

Senate Bill No. 167–Committee on Natural Resources

CHAPTER.....

AN ACT relating to hazardous materials; revising the requirements for the transportation of hazardous materials by motor carriers; revising the authority of the department of motor vehicles and public safety to administer and enforce those requirements; providing for the imposition of an assessment upon certain motor carriers; revising the requirements for the reporting of accidents and incidents involving a hazardous material; authorizing the imposition of civil penalties for certain violations; revising the definition of a hazardous material for certain purposes; prohibiting the political subdivisions of this state from regulating the transportation of hazardous materials; making various changes regarding the amount and disposition of certain fees for permits and other regulation; revising the method for funding the state emergency response commission; and providing other matters properly relating thereto.

THE PEOPLE OF THE STATE OF NEVADA, REPRESENTED IN
SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

Section 1. Chapter 459 of NRS is hereby amended by adding thereto the provisions set forth as sections 2 to 18, inclusive, of this act.

Sec. 2. *“Base state” means a participating state designated by a motor carrier pursuant to the uniform program as the base state of the motor carrier.*

Sec. 3. *“Motor carrier” means a person who owns or operates one or more motor vehicles used to transport a hazardous material.*

Sec. 4. *“Participating state” means a state that has entered into a reciprocal agreement with this state to participate in the uniform program.*

Sec. 5. *“Uniform application” means an application to register and obtain a permit for the transportation of hazardous materials pursuant to the uniform program.*

Sec. 6. *“Uniform program” means the program established pursuant to 49 U.S.C. § 5119 to regulate the transportation of hazardous materials.*

Sec. 7. *The director shall adopt regulations for the participation of this state in the uniform program. The regulations adopted pursuant to this section must be consistent with, and equivalent in scope, coverage and content to:*

1. Except as otherwise provided in subsection 2, the recommendations contained in the final report of the working group established pursuant to 49 U.S.C. § 5119; or

2. If the Secretary of Transportation prescribes regulations pursuant to 49 U.S.C. § 5119, the regulations of the Secretary of Transportation.

Sec. 8. *Except as otherwise required by federal law, before transporting a hazardous material upon a public highway of this state, a motor carrier shall register with and obtain a permit for the transportation of hazardous materials:*

1. From the department; o

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2. If the motor carrier has designated another participating state as its base state pursuant to the uniform program, from the base state.

Sec. 9. Except as otherwise required by federal law, a motor carrier who is required to register with and obtain a permit from the department pursuant to section 8 of this act:

1. Except as otherwise provided in subsection 2, is not required to provide on a uniform application any information required solely from a motor carrier who transports hazardous waste.

2. For the transportation of any radioactive waste must provide all the information required on a uniform application, including any information required solely from a motor carrier who transports hazardous waste.

Sec. 10. 1. Except as otherwise provided in subsection 2 or required by federal law, the following information is confidential when provided to the department on a uniform application:

(a) Any information regarding the ownership of a motor carrier.

(b) Any information regarding a parent company, affiliate or subsidiary of a motor carrier.

(c) Any information regarding the financial balance sheet and statement of income of a motor carrier.

(d) Any information regarding the liability of a motor carrier for any debts.

(e) Any information regarding the customers of a motor carrier, including the services provided to specific customers.

2. The department may, to the extent required for the administration of the uniform program, disclose any information described in subsection 1 to:

(a) An appropriate agency of the Federal Government or a participating state; or

(b) A national repository established to assist in the administration of the uniform program.

Sec. 11. 1. Except as otherwise required by federal law, the department shall immediately suspend or revoke the registration and permit for the transportation of hazardous materials, or deny the approval of an application for such a registration and permit, by a motor carrier who:

(a) Knowingly makes a materially false or misleading statement on the application for the registration and permit;

(b) Is assigned an unsatisfactory safety rating pursuant to 49 C.F.R. Part 385;

(c) Is subject to an order entered pursuant to 49 C.F.R. § 386.72;

(d) Does not maintain the financial responsibility for liability required pursuant to 49 C.F.R. Part 387 and the laws of this state;

(e) Knowingly uses a forged certificate of registration or permit for the transportation of hazardous materials;

(f) Knowingly allows the use of his registration or permit for the transportation of hazardous materials by any person other than an agent or employee of the motor carrier; or

(g) Is convicted of a serious violation or repeated violations of the laws of this state for the regulation of common, contract or private motor carriers of property.

