

CHAPTER 393—S.F.No. 508

An act relating to transportation; requiring a license for the transportation of hazardous waste; providing for license administration, suspension, and revocation; requiring rulemaking; providing penalties; specifying articles that may be carried as household goods; revising fees for certain motor carrier permits and certificates; appropriating money; amending Minnesota Statutes 1986, sections 221.061; 221.121, subdivision 7, and by adding a subdivision; 221.131, subdivisions 2 and 3; 221.291, subdivision 3; 221.296, subdivision 5; and 221.60, subdivision 2; proposing coding for new law in Minnesota Statutes, chapter 221.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MINNESOTA:

ARTICLE 1

TRANSPORTATION OF HAZARDOUS WASTE

Section 1. [221.035] HAZARDOUS WASTE TRANSPORTER LICENSE.

Subdivision 1. LICENSE REQUIREMENT. (a) A person may not transport hazardous waste that is required to have a manifest under Minnesota Rules, part 7045.0261, or is required to have shipping papers under Minnesota Rules, part 7045.0125, without a license issued under this section.

(b) If the applicant complies with the requirements of this section, the commissioner shall issue the license and shall issue a vehicle identification decal for each single unit vehicle or trailer that the licensee will use to transport hazardous waste. The applicant shall pay a fee of \$500 for a three-year license and an annual fee of \$25 for each vehicle identification decal. The license must be maintained at the licensee's principal place of business. The name and address of the licensee must be displayed on both sides of each unit of the vehicle. The vehicle identification decal must be displayed on the single unit vehicle or trailer to which it is assigned, as prescribed by the commissioner. The decal is effective only when the license is effective. The license must be renewed in the third year following the date of the issuance of the license. The licensee must obtain new decals each year. The license may not be transferred to another person.

(c) An applicant for a license under this section, who is not otherwise subject to section 221.141, shall file a certificate of insurance with the commissioner as provided in section 221.141. The certificate must state that the insurer has issued to the applicant a policy that by endorsement provides public liability insurance in the amount required by Code of Federal Regulations, title 49, part 387.

Subd. 2. OPERATION REQUIREMENTS. A vehicle operated under a license issued under this section must be operated in compliance with the rules of the commissioner adopted under this chapter governing: driver qualifications; safety of operation; equipment, parts, and accessories; inspection, repair, and maintenance; and maximum hours of service.

Changes or additions are indicated by underline, deletions by ~~strikeout~~.

Subd. 3. LICENSE SUSPENSION AND REVOCATION. (a) The commissioner may after notice and opportunity for hearing under chapter 14 suspend or revoke a license issued under this section if the commissioner determines that a licensee's actions constitute a serious or repeated violation of a statute or rule governing the transportation of hazardous waste. Factors to be considered by the commissioner in determining whether to suspend or revoke a license include:

(1) the danger of exposing the public to toxic or hazardous substances;

(2) the condition of vehicles used by the licensee to transport hazardous waste; and

(3) the history of past violations, including the similarity of the most recent violation and the violation to be penalized, the time elapsed since the last violation, the number of previous violations, and the response of the person to the most recent violation identified.

(b) The commissioner shall revoke by order, without a hearing, the license of a licensee who fails to renew a license or fails to maintain insurance as required by this section. Revocation under this paragraph continues until the licensee renews the license and provides the commissioner with proof of insurance required under this section.

Subd. 4. RULEMAKING AUTHORITY. The commissioner shall adopt rules to implement this section. The commissioner may adopt rules to require licensed transporters to report to the commissioner.

Sec. 2. [221.036] ADMINISTRATIVE PENALTIES.

Subdivision 1. AUTHORITY TO ISSUE PENALTY ORDERS. The commissioner may issue an order requiring violations to be corrected and administratively assessing monetary penalties for a violation of section 1, of a material term or condition of a license issued under section 1, or of a rule or order of the commissioner relating to the transportation of hazardous waste. An order must be issued as provided in this section.

Subd. 2. ELECTION OF PENALTIES. The commissioner may not both assess an administrative penalty under this section and seek a criminal sanction under section 221.291, subdivision 3, for violations arising out of the same inspection or audit.

