1988

c 44 Highway Traffic Amendment Act, 1988

Ontario

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Bibliographic Citation
Highway Traffic Amendment Act, 1988, SO 1988, c 44
Repository Citation
Available at: http://digitalcommons.osgoode.yorku.ca/ontario_statutes/vol1988/iss1/49

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CHAPTER 44

An Act to amend the Highway Traffic Act

Assented to June 29th, 1988

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:

1. Subsection 7 (6) of the Highway Traffic Act, being chapter 198 of the Revised Statutes of Ontario, 1980, is amended by striking out "or" at the end of clause (a), by adding "or" at the end of clause (b) and by adding thereto the following clause:

   (c) as a public truck within the meaning of the Truck Transportation Act, 1988,

2. The said Act is amended by adding thereto the following sections:

   15a.—(1) In this section and in sections 15d and 15e, "commercial motor vehicle" does not include,

   (a) an ambulance, a fire apparatus, a hearse, a casket wagon, a mobile crane, a motor home, a vehicle commonly known as a tow truck or a commercial motor vehicle, other than a bus, having a registered gross weight of not more than 4500 kilograms,

   (b) a commercial motor vehicle leased for no longer than thirty days by an individual for the transportation of goods kept for that individual's personal use or the gratuitous carriage of passengers,

   (c) a commercial motor vehicle operated under a permit and number plates issued under a regulation made under clause 7 (14) (f) or (fa) that is not transporting passengers or goods,
(d) a commercial motor vehicle operated under the authority of an In-Transit permit, and
(e) a bus that is used for personal purposes without compensation;

“CVOR certificate” means a Commercial Vehicle Operator’s Registration Certificate issued under this Act;

“operator” means the person responsible for the operation of a commercial motor vehicle including the conduct of the driver of, and the carriage of goods or passengers, if any, in the vehicle or combination of vehicles;

“owner-driver authority” means an owner-driver authority issued under the Truck Transportation Act, 1988;

“single-source authority” means a single-source authority issued under the Truck Transportation Act, 1988.

(2) No person shall drive or operate a commercial motor vehicle on a highway unless the operator is the holder of a CVOR certificate that is not under suspension.

(3) Every driver of a commercial motor vehicle shall carry the original or a copy of,

(a) the CVOR certificate issued to the operator of the vehicle;

(b) the lease of the vehicle meeting the requirements of subsection (5) if it is a leased vehicle; or

(c) the applicable contract or the notice thereof, as filed with the Ministry, meeting the requirements of subsection (5) if the vehicle is operated under an owner-driver authority or single-source authority,

and where the operator has been issued fleet limitation certificates, a fleet limitation certificate.

(4) Every driver of a commercial motor vehicle shall, upon the demand of a police officer, surrender for inspection the documents that are required under subsection (3) to be carried.

(5) Every lease, contract or notice of contract carried under subsection (3) shall clearly identify the vehicle involved, the parties thereto and their addresses, the operator of the vehicle and the operator’s CVOR certificate.
(6) A commercial motor vehicle operated under the authority of an owner-driver authority or single-source authority shall be deemed to be operated by the person or partnership that contracted with the holder of the licence.

(7) For a commercial motor vehicle, for which an Ontario permit is not in force and which bears number plates from and is registered in another province or state, the motor vehicle permit may be substituted for a CVOR certificate for the purposes of subsections (2) and (3) if the operator of the commercial motor vehicle is not the holder of a CVOR certificate.

15b.—(1) The Minister shall issue a CVOR certificate to every person who applies therefor in the prescribed form and meets the requirements of this Act and the regulations.

(2) The Minister may refuse to issue a CVOR certificate to a partnership or corporation where a partner or officer thereof is the holder of, or a partner or officer of a holder of, a CVOR certificate that is under suspension or the subject of a fleet restriction under subsection 30 (1) or (2).

(3) The Minister may refuse to issue a CVOR certificate to an individual where the individual is a partner of a partnership or officer of a corporation that is the holder of a CVOR certificate that is under suspension or the subject of a fleet restriction under subsection 30 (1) or (2).

(4) No person, alone or in partnership, is entitled to hold more than one CVOR certificate.

15c. Every corporate holder of a CVOR certificate shall notify the Minister in writing, within fifteen days after any change in the name, address or persons constituting the officers of the corporation, of the change made.