2. Upon taking any action pursuant to subsection 1, the department shall:

(a) Notify the motor carrier, by certified mail, of the reasons for its action and of any action the motor carrier may take to obtain the reinstatement of his registration and permit or the approval of his application; and

(b) Provide the motor carrier with an opportunity for a fair and impartial hearing on the matter.

Sec. 12. 1. The department shall not issue a permit required pursuant to section 8 of this act to a common, contract or private motor carrier of property who is seeking to transport radioactive waste upon a public highway of this state without first determining that the carrier transporting the waste is in compliance and will continue to comply with all laws and regulations of this state and the Federal Government respecting the handling and transportation of radioactive waste and the safety of drivers and vehicles.

2. Any common, contract or private motor carrier of property who maintains his books and records outside of this state must, in addition to any other assessments and fees provided by law, be assessed by the department for an amount equal to the travel expenses, including the excess of the out-of-state subsistence allowances over the in-state subsistence allowances, as fixed by NRS 281.160, of employees of the department for investigations, inspections and audits which may be required to be performed outside of this state in carrying out the provisions of subsection 1.

3. The assessment provided for in subsection 2 must be determined by the department upon the completion of each such investigation, inspection or audit and is due within 30 days after the date on which the affected common, contract or private motor carrier receives the assessment. The records of the department relating to the additional costs incurred by reason of necessary travel must be open for inspection by the affected carrier at any time within the 30-day period.

Sec. 13. 1. A common, contract or private motor carrier of property shall not transport any high-level radioactive waste or spent nuclear fuel upon a public highway of this state unless:

(a) The high-level radioactive waste or spent nuclear fuel is contained in a package that has been approved for that purpose pursuant to 10 C.F.R. Part 71; and

(b) *The carrier has complied with the provisions of 10 C.F.R. Part 71 and 10 C.F.R. Part 73 requiring the advance notification of the governor of this state or his designee.*

2. *As used in this section:*

(a) *“High-level radioactive waste” has the meaning ascribed to it in 10 C.F.R. § 72.3.*

(b) *“Spent nuclear fuel” has the meaning ascribed to it in 10 C.F.R. § 72.3.*

Sec. 14. 1. *Except as otherwise required by federal law, an authorized agent of the department may:*

(a) *Conduct any examination or inspection of a motor vehicle or facility;*

(b) *Conduct any investigation, audit or other review; and*

(c) *Inspect and electronically reproduce any record, document or other evidentiary material,*

as is necessary to determine the applicability of the provisions of NRS 459.708 to 459.725, inclusive, sections 2 to 17, inclusive, of this act and any regulations adopted pursuant thereto, to any person or motor vehicle, and to determine whether the person or motor vehicle is in compliance therewith.

2. *The director shall adopt regulations governing the inspection of vehicles pursuant to subsection 1 based on standards adopted by a nonprofit organization comprised of representatives from private industry, state agencies, agencies of the Federal Government and other governmental agencies, which is dedicated to improving the safety of commercial vehicles.*

Sec. 15. 1. *A person responsible for the care, custody or control of a hazardous material which is involved in an accident or incident occurring during the transportation of the hazardous material by motor carrier, including any accident or incident occurring during any loading, unloading or temporary storage of the hazardous material while it is subject to active shipping papers and before it has reached its ultimate consignee, shall notify the division as soon as practicable if, as a result of the hazardous material:*

