

House File 2477 - Introduced

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BY THOMSON

A BILL FOR

1 An Act relating to English language proficiency requirements
2 for commercial drivers and commercial carriers, providing
3 penalties, and making penalties applicable.
4 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

unofficial

1 Section 1. LEGISLATIVE FINDINGS.

2 1. Iowa has a compelling interest in ensuring vehicles and
3 persons are safe on Iowa highways.

4 2. Federal regulations requires persons operating a
5 commercial motor vehicle to possess sufficient English language
6 proficiency necessary to converse with the general public,
7 understand traffic signs and signals, respond to official
8 inquiries, and make entries on reports and records.

9 3. Iowa is empowered to enforce federal regulations and
10 has authority to regulate persons operating a commercial motor
11 vehicle in this state.

12 4. Communication failures involving commercial motor vehicles
13 contribute to collisions, injuries, and fatalities on Iowa
14 highways.

15 5. Enhanced state enforcement mechanisms serve Iowa's
16 legitimate and compelling interest in protecting the traveling
17 public.

18 6. These requirements apply neutrally to all persons
19 operating a commercial motor vehicle regardless of national
20 origin, ethnicity, race, or state of licensure.

21 Sec. 2. NEW SECTION. **321.187B English language proficiency**
22 **— commercial drivers — commercial carriers — enforcement.**

23 1. *English language proficiency.* A commercial driver shall
24 not operate a commercial motor vehicle unless the driver is able
25 to demonstrate proficiency in the English language sufficient to
26 do all of the following:

27 a. Understand and respond to spoken English safety
28 instructions.

29 b. Read and comprehend written materials required under
30 federal law, including vehicle logs and inspection documents.

31 c. Demonstrate comprehension of emergency routing signs,
32 traffic signals, and highway advisories.

33 d. Communicate essential safety information relevant to the
34 operation of the commercial motor vehicle.

35 2. *Enhanced safety interaction assessments.*

1 a. A peace officer of the division of state patrol of
2 the department of public safety is authorized to conduct
3 structured English proficiency interactions during commercial
4 vehicle inspections. The peace officer may request a commercial
5 driver to demonstrate the driver's proficiency in the English
6 language with respect to any of the following:

7 (1) The commercial driver's ability to understand directions
8 in English related to commercial motor vehicle operation and
9 safety.

10 (2) The commercial driver's ability to comprehend logbook
11 entries and ability to make required entries.

12 (3) The commercial driver's ability to respond to equipment
13 inspection questions requiring verbal communication.

14 b. A peace officer who requests a commercial driver to
15 demonstrate the driver's proficiency in the English language
16 shall use a standardized, scripted assessment protocol approved
17 by the department.

18 c. A peace officer shall advise a commercial driver of any
19 adverse determination.

20 3. *Out-of-service order.*

21 a. A commercial driver who fails to demonstrate sufficient
22 proficiency in the English language shall not operate a
23 commercial motor vehicle until the person is able to demonstrate
24 sufficient proficiency in the English language. A peace officer
25 shall serve an out-of-service order to the driver.

26 b. A commercial driver may contest an out-of-service order
27 through an administrative hearing with the department within
28 thirty days.

29 4. *Prohibited inferences.* A peace officer shall not consider
30 or make an inference based on a commercial driver's nationality,
31 ethnicity, race, accent, or state that issued the driver's
32 commercial driver's license. A peace officer's determination
33 shall be based solely on the commercial driver's English language
34 proficiency.

35 5. *Commercial carrier liability.*

1 a. A commercial carrier who employs or engages the services
2 of a person as a commercial driver who fails to demonstrate
3 sufficient proficiency in the English language is subject to
4 a one hundred thousand dollar civil penalty for each time a
5 driver fails to demonstrate sufficient proficiency in the English
6 language, to be imposed and collected by the department and
7 deposited in the road use tax fund.

8 b. A commercial carrier who employs or engages the services
9 of a person as a commercial driver is subject to enhanced
10 penalties if the carrier is fined under paragraph "a" three or
11 more times in a twenty-four-month period. In addition to the
12 civil penalty imposed, the department may designate the carrier
13 as a high-risk carrier.

14 c. A commercial carrier may contest the imposition of a civil
15 penalty through a contested case proceeding under chapter 17A
16 with the department within thirty days.

17 6. *High-risk carrier designation.*

18 a. A commercial carrier shall be designated as a high-risk
19 carrier upon any of the following:

20 (1) Three or more violations of this section that involve the
21 carrier within twenty-four months.

22 (2) A pattern of employing or engaging the services
23 of persons as commercial drivers who fail to meet the
24 federal English language proficiency requirements under 49
25 C.F.R. §391.11(b)(2).

26 b. A high-risk carrier is subject to any of the following:

27 (1) Increased inspection frequency, including mandatory
28 inspections for all vehicles.

29 (2) Denial of special permits issued by the department,
30 including hazardous materials permits, oversize and overweight
31 permits, livestock permits, and agricultural-load permits.

32 (3) Required quarterly safety and compliance plans filed with
33 the department.

34 (4) Escalating civil penalties for continued violations.

