

5611

2009-2010 Regular Sessions

I N S E N A T E

May 21, 2009

Introduced by Sen. KLEIN -- read twice and ordered printed, and when printed to be committed to the Committee on Transportation

AN ACT to amend the transportation law and the vehicle and traffic law, in relation to the regulation of ambulette motor vehicles and the operators thereof

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

1 Section 1. Legislative findings. The legislature hereby finds that
2 non-emergency medical transportation is a vital part of the provision of
3 medical services in this state. The purpose of this act is to establish
4 uniform standards for the non-emergency medical transportation industry
5 throughout the state that ensure a consistent level of safety and quality.
6 ty.
7 S 2. The opening paragraph of subparagraph 1 of paragraph a of subdivision
8 5 of section 80 of the transportation law, as amended by chapter
9 487 of the laws of 1993, is amended to read as follows:
10 Notwithstanding any other provision of law, in any city with a population
11 of over one million, the commissioner shall not have jurisdiction
12 over the regulation of any van service or other common carrier of
13 passengers by motor vehicle covered under article seven of this chapter
14 when such van service or other such common carrier is operated wholly
15 within the boundaries of such city or is operated partly within such
16 city if the partial operation consists of the pick up and discharge of
17 passengers wholly within such city, when such city has adopted an ordinance,
18 local law or charter to regulate or franchise such operations;
19 provided, however, that the commissioner shall have exclusive jurisdiction
20 with respect to the safety of operation of motor vehicles operated
21 as van services or other such common carriers of passengers, except that
22 concurrent jurisdiction with respect to enforcement of such safety standards
23 may be transferred pursuant to agreement between the department
24 and such city; and provided further that the commissioner shall have

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

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1 exclusive jurisdiction with respect to van services [and], other such
2 common carriers AND MOTOR VEHICLES that are designed for the transport
3 of transportation disabled persons, as defined in section fifteen-b of
4 this chapter, [except that such city shall continue to have jurisdiction
5 over the licensure of wheelchair accessible vans and drivers of such
6 vans as provided in chapter five of title nineteen of the administrative
7 code of the city of New York] ANY OTHER DISABLED PERSONS, OR PERSONS IN
8 NEED OF NON-EMERGENCY MEDICAL TRANSPORTATION PURSUANT TO SECTION THREE
9 HUNDRED SIXTY-FIVE-H OF THE SOCIAL SERVICES LAW; and provided further
10 that the commissioner shall have exclusive jurisdiction with respect to
11 the operations of motor vehicles as van services or other such common
12 carriers of passengers covered under article seven of this chapter to or
13 from an airport in such city when such van services or other such common
14 carriers of passengers have been issued a permit by the port authority
15 of New York and New Jersey to operate at an airport in such city or
16 apply for such permit and within a reasonable period of time are issued
17 such permit by such authority. Such local law or ordinance shall:

18 S 3. Subparagraph (iv) of paragraph a of subdivision 2 of section 140
19 of the transportation law, as added by chapter 853 of the laws of 1992,
20 is amended to read as follows:

21 (iv) All van services or other common carriers of passengers by motor
22 vehicle covered under article seven of this chapter, which van services
23 or other such common carriers of passengers are operated pursuant to or
24 requiring regulatory authority from any city with a population of over
25 one million that has adopted an ordinance or local law pursuant to
26 subdivision five of section eighty of this chapter. NOTWITHSTANDING THE
27 REQUIREMENTS ABOVE THE COMMISSIONER SHALL HAVE THE POWER TO ADOPT RULES
28 AND REGULATIONS GOVERNING THE SAFETY OF OPERATIONS OF VAN SERVICES,
29 OTHER SUCH COMMON CARRIERS AND MOTOR VEHICLES THAT ARE DESIGNED FOR THE
30 TRANSPORTATION OF DISABLED PERSONS INCLUDING WHEELCHAIR ACCESSIBLE VANS
31 OR PERSONS IN NEED OF NON-EMERGENCY MEDICAL TRANSPORTATION PURSUANT TO
32 SECTION THREE HUNDRED SIXTY-FIVE-H OF THE SOCIAL SERVICES LAW.

33 S 4. The transportation law is amended by adding a new section 160 to
34 read as follows:

35 S 160. ISSUANCE OF SPECIAL PERMITS FOR COMMON CARRIERS OF PASSENGERS
36 THAT ARE TRANSPORTATION DISABLED. 1. IN ADDITION TO THE OTHER PROVISIONS
37 OF THIS ARTICLE, NO PERSON SHALL ENGAGE IN THE TRANSPORTATION OF PASSEN-
38 GERS THAT ARE TRANSPORTATION DISABLED OR IN NEED OF NON-EMERGENCY
39 MEDICAL TRANSPORTATION PURSUANT TO SECTION THREE HUNDRED SIXTY-FIVE-H OF
40 THE SOCIAL SERVICES LAW IN A CITY WITH A POPULATION OF ONE MILLION OR
41 MORE, OR HOLD THEMSELVES OUT BY ADVERTISING, OR ANY OTHER MEANS TO
42 PROVIDE SUCH TRANSPORTATION, UNLESS THERE IS IN FORCE WITH RESPECT TO
43 SUCH PERSON OR PERSONS A SPECIAL CERTIFICATE ISSUED BY THE COMMISSIONER.