(a) *A person is killed;*

(b) *A person receives injuries that require hospitalization;*

(c) *Any damage to property exceeds \$50,000;*

(d) *There is an evacuation of the general public for 1 hour or more;*

(e) *One or more major transportation routes or facilities are closed or shut down for 1 hour or more;*

(f) *There is an alteration in the operational flight pattern or routine of any aircraft;*

(g) *Any radioactive contamination is suspected;*

(h) *Any contamination by an infectious substance is suspected;*

(i) *There is a release of a liquid marine pollutant in excess of 450 liters or a solid marine pollutant in excess of 400 kilograms; or*

(j) Any situation exists at the site of the accident or incident which, in the judgment of the person responsible for the care, custody or control of the hazardous material, should be reported to the division.

2. The notification required pursuant to this section must include:

(a) The name of the person providing the notification;

(b) The name and address of the motor carrier represented by that person;

(c) The telephone number where that person can be contacted;

(d) The date, time and location of the accident or incident;

(e) The extent of any injuries;

(f) The classification, name and quantity of the hazardous material involved, if that information is available; and

(g) The type of accident or incident, the nature of the hazardous material involved and whether there is a continuing danger to life at the scene of the accident or incident.

3. A person may satisfy the requirements of this section by providing the information specified in subsection 2 to the person who responds to a telephone call placed to:

(a) The number 911 in an area where that number is used for emergencies; or

(b) The number zero in an area where the number 911 is not used for emergencies.

Sec. 16. Except as otherwise required by federal law, the provisions of NRS 459.708 to 459.725, inclusive, sections 2 to 17, inclusive, of this act and the regulations adopted pursuant thereto do not apply to the transportation of a hazardous material by any vehicle which is owned and operated by the Federal Government, this state or any political subdivision of this state.

Sec. 17. 1. Except as otherwise provided in subsection 2, the provisions of NRS 459.708 to 459.725, inclusive, sections 2 to 17, inclusive, of this act and the regulations adopted pursuant thereto supersede and preempt any ordinance or regulation adopted by the governing body of a political subdivision of this state governing the transportation of a hazardous material upon a public highway of this state.

2. The provisions of subsection 1 do not apply to any ordinance or regulation:

(a) For the control of traffic generally; or

(b) Which is approved by the board of directors of the department of transportation pursuant to paragraph (b) of subsection 3 of NRS 484.779.

Sec. 18. 1. In addition to any applicable criminal penalties, the department may, after providing written notice and an opportunity for a fair and impartial hearing, impose a civil penalty, in an amount determined pursuant to the schedule adopted by the director pursuant to this section, upon a person who violates a provision of NRS 459.708 to

459.725, inclusive, and sections 2 to 17, inclusive, of this act, or the regulations adopted pursuant thereto. The notice required by this section must include the amount of the penalty and a description of the violation.

2. The director shall adopt a schedule of civil penalties for the purposes of this section based on a schedule of recommended fines adopted by a nonprofit organization comprised of representatives from private industry, state agencies, agencies of the Federal Government and other governmental agencies, which is dedicated to improving the safety of commercial vehicles.

3. The department may bring an action to recover a civil penalty imposed pursuant to this section and shall deposit any money collected with the state treasurer for credit to the state highway fund.

Sec. 19. NRS 459.250 is hereby amended to read as follows:

459.250 1. Peace officers of the Nevada highway patrol shall enforce those provisions of NRS 459.221 ~~[-459.707]~~ and 459.708 *to 459.725, inclusive, and sections 2 to 17, inclusive, of this act* which govern the transport and handling of radioactive waste as they affect the safety of drivers or vehicles, the leakage or spill of radioactive waste from its package or the emission of ionizing radiation in an unsafe amount as established by the regulations of the state board of health.

2. The peace officer may:

(a) Impound a vehicle with unsafe equipment; or
(b) Detain a vehicle, if any waste has leaked or spilled from its package or if he has detected the emission of ionizing radiation in an unsafe amount, and order the driver of the vehicle to park it in a safe place, as determined by an officer designated by the health division of the department of human resources, pending remedial action by that division.