35 (5) Potential permanent bar from Iowa-issued permits upon

1 continued noncompliance.

2 c. A commercial carrier may petition to be removed from
3 high-risk status after twelve consecutive months with no
4 attributable violations if the carrier submits to the department
5 a compliance plan demonstrating corrective measures that is
6 approved by the department.

7 7. *Winter operations communications.*

8 a. The department is authorized to declare winter emergency
9 conditions when the weather conditions then occurring may affect
10 highway traffic and safety. However, winter emergency conditions
11 shall not be declared during a month in which no snow has fallen
12 in this state during that month.

13 b. During declared winter emergency conditions, every
14 commercial driver shall do all of the following:

15 (1) Demonstrate the driver's ability to understand advisories
16 broadcast by the department in the English language.

17 (2) Electronically acknowledge the existence of winter
18 emergency conditions before entering affected interstate road
19 systems.

20 (3) Demonstrate the driver's English language comprehension
21 to understand emergency routing signs and verbal instructions
22 from enforcement personnel that are provided and given in
23 English.

24 c. A commercial driver who is unable to demonstrate English
25 comprehension during winter emergency conditions may be denied
26 entry to certain highway corridors, restricted to designated
27 routes with enhanced supervision, or issued an out-of-service
28 order until conditions permit safe travel, as determined by the
29 department.

30 d. The department shall consider the state's compelling
31 interest in preventing weather-related commercial vehicle crashes
32 when determining the appropriate restrictions to place on a
33 commercial driver under paragraph "c".

34 8. *Inspection prioritization.*

35 a. The department may implement a system to prioritize

1 inspections of commercial drivers to determine whether a driver
2 can comply with subsection 1. The system may be implemented
3 at weigh stations and a commercial driver demonstrating
4 communication difficulties during initial screening shall receive
5 a mandatory full inspection.

6 b. A commercial driver who fails to demonstrate compliance
7 with subsection 1 shall be added to the department's intrastate
8 enforcement system and commercial carriers who are attributable
9 to patterns of communication-related violations shall receive
10 higher inspection frequency through an inspection prioritization
11 algorithm.

12 9. *Rebuttable presumption of gross negligence.*

13 a. In any civil action for damages arising from the operation
14 of a commercial motor vehicle within this state, proof that the
15 commercial driver was unable to comply with subsection 1, at the
16 time of the accident or crash, constitutes prima facie evidence
17 of gross negligence on the part of both the commercial driver and
18 the commercial carrier that employed or engaged the services of
19 the driver, if applicable.

20 b. A commercial driver or commercial carrier may rebut the
21 presumption by showing any of the following:

22 (1) The commercial driver possessed sufficient English
23 proficiency as required by federal law.

24 (2) The commercial driver's communication ability did not
25 contribute to the accident or crash.

26 (3) The alleged injury resulted solely from causes unrelated
27 to the commercial driver's communication ability.

28 c. A person shall not make an inference based on a commercial
29 driver's nationality, race, ethnicity, accent, or state of
30 licensure. The presumption under paragraph "a" arises solely
31 from a commercial driver's demonstrated inability to communicate
32 in English in circumstances where such communication is required
33 for the safe operation of a commercial motor vehicle.

34 10. *Private right of action.*

35 a. A commercial carrier operating in this state shall

1 ensure that each commercial driver assigned to operate a
2 commercial motor vehicle in this state possesses sufficient
3 English proficiency required under 49 C.F.R. §391.11(b)(2) and
4 shall not request or authorize a person to operate a commercial
5 motor vehicle if the person does not meet that requirement.
6 In addition, a commercial carrier shall not deploy a commercial
7 driver in this state who cannot do any of the following:

- 8 (1) Communicate in English for safety purposes.
- 9 (2) Respond to peace officer instructions in English.
- 10 (3) Understand traffic signs in the English language.
- 11 (4) Follow the department's emergency routing instructions
12 given in the English language.

13 b. Any person who suffers bodily injury, death of a family
14 member, property damage, or economic loss proximately caused by a
15 commercial carrier's violation of paragraph "a" may bring a civil
16 action against the commercial carrier.

17 c. A person who notifies a law enforcement agency, prior to
18 the event that caused injury or economic loss, of a commercial
19 driver's apparent inability to sufficiently understand the
20 English language under 49 C.F.R. §391.11(b)(2) shall be deemed to
21 have established prima facie evidence of all of the following:

- 22 (1) The commercial carrier's negligence in assigning the
23 commercial driver.
- 24 (2) The commercial carrier's knowledge or constructive
25 knowledge of the commercial driver's noncompliance.
- 26 (3) Causation, if the injury resulted from the commercial
27 driver's miscommunication, misunderstanding of signage, or
28 failure to follow emergency instructions.

29 d. The private right of action shall also be available when
30 all of the following occurred:

- 31 (1) A person reported a commercial driver who appeared to be
32 unable to comply with 49 C.F.R. §391.11(b)(2).
- 33 (2) A peace officer or the department issued an
34 out-of-service order, or a peace officer or the department
35 failed to act within four hours despite credible evidence of

1 noncompliance.