44 2. NO SPECIAL CERTIFICATE SHALL BE ISSUED BY THE COMMISSIONER UNLESS
45 THE PERSONS OR PERSONS AGREE TO:

46 A. MAINTAIN AND STORE ELECTRONIC TRIP TICKET RECORDS WHICH CONTEMPORA-
47 NEOUSLY WITH THE TRIP CAPTURE PICK-UP AND DROP-OFF PASSENGER INFORMA-
48 TION;

49 B. VEHICLE AGE AND RETIREMENT REQUIREMENTS SUCH THAT VEHICLES
50 PRESENTED FOR INITIAL LICENSURE MUST HAVE BEEN DRIVEN NO MORE THAN FIFTY
51 THOUSAND MILES, REDUCING TO TWENTY-FIVE THOUSAND MILES FOR VEHICLES
52 PRESENTED FOR INITIAL LICENSURE BEGINNING ON JANUARY FIRST, TWO THOUSAND
53 TEN, AND REDUCING TO FIVE HUNDRED MILES BEGINNING ON JANUARY FIRST, TWO
54 THOUSAND ELEVEN. IN ADDITION, BEGINNING ON JANUARY FIRST, TWO THOUSAND
55 ELEVEN, VEHICLES PRESENTED FOR INITIAL LICENSURE MUST BE OF THE CURRENT
56 OR IMMEDIATELY PRECEDING MODEL YEAR. VEHICLES MANUFACTURED IN MODEL

1 YEAR TWO THOUSAND OR EARLIER MUST BE RETIRED FROM PARATRANSIT SERVICE NO
2 LATER THAN THE EXPIRATION OF THEIR VEHICLE LICENSE OCCURRING NEXT AFTER
3 JANUARY FIRST, TWO THOUSAND NINE. VEHICLES FROM MODEL YEAR TWO THOUSAND
4 TWO OR EARLIER MUST BE RETIRED NO LATER THAN THEIR LICENSE EXPIRATION
5 OCCURRING NEXT AFTER JANUARY FIRST, TWO THOUSAND TEN. VEHICLES FROM
6 MODEL YEAR TWO THOUSAND FOUR OR EARLIER MUST BE RETIRED NO LATER THAN
7 THEIR LICENSE EXPIRATION OCCURRING NEXT AFTER JANUARY FIRST, TWO THOU-
8 SAND ELEVEN. BEGINNING ON JANUARY FIRST, TWO THOUSAND TWELVE, ALL VEHI-
9 CLES MUST BE RETIRED NO LATER THAN SEVEN YEARS AFTER THE VEHICLE WAS
10 FIRST LICENSED.

11 S 5. Subdivision 1 of section 509-a of the vehicle and traffic law,
12 as amended by chapter 853 of the laws of 1992, is amended to read as
13 follows:

14 (1) bus shall mean every motor vehicle, owned, leased, rented or
15 otherwise controlled by a motor carrier, which

16 (a) is a school bus as defined in section one hundred forty-two of
17 this chapter or has a seating capacity of more than ten adult passengers
18 in addition to the driver and which is used for the transportation of
19 persons under the age of twenty-one or persons of any age who are
20 mentally or physically disabled to a place of vocational, academic or
21 religious instruction or religious service including nursery schools,
22 day care centers and camps,

23 (b) is required to obtain approval to operate in the state as a common
24 or contract carrier of passengers by motor vehicle from the commissioner
25 of transportation, or the interstate commerce commission,

26 (c) is regulated as a bus line by a city that has adopted an ordi-
27 nance, local law or charter to regulate or franchise bus line operations
28 pursuant to subdivision four of section eighty of the transportation
29 law,

30 (d) is regulated as a van service or other common carrier of passen-
31 gers by motor vehicle covered under article seven of the transportation
32 law by a city with a population of over one million pursuant to an ordi-
33 nance or local law adopted pursuant to subdivision five of section
34 eighty of the transportation law [or],

35 (e) is operated by a transit authority or municipality and is used to
36 transport persons for hire, OR

37 (F) IS A MOTOR VEHICLE FOR THE TRANSPORTATION OF DISABLED PERSONS OR
38 PERSONS IN NEED OF NON-EMERGENCY MEDICAL TRANSPORTATION PURSUANT TO
39 SECTION THREE HUNDRED SIXTY-FIVE-H OF THE SOCIAL SERVICES LAW.

