

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

A Bill

HOUSE BILL 1426

For An Act To Be Entitled

8 "AN ACT TO AMEND ARKANSAS CODE ANNOTATED §§27-23-103, 27-
9 23-106, 27-23-112, 27-23-113 AND 27-23-116 AND TO ADD TWO
10 NEW SECTIONS TO SUBCHAPTER 1, CHAPTER 23 OF TITLE 27 TO
11 CONFORM TO THE FEDERAL HIGHWAY ADMINISTRATIVE REQUIREMENTS
12 REGARDING COMMERCIAL DRIVERS LICENSE OUT-OF-SERVICE ORDERS
13 AND CONVICTIONS OF PERSONS OPERATING COMMERCIAL MOTOR
14 VEHICLES WHO DO NOT HOLD COMMERCIAL DRIVERS LICENSES; AND
15 FOR OTHER PURPOSES."

Subtitle

17 "PROVIDE PENALTIES FOR DISQUALIFIED AND
18 UNLICENSED DRIVERS OF COMMERCIAL MOTOR
19 VEHICLES AS REQUIRED BY THE FEDERAL
20 HIGHWAY ADMINISTRATION."
21

22
23 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:

24
25 SECTION 1. Ark. Code Ann. §27-23-103(7) is amended to read as follows:

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

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

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

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

34 F.

35 (b) When out-of-service orders are involved, the term Commercial

1 motor vehicle_ shall also include any self-propelled or towed vehicle used on
2 public highways in interstate commerce to transport passengers or property
3 when:

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

6 (2) The vehicle is used in the transportation of hazardous
7 materials in a quantity requiring placarding under regulations issued by the
8 Secretary under the Hazardous Materials Transportation Act (49 U.S.C. App.
9 1801-1813)."

10

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

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

18

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

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

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

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

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

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

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

1 sum of one thousand dollars (\$1,000), and each day's violation and each
2 driver's violation shall constitute a separate offense and shall be punished
3 as such.

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

7

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

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

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

16 (2) Duration of disqualification for violation of out-of-service
17 orders.

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

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

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

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

1 period of not less than three years nor more than five years if, during any
2 10-year period, the driver is convicted of any subsequent violations of out-
3 of-service order, in separate incidents, while transporting hazardous
4 materials required to be placarded under the Hazardous Materials
5 Transportation Act, or while operating a motor vehicle designed to transport
6 more than 15 passengers, including the driver."

7

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

9 "(a) No person shall -

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

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

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

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

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

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

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

33

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

1 "27-23-126. Notification of Out-of-Service Order.

2 The law enforcement officer issuing an out-of-service order to a
3 commercial motor vehicle driver pursuant to Ark. Code Ann. §27-23-113, or
4 compatible law, shall within thirty (30) days report such issuance to the
5 Office of Driver Services, Revenue Division, of Arkansas Department of
6 Finance and Administration."

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

10 "27-23-127. Disqualification of Non-CDL Holder.

11 (a) The provisions of Ark. Code Ann. §27-23-112 through Ark. Code Ann.
12 §27-23-114 shall apply equally to drivers of a commercial motor vehicle who
13 have not been issued a commercial drivers license (CDL). Any person
14 convicted of any of the listed offenses shall be prohibited from obtaining a
15 CDL during the disqualification period(s) provided in Ark. Code Ann. §27-23-
16 112.

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

20

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

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

28

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

32

33 SECTION 10. If any provision of this act or the application thereof to
34 any person or circumstance is held invalid, such invalidity shall not affect
35 other provisions or applications of the act which can be given effect without

1 the invalid provision or application, and to this end the provisions of this
2 act are declared to be severable.

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

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/s/Rep. Hunton