Subd. 3. AMOUNT OF PENALTY; CONSIDERATIONS. (a) The commissioner may issue an order assessing a penalty up to a maximum of \$10,000 for all violations identified during a single inspection or audit.

(b) In determining the amount of a penalty, the commissioner shall consider:

(1) the willfulness of the violation;

Changes or additions are indicated by underline, deletions by ~~strikeout~~.

(2) the gravity of the violation, including damage to humans, animals, air, water, land, or other natural resources of the state;

(3) the history of past violations, including the similarity of the most recent violation and the violation to be penalized, the time elapsed since the last violation, the number of previous violations, and the response of the person to the most recent violation identified;

(4) the economic benefit gained by the person by allowing or committing the violation; and

(5) other factors as justice may require, if the commissioner specifically identifies the additional factors in the commissioner's order.

Subd. 4. CONTENTS OF ORDER. An order assessing an administrative penalty under this section must include:

(1) a concise statement of the facts alleged to constitute a violation;

(2) a reference to the section of the statute, rule, order, or material term or condition of a license that has been violated;

(3) a statement of the amount of the administrative penalty to be imposed and the factors upon which the penalty is based; and

(4) a statement of the person's right to review of the order.

Subd. 5. CORRECTIVE ORDER. (a) The commissioner may issue an order assessing a penalty and requiring the violations cited in the order to be corrected within 30 calendar days from the date the order was received.

(b) The person to whom the order was issued shall provide information to the commissioner before the 31st day after the order was received demonstrating that the violation has been corrected or that appropriate steps toward correcting the violation have been taken. The commissioner shall determine whether the violation has been corrected and notify the person subject to the order of the commissioner's determination.

Subd. 6. PENALTY. (a) Except as provided in paragraph (b), if the commissioner determines that the violation has been corrected or appropriate steps have been taken to correct the action, the penalty must be forgiven. Unless the person requests review of the order under subdivision 7, 8, or 9 before the penalty is due, the penalty in the order is due and payable:

(1) on the 31st day after the order was received, if the person subject to the order fails to provide information to the commissioner showing that the violation has been corrected or that appropriate steps have been taken toward correcting the violation; or

(2) on the 20th day after the receipt of a notice by the person subject to the order of the commissioner's determination under subdivision 5, paragraph (b),

Changes or additions are indicated by underline, deletions by ~~strikeout~~.

that information supplied to the commissioner is not sufficient to show that the violation has been corrected or that appropriate steps have been taken toward correcting the violation.

(b) For a repeated or serious violation, the commissioner may issue an order with a penalty that will not be forgiven after the corrective action is taken. The penalty is due within 30 days after the order was received unless review of the order under subdivision 7, 8, or 9 has been sought.

(c) Interest at the rate established in section 549.09 begins to accrue on penalties on the date that the penalty is due and payable if no request for review is filed under subdivision 7, 8, or 9.

Subd. 7. EXPEDITED ADMINISTRATIVE HEARING. (a) Within 30 days after the date on which an order was received, or within 20 days after the receipt of a notice that the commissioner has determined that a violation has not been corrected or appropriate steps have not been taken, the person subject to an order under this section may request an expedited hearing. The person to whom the order is directed and the commissioner are the parties to the expedited hearing to review the order and the penalty. The commissioner must notify the person to whom the order is directed of the time and place of the hearing at least 20 days before the hearing. The expedited hearing must be held within 30 days after a request for hearing has been filed with the commissioner unless the parties agree to a later date.

(b) All written arguments must be submitted within ten days following the close of the hearing. The hearing must be conducted under the conference contested case rules of the office of administrative hearings, as modified by this subdivision. The office of administrative hearings may, in consultation with the commissioner, adopt rules specifically applicable to cases under this section.

(c) The administrative law judge shall issue a report making recommendations about the order to the commissioner within 30 days following the close of the record. The administrative law judge may not recommend a change in the amount of the proposed penalty unless the administrative law judge determines that, based on the factors in subdivision 3, the amount of the penalty is unreasonable.

