
By: **Senator Garagiola**

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Assigned to: Judicial Proceedings

Committee Report: Favorable with amendments

Senate action: Adopted

Read second time: March 20, 2005

CHAPTER_____

1 AN ACT concerning

2 **Vehicle Laws - Utility Emergencies - Incidental Drivers**

3 FOR the purpose of providing that certain provisions relating to motor carriers do not
 4 apply to certain incidental drivers during a declared utility emergency;
 5 ~~repealing a requirement that a utility emergency declared by the Secretary of~~
 6 ~~Transportation or the Secretary's designee must be renewed by the Governor if~~
 7 ~~it extends for more than a certain number of days; authorizing a utility company~~
 8 ~~to declare a utility emergency; requiring a utility company to file a certain plan~~
 9 ~~with the Secretary or the Secretary's designee before the utility company may~~
 10 ~~declare a utility emergency; requiring a utility company, if a utility emergency is~~
 11 ~~declared, to provide certain notification to the Secretary or the Secretary's~~
 12 ~~designee within a certain number of hours providing that certain incidental~~
 13 ~~drivers employed by or under contract with a utility company are exempt from~~
 14 ~~certain requirements during a certain utility emergency if the utility company~~
 15 ~~has prefiled certain information with the Secretary of Transportation or the~~
 16 ~~Secretary's designee; requiring the Secretary or the Secretary's designee to~~
 17 ~~require certain information, make a certain determination, and notify a utility~~
 18 ~~company of certain matters under certain circumstances; providing for renewal~~
 19 ~~of a certain utility emergency under certain circumstances; altering the~~
 20 ~~definition of "utility emergency" to include the disruption or potential~~
 21 ~~distribution disruption of certain cable service; defining certain terms; making~~
 22 ~~certain technical corrections and stylistic changes; and generally relating to~~
 23 utility emergencies.

24 BY repealing and reenacting, with amendments,

25 Article - Transportation

26 Section 25-111

27 Annotated Code of Maryland

(2002 Replacement Volume and 2004 Supplement)

SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF
MARYLAND, That the Laws of Maryland read as follows:

Article - Transportation

25-111.

(a) (1) In this section the following words have the meanings indicated.

(2) "Hazardous materials inspector" means a person who is assigned by
the Department of the Environment and certified by the Department of State Police
to perform an inspection authorized under this section.

(3) "INCIDENTAL DRIVER" MEANS AN INDIVIDUAL ~~WHO~~:

(I) WHO IS EMPLOYED BY OR CONTRACTS WITH A UTILITY
COMPANY OR IS EMPLOYED BY A PERSON WHO CONTRACTS WITH A UTILITY
COMPANY; AND

(II) WHOSE PRIMARY EMPLOYMENT BY OR CONTRACTUAL
AGREEMENT WITH THE UTILITY COMPANY IS NOT REQUIRED TO DRIVE A MOTOR
VEHICLE FOR MORE THAN 50% OF THE TOTAL NUMBER OF HOURS THE INDIVIDUAL
IS REQUIRED TO WORK UNDER THE INDIVIDUAL'S EMPLOYMENT OR CONTRACTUAL
AGREEMENT WITH THE UTILITY COMPANY AS A DRIVER OF A MOTOR VEHICLE; AND

(III) WHO DRIVES A MOTOR VEHICLE ONLY AS AN INCIDENTAL PART
OF THE INDIVIDUAL'S EMPLOYMENT OR CONTRACTUAL AGREEMENT WITH THE
UTILITY COMPANY.

(4) "Police officer" means:

(i) Any uniformed law enforcement officer who is certified or under
the direction of a law enforcement officer who is certified by the Department of State
Police to perform an inspection authorized under this section;

(ii) Any civilian employee of the Department of State Police
assigned to enforce any rule or regulation adopted under this section, but only while
acting under written authorization of the Secretary of the State Police;

(iii) Any civilian employee of the Maryland Transportation
Authority Police who is:

1. Acting under the immediate direction and control of a
uniformed police officer;

2. Acting under the written authorization of the Secretary of
the State Police; and

35 (2) A police officer who is certified by the Department of State Police to
36 perform an inspection authorized under this section, a Public Service Commission

1 inspector, or a hazardous materials inspector may conduct a safety inspection of the
2 vehicle that is subject to a rule or regulation adopted under this section or § 22-409 of
3 this article.

