S T A T E O F N E W Y O R K

4882

2009-2010 Regular Sessions

I N A S S E M B L Y

February 6, 2009

Introduced by M. of A. ALESSI -- Multi-Sponsored by -- M. of A. EDDINGTON -- read once and referred to the Committee on Transportation

AN ACT to amend the transportation law, in relation to procedures and protocol for a utility service interruption emergency

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

Section 1. The transportation law is amended by adding a new section 23 to read as follows:

S 23. UTILITY SERVICE INTERRUPTION EMERGENCIES. 1. AS USED IN THIS SECTION, THE FOLLOWING TERMS SHALL HAVE THE FOLLOWING MEANINGS:

(A) "COMMERCIAL DRIVER'S LICENSE" (CDL) MEANS A CLASS A OR B DRIVER'S LICENSE OR A CLASS C DRIVER'S LICENSE WHICH BEARS AN H, P OR X ENDORSEMENT, WHICH LICENSES CONTAIN THE LEGEND COMMERCIAL DRIVING LICENSE OR CDL THEREON AND WHICH IS ISSUED IN ACCORDANCE WITH THE COMMERCIAL MOTOR VEHICLE SAFETY ACT OF 1986, PUBLIC LAW 99-570, TITLE XII, AND THE VEHICLE AND TRAFFIC LAW, WHICH AUTHORIZES A PERSON TO OPERATE A COMMERCIAL MOTOR VEHICLE.

(B) "COMMERCIAL MOTOR VEHICLE" (CMV) MEANS A MOTOR VEHICLE THAT HAS ANY OF THE FOLLOWING CHARACTERISTICS:

(1) A GROSS VEHICLE WEIGHT (GVW), GROSS VEHICLE WEIGHT RATING (GVWR), GROSS COMBINATION WEIGHT (GCW), OR GROSS COMBINATION WEIGHT RATING (GCWR) OF 4,537 KILOGRAMS (10,001 POUNDS) OR MORE.

(2) REGARDLESS OF WEIGHT, IS DESIGNED OR USED TO TRANSPORT 16 OR MORE PASSENGERS, INCLUDING DRIVER.

(3) REGARDLESS OF WEIGHT, IS USED IN THE TRANSPORTATION OF HAZARDOUS MATERIALS AND IS REQUIRED TO BE PLACARDED PURSUANT TO 49 CFR PART 172, SUBPART F.

(C) "UTILITY SERVICE INTERRUPTION EMERGENCY" SHALL MEAN AN OUTAGE OR INTERRUPTION OF UTILITY SERVICE IN NEW YORK STATE DUE TO AN EMERGENCY.

(D) "EMERGENCY" SHALL MEAN ANY HURRICANE, TORNADO, STORM (E.G. THUNDERSTORM, SNOWSTORM, ICESTORM, BLIZZARD, SANDSTORM, ETC.), HIGH WATER,

EXPLANATION--Matter in ITALICS (underscored) is new; matter in brackets [ ] is old law to be omitted.

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WIND-DRIVEN WATER, TIDAL WAVE, TSUNAMI, EARTHQUAKE, VOLCANIC ERUPTION, MUD SLIDE, DROUGHT, FOREST FIRE, EXPLOSION, BLACKOUT OR OTHER OCCURRENCE, NATURAL OR MAN-MADE, WHICH INTERRUPTS THE DELIVERY OF ESSENTIAL SERVICES (SUCH AS, ELECTRICITY, MEDICAL CARE, SEWER, WATER, TELECOMMUNICATIONS, AND TELECOMMUNICATION TRANSMISSIONS) OR ESSENTIAL SUPPLIES (SUCH AS, FOOD AND FUEL) OR OTHERWISE IMMEDIATELY THREATENS HUMAN LIFE OR PUBLIC WELFARE, PROVIDED SUCH HURRICANE, TORNADO, OR OTHER EVENT RESULTS IN:

(1) A DECLARATION OF AN EMERGENCY BY THE PRESIDENT OF THE UNITED STATES, THE GOVERNOR OF NEW YORK STATE, OR HIS OR HER AUTHORIZED REPRESENTATIVES HAVING AUTHORITY TO DECLARE EMERGENCES, BY THE FMCSA FIELD ADMINISTRATOR FOR THE GEOGRAPHICAL AREA IN WHICH THE OCCURRENCE HAPPENS, OR BY OTHER FEDERAL, STATE OR LOCAL GOVERNMENT OFFICIALS HAVING AUTHORITY TO DECLARE EMERGENCIES, OR

(2) A REQUEST BY A POLICE OFFICER FOR TOW TRUCKS TO MOVE WRECKED OR DISABLED MOTOR VEHICLES.

(E) "UTILITY SERVICE" SHALL MEAN THE REPAIRING, MAINTAINING OR OPERATING OF ANY STRUCTURE OR ANY OTHER PHYSICAL FACILITIES NECESSARY FOR THE DELIVERY OF UTILITY SERVICES, INCLUDING THE FURNISHING OF ELECTRIC, GAS, WATER, SANITARY SEWER, TELEPHONE, AND TELEVISION CABLE OR COMMUNITY ANTENNA SERVICE.