(d) If the administrative law judge makes a finding that the hearing was requested solely for purposes of delay or that the hearing request was frivolous, the commissioner may add to the amount of the penalty the costs charged to the commissioner by the office of administrative hearings for the hearing.

(e) If a hearing has been held, the commissioner may not issue a final order until at least five days after receipt of the report of the administrative law judge. The person subject to the order may, within those five days, comment to the commissioner on the recommendations and the commissioner shall consider the comments. The final order may be appealed in the manner provided in sections 14.63 to 14.69.

Changes or additions are indicated by underline, deletions by ~~strikeout~~.

(f) If a hearing has been held and a final order issued by the commissioner, the penalty must be paid by the 15th day after the final order was mailed, together with interest accruing at the rate established in section 549.09 from 31 days after the original order was received.

Subd. 8. DISTRICT COURT HEARING. (a) Within 30 days after the receipt of an order, or within 20 days after the receipt of a notice that the commissioner has determined that a violation has not been corrected or appropriate steps have not been taken, the person subject to an order under this section may file a petition in district court for review of the order. The petition must be filed with the court administrator with proof of service on the commissioner. The petition must be captioned in the name of the person making the petition as petitioner and the commissioner as respondent. The petition must state with specificity the grounds upon which the petitioner seeks rescission of the order, including the facts upon which each claim is based.

(b) At trial, the commissioner must establish by a preponderance of the evidence that a violation subject to this section and for which the petitioner is responsible occurred, that the factors listed in subdivision 3 were considered when the penalty amount was determined, and that the penalty amount is justified by those factors. In addition, if the commissioner immediately assesses a penalty as provided for under subdivision 5, paragraph (a), the commissioner must establish by a preponderance of the evidence that the immediate imposition of the penalty was justified.

Subd. 9. MEDIATION. In addition to review under subdivision 6 or 7, the commissioner may enter into mediation concerning an order issued under this section if the commissioner and the person to whom the order is issued both agree to mediation.

Subd. 10. ELECTION OF REMEDIES. A person subject to a corrective order under this section may not seek review of the order under both subdivisions 7 and 8.

Subd. 11. ENFORCEMENT. (a) The attorney general may proceed on behalf of the state to enforce penalties that are due and payable under this section in any manner provided by law for the collection of debts.

(b) The attorney general may petition the district court to file the administrative order as an order of the court. At a court hearing, the only issues parties may contest are procedural and notice issues. Once entered, the administrative order may be enforced in the same manner as a final judgment of the district court.

(c) If a person fails to pay the penalty, the attorney general may bring a civil action in district court seeking payment of the penalties, injunctive, or other appropriate relief including monetary damages, attorney fees, costs, and interest.

Subd. 12. REVOCATION AND SUSPENSION OF PERMIT. If a person

Changes or additions are indicated by underline, deletions by ~~strikeout~~.

fails to pay a penalty owed under this subdivision, the commissioner has grounds to revoke or refuse to reissue or renew a license issued by the commissioner under section 1.

Subd. 13. CUMULATIVE REMEDY. The authority of the commissioner to issue a corrective order assessing penalties is in addition to other remedies available under statutory or common law. Except as provided in subdivision 2, the payment of a penalty does not preclude the use of other enforcement provisions in connection with the violation for which the penalty was assessed.

Subd. 14. TRUNK HIGHWAY FUND. Penalties collected under this section must be deposited in the state treasury and credited to the trunk highway fund.

Sec. 3. Minnesota Statutes 1986, section 221.291, subdivision 3, is amended to read:

Subd. 3. TRANSPORTATION OF HAZARDOUS MATERIALS. A person who ships, transports, or offers for transportation hazardous waste or hazardous material, or hazardous substances in violation of a provision of this chapter or a rule or order of the commissioner or board adopted or issued under this chapter which specifically applies to the transportation of hazardous material or hazardous waste, or hazardous substances is guilty of a misdemeanor and upon conviction may be fined up to the maximum fine which may be imposed for a misdemeanor for each violation.

