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SENATE BILL 20-118

BY SENATOR(S) Hisey, Cooke, Crowder, Gardner, Hansen, Hill, Holbert, Lundeen, Marble, Moreno, Priola, Rankin, Scott, Sonnenberg, Tate, Woodward;
also REPRESENTATIVE(S) Gray and Valdez D., Arndt, Catlin, Exum, Pelton, Snyder, Wilson.

CONCERNING THE TRANSFER OF THE FUNCTION OF ISSUING PERMITS FOR THE TRANSPORTATION OF HAZARDOUS MATERIALS BY MOTOR VEHICLE FROM THE PUBLIC UTILITIES COMMISSION TO THE DEPARTMENT OF TRANSPORTATION, AND, IN CONNECTION THEREWITH, MAKING AN APPROPRIATION.

Be it enacted by the General Assembly of the State of Colorado:

SECTION 1. In Colorado Revised Statutes, **amend** 42-20-201 as follows:

42-20-201. Hazardous materials transportation permit required. Except as otherwise provided in this part 2, no transportation of hazardous materials by motor vehicle which requires placarding under 49 CFR part 172 or 173 shall take place in, to, from, or through this state until the ~~public utilities commission~~ DEPARTMENT OF TRANSPORTATION issues a permit, in

Capital letters or bold & italic numbers indicate new material added to existing law; dashes through words or numbers indicate deletions from existing law and such material is not part of the act.

accordance with the provisions of this part 2, authorizing the applicant to operate or move upon the public roads of this state a motor vehicle or a combination of motor vehicles which carries hazardous materials. This part 2 ~~shall~~ DOES not apply to motor vehicles owned by the federal government, motor vehicles when used to transport to or from the farm or ranch site products used for agricultural production, or farm machinery which is exempted from registration requirements by section 42-3-103, unless such vehicles are used in furtherance of any commercial business other than agriculture. This part 2 ~~shall apply~~ APPLIES to motor vehicles owned by the state or any political subdivision thereof; except that such vehicles ~~shall be~~ ARE exempt from the fees provided in section 42-20-202. The requirements of this part 2 ~~shall be~~ ARE in addition to, and not in substitution for, any other provisions of law.

SECTION 2. In Colorado Revised Statutes, 42-20-202, **amend** (1) and (2)(a) as follows:

42-20-202. Transportation permit - application fee.

(1) (a) Except as otherwise provided in this section, each person desiring to transport hazardous materials which require placarding under 49 CFR part 172 or 173 in, to, from, or through this state shall submit a permit application for an annual permit to the ~~public utilities commission~~ prior to DEPARTMENT OF TRANSPORTATION BEFORE beginning such transportation. Permit applications ~~shall~~ MUST be in a form designated by the ~~public utilities commission~~ DEPARTMENT, and the ~~public utilities commission~~ DEPARTMENT shall maintain records of all such applications.

(b) Each annual permit ~~shall be~~ IS valid for one year following its issuance and shall be issued after the approval of the permit application by the ~~public utilities commission~~ DEPARTMENT OF TRANSPORTATION and upon the payment of a permit fee, which fee ~~shall~~ MUST be based on the number of motor vehicles the applicant operates within this state, as follows:

Number of Motor Vehicles	Permit Fee
1 - 5	\$ 10
6 - 10	25
11 - 50	125
51 - 100	200

101 - 300
over 300

350
400

(c) Single trip permits may be obtained at all port of entry weigh stations. ~~and from the Colorado state patrol.~~ Each person transporting such hazardous materials in, to, from, or through this state who has not obtained an annual permit from the ~~public utilities commission~~ DEPARTMENT OF TRANSPORTATION shall apply at the closest possible port of entry weigh station or ~~to an officer or office of the Colorado state patrol~~ AT A DEPARTMENT OF TRANSPORTATION OFFICE for a single trip permit. Each single trip permit ~~shall be~~ IS valid for a single continuous business venture, but in no event shall the permit be valid for more than seventy-two hours, unless extended by any enforcement official for any reason the official deems advisable, including mechanical difficulties and road and weather conditions. ~~The~~ A single trip permit shall be issued upon the approval of the permit application and upon the payment of a twenty-five-dollar permit fee.

