

Stricken language would be deleted from and underlined language would be added to the law as it existed prior to this session of the General Assembly.

Act 879 of the Regular Session

1 State of Arkansas
2 85th General Assembly
3 Regular Session, 2005
4

As Engrossed: H2/22/05

A Bill

HOUSE BILL 1681

5 By: Representative Rosenbaum
6
7

For An Act To Be Entitled

9 AN ACT TO PROVIDE THAT COMMERCIAL MOTOR VEHICLE
10 OWNERS OR CARRIERS WHO PERMIT A COMMERCIAL DRIVER
11 TO OPERATE A COMMERCIAL MOTOR VEHICLE WHILE THE
12 VEHICLE OR THE MOTOR CARRIER IS SUBJECT TO AN
13 OUT-OF-SERVICE ORDER OR WHO PERMIT OR ENCOURAGE
14 RAILROAD CROSSING VIOLATIONS ARE SUBJECT TO
15 PENALTIES FOR THAT VIOLATION; TO AMEND THE
16 DEFINITIONS CONTAINED IN ARKANSAS CODE § 27-23-
17 103; TO AMEND ARKANSAS CODE § 27-16-603(4) TO
18 APPLY ONLY TO OPERATION OF NONCOMMERCIAL
19 VEHICLES; AND FOR OTHER PURPOSES.
20

Subtitle

21 AN ACT PROVIDING PENALTIES FOR EMPLOYERS
22 PERMITTING ILLEGAL USE OF A COMMERCIAL
23 MOTOR VEHICLE.
24
25
26

27 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:
28

29 SECTION 1. Arkansas Code § 27-23-106 is amended to read as follows:
30 27-23-106. Employer responsibilities.

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

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

35 (1) In which the driver has a driver license suspended, revoked,



1 or cancelled by a state; has lost the privilege to drive a commercial motor
 2 vehicle in a state, or has been disqualified from driving a commercial motor
 3 vehicle; or

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

5 (3) In which the employee, the motor carrier, the driver, or the
 6 vehicle operated by the employee or driver is subject to an out-of-service
 7 order.

8 (c)(1) Any employer who once violates the provisions of subdivision
 9 (b)(1) or (2) of this section shall, upon conviction, be fined a sum of five
 10 hundred dollars (\$500), and each day's violation and each driver's violation
 11 shall constitute a separate offense and shall be punished as such. Any
 12 employer who violates the provisions of subdivision (b)(1) or (2) of this
 13 section a second or subsequent time shall, upon conviction, be fined a sum of
 14 one thousand dollars (\$1,000), and each day's violation and each driver's
 15 violation shall constitute a separate offense and shall be punished as such.

16 (2) Any employer convicted of a violation of the provisions of
 17 subdivision (b)(3) of this section shall be subject to a civil penalty of not
 18 less than ~~two thousand five hundred dollars (\$2,500)~~ two thousand seven
 19 hundred fifty dollars (\$2,750) nor more than ~~ten thousand dollars (\$10,000)~~
 20 eleven thousand dollars (\$11,000).

21 (3) Any employer who knowingly allows, requires, permits, or
 22 authorizes a driver to operate a commercial motor vehicle in violation of
 23 federal, state, or local law or regulation pertaining to one (1) or more of
 24 the offenses listed in § 27-23-112(d) at a railroad-highway grade crossing
 25 shall be subject to the civil penalties of subdivision (c)(2) of this
 26 section, in addition to the disqualification provisions of § 27-23-112(e).

27
 28 SECTION 2. Arkansas Code § 27-23-103 is amended to read as follows:

29 27-23-103. Definitions.