15d. In the absence of evidence to the contrary, where there is no CVOR certificate, lease or contract applicable to a commercial motor vehicle, the holder of the plate portion of the permit for the vehicle shall be deemed to be the operator for the purposes of sections 15c and 15e.

15e.—(1) Every person who gives up possession of a commercial motor vehicle under a lease or contract shall retain a copy of the lease or contract in his place of business for a period of one year after the termination of the lease or contract.
(2) A police officer who has reason to believe that a commercial motor vehicle is being operated in contravention of subsection 15a (2) or 30 (3e) may,

(a) detain the vehicle at any location that is reasonable in the circumstances; and

(b) seize the permits and number plates for the vehicle,

until the vehicle can be moved without a contravention of this Act occurring.

(3) Every permit seized under subsection (2) shall be deemed to be under suspension for the purposes of section 33 while it is in the custody of the officer seizing it.

(4) The costs incurred in detaining a vehicle under subsection (2) are a lien on the vehicle, which may be enforced in the manner provided by section 52 of the *Mechanics’ Lien Act*.

(5) The person entitled to possession of a vehicle that is detained or the permits or plates of which are seized under subsection (2) may apply to the District Court for an order that the vehicle be released or the permits and plates returned, as the case may be.

(6) On an application being made under subsection (5), the Court may make the order applied for on condition that a security, for the payment of any fine imposed, in such amount as is determined by the Court but not exceeding $5,000 be deposited with the Court.

(7) Every security deposited under subsection (6) shall be returned,

(a) upon a final acquittal under all charges arising in connection with the seizure or detention;

(b) where a charge is not laid within six months after the seizure or detention, on the expiration of the six month period; or

(c) upon a conviction arising in connection with the seizure or detention, after withholding the amount of the fine.

**15f.—(1) Every person who contravenes subsection 15a (3) or (4), section 15c or 15e or a regulation made under**
section 15g is guilty of an offence and on conviction is liable to a fine of not more than $500.

(2) Every person who contravenes subsection 15a (2) is guilty of an offence and on conviction is liable to a fine of not more than $2,000 or to imprisonment for a term of not more than six months, or to both.

15g. The Lieutenant Governor in Council may make regulations,

(a) prescribing forms;

(b) prescribing fees for the replacement of CVOR certificates;

(c) classifying persons and vehicles and exempting any class of person or vehicle from any provision of section 15a and prescribing conditions for any such exemption;

(d) prescribing the qualifications required to obtain and to hold CVOR certificates and authorizing the Minister to waive such qualifications as are specified in the regulations under the circumstances prescribed therein;

(e) providing for the suspension or cancellation of CVOR certificates where the prescribed qualifications or conditions are not maintained;

(f) respecting documents and information to be filed with or supplied to the Ministry prior to the issuance of CVOR certificates or as a condition of retention thereof by the holders of CVOR certificates;

(g) requiring the attendance of certificate holders to show why a certificate should not be cancelled or suspended.

3. Subsection 21 (2) of the said Act is repealed and the following substituted therefor:

(2) Notwithstanding clause (1) (e), a person may hold a second driver's licence if the second licence is,

(a) issued solely to permit the licensee to obtain experience in the driving of a motorcycle for the purpose
of qualifying for a driver’s licence that authorizes him or her to drive a motorcycle; or

(b) required by any other province or territory of Canada or any state of the United States of America and has been issued in compliance with the law of that province, territory or state.

Definition

(3) For the purposes of this section, “driver’s licence” includes a licence issued by any other province or territory of Canada or by any state of the United States of America.

4.—(1) Subsections 30 (1), (2) and (3) of the said Act are repealed and the following substituted therefor:

(1) The Registrar may suspend or cancel,

(a) the plate portion of a permit as defined in Part II;

(b) a driver’s licence; or

(c) a CVOR certificate,

on the grounds of,

(d) misconduct for which the holder is responsible, directly or indirectly, related to the operation or driving of a motor vehicle;

(e) conviction of the holder for an offence referred to in subsection 184 (1) or (1a); or

(f) any other sufficient reason not referred to in clause (d) or (e).

Restriction

(2) As an alternative to a suspension or cancellation under subsection (1), the Registrar may restrict the number of commercial motor vehicles that may be operated by a holder of a CVOR certificate during such period as the Registrar stipulates.

New licence, etc., not to be issued

(3) A person whose permit, licence or certificate is under suspension is not entitled to be issued a certificate, licence or plate portion of a permit, as the case may be.

