

SECOND REGULAR SESSION

SENATE BILL NO. 761

93RD GENERAL ASSEMBLY

INTRODUCED BY SENATOR STOUFFER.

Pre-filed December 15, 2005, and ordered printed.

TERRY L. SPIELER, Secretary.

3982S.011

AN ACT

To amend chapter 226, RSMo, by adding thereto one new section relating to the enforcement of certain federal or state orders prohibiting the operation of commercial motor vehicles.

Be it enacted by the General Assembly of the State of Missouri, as follows:

Section A. Chapter 226, RSMo, is amended by adding thereto one new section, to be known as section 226.009, to read as follows:

226.009. 1. Whenever the Federal Motor Carrier Safety Administration, the United States Department of Transportation, or the state highways and transportation commission issues an out-of-service order against a motor carrier, as those terms are defined in section 390.5 of Title 49, Code of Federal Regulations, as those regulations have been and periodically may be amended, the commission may immediately, without hearing, order the suspension, revocation, cancellation, confiscation, or any of these, of every license, registration, certificate, permit, and other credential issued to the motor carrier by the commission's authority under section 226.008 and every motor vehicle license plate issued under any provision of chapter 301, RSMo, which authorizes the operation of motor vehicles in intrastate or interstate commerce by that motor carrier. This section is applicable to out-of-service orders placing a motor carrier's entire operation out of service, but does not apply to any out-of-service order placing an individual driver or individual vehicle out of service.

(1) The commission immediately shall serve notice of its order upon the affected motor carrier, and upon the director of revenue, in the manner authorized by section 622.410, RSMo, or any other manner authorized by law for the service of notice of the commission's

21 orders. The notice or order shall state a specific effective date for the
22 commission's action or, in the commission's discretion, that its action
23 shall become effective immediately upon the service of the notice or
24 order upon the motor carrier. The order shall remain in force until
25 ordered otherwise by the commission or by a court having proper
26 jurisdiction.

27 (2) Whenever an order of the commission issued under
28 subsection 1 of this section is in force, a motor carrier who is
29 prohibited by the order from operating commercial motor vehicles shall
30 not operate any commercial motor vehicles and shall not allow any
31 employee, agent, lessor, or other person acting under the motor
32 carrier's authority or control, to operate any commercial motor
33 vehicles in intrastate or interstate commerce within this state. Upon
34 receiving notice of the commission's order, the motor carrier
35 immediately shall surrender all license plates, motor carrier licenses,
36 registrations, permits, and other credentials as directed by the
37 commission's order. While the out-of-service order is in force, the
38 commission may dismiss or deny every application for the issuance of
39 any of these credentials to that motor carrier.

40 (3) After the commission has issued an order under this section,
41 the out-of-service motor carrier shall not be eligible to apply for the
42 issuance or reinstatement of, and the commission shall not issue or
43 reinstate any license plate, motor carrier license, registration, permit,
44 certificate, or other credential described in the commission's order,
45 until the out-of-service order and any commission orders issued under
46 this subsection have been rescinded by the agency that issued these
47 orders, or the orders have been set aside by a court having proper
48 jurisdiction.

49 2. In any commission or court proceeding relating to this section,
50 a copy of any federal or state order described in subsection 1 of this
51 section shall be admissible and shall constitute prima facie evidence
52 that the motor carrier violated Title 49, Code of Federal Regulations,
53 or that the motor carrier's operation of commercial motor vehicles
54 poses an imminent hazard to safety, or both, as stated in that order.

55 3. Any person who is aggrieved by an order of the highways and
56 transportation commission issued under this section, or by any out-of-
57 service order issued by commission enforcement personnel under

58 section 390.201, RSMo, or subsection 3 of section 307.400, RSMo, may
59 apply to the circuit court for a hearing and review of the order. Venue
60 of such judicial review shall lie within the county of the first
61 classification with more than seventy-one thousand three hundred but
62 fewer than seventy-one thousand four hundred inhabitants, or in the
63 county where the out-of-service order was issued to the motor
64 carrier. The right to a hearing and judicial review of the commission's
65 orders under this section shall be waived, unless an aggrieved person
66 files a petition for review with the clerk of the circuit court in the
67 proper venue, not later than thirty days following issuance of the order
68 to be reviewed. Except as otherwise provided in this section, sections
69 622.430 to 622.450, RSMo, shall govern the judicial review of orders
70 issued by the commission or its personnel as described in this section.
71 In addition to any other interested parties, the commission shall have
72 the right to appear in all hearing and review proceedings under this
73 section, and may, in its discretion, defend any order or notice issued
74 and any action taken by any public agency or officer acting in good
75 faith under the provisions of this section. This section shall not be
76 construed as conferring any jurisdiction to review, amend, vacate, or
77 set aside any orders issued by a federal agency or federal officer.