30 As used in this chapter, unless the context otherwise requires:

31 (1) "Alcohol" or "alcoholic beverage" means:

32 (A) Ethyl alcohol, or ethanol; or

33 (B) Beer which is defined as beer, ale, stout, and other
 34 similar fermented beverages, including sake or similar products, of any name
 35 or description containing one-half of one percent (0.5%) or more of alcohol
 36 by volume, brewed or produced from malt, wholly or in part, or from any

1 substitute therefore;

2 (C) Wine of not less than one-half of one percent (0.5%)
3 of alcohol by volume; or

4 (D) Distilled spirits, alcoholic spirits, and spirits,
5 which are defined as those substances known as ethyl alcohol, ethanol, or
6 spirits of wine in any form, including all dilutions and mixtures thereof
7 from whatever source or by whatever process produced;

8 (2) "Blood alcohol concentration" means:

9 (A) The number of grams of alcohol per one hundred
10 milliliters (100 ml) of blood;

11 (B) The number of grams of alcohol per two hundred ten
12 liters (210 l) of breath; or

13 (C) Blood and breath quantitative measures in accordance
14 with the current Arkansas Regulations for Blood Alcohol Testing promulgated
15 by the Department of Health;

16 (3) "Commerce" means:

17 (A) Trade, traffic, and transportation within the
18 jurisdiction of the United States between a place in a state and a place
19 outside of the state, including a place outside the United States; and

20 (B) Trade, traffic, and transportation in the United
21 States which affects any trade, traffic, and transportation within the
22 jurisdiction of the United States between a place in a state and a place
23 outside of the state, including a place outside the United States;

24 (4) "Commercial driver instruction permit" means a permit issued
25 pursuant to § 27-23-108(d);

26 (5) "Commercial driver license" means a license issued in
27 accordance with the requirements of this chapter to an individual which
28 authorizes the individual to drive a class of commercial motor vehicle;

29 (6) The "Commercial Driver License Information System" is the
30 information system established pursuant to the Commercial Motor Vehicle
31 Safety Act of 1986 to serve as a clearinghouse for locating information
32 related to the licensing and identification of commercial motor vehicle
33 drivers;

34 (7)(A) "Commercial motor vehicle" means a motor vehicle or
35 combination of motor vehicles used in commerce to transport passengers or
36 property if the motor vehicle:

1 (i) Has a gross combination weight rating of twenty-
2 six thousand one pounds (26,001 lbs.) or more inclusive of a towed unit with
3 a gross vehicle weight rating of more than ten thousand pounds (10,000 lbs.);

4 (ii) Has a gross vehicle weight rating of twenty-six
5 thousand one pounds (26,001 lbs.) or more;

6 (iii) Is designed to transport sixteen (16) or more
7 passengers, including the driver; or

8 (iv) Is of any size and is used in the
9 transportation of materials found to be hazardous, as a result of which the
10 motor vehicle is required to be placarded under the Hazardous Materials
11 Regulations, 49 C.F.R. part 172, subpart F.

12 (B) When out-of-service orders are involved, the term
13 "commercial motor vehicle" shall also include any self-propelled or towed
14 vehicle used on public highways in interstate commerce to transport
15 passengers or property when:

16 (i) The vehicle has a gross vehicle weight rating or
17 gross combination weight rating of ten thousand one (10,001) or more pounds;
18 or

19 (ii) The vehicle is used in the transportation of
20 hazardous materials in a quantity requiring placarding under regulations
21 issued by the Secretary of Transportation under the Hazardous Materials
22 Transportation Act, 49 U.S.C. App. §§ 1801-1813;

23 (8) "Controlled substance" means a drug, substance, or immediate
24 precursor in Schedules I-VI of the Uniform Controlled Substances Act, § 5-64-
25 101 et seq.;

26 (9) "Conviction" means an unvacated adjudication of guilt, a
27 determination that a person has violated or failed to comply with the law in
28 a court of original jurisdiction or by an authorized administrative tribunal,
29 an unvacated forfeiture of bail or collateral deposited to secure the
30 person's appearance in court, a plea of guilty or nolo contendere accepted by
31 the court, the payment of a fine or court order, or violation of a condition
32 of release without bail, regardless of whether or not the penalty was
33 rebated, suspended, or prorated;

34 (10) "Disqualification" means any of the following three (3)
35 actions:

36 (A) The suspension, revocation, or cancellation of a

1 commercial driver license by the Office of Driver Services of the Department
2 of Finance and Administration or jurisdiction of issuance;