Fleet limitation certificates

(3a) Where a restriction is imposed under subsection (2), the Registrar shall issue to the holder of the CVOR certificate fleet limitation certificates in a number equal to the number of vehicles permitted to be operated.
(3b) Every person whose permit for a motor vehicle is suspended or cancelled and who, while prohibited from having such a motor vehicle registered in his or her name, applies for or procures the issue or has possession of the plate portion of a permit for such a motor vehicle issued to him or her is guilty of an offence and on conviction is liable,

(a) to a fine of not less than $40 and not more than $200 where the vehicle is not a commercial motor vehicle; or

(b) to a fine of not less than $100 and not more than $1,000 where the vehicle is a commercial motor vehicle,

or to imprisonment for a term of not more than thirty days, or to both a fine and imprisonment.

(3c) Every person whose licence is suspended or cancelled and who, while prohibited from driving a motor vehicle, applies for or procures the issue to or has possession of any portion of a licence other than a Photo Card portion issued to him or her is guilty of an offence and on conviction is liable to a fine of not less than $40 and not more than $200 and to imprisonment for a term of not more than thirty days.

(3d) Every person whose CVOR certificate is suspended who applies for or procures the issue of a CVOR certificate to him or her is guilty of an offence and on conviction is liable, to a fine of not less than $100 and not more than $1,000 or to imprisonment for a term of not more than thirty days, or to both.

(3e) Every person,

(a) in respect of whom a restriction is imposed under subsection (2) who operates a commercial motor vehicle in which a valid fleet limitation certificate is not carried; or

(b) who operates a commercial motor vehicle without a permit or certificate or when his or her permit or certificate is under suspension,

is guilty of an offence and on conviction is liable to a fine of not more than $2,000 or to imprisonment for a term of not more than six months, or to both.

(3f) For the purposes of this section, "commercial motor vehicle" has the same meaning as defined in section 15a.
(2) Subsection 30 (4) of the said Act is amended by inserting after "Act" in the second line "the Truck Transportation Act, 1988".

5.—(1) Subsections 30a (6), (10), (11) and (12) of the said Act, as enacted by the Statutes of Ontario, 1981, chapter 72, section 1, are repealed and the following substituted therefor:

(10) The suspension of a licence under this section is intended to safeguard the licensee and the public and does not constitute an alternative to any proceeding or penalty arising from the same circumstances or around the same time.

(11) Every officer who asks for the surrender of a licence under this section shall keep a written record of the licence received with the name and address of the person and the date and time of the suspension and, at the time of receiving the licence, shall return the Photo Card portion of the licence, if the licence consists of a Photo Card and Licence Card, and provide the licensee with a written statement of the time from which the suspension takes effect, the length of the period during which the licence is suspended, and the place where the licence or Licence Card portion thereof may be recovered.

(12) If the motor vehicle of a person whose licence is suspended under this section is at a location from which, in the opinion of a police officer, it should be removed and there is no person available who may lawfully remove the vehicle, the officer may remove and store the vehicle or cause it to be removed and stored, in which case, the officer shall notify the person of the location of the storage.

(12a) Where a police officer obtains assistance for the removal and storage of a motor vehicle under this section, the costs incurred in moving and storing the vehicle are a lien on the vehicle that may be enforced under the Mechanics' Lien Act by the person who moved or stored the vehicle at the request of the officer.

(2) Clause 30a (13) (a) of the said Act, as enacted by the Statutes of Ontario, 1984, chapter 21, section 5, is amended by inserting after "licence" in the second line "and a driver's licence issued by any other jurisdiction".

6. Subsection 44 (15) of the said Act is amended by inserting after "Public Vehicles Act" in the fourth line "the Truck Transportation Act, 1988".

7. The said Act is further amended by adding thereto, in Part V, the following section:
90a.—(1) In this section, "commercial motor vehicle" and "operator" have the meaning prescribed under this section and not as set out in this Act.

(2) Every operator shall establish a system to periodically inspect, repair and maintain all commercial motor vehicles and trailers under the operator's control that are operated on a highway.

(3) Every operator shall inspect, repair and maintain or cause to be inspected, repaired and maintained all commercial motor vehicles and trailers under the operator's control in accordance with the prescribed vehicle component performance standards and the operator's system for periodic inspections.

(4) Every operator shall instruct every driver of commercial motor vehicles under the operator's control to conduct or cause to be conducted a prescribed inspection of the commercial motor vehicles and trailers to be driven or towed by the driver prior to the motor vehicles being driven or the trailers being towed on a highway.

