

LEGISLATIVE BILL 1360

Approved by the Governor March 24, 1972

Introduced by William Skarda, Jr., 7th District

AN ACT relating to motor vehicles; to control smoke emissions from diesel-powered motor vehicles; to prohibit the sale of new motor vehicles producing maximum noises as prescribed; to define terms; to provide for the establishment of standards; to provide for rules and regulations; to provide penalties for violation thereof; and to provide a severability clause.

Be it enacted by the people of the State of Nebraska,

Section 1. As used in this act, unless the context otherwise requires:

(1) Diesel-powered motor vehicle shall mean a self-propelled vehicle designed primarily for transporting persons or property on a public street or highway and which is powered by an internal combustion engine of the compression ignition type;

(2) Smoke shall mean the solid or liquid matter, except water, discharged from a motor vehicle engine which obscures the transmission of light;

(3) Federal standards shall mean the federal standards for the Control of Air Pollution from New Motor Vehicles and New Motor Vehicle Engines, promulgated by the Environmental Protection Agency in the Code of Federal Regulations, Title 40, Part 85;

(4) Smokemeter shall mean a full flow light-extinction smokemeter of a type approved by the Department of Environmental Control and operating on the principles described in the federal standards;

(5) Opacity shall mean the degree to which a smoke plume emitted from a motor vehicle engine will block the passage of a beam of light expressed as a percentage;

(6) Smoke control system shall mean a system consisting of one or more devices and adjustments designed to control the discharge of smoke from diesel-powered motor vehicles;

(7) Administrator shall mean the Director of Environmental Control of the State of Nebraska; and

(8) This act shall mean sections 1 to 13 of this act.

Sec. 2. This act shall apply to all diesel-powered motor vehicles operated within this state with the exception of the following:

(1) Emergency vehicles operated by federal, state, and local governmental authorities;

(2) Vehicles which are not required to be registered in accordance with applicable motor vehicle laws of this state;

(3) Vehicles used for research and development which have been approved by the administrator;

(4) Vehicles being operated while undergoing maintenance;

(5) Vehicles operated under emergency conditions;

(6) Vehicles being operated in the course of training programs which have been approved by the administrator; and

(7) Other vehicles expressly exempted by the administrator.

Sec. 3. No one shall operate a diesel-powered motor vehicle on any public street or highway in this state in such a manner that the smoke exceeds the opacity set forth in the rules and regulations promulgated by the administrator in accordance with this act.

Sec. 4. No one shall intentionally make a change or other alteration to any vehicle equipped by its manufacturer with a smoke control system, including the basic fuel system, that may limit the ability of the system to control smoke, and no one shall remove such a smoke control system except for repair or installation of a proper replacement.

Sec. 5. (1) State and local enforcement officials shall have the authority to arrest suspected violators of the provisions of this act on the basis of their visual evaluation of the smoke emitted from a diesel-powered motor vehicle; Provided, that a suspected violator may demand that the suspected vehicle be tested in accordance with the provisions of this act by an

approved smokemeter prior to a trial on the alleged violation.

(2) Smokemeter tests shall be conducted (a) by or under the supervision of a person or testing facility authorized by the administrator to conduct such tests, and (b) by installing an approved smokemeter on the exhaust pipe and operating the suspected vehicle in a manner similar to the manner of operation at the time of the alleged violation.

(3) The results of smokemeter tests run in accordance with the provisions of this act and after the arrest shall be admissible as evidence in legal proceedings.

Sec. 6. (1) The administrator shall have the power, after public hearings on due notice, to promulgate, consistent with and in furtherance of the provisions of this act, rules and regulations in accordance with which he will carry out his responsibilities and obligations under the provisions of this act.

(2) As the state of knowledge and technology relating to the control of smoke from diesel-powered motor vehicles may permit or make appropriate, and in furtherance of the purposes of this act, the administrator may provide by rules and regulations, promulgated after public hearings on due notice, for the control of such smoke. Such rules and regulations may prescribe standards, inspection procedures, and approval of inspection equipment to insure compliance with section 3 of this act.

(3) Any rules or regulations promulgated by the administrator pursuant to this act shall be consistent with the provisions of the federal standards, if any, relating to control of emissions from the vehicles affected by such rules and regulations. The administrator shall not require, as a condition for the sale of any vehicle covered by the provisions of this act, the inspection, certification, or other approval of any feature or equipment designed for the control of emissions from such motor vehicles, if such feature or equipment has been certified, approved, or otherwise authorized pursuant to laws or regulations of any federal governmental body as sufficient to make lawful the sale of any vehicle covered by this act.

Sec. 7. No person shall sell, or offer for sale, a new motor vehicle with a gross vehicle weight of ten thousand pounds or more that produces a maximum noise

exceeding the following noise limit at a distance of fifty feet from the centerline of travel under test procedures established by section 10 of this act: (1) After January 1, 1972, 88dB(A); (2) after January 1, 1973, 86dB(A); (3) after January 1, 1975, 84dB(A); and (4) after January 1, 1980, 80dB(A).

The manufacturer, distributor, importer, or designated agent shall certify in writing to the Department of Environmental Control that his vehicles sold within the state comply with the provisions of this section.

Sec. 8. No person shall operate within the speed limits specified in this section either a motor vehicle with a gross vehicle weight of ten thousand pounds or more or any combination of vehicles of a type subject to registration, towed by such motor vehicle, at any time or under any condition of grade, load, acceleration, or deceleration in such manner as to exceed the following noise limit based on a distance of not less than fifty feet from the centerline of travel under test procedures established by section 10 of this act: When the posted speed limit is thirty-five miles per hour or less, the noise limit shall be 88dB(A) and when the posted speed limit is more than thirty-five miles per hour the noise limit shall be 90dB(A); Provided, that this section shall apply to the total noise from a vehicle or combination of vehicles and shall not be construed as limiting or precluding the enforcement of any other provisions of this act relating to motor vehicle mufflers for noise control.

Sec. 9. No person shall modify or change the exhaust muffler, intake muffler, or any other noise abatement device of a motor vehicle in a manner such that the noise emitted by the motor vehicle is increased above that emitted by the vehicle as originally manufactured. Procedures used to establish compliance with this section shall be those used to establish compliance of a new motor vehicle with the requirements of this act.

Sec. 10. Test procedures to determine whether maximum noise emitted by new motor vehicles sold or offered for sale meet the noise limits stated in section 7 or 8 of this act shall be in substantial conformity with standards and recommended practice established by the Society of Automotive Engineers, Inc., including SAE Recommended Practice J184, SAE Recommended Practice J366a, and such other and further standards as may be propounded in the Code of Recommended Practices of the Commissioner.

Sec. 11. Every person who operates a diesel-powered motor vehicle in this state in violation of the standards established by the provisions of this act shall be guilty of a misdemeanor and shall, upon conviction thereof, be fined not less than ten dollars nor more than twenty-five dollars, and every day that the motor vehicle is so operated shall be deemed to be a separate offense.

Sec. 12. The provisions of this act shall be exclusive and prevail over other provisions of law in this state or any of its subdivisions applied to smoke from diesel-powered motor vehicles.

Sec. 13. If any section in this act or any part of any section shall be declared invalid or unconstitutional, such declaration of invalidity shall not affect the validity of the remaining portions thereof.