40 Provided, however, that bus shall not mean an authorized emergency
41 vehicle operated in the course of an emergency, or a motor vehicle used
42 in the transportation of agricultural workers to and from their place of
43 employment;

44 S 6. Subdivision 2 of section 509-d of the vehicle and traffic law, as
45 added by chapter 675 of the laws of 1985, paragraph (a) as amended by
46 chapter 164 of the laws of 2003, is amended to read as follows:

47 (2) Investigations and inquiries of drivers of [school] CERTAIN buses;
48 maintenance of file; availability to subsequent employer. (a) A motor
49 carrier shall request the department to initiate a criminal history
50 check for persons employed as drivers of school buses, as defined in
51 paragraph (a) of subdivision one of section five hundred nine-a of this
52 [chapter] ARTICLE, on September fourteenth, nineteen hundred eighty-five
53 by such motor carrier, in accordance with regulations of the commission-
54 er by requiring such school bus drivers to submit to the mandated fing-
55 erprinting procedure. The department [of motor vehicles] at the request
56 of the motor carrier shall initiate a criminal history check of all

1 current school bus drivers of such motor carrier as well as those hired
2 on or after September fifteenth, nineteen hundred eighty-five by requir-
3 ing such drivers and applicants to submit to the mandated fingerprinting
4 procedure as part of the school bus driver qualification procedure. Such
5 fingerprinting procedure and the related fee as well as a procedure for
6 the return of such fingerprints upon application of a person who has
7 terminated employment as a school bus driver shall be established in
8 accordance with regulations of the commissioner in consultation with the
9 commissioner of [the division of] criminal justice services. The fee to
10 be paid by or on behalf of the school bus driver or applicant shall be
11 no more than five dollars over the cost to the commissioner for the
12 criminal history check. No cause of action against the department, the
13 division of criminal justice services, a motor carrier or political
14 subdivision for damages related to the dissemination of criminal history
15 records pursuant to this section shall exist when such department, divi-
16 sion, motor carrier or political subdivision has reasonably and in good
17 faith relied upon the accuracy and completeness of criminal history
18 information furnished to it by qualified agencies. Fingerprints submit-
19 ted to the division of criminal justice services pursuant to this subdivi-
20 sion may also be submitted to the federal bureau of investigation for
21 a national criminal history record check.

22 (b) A MOTOR CARRIER SHALL REQUEST THE DEPARTMENT TO INITIATE A CRIMI-
23 NAL HISTORY CHECK FOR PERSONS EMPLOYED AS DRIVERS OF MOTOR VEHICLES USED
24 FOR THE TRANSPORTATION OF DISABLED PERSONS OR PERSONS IN NEED OF NON-EM-
25 ERGENCY MEDICAL TRANSPORTATION, AS PROVIDED IN SECTION THREE HUNDRED
26 SIXTY-FIVE-H OF THE SOCIAL SERVICES LAW, IN ACCORDANCE WITH REGULATIONS
27 OF THE COMMISSIONER BY REQUIRING SUCH DRIVERS TO SUBMIT TO THE MANDATED
28 FINGERPRINTING PROCEDURE. THE DEPARTMENT AT THE REQUEST OF THE MOTOR
29 CARRIER SHALL INITIATE A CRIMINAL HISTORY CHECK OF ALL SUCH CURRENT
30 DRIVERS OF SUCH MOTOR CARRIER BY REQUIRING SUCH DRIVERS AND APPLICANTS
31 TO SUBMIT TO THE MANDATED FINGERPRINTING PROCEDURE AS PART OF THE DRIVER
32 QUALIFICATION PROCEDURE. SUCH FINGERPRINTING PROCEDURE AND THE RELATED
33 FEE AS WELL AS A PROCEDURE FOR THE RETURN OF SUCH FINGERPRINTS UPON
34 APPLICATION OF A PERSON WHO HAS TERMINATED EMPLOYMENT AS SUCH A DRIVER
35 SHALL BE ESTABLISHED IN ACCORDANCE WITH REGULATIONS OF THE COMMISSIONER
36 IN CONSULTATION WITH THE COMMISSIONER OF CRIMINAL JUSTICE SERVICES. THE
37 FEE TO BE PAID BY OR ON BEHALF OF THE DRIVER OR APPLICANT SHALL BE NO
38 MORE THAN FIVE DOLLARS OVER THE COST TO THE COMMISSIONER FOR THE CRIMI-
39 NAL HISTORY CHECK. NO CAUSE OF ACTION AGAINST THE DEPARTMENT, THE DIVI-
40 SION OF CRIMINAL JUSTICE SERVICES, A MOTOR CARRIER OR POLITICAL SUBDIVI-
41 SION FOR DAMAGES RELATED TO THE DISSEMINATION OF CRIMINAL HISTORY
42 RECORDS PURSUANT TO THIS SECTION SHALL EXIST WHEN SUCH DEPARTMENT, DIVI-
43 SION, MOTOR CARRIER OR POLITICAL SUBDIVISION HAS REASONABLY AND IN GOOD
44 FAITH RELIED UPON THE ACCURACY AND COMPLETENESS OF CRIMINAL HISTORY
45 INFORMATION FURNISHED TO IT BY QUALIFIED AGENCIES. FINGERPRINTS SUBMIT-
46 TED TO THE DIVISION OF CRIMINAL JUSTICE SERVICES PURSUANT TO THIS SUBDI-
47 VISION MAY ALSO BE SUBMITTED TO THE FEDERAL BUREAU OF INVESTIGATION FOR
48 A NATIONAL CRIMINAL HISTORY RECORD CHECK.