(5) No driver shall drive a commercial motor vehicle or tow a trailer on a highway unless the prescribed inspection of the vehicle or trailer has been conducted or caused to be conducted by that driver.

(6) Every driver who reasonably believes or suspects that the state, condition or components of a vehicle or trailer that driver is about to or is driving or towing, as the case may be, on a highway do not meet the prescribed standards shall report the belief or suspicion to the operator.

(7) No driver shall drive a vehicle or tow a trailer on a highway if the driver determines as a result of an inspection that the state, condition or components of the vehicle or trailer do not meet the prescribed standards.

(8) No operator shall permit a commercial motor vehicle to be driven or a trailer to be towed on a highway if the operator has reason to believe that the state, condition or components of the vehicle or trailer do not meet the prescribed standards.

(9) Every operator, owner and driver of a commercial motor vehicle shall maintain or cause to be maintained such books and records as are prescribed.

(10) Every driver shall carry the inspection report in respect of the prescribed inspection at all times while in
charge of a commercial motor vehicle on a highway and shall surrender the report to any police officer or officer appointed for the purpose of carrying out the provisions of this Act or the regulations made under this Act on demand of the officer.

(11) In this section, "prescribed" means prescribed by the regulations made under this section.

Regulations

(12) The Lieutenant Governor in Council may make regulations,

(a) respecting the driving or operation of commercial motor vehicles and trailers;

(b) governing the method and requirements for inspecting vehicles referred to in clause (a);

(c) prescribing books and records that shall be kept by operators, owners and drivers of commercial motor vehicles;

(d) requiring the retention of prescribed books and records by operators, owners and drivers of commercial motor vehicles and prescribing the information to be contained and the entries to be recorded therein and the places where they shall be maintained;

(e) prescribing inspection, repair and maintenance standards for commercial motor vehicles and trailers;

(f) prescribing vehicle component performance standards for commercial motor vehicles and trailers;

(g) exempting any person or class of persons or any vehicle or class of vehicles from any requirement in this section or any regulation made under this section and prescribing conditions for any such exemption;

(h) defining "commercial motor vehicle" and "operator" for the purposes of this section;

(i) prescribing anything that is referred to in this section as prescribed.

(13) Any regulation made under subsection (12) may adopt by reference in whole or in part, with such changes as the Lieutenant Governor in Council considers necessary, any code
or standard, or any regulation made by the Government of Canada or the United States of America.

(14) Every operator or owner who contravenes any provision in this section or the regulations made under this section is guilty of an offence and on conviction is liable,

(a) for a first offence, to a fine of not less than $250 and not more than $2,000; and

(b) for each subsequent offence, to a fine of not less than $500 and not more than $2,000 or to imprisonment for a term of not more than six months, or to both.

(15) Every driver who contravenes any provision in this section or the regulations made under this section is guilty of an offence and on conviction is liable,

(a) for a first offence, to a fine of not less than $100 and not more than $500; and

(b) for each subsequent offence, to a fine of not less than $250 and not more than $500 or to imprisonment for a term of not more than six months, or to both.

(16) An offence referred to in subsection (14) or (15) committed more than five years after a previous conviction for any offence under this section or the regulations made under this section is not a subsequent offence for the purposes of clause (14) (b) or (15) (b).

8. Subsection 104 (5) of the said Act is amended by striking out "produced" in the fifth line and inserting in lieu thereof "surrendered" and by inserting after "Act" where it occurs the first time in the seventh line "the Truck Transportation Act, 1988".

9. The said Act is further amended by adding thereto the following section:

165a.—(1) In this section, "commercial motor vehicle" and "operator" have the meaning prescribed under this section and not as set out in this Act.

(2) No person shall drive a commercial motor vehicle on a highway except in accordance with this section and the regulations made under this section.
Daily log

(3) Every driver shall maintain a daily log and shall carry it at all times while in charge of a commercial motor vehicle on the highway.

Surrender of daily log

(4) Every driver who is required under subsection (3) to carry a daily log shall surrender it to any police officer or officer appointed for the purpose of carrying out the provisions of this Act upon demand by the officer.

One daily log only

(5) No driver shall make or have more than one daily log that records the same time period or overlapping time periods.

Operator's duty

(6) No operator shall permit a person to drive a commercial motor vehicle on a highway except in accordance with this section or the regulations made under this section.