2 (3) The commercial carrier knowingly or negligently
3 deployed a commercial driver who did not comply with 49
4 C.F.R. §391.11(b)(2).

5 (4) The reporting individual suffered harm, including but not
6 limited to being delayed or endangered by an incident involving
7 the noncompliant driver, property damage, business interruption,
8 delayed shipment, personal injury, economic loss from a resulting
9 road closure, or other demonstrable harm.

10 e. If the finder of fact determines that the commercial
11 carrier knew or, in the exercise of reasonable care, should have
12 known that a commercial driver was not sufficiently proficient
13 in the English language, the plaintiff is entitled to all of the
14 following:

15 (1) Six times the amount of actual damages.

16 (2) Reasonable attorney fees and costs.

17 (3) Appropriate injunctive relief, including an order
18 restricting the commercial carrier from deploying noncompliant
19 drivers in this state.

20 f. The motor carrier may rebut the presumption or avoid
21 enhanced damages by proving any of the following:

22 (1) The commercial driver met federal English proficiency
23 requirements.

24 (2) The commercial driver's communication ability did not
25 contribute to the incident.

26 (3) The incident resulted solely from causes unrelated to the
27 commercial driver's communication ability.

28 g. To have standing to bring a cause of action, a
29 plaintiff must demonstrate actual, specific, particularized harm.
30 Observation of a violation alone shall not confer standing.

31 11. *Enhanced penalties.* The department shall impose enhanced
32 administrative penalties including an additional civil penalty
33 not to exceed one hundred thousand dollars per violation to be
34 collected by the department and deposited in the road use tax
35 fund, and commercial carrier sanctions against a culpable person

1 for any of the following:

2 a. Failure to obey officer instructions due to demonstrated
3 communication inability.

4 b. Ignoring or failing to comprehend detour or emergency
5 signage.

6 c. Entering restricted-weather corridors without demonstrated
7 comprehension of warnings.

8 d. Any violation where communication failure contributed to a
9 safety incident.

10 e. Repeat violations or violations resulting in injury.

11 12. *Enforcement and training.* The department shall adopt
12 rules pursuant to chapter 17A for all of the following:

13 a. Standardized, scripted English comprehension assessment
14 protocols that should be completed within approximately three
15 minutes and structured as a safety conversation.

16 b. Training on constitutional limits and procedural
17 requirements.

18 c. Antiprofiling protections ensuring officers do not
19 consider race, ethnicity, national origin, or accent as factors
20 in initiating assessments.

21 d. Documentation and recordkeeping requirements for all
22 enhanced safety interaction assessments.

23 13. *Data reporting and transparency.* The department shall
24 publish an annual report including all of the following:

25 a. Total number of enhanced safety interaction assessments
26 conducted.

27 b. Number and rate of enhanced safety interaction violations.

28 c. Carrier violation patterns and high-risk carrier
29 designations.

30 d. Safety outcomes, including incidents involving factors
31 related to communications and miscommunications.

32 e. Demographic data presented in an aggregate, nonidentifying
33 manner to monitor for potential disparate impact.

34 f. Recommendations for program improvements.

35

EXPLANATION

1 The inclusion of this explanation does not constitute agreement with
2 the explanation's substance by the members of the general assembly.

3 Under federal law, a person who is operating a commercial
4 motor vehicle (commercial driver) must be able to read and speak
5 the English language sufficiently to converse with the general
6 public, to understand highway traffic signs and signals in the
7 English language, to respond to official inquiries, and to make
8 entries on reports and records.

9 This bill relates to the enforcement of this federal
10 regulation. The bill requires commercial drivers to have
11 sufficient English language proficiency, makes commercial
12 carriers liable for violations involving commercial drivers
13 that do not have sufficient English language proficiency, and
14 authorizes state patrol officers to inspect a commercial driver
15 to determine whether the driver complies with federal English
16 language proficiency requirements.

17 A commercial carrier who violates the bill is subject to a
18 \$100,000 civil penalty for each violation, imposed and collected
19 by the department of transportation (DOT) and deposited in the
20 road use tax fund. Repeat violators are subject to enhanced
21 penalties, including restrictions placed on where a commercial
22 driver is authorized to operate a commercial motor vehicle. A
23 commercial driver may be subject to an out-of-service order for
24 violating the bill. An out-of-service order restricts a person's
25 authorization to operate a commercial motor vehicle and carries
26 additional penalties under Code section 321.208 for violating the
27 out-of-service order.

28 The bill prohibits inferences from being made based on a
29 commercial driver's nationality, race, ethnicity, accent, or
30 state of licensure.

31 A person may have standing to bring a private right of action
32 against a commercial carrier who violates the bill, as described
33 in the bill.

34 The DOT is required to adopt rules necessary to implement the
35 bill and must publish a report on enforcement of the bill.

1 By operation of law, it is a simple misdemeanor for a person
2 to do an act forbidden or to fail to perform an act required by
3 the bill. A simple misdemeanor is punishable by confinement for
4 no more than 30 days and a fine of at least \$105 but not more
5 than \$855.

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