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HOUSE BILL 1843

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State of Washington

61st Legislature

2009 Regular Session

By Representatives Kagi, Rodne, and Kenney; by request of Utilities & Transportation Commission and Washington State Patrol

Read first time 01/30/09. Referred to Committee on Transportation.

1 AN ACT Relating to motor carrier regulation and compliance review;  
2 amending RCW 46.32.080, 46.32.085, 46.32.090, and 46.32.100; adding a  
3 new section to chapter 46.32 RCW; and repealing 2007 c 419 s 18  
4 (uncodified).

5 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

6 **Sec. 1.** RCW 46.32.080 and 2007 c 419 s 10 are each amended to read  
7 as follows:

8 (1) The Washington state patrol is responsible for enforcement of  
9 safety requirements for commercial motor vehicles including, but not  
10 limited to, safety audits and compliance reviews. Those motor carriers  
11 that have operations in this state are subject to the patrol's safety  
12 audits and compliance review programs. Compliance reviews may result  
13 in the initiation of an enforcement action, which may include monetary  
14 penalties. The utilities and transportation commission is responsible  
15 for adoption and enforcement of safety requirements for vehicles  
16 operated by entities holding authority under chapters 81.66, 81.68,  
17 81.70, and 81.77 RCW, and by household goods carriers holding authority  
18 under chapter 81.80 RCW.

1 (2) Motor vehicles owned and operated by farmers in the  
2 transportation of their own farm, orchard, or dairy products, including  
3 livestock and plant or animal wastes, from point of production to  
4 market or disposal, or supplies or commodities to be used on the farm,  
5 orchard, or dairy, must have a department of transportation number, as  
6 defined in RCW 46.16.004, but are exempt from safety audits and  
7 compliance reviews.

8 (3) All records and documents required of motor carriers with  
9 operations in this state must be available for review and inspection  
10 during normal business hours. Duly authorized agents of the state  
11 patrol conducting safety audits and compliance reviews may enter the  
12 motor carrier's place of business, or any location where records or  
13 equipment are located, at reasonable times and without advanced notice.  
14 Motor carriers who do not permit duly authorized agents to enter their  
15 place of business, or any location where records or equipment are  
16 located, for safety audits and compliance reviews are subject to  
17 enforcement action, including a monetary penalty.

18 (4)(a) All motor carriers with a commercial motor vehicle, as  
19 defined in RCW 46.16.004, that operate in this state must apply for a  
20 department of transportation number, as defined in RCW 46.16.004, by  
21 January 1, 2008. All entities with authority under chapters 81.66,  
22 81.68, 81.70, and 81.77 RCW, and all household goods carriers with  
23 authority under chapter 81.80 RCW, must apply for a department of  
24 transportation number by January 1, 2010.

25 (b) All motor carriers operating in this state who (i) have not  
26 applied under (a) of this subsection for a department of transportation  
27 number, as defined in RCW 46.16.004, and (ii) have a commercial motor  
28 vehicle that has a gross vehicle weight rating of 7,258 kilograms  
29 (16,001 pounds) or more, must apply for a department of transportation  
30 number by January 1, 2011.

31 (c) The state patrol may deny an application if the ((~~motor~~  
32 ~~carrier~~)) applicant does not meet the requirements and standards under  
33 this chapter. The state patrol shall not issue a department of  
34 transportation number to ((~~a motor carrier~~)) an applicant who at the  
35 time of application has been placed out of service by the federal motor  
36 carrier safety administration. Commercial motor vehicles must be  
37 marked as prescribed by the state patrol. Those ((~~motor carriers~~))

1 applicants with a current United States department of transportation  
2 number are exempt from applying for a department of transportation  
3 number.

4 (d) The state patrol may (i) place a motor carrier out of service  
5 or (ii) refuse to issue or recognize as valid a department of  
6 transportation number to (~~(a motor carrier)~~) an applicant who: (A)  
7 Formerly held a department of transportation number that was placed out  
8 of service for cause, and where cause has not been removed; (B) is a  
9 subterfuge for the real party in interest whose department of  
10 transportation number was placed out of service for cause, and where  
11 cause has not been removed; (C) as an individual licensee, or officer,  
12 director, owner, or managing employee of a nonindividual licensee, had  
13 a department of transportation number and was placed out of service for  
14 cause, and where cause has not been removed; or (D) has an unsatisfied  
15 debt to the state assessed under this chapter.