3 (B) A withdrawal of a person's privileges to drive a
4 commercial motor vehicle by the office or other jurisdiction as the result of
5 a violation of state or local law relating to motor vehicle traffic control
6 except for parking, vehicle weight, or vehicle defect violations; or

7 (C) A determination by the Federal Motor Carrier Safety
8 Administration that a person is not qualified to operate a commercial motor
9 vehicle;

10 (11) "Drive" means to drive, operate, or be in physical control
11 of a commercial motor vehicle on any public street or highway in the state or
12 in any place open to the general public for purposes of vehicular traffic;

13 (12) "Driver" means any person who drives, operates, or is in
14 physical control of a commercial motor vehicle on any public street or
15 highway in the state or in any place open to the general public for purposes
16 of vehicular traffic;

17 (13) "Driver applicant" or "applicant" means any person who has
18 applied for a commercial driver license.

19 ~~(13)~~(14) "Driver license" means a license issued by a state to
20 an individual which authorizes the individual to drive a motor vehicle;

21 ~~(14)~~(15) "Driving a commercial motor vehicle while under the
22 influence of alcohol" means committing any one (1) or more of the following
23 acts in a commercial motor vehicle:

24 (A) Driving a commercial motor vehicle while the person's
25 blood alcohol concentration is four-hundredths of one percent (0.04%) or
26 more;

27 (B) Driving while intoxicated in violation of § 5-65-103;
28 or

29 (C) Refusal to undergo such testing as is required by § 5-
30 65-202;

31 ~~(15)~~(16) "Employer" means any person, including the United
32 States, a state, or a political subdivision of a state, who owns or leases a
33 commercial motor vehicle or assigns a person to drive a commercial motor
34 vehicle;

35 ~~(16)~~(17) "Fatality" means the death of a person as a result of a
36 motor vehicle accident;

1 ~~(17)~~(18) "Felony" means any offense under state or federal law
2 that is punishable by death or imprisonment for a term exceeding one (1)
3 year;

4 ~~(18)~~(19) "Foreign jurisdiction" means any jurisdiction other
5 than a state of the United States;

6 ~~(19)~~(20) "Gross combination weight rating" means the value
7 specified by the manufacturer as the loaded weight of a combination or
8 articulated vehicle. In the absence of a value specified by the
9 manufacturer, the gross combination weight rating will be determined by
10 adding the gross vehicle weight rating of the power unit and the total weight
11 of the towed unit and any load thereon;

12 ~~(20)~~(21) "Gross vehicle weight rating" means the value specified
13 by the manufacturer as the loaded weight of a single vehicle;

14 ~~(21)~~(22) "Hazardous materials" has the same meaning as that
15 found in Section 103 of the Hazardous Materials Transportation Act, 49 U.S.C.
16 App. § 1802;

17 ~~(22)~~(23) "Imminent hazard" means the existence of a condition
18 that presents a substantial likelihood that death, serious illness, severe
19 personal injury, or a substantial endangerment to health, property, or the
20 environment may occur before the reasonably foreseeable completion date of a
21 formal proceeding begun to lessen the risk of that death, illness, injury, or
22 endangerment;

23 ~~(23)~~(24) "Motor vehicle" means a vehicle, machine, tractor,
24 trailer, or semitrailer propelled or drawn by mechanical power used on
25 highways, except that the term does not include a vehicle, machine, tractor,
26 trailer, or semitrailer operated exclusively on a rail;

27 ~~(24)~~(25) "Nonresident CDL" means a commercial driver license
28 issued by a state under either of the following two (2) conditions:

29 (A) To an individual domiciled in a foreign country
30 meeting the requirements of 49 C.F.R. § 383.23(b)(1); or

31 (B) To an individual domiciled in another state meeting
32 the requirements of 49 C.F.R. § 383.23(b)(2);

33 ~~(25)~~(26) "Out-of-service order" means a declaration by an
34 authorized enforcement officer of a federal, state, Canadian, Mexican, or
35 local jurisdiction that a driver or motor carrier is temporarily prohibited
36 from operating a commercial motor vehicle pursuant to § 27-23-113 or

1 compatible laws, or that a commercial motor vehicle may not be operated;

2 ~~(26)~~(27) "School bus" means:

3 (A) A commercial motor vehicle used to transport
4 preprimary, primary, or secondary school students from home to school, from
5 school to home, or to and from school-sponsored events.