Sec. 4. **APPROPRIATION.**

\$75,000 in fiscal year 1988 and \$78,000 in fiscal year 1989 is appropriated from the trunk highway fund to the commissioner of transportation to administer and enforce the licensing program established in sections 1 and 2. The approved complement of the department of transportation is increased by two.

Sec. 5. **EFFECTIVE DATE.**

Sections 1 and 2 are effective January 1, 1988, except section 1, subdivision 4, is effective the day after enactment and rules adopted under section 1, subdivision 4, must be adopted by January 1, 1988.

ARTICLE 2

COMMON CARRIERS

Section 1. Minnesota Statutes 1986, section 221.061, is amended to read:

221.061 OPERATION CERTIFICATE FOR REGULAR ROUTE COMMON CARRIER OR PETROLEUM CARRIER.

Changes or additions are indicated by underline, deletions by ~~strikeout~~.

A person desiring a certificate authorizing operation as a regular route common carrier or petroleum carrier, or an extension of or amendment to that certificate, shall file a petition with the board which must contain information as the board, by rule may prescribe.

Upon the filing of a petition for a certificate, the petitioner shall pay to the commissioner as a fee for issuing the certificate the sum of \$75 \$300 and for a transfer or lease of the certificate the sum of ~~\$37.50~~ \$300.

The petition must be processed as any other petition. The board shall cause a copy and a notice of hearing thereon to be served upon a competing carrier operating into a city located on the proposed route of the petitioner and to other persons or bodies politic which the board deems interested in the petition. A competing carrier and other persons or bodies politic are hereby declared to be interested parties to the proceedings.

If, during the hearing, an amendment to the petition is proposed which appears to be in the public interest, the board may allow it when the issues and the territory are not unduly broadened by the amendment.

Sec. 2. Minnesota Statutes 1986, section 221.121, is amended by adding a subdivision to read:

Subd. 6a. HOUSEHOLD GOODS CARRIER. A person who desires to hold out or to operate as a carrier of household goods shall follow the procedure established in subdivision 1, and shall specifically request an irregular route common carrier permit with authority to transport household goods. The permit granted by the board to a person who meets the criteria established in this subdivision and subdivision 1 shall authorize the person to hold out and to operate as an irregular route common carrier of household goods.

Sec. 3. Minnesota Statutes 1986, section 221.121, subdivision 7, is amended to read:

Subd. 7. FEES. The permit holder shall pay a fee of ~~\$25~~ \$150 into the treasury of the state of Minnesota for each kind of permit, ~~reinstatement~~, or extension of authority for which a petition is filed under this section.

Sec. 4. Minnesota Statutes 1986, section 221.131, subdivision 2, is amended to read:

Subd. 2. PERMIT CARRIERS; ANNUAL VEHICLE REGISTRATION. The permit holder shall pay an annual registration fee of \$20 on each vehicle, including pickup and delivery vehicles, operated by the holder under authority of the permit during the 12-month period or fraction of the 12-month period. Trailers and semitrailers used by a permit holder in combination with power units may not be counted as vehicles in the computation of fees under this section if the permit holder pays the fees for power units. The commissioner shall furnish a distinguishing annual identification card for each vehicle or

Changes or additions are indicated by underline, deletions by ~~strikeout~~.

power unit for which a fee has been paid. The identification card must at all times be carried in the vehicle or power unit to which it has been assigned. An identification card may be reassigned to another vehicle or power unit ~~without fee by the commissioner~~ upon application of the permit holder and a transfer fee of \$10. An identification card issued under the provisions of this section is valid only for the period for which the permit is effective. The name and residence of the permit holder must be stenciled or otherwise shown on the outside of both doors of each registered vehicle operated under the permit. A fee of ~~\$3~~ \$10 is charged for the replacement of an unexpired identification card that has been lost or damaged.

Sec. 5. Minnesota Statutes 1986, section 221.131, subdivision 3, is amended to read:

Subd. 3. **CERTIFICATE CARRIERS; ANNUAL VEHICLE REGISTRATION.** Regular route common carriers and petroleum carriers, operating under sections 221.011 to 221.291, shall annually ~~on or before January 1 of each calendar year,~~ pay into the treasury of the state of Minnesota an annual registration fee of \$20 for each vehicle, including pickup and delivery vehicles, operated during a calendar year. The commissioner shall issue distinguishing identification cards as provided in subdivision 2.