(F) "UTILITY SERVICE VEHICLE" SHALL MEAN ANY COMMERCIAL MOTOR VEHICLE;

(1) USED IN THE FURTHERANCE OF REPAIRING, MAINTAINING, OR OPERATING ANY STRUCTURES OR ANY OTHER PHYSICAL FACILITIES NECESSARY FOR THE DELIVERY OF PUBLIC UTILITY SERVICES, INCLUDING THE FURNISHING OF ELECTRIC, GAS, WATER, SANITARY SEWER, TELEPHONE, AND TELEVISION CABLE OR COMMUNITY ANTENNA SERVICE;

(2) WHILE ENGAGED IN ANY ACTIVITY NECESSARILY RELATED TO THE ULTIMATE DELIVERY OF SUCH PUBLIC UTILITY SERVICES TO THE CONSUMERS, INCLUDING TRAVEL OR MOVEMENT TO, FROM, UPON, OR BETWEEN ACTIVITY SITES (INCLUDING OCCASIONAL TRAVEL OR MOVEMENT OUTSIDE THE SERVICE AREA NECESSITATED BY ANY UTILITY EMERGENCY AS DETERMINED BY THE UTILITY PROVIDER); AND

(3) EXCEPT FOR ANY OCCASIONAL EMERGENCY USE, OPERATED PRIMARILY WITHIN THE SERVICE AREA OF A UTILITY'S SUBSCRIBERS OR CONSUMERS, WITHOUT REGARD TO WHETHER THE VEHICLE IS OWNED, LEASED, OR RENTED BY THE UTILITY.

2. UPON RECEIPT OF NOTIFICATION OF A UTILITY SERVICE INTERRUPTION EMERGENCY BY A UTILITY SERVICE PROVIDER, THE DEPARTMENT SHALL DECLARE THAT AN EMERGENCY EXISTS FOR THE PURPOSES OF 49 CFR 390.23. SHOULD AN AUDIT BY THE DEPARTMENT ESTABLISH THAT THERE HAS BEEN AN ABUSE OF THE NOTIFICATION PROCEDURE BY A UTILITY SERVICE PROVIDER, THE DEPARTMENT MAY REFUSE TO GRANT EMERGENCY DECLARATIONS TO THAT UTILITY SERVICE PROVIDER IN THE FUTURE WITHOUT FURTHER CONFIRMATION OF THE EXISTENCE OF A UTILITY SERVICE INTERRUPTION EMERGENCY.

3. A UTILITY SERVICE INTERRUPTION EMERGENCY CONTINUES UNTIL:

(A) THE NECESSARY MAINTENANCE OR REPAIR WORK IS COMPLETED; AND

(B) PERSONNEL USED TO PERFORM NECESSARY MAINTENANCE OR REPAIR WORK HAVE RETURNED TO THEIR RESPECTIVE NORMAL WORK ROUTINES.

4. AN INDIVIDUAL IS EXEMPT FROM ANY REGULATION OF THE MAXIMUM HOURS OF SERVICE THAT AN EMPLOYEE MAY WORK UNDER 49 CFR 395 IF HE OR SHE:

(A) IS THE HOLDER OF A COMMERCIAL DRIVER'S LICENSE; OR

(B) (1) IS AN EMPLOYEE;

(2) IS AN EMPLOYEE OF A CONTRACTOR; OR

(3) IS AN EMPLOYEE OF SUBCONTRACTOR; OF A UTILITY SERVICE PROVIDER IN AN EMPLOYMENT CAPACITY IN WHICH THE COMMERCIAL DRIVER'S LICENSE IS USED; OR

(C) OPERATES A COMMERCIAL MOTOR VEHICLE AS A UTILITY SERVICE VEHICLE AND ENGAGES IN INTRASTATE MAINTENANCE OR REPAIR WORK IN RESPONSE TO A UTILITY SERVICE INTERRUPTION EMERGENCY OR A LOSS OF SUCH SERVICE THAT IS UNEXPECTED, UNPLANNED OR UNSCHEDULED.

5. THE EXEMPTION FOR MAXIMUM HOURS OF SERVICE REGULATIONS PROVIDED UNDER SUBDIVISION FOUR SHALL NOT EXCEED THE DURATION OF THE UTILITY SERVICE PROVIDER'S OR DRIVER'S DIRECT ASSISTANCE IN PROVIDING UTILITY SERVICE INTERRUPTION EMERGENCY RELIEF, OR FIVE DAYS FROM THE DATE OF THE INITIAL DECLARATION, WHICHEVER IS LESS.

6. THE EXEMPTION OF THE REGULATION PROVIDED FOR IN THIS SECTION SHALL EXPIRE IF THE SECRETARY OF THE UNITED STATES DEPARTMENT OF TRANSPORTATION DETERMINES THAT IT IS IN CONFLICT WITH THE INTENT OF THE FEDERAL MOTOR CARRIER SAFETY REGULATIONS. NOTHING IN THIS SECTION SHALL BE CONSTRUED TO CONTRAVENE ANY FEDERAL LAW OR TO JEOPARDIZE STATE OF NEW YORK ENTITLEMENT TO FEDERAL FUNDING. IF ANY PROVISION OF THIS SECTION OR ITS APPLICATION IS FOUND TO JEOPARDIZE FEDERAL FUNDING, THAT PROVISION IS DECLARED INVALID BUT DOES NOT AFFECT ANY OTHER PROVISION OR APPLICATION. THE PROVISIONS OF THIS SECTION ARE DECLARED TO BE SEVERABLE.

S 2. This act shall take effect immediately.