6 (B) "School bus" does not include a bus used as a common
7 carrier;

8 ~~(27)~~(28) "Serious traffic violation" means a conviction when
9 operating a commercial motor vehicle of:

10 (A) Excessive speeding, involving any single offense for
11 any speed of fifteen (15) miles per hour or more above the posted speed
12 limit;

13 (B) Reckless driving as defined by state or local law or
14 regulation, including, but not limited to, offenses of driving a commercial
15 motor vehicle in willful or wanton disregard for the safety of persons or
16 property;

17 (C) Improper or erratic traffic lane changes;

18 (D) Following the vehicle ahead too closely;

19 (E)(i) A violation, arising in connection with a fatal
20 accident, of state or local law relating to motor vehicle traffic control,
21 other than a parking violation.

22 (ii) Serious traffic violations shall not include
23 weight or defect violations;

24 (F) Driving a commercial motor vehicle without obtaining a
25 commercial driver license;

26 (G)(1) Driving a commercial motor vehicle without a
27 commercial driver license in the driver's possession.

28 (2) Any individual who by the date the individual must appear in
29 court or pay any fine for such a violation provides proof to the enforcement
30 authority that issued the citation that the individual held a valid
31 commercial driver license on the date the citation was issued shall not be
32 guilty of this offense; or

33 (H) Driving a commercial vehicle without the proper class
34 of commercial driver license or endorsements for the specific vehicle group
35 being operated or for the passengers or type of cargo being transported;

36 ~~(28)~~(29) "State" means a state of the United States and also

1 means the District of Columbia; ~~and~~

2 (30) "Tank vehicle" means any commercial motor vehicle equipped
3 with a tank designed to hold liquid or gaseous materials with a capacity of
4 one thousand gallons (1,000 gals.) or more; and

5 ~~(29)-(31)~~ "United States" means the fifty (50) states and the
6 District of Columbia.

7
8 SECTION 3. Arkansas Code § 27-16-603(4), relating to commercial
9 drivers exempt from obtaining an Arkansas driver license, is amended to read
10 as follows:

11 (4) A nonresident who is at least eighteen (18) years of age and
12 who has in his immediate possession a valid commercial driver's license
13 issued to him by his home state or country may operate a motor vehicle in
14 this state ~~either as a commercial or a noncommercial driver~~ or may operate a
15 commercial motor vehicle as provided by § 27-23-123; and

16
17 SECTION 4. Arkansas Code § 27-16-903, relating to authority to cancel
18 or revoke driver's licenses, is amended to add an additional subsection to
19 read as follows:

20 (c) The Office of Driver Services shall not grant an application for a
21 new license to any driver if the driver's previous license was cancelled,
22 suspended, or revoked as a result of a determination that the applicant
23 committed any fraud in making the application until the expiration of one (1)
24 year after the cancellation, suspension, or revocation.

25
26 SECTION 5. Arkansas Code § 27-23-108(c), regarding the reporting of
27 automobile accidents effective July 1, 2005, is amended to read as follows:

28 (c) *Limitations on issuance of license. A commercial driver license,*
29 special commercial license, restricted commercial license, temporary
30 commercial license, provisional commercial license, or commercial driver
31 *instruction permit may not be issued to a person while the person is subject*
32 *to a disqualification from driving a commercial motor vehicle, or while the*
33 *person's driver license is suspended, revoked, or cancelled in any state; nor*
34 *may a commercial driver license be issued to a person who has a commercial*
35 *driver license or any other driver license issued by any other state unless*
36 *the person first surrenders all such licenses, which must be returned to the*

1 *issuing state(s) for cancellation.*

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3 */s/ Rosenbaum*

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6 *APPROVED: 3/16/2005*

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