(d) The ~~public utilities commission~~ DEPARTMENT OF TRANSPORTATION shall provide the option to a company filing for a permit under this subsection (1) to file an express consent waiver that enables the company to designate a company representative to be a party of interest for a violation of this section. The appearance of the company representative in a court hearing without the operator when the operator has signed such waiver shall not be deemed the practice of law in violation of article 93 of title 13.

(2) No annual permit application shall be approved unless the applicant:

(a) Supplies proof of having obtained liability insurance as required by the United States department of transportation pursuant to 49 CFR 387. Proof of such liability insurance policy shall be filed with the ~~public utilities commission~~ DEPARTMENT OF TRANSPORTATION. The insurance carrier shall give thirty days' written notice for nonpayment of premium and ninety days' notice for nonrenewal of policy to the ~~public utilities commission~~ DEPARTMENT before the cancellation of such policy. At any time that the insurance policy lapses, the permit shall be automatically revoked.

SECTION 3. In Colorado Revised Statutes, 42-20-203, **amend** (1) as follows:

42-20-203. Carrying of permit and shipping papers. (1) Any person transporting hazardous materials that require placarding under 49 CFR part 172 or 173 in this state shall carry a copy of the shipping papers required in 49 CFR 172.200 and a copy of the hazardous materials transportation permit issued by the ~~public utilities commission or by the Colorado state patrol~~ DEPARTMENT OF TRANSPORTATION OR, BEFORE JANUARY 1, 2021, BY THE PUBLIC UTILITIES COMMISSION OR BY THE COLORADO STATE PATROL at a port of entry weigh station in the transporting motor vehicle while in this state; except that, if a peace officer, as described in section 16-2.5-101, ~~C.R.S.~~, or any other enforcement official ~~may determine~~ DETERMINES that the hazardous materials transportation permit can be electronically verified at the time of contact, a copy of the permit need not be carried by the person transporting hazardous materials. The permit ~~shall be~~ IS open to inspection or electronic verification by any enforcement official.

SECTION 4. In Colorado Revised Statutes, **amend** 42-20-205 as follows:

42-20-205. Permit suspension or revocation - rules. In addition to any other civil or criminal penalties, FOR VIOLATIONS OCCURRING AFTER MARCH 16, 2020, the ~~public utilities commission~~ DEPARTMENT OF TRANSPORTATION may suspend ~~the~~ A hazardous materials transportation annual permit for a period not to exceed six months or may revoke ~~such~~ A permit for failure to comply with the terms and conditions of ~~such~~ THE permit, for failure to pay a civil penalty assessed pursuant to section 42-20-204, or for continuing violations of the RULES AND regulations promulgated pursuant to part 1, 2, or 3 of this ~~article~~ ARTICLE 20. The permit may be suspended or revoked only for good cause shown after due notice and an opportunity for a hearing as provided in article 4 of title 24 ~~C.R.S.~~, if requested by the permit holder. THE DEPARTMENT MAY PROMULGATE RULES, SUBJECT TO THE REQUIREMENTS OF ARTICLE 4 OF TITLE 24, TO ESTABLISH SPECIFIC PROCEDURES FOR SUSPENSION OR REVOCATION OF PERMITS AND THE CONDUCT OF PERMIT SUSPENSION AND REVOCATION HEARINGS.

SECTION 5. In Colorado Revised Statutes, 42-20-402, **repeal** (2) as follows:

42-20-402. Definitions. As used in this part 4 and part 5 of this

article, unless the context otherwise requires:

(2) "~~Commission~~" means the public utilities commission.

SECTION 6. In Colorado Revised Statutes, 42-20-405, **amend** (1) as follows:

42-20-405. Violations - criminal penalties. (1) Notwithstanding the provisions of section 40-7-107, ~~C.R.S.~~, any person who violates any provision of this part 4 or part 5 of this article **20** or rule or regulation promulgated by the chief pursuant to this part 4 and part 5 of this article **20** commits a class 2 misdemeanor and shall be punished as provided in section 18-1.3-501. ~~C.R.S.~~ No conviction pursuant to this section shall bar enforcement by the PUBLIC UTILITIES commission of any provision of title 40 ~~C.R.S.~~, with respect to violations by persons subject to said title.

