

CHAPTER 377

H.B. No. 908

AN ACT

relating to regulations of certain motor carriers; providing civil and criminal penalties.

Be it enacted by the Legislature of the State of Texas:

SECTION 1. Section 2, Uniform Act Regulating Traffic on Highways (Article 6701d, Vernon's Texas Civil Statutes), is amended by adding Subsections (o) and (p) to read as follows:

(o) "Motor carrier" means any common carrier, specialized carrier, or contract carrier of property or passengers by motor vehicle or any private carrier of property by motor vehicle. Motor carrier includes any employee, owner, lessee, or officer acting for or on behalf of a motor carrier.

(p) "Hazardous material shipper" means a consignor, consignee, or beneficial owner of a shipment of hazardous materials.

SECTION 2. Section 139, Uniform Act Regulating Traffic on Highways (Article 6701d, Vernon's Texas Civil Statutes), is amended to read as follows:

Sec. 139. **MOTOR CARRIER SAFETY STANDARDS** [~~VEHICLE TRANSPORTING HAZARDOUS MATERIALS~~]. (a) The Director of the Texas Department of Public Safety shall after notice and public hearing adopt such regulations as may be deemed necessary for the safe operation of motor carriers and for the safe transportation of hazardous materials. Such regulations shall duplicate or be consistent with current federal [~~hazardous materials~~] regulations, including the Hazardous Materials Regulations (49 C.F.R. Parts 101-199), and the Federal Motor Carrier Safety Regulations (49 C.F.R. Parts 386 and 388-399) [~~of the United States Department of Transportation~~]. The Director of the Texas Department of Public Safety is hereby authorized to adopt all or any part of said [~~hazardous materials~~] regulations by reference and any such adoption shall be construed to incorporate amendments thereto as may be made from time to time. *The regulations must include provisions to ensure that:*

- (1) a motor carrier's vehicle is safely maintained, equipped, loaded, and operated;
- (2) the responsibilities imposed on the driver of a motor carrier's vehicle do not impair the driver's ability to operate the vehicle safely;
- (3) the physical condition of the driver of a motor carrier's vehicle is adequate to enable the driver to operate the vehicle safely; and
- (4) a motor carrier is able to pay or assure the payment of damages for liability for accidents arising from the motor carrier's ownership, maintenance, or use of a motor vehicle.

(b) Notwithstanding any exemptions found in the federal regulations other than those provided for intracity or commercial zone operations under 49 C.F.R. Part 395,

regulations adopted by the Department under this section shall be applicable and uniform for all areas of the state. [Any person operating a vehicle transporting any hazardous materials as a cargo or part of a cargo upon a highway shall at all times comply with regulations of the Director of the Department of Public Safety adopted pursuant to the provisions of this section.]

(c) Every motor carrier subject to this section shall maintain liability and property damage insurance covering each motor vehicle operated by the motor carrier and file proof of that insurance with the Railroad Commission of Texas. The commission shall set the amount of necessary insurance, and may establish a reasonable fee necessary to offset the administrative costs for such filings. The commission, after notice and public hearing, may adopt regulations necessary to ensure that motor carriers maintain proof of liability and property damage insurance. The commission may allow a motor carrier to meet its liability and property damage insurance requirements through self-insurance if the motor carrier has adequate financial assets to assume liability and is in substantial compliance with all motor carrier safety regulations adopted by the Department. [Said vehicle shall be marked or placarded at such places and in such manner as have been proscribed by regulations adopted pursuant to this section.]

(d) Any regulation relating to motor carrier safety adopted by a local government, authority, or state agency or officer, other than the Director, must be consistent with corresponding federal regulations. To the extent of any conflict between said regulations and those adopted by the Director under this section, other than regulations adopted by the Railroad Commission of Texas under Chapter 113, Natural Resources Code, regulations adopted by the Department shall control. [Every said vehicle shall be equipped with not less than one (1) fire extinguisher with physical characteristics in fire extinguishing ability equivalent to or better than fire extinguishers which qualify under Classification B of the Standards of Underwriters Laboratories, Incorporated, 207 East Ohio Street, Chicago, Illinois 60611, in effect on June 30, 1951.]

