

## LEGISLATIVE BILL 358

Approved by the Governor April 18, 1994

Introduced by Schmitt, 41

AN ACT relating to the Nebraska State Patrol; to provide powers and duties; to provide a civil penalty for motor carriers; to provide for service of notices and orders; to provide for a hearing; to provide for an appeal; and to declare an emergency.

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

Section 1. Any officer of the carrier enforcement division of the Nebraska State Patrol or any officer of the Nebraska State Patrol may conduct a safety review or safety compliance audit of a motor carrier.

Sec. 2. Following a safety review or safety compliance audit of an intrastate motor carrier by an officer of the carrier enforcement division of the Nebraska State Patrol or any officer of the Nebraska State Patrol, the Nebraska State Patrol shall issue a safety rating of that motor carrier. The safety rating shall be based upon factors prescribed in 49 C.F.R. part 385 of the federal Motor Carrier Safety Regulations adopted in section 75-363, the federal Hazardous Material Regulations adopted in section 75-364, and insurance requirements for intrastate motor carriers set forth by the Public Service Commission pursuant to section 75-307. The motor carrier shall be notified by the Nebraska State Patrol of such safety rating by certified or registered mail.

Sec. 3. The Superintendent of Law Enforcement and Public Safety may issue an order imposing a civil penalty against an intrastate motor carrier for violation of section 75-363 or 75-364 based upon an inspection conducted pursuant to section 75-366 in an amount which shall not exceed five hundred dollars for any single violation in any proceeding or series of related proceedings against any person, motor carrier, common carrier, contract carrier, exempt carrier, or private carrier as defined in 49 C.F.R. part 390.5 of the federal Motor Carrier Safety Regulations as adopted in section 75-363. Upon the discovery of any violation by an interstate motor carrier of section 75-307, 75-352, 75-363, or 75-364 based upon an inspection conducted pursuant to section 75-366, the superintendent shall immediately refer such violation to the appropriate federal agency for disposition, and upon the discovery of any violation by an intrastate motor carrier of section 75-307 based upon such inspection, the superintendent shall refer such violation to the Public Service Commission for disposition.

Sec. 4. Any order issued by the Superintendent of Law Enforcement and Public Safety under section 3 of this act shall include at least (1) the date of the order, (2) a description of each act or omission upon which the violation is based, (3) the manner in which and the place where the respondent may pay the civil penalty or request a hearing within fifteen business days after receipt of the order, and (4) a notice that if the respondent fails to respond to the order within fifteen business days after receipt of the order, the order shall automatically become final and the civil penalty may be collected by civil action in the district court of Lancaster County.

Sec. 5. Any notice or order provided for in sections 1 to 7 of this act shall be personally served on the respondent or on the person authorized by the respondent to receive notices and orders or shall be sent by registered mail or certified mail, return receipt requested, to the last-known address of the respondent or the person authorized to receive such notices and orders. A copy of the notice or order shall be filed in the records of the carrier enforcement division of the Nebraska State Patrol.

Sec. 6. Civil penalties assessed pursuant to section 3 of this act and unpaid shall constitute a debt to the State of Nebraska which may be collected in the form of a lien foreclosure or recovered in a proper form of action in the name of the State of Nebraska in the district court of Lancaster County. Any civil penalty collected shall be remitted on a monthly basis to the State Treasurer for credit to the permanent school fund.

Sec. 7. (1) If no hearing is requested and none is ordered by the Superintendent of Law Enforcement and Public Safety, the summary order shall automatically become a final order after fifteen business days after receipt of the order pursuant to section 5 of this act.

(2) If a hearing is requested or ordered, the superintendent shall appoint as hearing officer an attorney licensed to practice law in Nebraska. Every hearing pursuant to this act shall be conducted in accordance with the Administrative Procedure Act.

(3) Every hearing in an administrative proceeding under this section shall be public unless the hearing officer grants a request joined in by all the respondents that the hearing be conducted privately.

(4) Upon agreement by all the parties any time before or during the hearing under this section, the hearing officer may compromise, mitigate, or aggravate any civil penalty. In determining the amount of the civil penalty, the hearing officer shall consider the appropriateness of the civil penalty in light of the gravity of the violation and the good faith of such violator in attempting to achieve compliance after notification of the violation.

(5) The hearing officer, within ten days after the conclusion of the hearing, shall make written findings of fact and conclusions of law to the superintendent. Such findings of fact and conclusions of law shall not be binding upon the superintendent.

(6) If a hearing is requested or ordered, the superintendent, after notice of and opportunity for hearing to all interested persons, may modify or vacate the order or extend it until final determination.

(7) No final order or order after hearing may be returned by the superintendent without (a) appropriate notice to all interested persons, (b) opportunity for hearing to all interested persons, and (c) entry of written findings of fact and conclusions of law. Any order or decision of the superintendent may be appealed. The appeal shall be in accordance with the Administrative Procedure Act.

Sec. 8. Since an emergency exists, this act shall be in full force and take effect, from and after its passage and approval, according to law.