3. After a vehicle has been so detained, an officer designated by the health division of the department of human resources may order:

(a) The vehicle to be impounded;
(b) The leaked or spilled waste to be cleaned up;
(c) The contents of any unsafe or leaking package to be repackaged; or
(d) Any other appropriate precaution or remedy,
at the expense of the shipper or broker, carrier or other person who is responsible as determined by the health division of the department of human resources.

Sec. 20. NRS 459.428 is hereby amended to read as follows:

459.428 "Hazardous material" has the meaning ascribed to it in NRS 459.7024. ~~[-, and includes the materials so identified and listed in regulations adopted by the director of the department of motor vehicles and public safety pursuant to NRS 459.710.]~~

Sec. 21. NRS 459.500 is hereby amended to read as follows:

459.500 1. Except as otherwise provided in NRS 459.700 to 459.780, inclusive, *and sections 2 to 18, inclusive, of this act*, or NRS 459.800 to 459.856, inclusive:

(a) Regulations of the commission must provide

:

(1) For safety in *the* packaging, handling, transportation and disposal of hazardous waste, including *the* safety of vehicles and drivers;

(2) For the certification of consultants involved in consultation regarding the response to and the clean up of leaks of hazardous waste, hazardous material or a regulated substance from underground storage tanks, the clean up of spills of or accidents involving hazardous waste, hazardous material or a regulated substance, or the management of hazardous waste; and

(3) That a person employed full time by a business to act as such a consultant is exempt from the requirements of certification:

(I) If he is certified by the federal Occupational Safety and Health Administration to manage such waste, materials or substances; and

(II) While acting in the course of that full-time employment.

(b) Regulations of the commission may:

(1) Provide for the licensing and other necessary regulation of generators, including shippers, brokers and carriers, both intrastate and interstate, who cause that waste to be transported into or through Nevada or for disposal in Nevada;

(2) Require that the person responsible for a spill, leak or accident involving hazardous waste, hazardous material or a regulated substance, obtain advice on the proper handling of the spill, leak or accident from a consultant certified under the regulations adopted pursuant to ~~subsection 1~~ *paragraph (a)*; and

(3) Establish standards relating to the education, experience, performance and financial responsibility required for the certification of consultants.

2. The regulations may include provisions for:

(a) Fees to pay the cost of inspection, certification and other regulation ~~1~~ *, excluding any activities conducted pursuant to NRS 459.708 to 459.725, inclusive, and sections 2 to 17, inclusive, of this act;* and

(b) Administrative penalties of not more than \$2,500 per violation or \$10,000 per shipment for violations by persons licensed by the department, and the criminal prosecution of violations of its regulations by persons who are not licensed by the department.

3. Designated employees of the department and the Nevada highway patrol *division* shall enforce the regulations of the commission relating to the transport and handling of hazardous waste, as they affect the safety of drivers and vehicles and the leakage or spill of that waste from packages.

Sec. 22. NRS 459.700 is hereby amended to read as follows:

459.700 As used in NRS 459.700 to 459.780, inclusive, *and sections 2 to 18, inclusive, of this act*, unless the context otherwise requires, the words and terms defined in NRS 459.701 to 459.7028, inclusive, *and sections 2 to 6, inclusive, of this act* have the meanings ascribed to them in those sections.

Sec. 23. NRS 459.7024 is hereby amended to read as follows:

459.7024 "Hazardous material" means any substance or combination of substances, including ~~[solids, semisolids, liquids or contained gases, which:~~

~~—1.—Is identified as hazardous by the regulating agency as a result of studies undertaken to identify hazardous materials or wastes; and~~
~~—2.—Because of its quantity or concentration or its physical, chemical, radioactive or infectious characteristics may:~~
~~—(a)—Cause or significantly contribute to an increase in mortality or serious irreversible or incapacitating illness; or~~
~~—(b)—Pose a substantial hazard or potential hazard to human health, public safety or the environment when it is given improper treatment, storage, transportation, disposal or other management, including toxins, corrosives, flammable materials, irritants, strong sensitizers and materials which generate pressure by decomposition, heat or otherwise.]~~ **any hazardous material, hazardous waste, hazardous substance or marine pollutant:**