16 (e) Upon a finding by the chief of the state patrol or the chief's  
17 designee that a motor carrier is an imminent hazard or danger to the  
18 public health, safety, or welfare, the state patrol shall notify the  
19 department, and the department shall revoke the registrations for all  
20 commercial motor vehicles that are owned by the motor carrier subject  
21 to RCW 46.32.080. In determining whether a motor carrier is an  
22 imminent hazard or danger to the public health, safety, or welfare, the  
23 chief or the chief's designee shall consider safety factors.

24 **Sec. 2.** RCW 46.32.085 and 2007 c 419 s 14 are each amended to read  
25 as follows:

26 (1) The Washington state patrol, in consultation with the  
27 department of licensing, shall adopt rules consistent with this chapter  
28 to regulate vehicle safety requirements for motor carriers who own,  
29 control, manage, or operate a commercial motor vehicle within this  
30 state. Except as otherwise provided in this chapter, the rules adopted  
31 by the state patrol under this section must be as rigorous as federal  
32 regulations governing certain interstate motor carriers at 49 C.F.R.  
33 Parts 40 and 380 through 397, which cover the areas of commercial motor  
34 carrier driver training, controlled substance and alcohol use and  
35 testing, compliance with the federal driver's license requirements and  
36 penalties, vehicle equipment and safety standards, hazardous material  
37 practices, financial responsibility, driver qualifications, hours of

1 service, vehicle inspection and corrective actions, and assessed  
2 penalties for noncompliance. The state patrol shall amend these rules  
3 periodically to maintain, to the extent permissible under this chapter,  
4 standards as rigorous as the federal regulations governing certain  
5 interstate motor carriers. The state patrol shall submit a report to  
6 the legislature by December 31st of each year that outlines new rules  
7 or rule changes and explains how the state rules compare to the federal  
8 regulations.

9 (2) Motor vehicles operated by entities with authority under  
10 chapters 81.66, 81.68, 81.70, and 81.77 RCW, and by household goods  
11 carriers operating under chapter 81.80 RCW, must comply with rules  
12 regulating vehicle safety adopted by the utilities and transportation  
13 commission.

14 **Sec. 3.** RCW 46.32.090 and 2007 c 419 s 11 are each amended to read  
15 as follows:

16 The department shall collect a fee of sixteen dollars, in addition  
17 to all other fees and taxes, for each motor vehicle base plated in the  
18 state of Washington that is subject to highway inspections and  
19 compliance reviews by the state patrol under RCW 46.32.080, at the time  
20 of registration and renewal of registration under chapter 46.16 or  
21 46.87 RCW, or the international registration plan if base plated in a  
22 foreign jurisdiction. The fee must be apportioned for those vehicles  
23 operating interstate and registered under the international  
24 registration plan. This fee does not apply to nonmotor-powered  
25 vehicles, including trailers. Refunds will not be provided for fees  
26 paid under this section when the vehicle is no longer subject to RCW  
27 46.32.080. The department may deduct an amount equal to the cost of  
28 administering the program. All remaining fees shall be deposited with  
29 the state treasurer and credited to the state patrol highway account of  
30 the motor vehicle fund.

31 **Sec. 4.** RCW 46.32.100 and 2007 c 419 s 12 are each amended to read  
32 as follows:

33 (1)(a) In addition to all other penalties provided by law, and  
34 except as provided otherwise in (a)(i), (ii), or (iii) of this  
35 subsection, a commercial motor vehicle that is subject to compliance  
36 reviews under this chapter and an officer, agent, or employee of a

1 company operating a commercial motor vehicle who violates or who  
2 procures, aids, or abets in the violation of this title or any order or  
3 rule of the state patrol is liable for a penalty of one hundred dollars  
4 for each violation(~~(, except for each violation)~~).

5 (i) It is a violation of this chapter for a person operating a  
6 commercial motor vehicle to fail to comply with the requirements of 49  
7 C.F.R. Pt. 382, controlled substances and alcohol use and testing, 49  
8 C.F.R. Sec. 391.15, disqualification of drivers, and 49 C.F.R. Sec.  
9 396.9(c)(2), moving a vehicle placed out of service before the out of  
10 service defects have been satisfactorily repaired(~~(, for which)~~). For  
11 each violation the person is liable for a penalty of five hundred  
12 dollars.

13 (ii) The driver of a commercial motor vehicle who violates an out-  
14 of-service order is liable for a penalty of at least one thousand one  
15 hundred dollars but not more than two thousand seven hundred fifty  
16 dollars for each violation.

17 (iii) An employer who allows a driver to operate a commercial motor  
18 vehicle when there is an out-of-service order is liable for a penalty  
19 of at least two thousand seven hundred fifty dollars but not more than  
20 eleven thousand dollars for each violation.

