

1 **State of Arkansas**  
2 **80th General Assembly**  
3 **Regular Session, 1995**  
4 **By: Representative Hunton**

# A Bill

**ACT 921 OF 1995**  
**HOUSE BILL 1426**

## For An Act To Be Entitled

"AN ACT TO AMEND ARKANSAS CODE ANNOTATED §§27-23-103, 27-23-106, 27-23-112, 27-23-113 AND 27-23-116 AND TO ADD TWO NEW SECTIONS TO SUBCHAPTER 1, CHAPTER 23 OF TITLE 27 TO CONFORM TO THE FEDERAL HIGHWAY ADMINISTRATIVE REQUIREMENTS REGARDING COMMERCIAL DRIVERS LICENSE OUT-OF-SERVICE ORDERS AND CONVICTIONS OF PERSONS OPERATING COMMERCIAL MOTOR VEHICLES WHO DO NOT HOLD COMMERCIAL DRIVERS LICENSES; AND FOR OTHER PURPOSES."

## Subtitle

"PROVIDE PENALTIES FOR DISQUALIFIED AND UNLICENSED DRIVERS OF COMMERCIAL MOTOR VEHICLES AS REQUIRED BY THE FEDERAL HIGHWAY ADMINISTRATION."

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:

SECTION 1. Ark. Code Ann. §27-23-103(7) is amended to read as follows:

"(7) (a) Commercial motor vehicle means a motor vehicle used in commerce designed or used to transport passengers or property:

(1) If the vehicle has a gross vehicle weight rating of twenty-six thousand one pounds (26,001 lbs) or more;

(2) If the vehicle is designed to transport sixteen (16) or more passengers, including the driver; or

(3) If the vehicle is transporting hazardous materials and is required to be placarded in accordance with 49 C.F.R., part 172, subpart F.

(b) When out-of-service orders are involved, the term Commercial motor vehicle shall also include any self-propelled or towed vehicle used on public highways in interstate commerce to transport passengers or property

1 when:

2 (1) The vehicle has a gross vehicle weight rating or gross  
3 combination weight rating of 10,001 or more pounds; or

4 (2) The vehicle is used in the transportation of hazardous  
5 materials in a quantity requiring placarding under regulations issued by the  
6 Secretary under the Hazardous Materials Transportation Act (49 U.S.C. App.  
7 1801-1813)."

8

9 SECTION 2. Ark. Code Ann. §27-23-103(21) is amended to read as follows:

10 "(21) Out of service order means a declaration by an authorized  
11 enforcement officer of a federal, state, Canadian, Mexican, or local  
12 jurisdiction that a driver is temporarily prohibited from operating a  
13 commercial motor vehicle pursuant to Ark. Code Ann. §27-23-113 or compatible  
14 laws."

15

16 SECTION 3. Ark. Code Ann. §27-23-106 is amended to read as follows:

17 "(a) Each employer must require the applicant to provide the information  
18 specified in §27-23-105(c).

19 (b) No employer may knowingly allow, permit, or authorize a driver to  
20 drive a commercial motor vehicle during any period:

21 (1) In which the driver has a driver license suspended, revoked,  
22 or canceled by a state; has lost the privilege to drive a commercial motor  
23 vehicle in a state, or has been disqualified from driving a commercial motor  
24 vehicle; or

25 (2) In which the driver has more than one (1) driver license; or

26 (3) In which the employee is subject to an out-of-service order.

27 (c) (1) Any employer who once violates the provisions of subsection  
28 (b) (1) or (b) (2) of this section shall, upon conviction, be fined a sum of  
29 five hundred dollars (\$500), and each day's violation and each driver's  
30 violation shall constitute a separate offense and shall be punished as such.  
31 Any employer who violates the provisions of subsections (b) (1) or (b) (2) of  
32 this section a second or subsequent time shall, upon conviction, be fined a  
33 sum of one thousand dollars (\$1,000), and each day's violation and each  
34 driver's violation shall constitute a separate offense and shall be punished  
35 as such.

1           (2) Any employer convicted of a violation of the provisions of  
2 subsection (b)(3) of this section shall be subject to a civil penalty of not  
3 less than \$2,500 nor more than \$10,000."  
4

5           SECTION 4. Ark. Code Ann. §27-23-112 is amended to add a new subsection  
6 (g) to read as follows:

7           "(g) Disqualification for violation of out-of-service orders.

8           (1) General rule. A driver who is convicted of violating an out-  
9 of-service order while driving a commercial motor vehicle is disqualified for  
10 the period of time specified in paragraph (g)(2) of this section. In  
11 addition, such driver is subject to special penalties as contained in Ark.  
12 Code Ann. §27-23-113.

13           (2) Duration of disqualification for violation of out-of-service  
14 orders.

15           (A) First violation. A driver is disqualified for not less  
16 than 90 days nor more than one year if the driver is convicted of a first  
17 violation of an out-of-service order.

18           (B) Second violation. A driver is disqualified for not less  
19 than one year nor more than five years if, during any 10 year period, the  
20 driver is convicted of two violations of out-of-service orders in separate  
21 incidents.