Regulations

(7) The Lieutenant Governor in Council may make regulations,

(a) prescribing the books, logs and records that shall be kept by operators and drivers of commercial motor vehicles;

(b) requiring the retention of books, logs and records, the information to be contained and the entries to be recorded therein and the places where they shall be kept;

(c) prescribing hours of work, periods of rest and other requirements for the purpose of subsection (2), including prescribing different hours or periods for different types of work or driving;

(d) exempting any person or class of persons or any vehicle or class of vehicles from any requirement in this section or any regulation made under this section and prescribing conditions for any such exemption;

(e) defining “commercial motor vehicle” and “operator” for the purposes of this section.

Offence

(8) Every person who contravenes a provision of this section or a regulation made under this section is guilty of an offence and on conviction is liable,

(a) for a first offence, to a fine of not less than $250 and not more than $2,000; and
(b) for each subsequent offence, to a fine of not less than $500 and not more than $2,000 or to imprisonment for a term of not more than six months, or to both.

(9) An offence referred to in subsection (8) committed more than five years after a previous conviction for an offence under subsection (8) is not a subsequent offence for the purpose of clause (8) (b).

10. Section 166 of the said Act, as amended by the Statutes of Ontario, 1983, chapter 63, section 37, is further amended by adding thereto the following subsection:

(3) In addition to any liability of an owner incurred under subsection (1), the operator of a commercial motor vehicle, as defined in subsection 15a (1), is liable for loss or damage sustained by any person by reason of negligence in the operation of the commercial motor vehicle on a highway.

11.—(1) Subclause 179 (c) (iii) of the said Act is repealed and the following substituted therefor:

(iii) a record of all licences, permits and CVOR certificates issued, suspended, revoked, cancelled or revived under this Act.

(2) Clause 179 (c) of the said Act is amended by striking out "and" at the end of subclause (v), by renumbering subclause (vi) as subclause (vii) and by adding thereto the following subclause:

(vi) an operating record of every conviction of every CVOR certificate holder and the holder's agents and employees that is reported to the Registrar under section 184 and such other convictions, whether or not the certificate holder was the person convicted, as the Registrar considers useful for the purpose of the administration and enforcement of this Act, and

12. Section 181 of the said Act, as amended by the Statutes of Ontario, 1982, chapter 15, section 12 and 1983, chapter 63, section 43, is further amended by adding thereto the following subsection:
(5) In this section, “owner” includes operator as defined in section 15a or as deemed in section 15d.

13. Subsection 190 (2) of the said Act, as re-enacted by the Statutes of Ontario, 1983, chapter 63, section 46, is amended by striking out “subsection 30 (2) or (3)” in the fourth line and inserting in lieu thereof “subsection 30 (3b), (3c), (3d) or (3e)”.

14. Subsection 194a (1) of the said Act, as enacted by the Statutes of Ontario, 1985, chapter 13, section 17, is amended by inserting after “the” in the seventh line “on the operator of the vehicle as defined in subsection 15a (1) or” and by inserting after “unless” in the eighth line “in the case of the owner”.

15. The said Act is further amended by adding thereto the following section:

194b.—(1) An officer of the Ministry may, during normal business hours upon production of his or her designation as an officer, enter any place of business of a person required under this Act or the regulations to keep records for the purpose of inspecting those records.

(2) An officer of the Ministry, for the purpose of ensuring that the provisions of this Act and the regulations are being complied with, is authorized to inspect any records required to be kept under this Act or the regulations.

(3) An officer examining any records under this section may, on giving a receipt therefor, remove any record for the purpose of making copies thereof but the copying must be made quickly and the record promptly returned.

(4) Any copy made under subsection (3) and certified as a true copy by the person making it is admissible in evidence in any action, proceeding or prosecution as proof, in the absence of evidence to the contrary, of the record copied and its contents.

(5) No person shall obstruct any officer from doing anything that he or she is authorized by this section to do or to withhold from the officer or conceal or destroy any record that the officer is authorized to examine or to copy.

(6) Every person who contravenes subsection (5) is guilty of an offence and on conviction is liable to a fine of not less
than $100 and not more than $1,000 or to imprisonment for a term of not more than six months, or to both.

16. This Act comes into force on a day to be named by proclamation of the Lieutenant Governor.

17. The short title of this Act is the *Highway Traffic Amendment Act, 1988.*