read as follows:
Sec. 643.002. EXEMPTIONS. This chapter does not apply to:

- (1) motor carrier operations exempt from registration by the Unified Carrier Registration Act of 2005 (49 U.S.C. Section 14504a) or a motor vehicle registered under the single state registration system established under 49 U.S.C. Section 14504(c) when operating exclusively in interstate or international commerce;
- (2) a motor vehicle registered as a cotton vehicle under Section 504.505 [~~502.277~~];
- (3) a motor vehicle the department by rule exempts because the vehicle is subject to comparable registration and a comparable safety program administered by another governmental entity;
- (4) a motor vehicle used to transport passengers operated by an entity whose primary function is not the transportation of passengers, such as a vehicle operated

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by a hotel, day-care center, public or private school, nursing home, or similar organization;
(5) a vehicle operating under a private carrier permit issued under Chapter 42, Alcoholic Beverage Code; or
(6) a vehicle operated by a governmental entity.

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

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

SECTION 10. The heading to Section 643.252, Transportation Code, is amended to read as follows:
Sec. 643.252. ADMINISTRATIVE SANCTIONS [~~SUSPENSION AND REVOCATION OF REGISTRATION~~].

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

(a) The department may suspend, ~~or~~ revoke, or deny a registration issued under this chapter or place on

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by a hotel, day-care center, public or private school, nursing home, or similar organization;
(5) a vehicle operating under a private carrier permit issued under Chapter 42, Alcoholic Beverage Code; or
(6) a vehicle operated by a governmental entity.

SECTION 17. Same as House version.

SECTION 18. Same as House version.

SECTION 19. Same as House version.

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probation a motor carrier whose registration is suspended if a motor carrier:

- (1) fails to maintain insurance or evidence of financial responsibility as required by Section 643.101(a), (b), (c), or (d);
- (2) fails to keep evidence of insurance in the cab of each vehicle as required by Section 643.103(b);
- (3) fails to register a vehicle requiring registration;
- (4) violates any other provision of this chapter;
- (5) knowingly provides false information on any form filed with the department under this chapter; or
- (6) [~~(5)~~] violates a rule or order adopted under this chapter [Section ~~643.063~~].

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

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

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

- (1) a brief summary of the alleged violation;
- (2) a statement of each administrative sanction being taken;
- (3) the effective date of each sanction;

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

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

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

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

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

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

(g) Based on the findings of fact, conclusions of law, and proposal for a decision, the director by order may find that a violation has occurred and impose the

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sanctions or may find that a violation has not occurred.

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

(i) Before the 31st day after the date the director's order under Subsection (g) becomes final as provided by Section 2001.144, Government Code, the motor carrier may appeal the order by filing a petition for judicial review contesting the order. Judicial review is under the substantial evidence rule.

(j) 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) If the motor carrier is required to pay a penalty or cost under Subsection (f), 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 may result in an additional penalty, revocation or suspension of a motor carrier registration, or denial of renewal of a motor carrier registration.

(l) 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 renewal of a registration under this chapter until all required amounts have been paid to the department.

(m) If the suspension of a motor carrier's registration is probated, the department may require the carrier to report regularly to the department on any matter that is the basis

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of the probation. Any violation of the probation may result in the imposition of an administrative penalty or the revocation of the registration.

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

SECTION 13. Section 643.254(a), Transportation Code, is amended to read as follows:

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

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

Sec. 643.255. INJUNCTIVE RELIEF. (a) The attorney general, at the request of the department, may 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) Venue in a suit for injunctive relief under this section is in Travis County.

(c) On application for injunctive relief and a finding that a person is violating or has violated this chapter or a rule

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SECTION 22. Same as House version.

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or order adopted under this chapter, the court shall grant the appropriate relief without bond.

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

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

Sec. 645.001. FEDERAL MOTOR CARRIER [~~SINGLE STATE~~] REGISTRATION. The Texas Department of Transportation may [~~shall~~], to the fullest extent practicable, participate in a federal motor carrier registration program under the unified carrier registration system as defined by Section 643.001 or the single state registration system established under 49 U.S.C. Section 14504.

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

Sec. 645.003. ENFORCEMENT RULES. The department shall 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

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SECTION 24. Same as House version.

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~~chapter in the same manner as Subchapter F, Chapter 643 [Section 643.251; and (2) suspension and revocation of registration in the same manner as Section 643.252].~~

SECTION 17. The following laws are repealed:

- (1) Sections 643.251(d), (e), (f), (g), (h), (i), (j), (k), (l), (m), (n), (o), (p), (q), and (r), Transportation Code; and
- (2) Sections 643.252(c), (d), and (e), Transportation Code.

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

(b) Section 643.2525, Transportation Code, as added by this Act, applies only to a violation for which an enforcement action under Section 643.251 or 643.252, Transportation Code, is commenced on or after the effective date of this Act, regardless of when the violation occurred. An action commenced under Section 643.251 or 643.252, Transportation Code, before the effective date of this Act is governed by the law in effect immediately before the effective date of this Act, and the former law is continued in effect for that purpose.

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SECTION 25. Same as House version.

SECTION 26. (a) Subchapter N, Chapter 623, Transportation Code, as added by this Act, applies only to a violation that occurs, or information that is provided to the Texas Department of Transportation, on or after the effective date of this Act.

(b) Section 643.2525, Transportation Code, as added by this Act, applies only to a violation for which an enforcement action under Section 643.251 or 643.252, Transportation Code, is commenced on or after the effective date of this Act, regardless of when the violation occurred. An action commenced under Section 643.251 or 643.252, Transportation Code, before the effective date of this Act is governed by the law in effect immediately before the effective date of this Act, and the former law is continued in effect for that purpose.

(c) Except as otherwise provided by subsection (d), the changes in law made by this Act relating to the amount

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or disposition of a fee collected by the Texas Department of Transportation in connection with a permit for an overweight or oversize vehicle apply only to a permit that is applied for on or after the effective date of this Act.

(d) The changes in law made by this Act relating to the amount or disposition of a fee collected by the Texas Department of Transportation do not apply to a permit for an overweight or oversize vehicle applied for in connection with the delivery of materials pursuant to a construction contract for a public infrastructure project let prior to the effective date of this Act. The amount or disposition of the fee for the permit is governed by the law in effect at the time the construction contract was let, and the former law is continued in effect for that purpose.

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

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

SECTION 27. Same as House version.