

SUBJECT: Enforcing commercial motor vehicle safety standards

COMMITTEE: Law Enforcement — favorable, with amendment

VOTE: 6 ayes — Driver, Garza, Y. Davis, Hegar, Hupp, Keel

1 present not voting — Burnam

0 nays

SENATE VOTE: On final passage, April 25 — voice vote

WITNESSES: No public hearing

BACKGROUND: Transportation Code, chs. 548, 644, and 683 deal with compulsory vehicle inspection, commercial motor vehicle safety standards, and abandoned motor vehicles, respectively. Sec. 643.251 delineates administrative penalties that the Texas Department of Transportation (TxDOT) may assess on trucks that violate registration laws. The Department of Public Safety (DPS) enforces state law and federal regulations on truck safety standards, such as vehicle maintenance, driver hours, and insurance.

DIGEST: SB 1184 would codify several administrative procedures and operational practices contained in DPS rules and followed by DPS when dealing with alleged violators of commercial motor vehicle (CMV) safety standards. The bill also would amend portions of the code to reflect applicable motor carrier provisions of the Code of Federal Regulations (CFR).

**Penalties and hearings.** DPS would have to designate one or more employees to investigate truck safety violations and conduct audits. DPS would impose administrative penalties for violations of rules or of administrative enforcement provisions that DPS by rule made subject to penalties. The bill would remove the requirement that DPS penalties be administered identically to TxDOT penalties for vehicle registration violations (other than amounts).

When imposing penalties, DPS would have to issue claim notices by delivery methods that recorded receipt of notices by the responsible persons. Notices would include brief summaries of alleged violations and recommended penalty amounts and state hearing rights, either on the violation, penalty, or both. Recipients would have 20 days to pay penalties or request in writing either informal hearings or administrative hearings on violations, penalties, or both.

DPS could modify penalty recommendations upon conclusion of informal hearings. Administrative hearings would be conducted by administrative law judges (ALJs) of the State Office of Administrative Hearings (SOAH). ALJs would make factual findings and legal conclusions and issue to the DPS director proposed decisions on violations and penalties. In any proposed decisions imposing penalties, ALJs would have to include the costs, fees, expenses, and attorney's fees incurred by the state. DPS could incorporate these findings into final orders, which could affirm violations and impose penalties or disclaim violations. The DPS director could alter ALJs' recommended penalty amounts, as long as they did not exceed allowable federal maximums. In doing so, DPS would have to determine, in accordance with Government Code, sec. 2001.058(e)), that:

- the ALJ improperly applied or interpreted applicable law, agency rules, written policies, or prior administrative decisions;
- a prior administrative decision on which the ALJ relied was incorrect or should be changed; or
- a technical error in a finding of fact should be changed.

DPS would have to state in writing the specific reasons and legal bases for changes it made to recommended penalties. Notice of DPS orders would have to be mailed to affected persons or their attorneys informing them of their right to seek judicial review. All proceedings would be subject to the state Administrative Procedure Act (Government Code, ch. 2001), which provides minimum standards of uniform practice and procedure for state agencies.

Within 30 days, recipients would have to respond in one of three ways:

- pay the penalties;
- pay and request judicial review of the violations, penalty amounts, or

- both; or
- request judicial review of the violations, penalty amounts, or both without paying penalties.

During the 30-day period, enforcement of penalties could be stayed by:

- placing penalty amounts in court escrow accounts;
- filing court-approved bonds equal to the penalty amounts and effective until judicial review was final; or
- requesting stays by filing affidavits of inability to pay the penalties or post bonds and mailing copies to the DPS director.

DPS would have five days from receipt of affidavits to contest them in court. Upon conducting hearings on the facts alleged in the affidavits, courts would have to stay penalty enforcement if they found them to be true. The burden of proving inability to pay penalties or post bonds would be on those filing the affidavits. Failure to pay penalties not stayed by courts could result in referral for collection to the attorney general, initiation of impoundment proceedings, or both.

**Impounded and abandoned CMVs.** Trucks impounded and stored for unpaid administrative penalties would be considered abandoned by definition after 10 days. Such trucks would be subject to the abandoned vehicle statute, including official use or public auction, except that DPS would be entitled to recover costs and unpaid penalties from sale proceeds.

**Vehicle interdiction.** The bill would clarify that DPS officers could stop trucks; that municipal police officers, sheriffs, and their deputies could stop or enter trucks; and that non-commissioned DPS employees at fixed-site facilities could stop or detain trucks and take enforcement actions, but only if supervised by DPS officers. Any person authorized to detain trucks could prohibit their continued operation if they violated federal safety regulations or DPS rules.

**Definitions.** A CMV would be defined to include vehicles used to transport more than 15 passengers, including drivers. CMVs also would mean those defined by the CFR, if operated interstate, and those defined by state law, if operated intrastate.

Compliance reviews would be incorporated into DPS' truck safety audit program patterned after the federal program.

The bill would take effect September 1, 2003. Changes to administrative penalties would apply to violations occurring on or after that date. Violations occurring prior to that date would be subject to the penalties in effect when they occurred.

**SUPPORTERS  
SAY:**

SB 1184 would bring the statutes under which DPS enforces truck safety into greater conformity with federal regulations and agency procedures. In particular, adding the penalty and hearing subsections would absolve DPS from having to rely on TxDOT's registration penalty statute for enforcement purposes.

Authorizing the use of non-commissioned employees to inspect trucks and take enforcement action with supervision would mean greater flexibility in personnel management. The 1:1 ratio of inspectors to troopers no longer would have to be maintained. This would free up officers trained to fight crime and enforce traffic laws, accelerate vehicle inspections, and allocate resources and spend taxpayer dollars more efficiently.

**OPPONENTS  
SAY:**

No apparent opposition.

**NOTES:**

The committee amendment would allow the DPS director to change the amounts of penalties recommended by SOAH ALJs only if doing so met the criteria set forth in Government Code, sec. 2001.058(e).