21 (iv) Each violation under this subsection (1)(a) is a separate and  
22 distinct offense, and in case of a continuing violation every day's  
23 continuance is a separate and distinct violation.

24 (b) In addition to all other penalties provided by law, any motor  
25 carrier, company, or any officer or agent of a motor carrier or company  
26 operating a commercial motor vehicle subject to compliance reviews  
27 under this chapter who refuses entry or to make the required records,  
28 documents, and vehicles available to a duly authorized agent of the  
29 state patrol is liable for a penalty of at least five thousand dollars  
30 as well as an out-of-service order being placed on the department of  
31 transportation number, as defined in RCW 46.16.004, and vehicle  
32 registration to operate. Each violation is a separate and distinct  
33 offense, and in case of a continuing violation every day's continuance  
34 is a separate and distinct violation.

35 (c) A motor carrier operating a commercial motor vehicle after  
36 receiving a final unsatisfactory rating or being placed out of service  
37 is liable for a penalty of not more than eleven thousand dollars for

1 each violation. Each violation is a separate and distinct offense, and  
2 in case of a continuing violation every day's continuance is a separate  
3 and distinct violation.

4 (d) A high-risk carrier is liable for double the amount of the  
5 penalty of a prior violation if the high-risk carrier repeats the same  
6 violation during a follow-up compliance review. Each repeat violation  
7 is a separate and distinct offense, and in case of a repeat continuing  
8 violation every day's continuance is a separate and distinct violation.

9 (2) The Washington state patrol may place an out-of-service order  
10 on a department of transportation number, as defined in RCW 46.16.004,  
11 for violations of this chapter or for nonpayment of any monetary  
12 penalties assessed by the state patrol or the utilities and  
13 transportation commission, as a result of compliance reviews, or for  
14 violations of cease and desist orders issued by the utilities and  
15 transportation commission. The state patrol shall notify the  
16 department of licensing when an out-of-service order has been placed on  
17 a motor carrier's department of transportation number. The state  
18 patrol shall notify the motor carrier when there has been an out-of-  
19 service order placed on the motor carrier's department of  
20 transportation number and the vehicle registrations have been revoked  
21 by sending a notice by first-class mail using the last known address  
22 for the registered or legal owner or owners, and recording the  
23 transmittal on an affidavit of first-class mail. Notices under this  
24 section fulfill the requirements of RCW 46.12.160. Motor carriers may  
25 not be eligible for a new department of transportation number, vehicle  
26 registration, or temporary permits to operate unless the violations  
27 that resulted in the out-of-service order have been corrected.

28 (3) Any penalty provided in this section is due and payable when  
29 the person incurring it receives a notice in writing from the state  
30 patrol describing the violation and advising the person that the  
31 penalty is due. ~~((If the amount of the penalty is not paid to the  
32 state patrol within twenty days after the later of (a) receipt of the  
33 notice imposing the penalty, or (b) disposition of an adjudicative  
34 proceeding regarding the penalty, the state patrol may commence an  
35 adjudicative proceeding under chapter 34.05 RCW in the name of the  
36 state of Washington to confirm the violation and recover the penalty.))~~

37 (a)(i) Any motor carrier who incurs a penalty as provided in this  
38 section, except for a high-risk carrier that incurs a penalty for a

1 repeat violation during a follow-up compliance review, may, upon  
2 written application, request that the state patrol mitigate the  
3 penalty. An application for mitigation must be received by the state  
4 patrol within twenty days of the receipt of notice.

5 (ii) The state patrol may decline to consider any application for  
6 mitigation.

7 (b) Any motor carrier who incurs a penalty as provided in this  
8 section has a right to an administrative hearing under chapter 34.05  
9 RCW to contest the violation or the penalty imposed, or both. In all  
10 such ((proceedings)) hearings, the procedure and rules of evidence are  
11 as specified in chapter 34.05 RCW except as otherwise provided in this  
12 chapter. Any request for an administrative hearing must be made in  
13 writing and must be received by the state patrol within twenty days  
14 after the later of (i) receipt of the notice imposing the penalty, or  
15 (ii) disposition of a request for mitigation, or the right to a hearing  
16 is waived.

17 (c) All penalties recovered under this section shall be paid into  
18 the state treasury and credited to the state patrol highway account of  
19 the motor vehicle fund.

20 NEW SECTION. Sec. 5. 2007 c 419 s 18 (uncodified) is repealed.

21 NEW SECTION. Sec. 6. A new section is added to chapter 46.32 RCW  
22 to read as follows:

23 This chapter does not apply to vehicles exempted from registration  
24 by RCW 46.16.020.

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