22           (C) Third or subsequent violation. A driver is  
23 disqualified for not less than three years nor more than five years if, during  
24 any 10 year period, the driver is convicted of three or more violations of  
25 out-of-service orders in separate incidents.

26           (D) Special rule for hazardous materials and passenger  
27 offenses. A driver is disqualified for a period of not less than 180 days nor  
28 more than two years if the driver is convicted of a first violation of an out-  
29 of-service order while transporting hazardous materials required to be  
30 placarded under the Hazardous Materials Transportation Act (49 U.S.C. app.  
31 1801-1813), or while operating a motor vehicle designed to transport more than  
32 15 passengers, including the driver. A driver is disqualified for a period of  
33 not less than three years nor more than five years if, during any 10-year  
34 period, the driver is convicted of any subsequent violations of out-of-service  
35 order, in separate incidents, while transporting hazardous materials required

1 to be placarded under the Hazardous Materials Transportation Act, or while  
2 operating a motor vehicle designed to transport more than 15 passengers,  
3 including the driver."  
4

5 SECTION 5. Ark. Code Ann. §27-23-113 is amended to read as follows:

6 "(a) No person shall -

7 (1) Consume an intoxicating beverage, regardless of its alcoholic  
8 content, or be under the influence of an intoxicating beverage, within 4 hours  
9 before going on duty or operating, or having physical control of, a commercial  
10 motor vehicle; or

11 (2) Consume an intoxicating beverage regardless of its alcohol  
12 content, be under the influence of an intoxicating beverage, or have any  
13 measured alcohol concentration or any detected presence of alcohol, while on  
14 duty, or operating, or in physical control of a commercial motor vehicle; or

15 (3) Be on duty or operate a commercial motor vehicle while the  
16 driver possesses an intoxicating beverage regardless of its alcoholic content.  
17 However, this paragraph does not apply to possession of an intoxicating  
18 beverage which is manifested and transported as part of a shipment.

19 (b) Any driver who is found to be in violation of the provisions of  
20 paragraph (a) of this section shall be placed out-of-service immediately for a  
21 period of 24 hours.

22 (1) The 24-hour out-of-service period will commence upon issuance  
23 of an out-of-service order.

24 (2) No driver shall violate the terms of an out-of-service order  
25 issued under this section.

26 (c) Any driver convicted of violating an out-of-service order shall be  
27 subject to a civil penalty of not less than \$1,000 nor more than \$2,500, in  
28 addition to disqualification under Ark. Code Ann. §27-23-112."  
29

30 SECTION 6. Subchapter 1 of Chapter 23 of Title 27 is amended by adding  
31 a new section to read as follows:

32 "27-23-126. Notification of Out-of-Service Order.

33 The law enforcement officer issuing an out-of-service order to a  
34 commercial motor vehicle driver pursuant to Ark. Code Ann. §27-23-113, or  
35 compatible law, shall within thirty (30) days report such issuance to the

1 Office of Driver Services, Revenue Division, of Arkansas Department of Finance  
2 and Administration."

3

4 SECTION 7. Subchapter 1 of Chapter 23 of Title 27 is amended by adding  
5 a new section to read as follows:

6 "27-23-127. Disqualification of Non-CDL Holder.

7 (a) The provisions of Ark. Code Ann. §27-23-112 through Ark. Code Ann.  
8 §27-23-114 shall apply equally to drivers of a commercial motor vehicle who  
9 have not been issued a commercial drivers license (CDL). Any person convicted  
10 of any of the listed offenses shall be prohibited from obtaining a CDL during  
11 the disqualification period(s) provided in Ark. Code Ann. §27-23-112.

12 (b) The disqualification of a non-CDL driver pursuant to this section  
13 shall be recorded and reported by the Office of Driver Services in the same  
14 manner as a disqualification of a driver holding a CDL."

15

16 SECTION 8. Ark. Code Ann. §27-23-116 is amended to read as follows:

17 "Within ten (10) days after receiving a report of the conviction of any  
18 nonresident holder of a driver license for any violation of state law or local  
19 ordinance relating to motor vehicle traffic control, other than parking  
20 violations, committed in a commercial motor vehicle, the Office of Driver  
21 Services shall notify the driver licensing authority in the licensing state of  
22 the conviction."

23

24 SECTION 9. All provisions of this act of a general and permanent nature  
25 are amendatory to the Arkansas Code of 1987 Annotated and the Arkansas Code  
26 Revision Commission shall incorporate the same in the Code.

27

28 SECTION 10. If any provision of this act or the application thereof to  
29 any person or circumstance is held invalid, such invalidity shall not affect  
30 other provisions or applications of the act which can be given effect without  
31 the invalid provision or application, and to this end the provisions of this  
32 act are declared to be severable.

33

34 SECTION 11. All laws and parts of laws in conflict with this act are  
35 hereby repealed.

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28  
29  
30  
31  
32  
33  
34  
35

*/s/Rep. Hunton*

APPROVED: 4-5-95

1

2

3

4