SECTION 7. In Colorado Revised Statutes, 42-20-406, **amend** (1), (2), (3) introductory portion, and (3)(e) as follows:

42-20-406. Violations - civil penalties - motor vehicles. (1) Any person who violates any provision of this part 4 or part 5 of this article **20** or a rule or regulation promulgated by the chief pursuant to this part 4 and part 5 of this article **20**, except for the violations enumerated in subsection (3) of this section and section 42-20-505, ~~shall be~~ IS subject to a civil penalty of not more than ten thousand dollars per day for each day during which ~~such~~ THE violation occurs. The penalty shall be assessed by the chief upon receipt of a complaint by any ~~investigative personnel of the commission or~~ Colorado state patrol officer and after written notice and an opportunity for a hearing pursuant to section 24-4-105. ~~C.R.S.~~ Payment of a civil penalty under this section ~~shall~~ DOES not relieve any person from liability pursuant to article 11 of title 25, part 3 of article 15 of title 25, or article 22 of title 29. ~~C.R.S.~~ Any person who is assessed a penalty pursuant to this subsection (1) ~~shall have~~ HAS the right to appeal the chief's decision by filing a notice of appeal with the court of appeals as specified in section 24-4-106 (11). ~~C.R.S.~~

(2) Any person who commits any of the acts enumerated in subsection (3) of this section ~~shall be~~ IS subject to the civil penalty listed in said subsection (3). ~~Investigative personnel of the commission, and~~ Officers of the Colorado state patrol ~~shall~~ have the authority to issue civil penalty

assessments for the enumerated violations. At any time that a person is cited for a violation enumerated in subsection (3) of this section, the person in charge of or operating the motor vehicle involved shall be given a notice in the form of a civil penalty assessment notice. ~~Such~~ THE notice shall be tendered by the ~~enforcement official~~ OFFICER OF THE COLORADO STATE PATROL and ~~shall~~ MUST contain the name and address of ~~such~~ THE person, the license number of the motor vehicle involved, if any, the number of ~~such~~ THE person's driver's license, the nature of the violation, the amount of the penalty prescribed for ~~such~~ THE violation, the date of the notice, a place for ~~such~~ THE person to execute a signed acknowledgment of his or her receipt of the civil penalty assessment notice, a place for ~~such~~ THE person to execute a signed acknowledgment of liability for the cited violation, and such other information as may be required by law to constitute ~~such~~ THE notice as a complaint to appear in court should the prescribed penalty not be paid within ten days. Every cited person shall execute the signed acknowledgment of his or her receipt of the civil penalty assessment notice. The acknowledgment of liability shall be executed at the time the cited person pays the prescribed penalty. The person cited shall pay the civil penalty specified in subsection (3) of this section for the violation involved at the office of the department of revenue either in person or by postmarking such payment within ten days of the citation. The department of revenue shall accept late payment of any penalty assessment up to twenty days after ~~such~~ THE payment becomes due. If the person cited does not pay the prescribed penalty within ten days of the notice, the civil penalty assessment notice shall constitute a complaint to appear in court unless payment for ~~such~~ THE penalty assessment has been accepted by the department of revenue as evidenced by receipt, and the person cited shall, within the time specified in the civil penalty assessment notice, file an answer to this complaint with the county court for the county in which the penalty assessment was issued. The attorney general shall represent the ~~state agency that issued the civil penalty assessment notice~~ COLORADO STATE PATROL if so requested by the ~~agency~~ COLORADO STATE PATROL.

(3) The following penalties ~~shall~~ apply only to the transportation of nuclear materials by motor vehicle and shall be assessed against drivers, shippers, carriers, operators, brokers, and other persons, as appropriate:

(e) Any person who fails to produce his or her driver's log book on demand of any law enforcement official OR port of entry personnel ~~or investigative personnel of the commission~~ in violation of 49 CFR 395.8

shall be assessed a civil penalty of two hundred fifty dollars.