(e) The Texas Department of Highways and Public Transportation shall require, at the time of registration of any motor vehicle or application for a temporary permit for any motor vehicle subject to this section, each registrant to declare knowledge of the applicable provisions of any state motor carrier safety regulations or hazardous materials regulations, as adopted by the Department. [Any person convicted of violating a regulation adopted pursuant to this section shall be punished by a fine of not more than Two Hundred Dollars (\$200).]

(f) Any peace officer of any city having a population of 300,000 or more, certified for this purpose by the Director, may detain any motor vehicle on any street or highway within such city subject to this section or to any regulation adopted in accordance with this section. Such certification procedures including the proper training of said officers shall be determined by the Department.

(g) Any officer of the Texas Department of Public Safety may enter or detain any motor vehicle on any street or highway subject to this section or to any regulation adopted by the Director in accordance with this section. In addition, any officer or employee of the Texas Department of Public Safety certified for this purpose by the Director may enter the premises of a motor carrier to inspect lands, buildings, and equipment and copy or verify the correctness of any records, reports, or other documents required to be kept or made pursuant to the regulations adopted by the Director under this section. The Department may conduct the inspection at a reasonable time on stating the purpose and presenting to the motor carrier appropriate credentials and a written statement to the carrier from the Department of the officer's or employee's inspection authority.

(h) A person commits an offense if the person violates, procures, or aids and abets the violation of any regulation adopted under this section. An offense under this section is a Class C misdemeanor.

(i) The attorney general on request of the Director or the Railroad Commission of Texas shall bring suit to enjoin a violation or a threat of violation of a regulation adopted under this section. The suit shall be brought in the county in which the

violation or threat of violation occurs. The court may grant the Director or the Railroad Commission of Texas, without bond or other undertaking, any prohibitory or mandatory injunction the facts may warrant, including temporary restraining orders, and after notice and hearing, temporary injunctions and permanent injunctions.

(j) A person convicted of a violation of a regulation adopted under this section is subject to a civil penalty in an amount not to exceed \$200 for each day of noncompliance or for each act of noncompliance. The action may be brought in any court of competent jurisdiction in the county in which the violation occurred.

(k) A penalty recovered in a suit brought under this section shall be deposited to the credit of the state highway fund.

SECTION 3. Section 11, Chapter 270, Acts of the 40th Legislature, Regular Session, 1927 (Article 911a, Vernon's Texas Civil Statutes), is amended to read as follows:

Sec. 11. The Commission shall, in the granting of any certificate to any motor bus company for regularly transporting persons as passengers for compensation or hire, require the owner or operator to first procure liability and property damage insurance from a company *holding a certificate of authority to transact such kinds of insurance business* [~~licensed to make and issue such insurance policy~~] in the State of Texas *or, with the approval of the Commissioner, by a surplus lines insurer meeting the requirements of Article 1.14-2, Insurance Code, and rules adopted by the State Board of Insurance under that article, covering each and every motor propelled vehicle while actually being operated by such applicant.* The amount of such policy or policies of insurance shall be fixed by the Commission by general order or otherwise, and the terms and conditions of said policy or policies covering said motor vehicle are to be such as to indemnify the applicant against loss by reason of any personal injury to any person or loss or damage to the property of any person other than the assured and his employees. Such policy or policies shall furthermore provide that the insurer will pay all judgements which may be recovered against the insured motor bus company based on claims for loss or damage from personal injury or loss of or injury to property occurring during the term of the said policy or policies and arising out of the actual operation of such motor bus or busses, and such policy or policies shall also provide for successive recoveries to the complete exhaustion of the face amount thereof, and that such judgment will be paid by the insurer irrespective of the solvency or insolvency of the insured. Such liability and property damage insurance as required by the Commission shall be continuously maintained in force on each and every motor propelled vehicle while being operated in common carrier service. In addition to the insurance hereinabove set forth, the owner or operator shall also protect his employees by taking out workmen's compensation insurance either as provided by the Workmen's Compensation Laws of the State of Texas or in a reliable insurance company approved by the Railroad Commission of the State of Texas. The taking out of such indemnity policy or policies shall be a condition precedent to any operation and such policy or policies as required under this Act, shall be approved and filed with the Commission and failure to file and keep such policy or policies in force and effect as provided herein shall be cause for the revocation of the certificate and shall subject the motor bus company so failing to the penalties prescribed herein.