- 1. Of a type and amount for which a vehicle transporting the substance must be placarded pursuant to 49 C.F.R. Part 172;**
- 2. Of a type and amount for which a uniform hazardous waste manifest is required pursuant to 40 C.F.R. Part 262; or**
- 3. Which is transported in bulk packaging, as defined in 49 C.F.R. § 171.8.**

Sec. 24. NRS 459.708 is hereby amended to read as follows:

459.708 1. A common, contract or private motor carrier of property who is transporting radioactive waste shall reject any package containing the waste which is tendered to him for transport in this state if the package:

- (a) Is leaking or spilling its contents;
- (b) Does not bear a ~~[required shipping label;]~~ :
 - (1) Mark required pursuant to 49 C.F.R. Part 172, Subpart D;**
 - (2) Label required pursuant to 49 C.F.R. Part 172, Subpart E; or**
 - (3) Placard required pursuant to 49 C.F.R. Part 172, Subpart F; or**
- (c) Is not accompanied by a ~~[bill of lading or other shipping document in a form prescribed by the regulations of the state board of health.]~~ :

- (1) Shipping paper required pursuant to 49 C.F.R. Part 172, Subpart C; or**
- (2) Manifest required pursuant to 10 C.F.R. Part 20, Appendix G.**

2. A carrier who accepts radioactive waste for transport in this state is liable for any package in his custody which leaks or spills its contents, does not bear the required ~~[shipping]~~ **mark**, label **or placard**, or is not accompanied by the required shipping ~~[documents,]~~ **paper or manifest**, unless, in the case of a leak or spill of the waste and by way of affirmative defense, the carrier proves that he did not and could not know of the leak when he accepted the package for transport.

Sec. 25. NRS 459.725 is hereby amended to read as follows:

459.725 1. The director is responsible for administering the provisions of NRS ~~[459.705]~~ **459.708** to 459.725, inclusive, **and sections 2 to 17, inclusive, of this act** and **, subject to the limitations contained in those provisions,** may adopt **such** regulations **as he deems necessary** for that purpose. **The regulations adopted pursuant to this section must be consistent with any applicable statutes and regulations of the Federal Government.**

2. The director shall adopt regulations:

(a) For the security of the repository for information concerning hazardous materials in Nevada so that it is adequately protected from fire, theft, loss, destruction, other hazards and unauthorized access.

(b) Prescribing the manner in which information concerning hazardous materials is submitted to the division by state and local governmental agencies.

(c) Providing for the imposition of fees to pay the cost of:

(1) Any registration and permitting required to carry out the uniform program; and

(2) Any other regulation pursuant to the provisions of NRS 459.708 to 459.725, inclusive, and sections 2 to 17, inclusive, of this act. Money received by the department from the fees imposed pursuant to this paragraph must be deposited with the state treasurer for credit to the state highway fund and used only to carry out the provisions of NRS 459.708 to 459.725, inclusive, and sections 2 to 17, inclusive, of this act.

3. The director, on behalf of this state, may enter into any agreements with:

(a) The Federal Government;

(b) Other states; and

(c) A national repository established to assist in the administration of the uniform program, as are appropriate for the administration of the uniform program.

Sec. 26. NRS 459.735 is hereby amended to read as follows:

459.735 1. The contingency account for hazardous materials is hereby created in the state general fund.

2. The commission shall administer the contingency account for hazardous materials, and the money in the account may be expended only for:

(a) Carrying out the provisions of NRS 459.735 to 459.773, inclusive;

(b) Carrying out the provisions of Public Law 99-499 and Title I of Public Law 93-633;

(c) Maintaining and supporting the operations of the commission and local emergency planning committees;

(d) Training and equipping state and local personnel to respond to accidents and incidents involving hazardous materials; and

(e) ~~{Operation}~~ ***The operation*** of training programs and a training center for handling emergencies relating to hazardous materials and related fires pursuant to NRS 477.045.