49 (c) After a motor carrier has completed the procedures set forth in
50 EITHER paragraph (a) OR (B) OF this [of] subdivision, it shall designate
51 each new [school] bus driver as a conditional [school] bus driver [as
52 defined in section five hundred nine-h of this article], until the
53 carrier is in receipt of information of the new [school] bus driver's
54 qualification from the department and the required driving records from
55 each appropriate state agency. If the information received indicates
56 that there is a pending criminal offense or driving violation that would

1 require disqualification of a [school] bus driver under this article,
2 the motor carrier shall require the applicant to provide documentation
3 evidencing the disposition of such offense or violation in accordance
4 with regulations established by the commissioner. The department, upon
5 notice of disqualification to an applicant, shall include in such notice
6 information regarding the applicant's right to appeal and contest any
7 claimed ground for disqualification. Such notice shall also advise the
8 applicant of his or her right to obtain, examine, inspect and copy any
9 information used by the department in support of its determination of
10 disqualification. In the event the applicant contests the existence of a
11 criminal conviction in his or her name, such applicant may provide
12 documentation evidencing the disposition of such offense or violation in
13 accordance with regulations established by the commissioner.

14 S 7. Section 509-h of the vehicle and traffic law, as amended by chap-
15 ter 675 of the laws of 1985, is amended to read as follows:

16 S 509-h. Operation by person not licensed to drive a bus. The motor
17 carrier shall not knowingly permit any person to operate a bus carrying
18 passengers unless the driver meets all of the requirements of this arti-
19 cle; except that a motor carrier may permit a conditional [school] bus
20 driver who is not otherwise disqualified under the provisions of this
21 article to operate a bus for a period not to exceed ninety days or a
22 longer period if granted a written extension of such ninety day period
23 by the department pursuant to regulations established by the commission-
24 er. Such regulation shall authorize extension for at least that period
25 of time necessary to review information regarding the prior criminal
26 history of the applicant.

27 S 8. Section 509-l of the vehicle and traffic law is amended by adding
28 a new subdivision 3 to read as follows:

29 3. A MOTOR CARRIER SHALL REQUIRE EVERY PERSON EMPLOYED AS THE DRIVER
30 OF A BUS, AS DEFINED IN PARAGRAPH (A) OR (F) OF SUBDIVISION ONE OF
31 SECTION FIVE HUNDRED NINE-A OF THIS ARTICLE, TO SUBMIT TO DRUG TESTING
32 AT THE EXPENSE OF SUCH MOTOR CARRIER IN ACCORDANCE WITH REGULATIONS
33 PROMULGATED BY THE COMMISSIONER. ALL SUCH DRIVERS SHALL SUBMIT TO DRUG
34 TESTING UPON BEING HIRED AND NOT LESS OFTEN THAN ONCE EACH YEAR THERE-
35 AFTER. ANY DRIVER WHO TESTS POSITIVE FOR A CONTROLLED SUBSTANCE OR ALCO-
36 HOLIC BEVERAGE SHALL NOT BE PERMITTED TO OPERATE SUCH A BUS. THE DRUG
37 TEST SHALL BE ADMINISTERED BY A PERSON OR ENTITY HOLDING THE REQUISITE
38 PERMIT FROM THE DEPARTMENT OF HEALTH. IN THE EVENT THE BUS DRIVER
39 CONTESTS THE RESULTS OF THE DRUG TEST, THE MOTOR CARRIER SHALL ALLOW THE
40 DRIVER TO PROVIDE ONE ADDITIONAL SAMPLE FOR TESTING AT SUCH DRIVER'S
41 EXPENSE.

42 S 9. This act shall take effect on the sixtieth day after it shall
43 have become a law.