SECTION 8. In Colorado Revised Statutes, **amend** 42-20-501 as follows:

42-20-501. Nuclear materials transportation permit required - application. (1) No transportation of nuclear materials shall take place in, to, from, or through this state until the ~~commission~~ DEPARTMENT OF TRANSPORTATION issues a permit, in accordance with the provisions of this section, which is not inconsistent with federal law, authorizing the applicant to operate or move upon public roads of this state a motor vehicle or combination of motor vehicles which carry nuclear materials.

(2) Each carrier desiring to transport nuclear materials shall submit a permit application, in the form designated by the ~~commission~~ DEPARTMENT OF TRANSPORTATION, to the ~~commission~~ ~~prior to~~ DEPARTMENT BEFORE beginning such transportation.

SECTION 9. In Colorado Revised Statutes, 42-20-505, **amend** (1) and (3) as follows:

42-20-505. Penalties - permit system. (1) ~~The investigative personnel of the commission;~~ A Colorado state patrol officer or a port of entry officer, as defined in section 42-8-102 (3), may assess a civil penalty of one thousand dollars against a carrier who transports nuclear materials without first obtaining a nuclear materials transportation permit.

(3) The penalties in subsection (1) of this section shall be assessed upon an action brought by ~~the commission~~ or the Colorado state patrol in accordance with the procedure set forth in section 42-20-406.

SECTION 10. In Colorado Revised Statutes, **amend** 42-20-506 as follows:

42-20-506. Permit suspension and revocation. In addition to any other civil or criminal penalties, the ~~commission~~ DEPARTMENT OF TRANSPORTATION may suspend the nuclear materials transportation permit of any carrier for a period not to exceed six months or revoke ~~such~~ THE permit for failure to comply with the permit terms, misrepresentation of information in the permit application, failure to pay a civil penalty assessed

pursuant to section 42-20-406, or failure to comply with the regulations promulgated pursuant to parts 4 and 5 of this article **20**. The permit may be suspended or revoked only for good cause shown after due notice and opportunity for a hearing pursuant to section 24-4-105, C.R.S., if requested by the carrier.

SECTION 11. In Colorado Revised Statutes, **amend** 42-20-511 as follows:

42-20-511. Nuclear materials transportation fund. All moneys MONEY collected pursuant to parts 4 and 5 of this article **20** shall be transmitted to the state treasurer, who ~~in addition to any excess moneys transferred from the motor carrier fund pursuant to section 40-2-110.5 (9);~~ C.R.S., shall credit the ~~same~~ MONEY to the nuclear materials transportation fund, which fund is hereby created. The ~~moneys~~ MONEY in the fund ~~shall be~~ IS subject to annual appropriation by the general assembly for the direct and indirect costs of the administration of parts 4 and 5 of this article **20**.

SECTION 12. Appropriation - adjustments to 2020 long bill.

(1) To implement this act, appropriations made in the annual general appropriation act for the 2020-21 state fiscal year to the department of regulatory agencies for use by the public utilities commission are adjusted as follows:

(a) The cash funds appropriation from the public utilities commission motor carrier fund created in section 40-2-110.5 (6), C.R.S., for personal services is decreased by \$20,243 and the related FTE is decreased by 0.5 FTE; and

(b) The cash funds appropriation from the public utilities commission motor carrier fund created in section 40-2-110.5 (6), C.R.S., for operating expenses is decreased by \$675.

SECTION 13. Act subject to petition - effective date. This act takes effect January 1, 2021; except that, if a referendum petition is filed pursuant to section 1 (3) of article V of the state constitution against this act or an item, section, or part of this act within the ninety-day period after final adjournment of the general assembly, then the act, item, section, or part will not take effect unless approved by the people at the general election to be

held in November 2020 and, in such case, will take effect January 1, 2021, or on the date of the official declaration of the vote thereon by the governor, whichever is later.

Leroy M. Garcia
PRESIDENT OF
THE SENATE

KC Becker
SPEAKER OF THE HOUSE
OF REPRESENTATIVES

Cindi L. Markwell
SECRETARY OF
THE SENATE

Robin Jones
CHIEF CLERK OF THE HOUSE
OF REPRESENTATIVES

APPROVED _____
(Date and Time)

Jared S. Polis
GOVERNOR OF THE STATE OF COLORADO