3. All money received by this state as a result of Public Law 99-499 or Title I of Public Law 93-633 must be deposited with the state treasurer to the credit of the contingency account for hazardous materials. In addition, all money received by the commission from any source must be deposited with the state treasurer to the credit of the contingency account for hazardous materials. The state controller shall transfer from the contingency account to the operating account of the state fire marshal such money collected pursuant to chapter 477 of NRS as is authorized for expenditure in the budget of the state fire marshal for use pursuant to paragraph (e) of subsection 2.

4. Upon the presentation of budgets in the manner required by law, money to support the operation of the commission pursuant to this chapter, other than its provision of grants, must be provided by direct legislative appropriation from the state highway fund to the contingency account for hazardous materials.

5. The interest and income earned on the money in the contingency account ~~{}~~ ***for hazardous materials***, after deducting any applicable charges, must be credited to the account.

~~{4.}~~ ***6. All claims against the contingency account for hazardous materials must be paid as other claims against the state are paid.***

Sec. 27. NRS 459.775 is hereby amended to read as follows:
459.775 Any person who:

1. Transports a hazardous material in a motor vehicle without ~~{a valid permit;}~~ ***the permit required pursuant to section 8 of this act;***

2. Transports a hazardous material in a motor vehicle that has not been inspected pursuant to ~~{the}~~ ***any*** regulations of the department ~~{}~~ ***requiring an inspection;***

3. Fails to carry the permit ***required pursuant to section 8 of this act*** or a copy of the permit in the driver's compartment of the motor vehicle if required to do so by a regulation of the department;

4. Transports a hazardous material in a motor vehicle under ~~{an expired permit;}~~ ***a permit required pursuant to section 8 of this act which has expired;***

5. Violates any of the terms or conditions of a permit ~~{issued by the division;}~~ ***required pursuant to section 8 of this act;*** or

6. Fails to pay when due any fee established pursuant to NRS 459.744,
is guilty of a misdemeanor.

Sec. 28. NRS 459.780 is hereby amended to read as follows:
459.780 Any person who:

1. Allows the use of a permit ~~{for identifying device issued by the division}~~ ***required pursuant to section 8 of this act*** by a person not entitled thereto;

2. Uses a permit ~~for identifying device~~ *required pursuant to section 8 of this act* to which he is not entitled;
 3. Alters, forges or counterfeits a permit ~~for identifying device issued by the division;~~ *required pursuant to section 8 of this act*;
 4. Uses a permit ~~for identifying device~~ *required pursuant to section 8 of this act* which has been altered, forged or counterfeited;
 5. Submits false information on an application or other form used to obtain a permit ~~to transport hazardous materials in a motor vehicle;~~ *required pursuant to section 8 of this act*;
 6. Transports a hazardous material in a motor vehicle under a permit *required pursuant to section 8 of this act* which has been suspended or revoked; or
 7. Transports a hazardous material in a motor vehicle which failed to pass ~~the required~~ *any* inspection for safety ~~as~~ *required by a regulation of the department*,
- is guilty of a gross misdemeanor.

Sec. 29. NRS 459.790 is hereby amended to read as follows:

459.790 As used in NRS 459.790 to 459.796, inclusive, unless the context otherwise requires, "hazardous material" has the meaning ascribed to it in NRS 459.7024, and includes ~~the materials so identified and listed in regulations adopted by the director of the department of motor vehicles and public safety pursuant to NRS 459.710 and~~ any other substance which is regulated pursuant to this chapter.

Sec. 30. NRS 459.705, 459.707, 459.710, 459.713, 459.720 and 459.730 are hereby repealed.

Sec. 31. This act becomes effective upon passage and approval.

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