Sec. 6. **[221.132] PREPAID TEMPORARY VEHICLE IDENTIFICATION CARDS.**

The commissioner may issue a prepaid temporary vehicle identification card to a permit or certificate holder for a fee of \$5 per card. The card must be preprinted by the commissioner with the carrier's name, address, and permit or certificate number. The card may be used by the motor carrier to whom it is issued to identify a vehicle temporarily added to its fleet. The card must be executed by the motor carrier by dating and signing the card and describing the vehicle in which it will be carried. The identification card is valid for a period of ten days from the date the motor carrier places on the card when the card is executed. The card must be used within one year from the date of issuance by the commissioner. The card may not be used if the permit or certificate is not in full force and effect. The card may not be transferred. The commissioner may not refund the cost of unused prepaid temporary vehicle identification cards.

Sec. 7. Minnesota Statutes 1986, section 221.296, subdivision 5, is amended to read:

Subd. 5. **PERMIT FEES.** Upon filing a petition for a permit the petitioner shall pay to the commissioner as a fee for the issuance of the permit, the sum of ~~\$50~~ \$150, and shall thereafter pay an annual renewal fee of \$75 plus \$5 per motor vehicle if the local cartage carrier operates less than five motor vehicles, or \$100 plus \$5 per motor vehicle if the local cartage carrier operates at least five but less than 15 motor vehicles, or \$150 plus \$5 per motor vehicle if the local cartage carrier operates 15 or more vehicles ~~provided that the \$5 per motor~~

Changes or additions are indicated by underline, deletions by ~~strikeout~~.

vehicle charge does not apply to taxicabs operated under a local cartage permit. Upon issuance of the permit the commissioner shall assign the carrier a permit number, which must be painted or prominently displayed on both sides of vehicles used by the local cartage carrier under authority of the permit.

Sec. 8. Minnesota Statutes 1986, section 221.60, subdivision 2, is amended to read:

Subd. 2. **FORM AND FEES.** A motor carrier engaged in interstate commerce shall register its interstate transportation authority or exemption before February 1 of each year on a form prescribed by the commissioner. The fee for the initial registration is \$25. The fee for each identification stamp is \$5; however, a lesser fee may be collected pursuant to a reciprocal agreement authorized by section 221.65. ~~No fee may be collected from a local cartage carrier that provides interstate transportation only within the zone described in United States Code, title 49, section 10526(b)(1)(1984).~~ A local cartage carrier shall register its interstate transportation each year when it pays the local cartage carrier permit or annual renewal fee.

Approved June 3, 1987

CHAPTER 394—H.F.No. 1113

An act relating to state departments and agencies; abolishing the Minnesota humane society as a state agency and authorizing its formation as a state federation of county and district societies; providing for the powers and duties of county and district societies and for the prevention of cruelty to animals; amending Minnesota Statutes 1986, sections 16B.51, subdivision 1; 43A.27, subdivision 2; 343.01; 343.06; 343.10; 343.11; 343.12; 343.22, subdivision 1; 343.29, subdivision 1; 346.37, subdivision 6; and 347.37; repealing Minnesota Statutes 1986, section 343.08.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MINNESOTA:

Section 1. Minnesota Statutes 1986, section 16B.51, subdivision 1, is amended to read:

Subdivision 1. **SUPERVISION BY COMMISSIONER.** The commissioner shall supervise and control the making and distribution of all reports and other publications of all kinds issued by the state and state agencies when not otherwise prescribed by law. The commissioner shall also prescribe the manner and form of issuing reports required by sections 8.08; 16A.50; 35.03; 139.08, subdivision 5; 256.01; 268.12, subdivision 2; 299C.18; ~~343.08~~; and 360.015, subdivision 17.

Sec. 2. Minnesota Statutes 1986, section 43A.27, subdivision 2, is amended to read:

Changes or additions are indicated by underline, deletions by ~~strikeout~~.