78 4. Notwithstanding any provision of law to the contrary, the
79 highways and transportation commission may receive and disclose any
80 data, information, or evidence relating to any out-of-service motor
81 carrier as provided in this section. Except as otherwise provided in
82 this section, this data may include, but is not limited to, the identity
83 and location of any persons known or reasonably believed to have
84 leased motor vehicles with or without driver to the out-of-service motor
85 carrier, any persons known or reasonably believed to be operating
86 commercial motor vehicles under the authority or control of the out-of-
87 service motor carrier, and any motor vehicles owned, operated by, or
88 leased to the out-of-service motor carrier or those persons, including
89 the vehicle identification numbers. The commission, in its discretion,
90 may disclose this data to the following entities, which are hereby
91 authorized to receive such data from, and to disclose such data to, the
92 commission:

93 (1) The Federal Motor Carrier Safety Administration and other
94 relevant officials of the United States Department of Transportation;

95 (2) The department of revenue;

96 (3) The Missouri state highway patrol, and any other peace
97 officers authorized to exercise police powers within the state;

98 (4) Similarly authorized law enforcement agencies of any other
99 state, of the United States government, or of any foreign government
100 having legal authority to promote or enforce motor carrier safety; and

101 (5) Any liability insurer or surety that provides, or has an
102 interest in providing, automobile liability insurance coverage for the
103 out-of-service motor carrier, or for any person who leases, or proposes
104 to lease, motor vehicles to be operated by or under the authority or
105 control of the out-of-service motor carrier.

106 5. Upon receiving notice of any order issued by the highways and
107 transportation commission under subsection 1 of this section, together
108 with any additional information reasonably required by the director of
109 revenue, the director of revenue may immediately, without hearing,
110 update the director's records to reflect the suspension, revocation, or
111 cancellation of all motor vehicle license plates, registrations, and other
112 credentials issued to the out-of-service motor carrier by the director of
113 revenue. The director of revenue shall immediately notify the motor
114 carrier, and the commission, of all actions taken pursuant to the
115 commission's order. The motor carrier shall have the right to seek
116 judicial review of the commission's order, including the suspension,
117 revocation, or cancellation of motor vehicle license plates and
118 registrations under the commission's order, as provided in subsection
119 3 of this section. The motor carrier shall not be entitled to any
120 separate appeal or review of the director of revenue's notice of
121 suspension, revocation, or cancellation of motor vehicle licenses or
122 registrations, or any other actions taken by the director of revenue
123 under the commission's order.

124 6. The commission may authorize any of its personnel to enforce
125 any provision of this section, or any out-of-service orders described in
126 this section, in the same manner provided by law for other orders of
127 the commission authorized under section 226.008. The Missouri state
128 highway patrol, and other peace officers within this state may enforce
129 the requirements of this section and of any orders issued under this
130 section. If so authorized by the commission's order under this section,
131 in addition to any other remedies provided by law, personnel of the

132 state department of transportation and the state highway patrol may
133 confiscate any license plates, motor carrier licenses, registrations,
134 certificates, permits, and other credentials issued to the motor carrier
135 by the commission, the director of revenue, the department of revenue,
136 or all of these.

137 7. Notwithstanding any provision of the law to the contrary, the
138 state of Missouri, the highways and transportation commission, the
139 state highway patrol, and any peace officers or other public officers
140 acting in good faith under the authority of this section, shall not be
141 held liable or required to pay any refund of any fees, taxes,
142 assessments, penalties, fines, forfeitures, or other payments that may
143 be charged to, received, or collected from the out-of-service motor
144 carrier, or from persons whose motor vehicles are leased to or operated
145 under the control of that motor carrier, in relation to any license plate,
146 motor carrier license, registration, permit, certificate, or other
147 credential that is suspended, revoked, canceled, or confiscated under
148 any provisions of this section.

149 8. Any act or omission by a state agency that this section
150 authorizes or requires with reference to an out-of-service motor
151 carrier, or with reference to motor vehicles operated by an out-of-
152 service motor carrier, is likewise authorized or required with reference
153 to:

154 (1) Any person who operates motor vehicles under the actual
155 control of that motor carrier, and any person who operates motor
156 vehicles that are leased to that motor carrier, with or without driver;
157 and

158 (2) Any motor vehicles operated under the actual control of that
159 motor carrier, and any motor vehicles that are leased to that motor
160 carrier, with or without driver.

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