SECTION 4. Section 13, Chapter 314, Acts of the 41st Legislature, Regular Session, 1929 (Article 911b, Vernon's Texas Civil Statutes), is amended to read as follows:

Sec. 13. Before any permit or certificate of public convenience and necessity may be issued to any motor carrier and before any motor carrier may lawfully operate under such permit or certificate as the case may be, such motor carrier shall file with the Commission bonds and/or insurance policies issued by some insurance company including mutuals and reciprocals or bonding company *holding a certificate of authority to transact such kinds of insurance business* [~~authorized by law to transact business~~] in Texas *or, with the approval of the Commissioner, by a surplus lines insurer meeting the requirements of Article 1.14-2, Insurance Code, and rules adopted by the State Board of Insurance under that article, in an amount to be fixed by the Commission under such rules and regulations as it may prescribe, which bonds and insurance policies shall provide that the obligor therein will pay to the extent of the face amount of such insurance*

policies and bonds all judgments which may be recovered against the motor carrier so filing said insurance policies and bonds, based on claims for loss or damages from personal injury or loss of, or injury to property occurring during the term of said bonds and policies and arising out of the actual operation of such motor carrier; and such bonds and policies shall also provide for successive recoveries to the complete exhaustion of the face amount thereof and that such judgments will be paid by the obligor in said bonds and insurance policies irrespective of the solvency or insolvency of the motor carrier; provided, however, such bonds and policies shall not cover personal injuries sustained by the servants, agents or employees of such motor carrier. Provided further, that in the event the insured shall abandon his permit or certificate and leave the state, a claimant, asserting a claim within the provisions of said bonds or policies, may file suit against the sureties executing such bond or the company issuing such policies in a court of competent jurisdiction without the necessity of making the insured a party to said suit. Provided, however, that the Commission shall not require insurance covering loss of or damage to cargo in amount excessive for the class of service to be rendered by any motor carrier. Each such motor carrier shall, on or before the date of the expiration of the term of any policy or bond so filed by him, file a renewal thereof, or new bonds or policies containing the same terms and obligations of the preceding bonds and policies, and shall each year thereafter on or before the expiration date of the existing bonds and policies, file such renewal policies and bonds so as to provide continuous and unbroken protection to the public having legal claims against such motor carrier; and in the event such renewal bonds and policies are not so filed, the Commission, after notice to the motor carrier, and hearing, may, within its discretion if it shall find and determine that the ends of justice will be better subserved thereby, cancel such permit or certificate for failure to furnish and provide such bonds or insurance as herein required. The Commission may accept in lieu of the filing of the original policies of insurance, a certificate of insurance, in such form as may be prescribed by the Commission, which certificate, when filed with the Commission, will bind the obligor thereunder and satisfy the requirements of this section as if the original policies of insurance had been filed.

Each motor carrier shall also protect his employees by taking out workmen's compensation insurance, either as provided by the Workmen's Compensation Laws of the State of Texas, or in a reliable insurance company authorized to write workmen's compensation insurance approved by the Commission.

SECTION 5. This Act takes effect January 1, 1988.

SECTION 6. The importance of this legislation and the crowded condition of the calendars in both houses create an emergency and an imperative public necessity that the constitutional rule requiring bills to be read on three several days in each house be suspended, and this rule is hereby suspended.

Passed by the House on May 5, 1987, by the following vote: revenue dedication: Yeas 139, Nays 0, 1 present, not voting; remainder of the bill: non-record vote; and that the House concurred in Senate amendments to H.B. No. 908 on May 19, 1987, by a non-record vote. Passed by the Senate, with amendments, on May 15, 1987, by the following vote: Yeas 30, Nays 0.

Approved June 16, 1987.

Effective Jan. 1, 1988.