4 (c) The operation of a vehicle on any highway in this State constitutes the
5 consent of the driver and the owner of the vehicle to the inspection provided for in this
6 section.

7 (d) (1) The driver of a vehicle shall obey every sign and every direction of a
8 police officer or an electronic signal to a CVISN transponder to stop the vehicle and
9 submit to the required inspection.

10 (2) If a driver fails or refuses to comply with the direction of a police
11 officer or an electronic signal to a CVISN transponder to submit a vehicle to the
12 required inspection, the police officer shall have the authority to take the vehicle and
13 its load into temporary custody for the purpose of inspecting the vehicle, load, its
14 equipment, or documents.

15 (3) The police officer may utilize resources as specified in § 27-111(b) of
16 this article to conduct the safety inspection.

17 (4) In addition to any fine or penalty attributable to the inspection, or
18 other offense, the driver is:

19 (i) Subject to a fine and penalty as specified in § 27-101(l) of this
20 article; and

21 (ii) Responsible for any additional costs incurred in inspecting the
22 vehicle and its load because of the driver's failure or refusal to comply with the
23 direction of a police officer or an electronic signal to a CVISN transponder.

24 (e) A sign used to direct vehicles under this section may be displayed only by
25 a police officer who is assigned to enforce this section.

26 (f) (1) Except as provided in subsection (i) of this section, the
27 Administration may adopt rules and regulations as are necessary for the safe
28 operation of vehicles that:

29 (i) Exceed a gross vehicle weight rating of 10,000 pounds;

30 (ii) Are required to be marked or placarded for the transportation of
31 hazardous materials; or

32 (iii) Are designed to transport 16 or more passengers including the
33 driver over the highways of this State.

34 (2) Any rule or regulation adopted pursuant to this subsection shall:

35 (i) Be formulated jointly by the Motor Vehicle Administration and
36 the Department of State Police;

1 (ii) Duplicate or be consistent with the Federal Motor Carrier
2 Safety Regulations contained in 49 CFR, Parts 390 through 399;

3 (iii) Apply to all vehicles over 10,000 pounds rated gross vehicle
4 weight that are subject to the Federal Motor Carrier Safety Regulations;

5 (iv) Apply to vehicles over 10,000 pounds gross vehicle weight
6 rating that are not subject to the Federal Motor Carrier Safety Regulations, if the rule
7 or regulations adopted by the Motor Vehicle Administration specifically states that it
8 applies to the vehicle; and

9 (v) Be consistent with 49 CFR, Parts 40 and 382, with respect to
10 alcohol and drug testing regulations applicable to drivers required by regulation to
11 possess a commercial driver's license.

12 (3) The rules or regulations adopted under this subsection may require
13 that registrants of motor vehicles subject to this subsection have knowledge of
14 applicable federal and State motor carrier safety regulations.

15 (g) Any motor carrier operating a vehicle that is subject to the rules and
16 regulations adopted under this section shall, at all times when operating the vehicle
17 on a highway in this State, comply with the rules and regulations adopted under this
18 section.

19 (h) (1) During normal business hours, a police officer, a hazardous materials
20 inspector, or a Public Service Commission inspector may enter the premises and
21 inspect equipment and review and copy records of motor carriers subject to the rules
22 or regulations adopted under § 22-409 or § 23-302 of this article, Federal Motor
23 Carrier Safety Regulations, Federal Hazardous Material Regulations, or Public
24 Service Commission laws and regulations.

25 (2) During normal business hours, trained personnel from the
26 Commercial Vehicle Enforcement Division of the Department of State Police may
27 enter the premises and inspect, review, and copy records of motor carriers subject to
28 the regulations adopted under this section, § 22-409 of this article, or § 23-302 of this
29 article, including:

30 (i) Any record required by this section;

31 (ii) Driver qualification files;

32 (iii) Hours of service records;

33 (iv) Drug and alcohol testing records of drivers required to be tested
34 under this section; and

35 (v) Insurance records.

36 (i) (1) Except as provided for in paragraph (2) of this subsection, regulations
37 adopted under this section for intrastate motor carrier transportation may not:

1 (i) Apply the provisions of § 391.21, § 391.23, § 391.31 or § 391.35
2 of the Federal Motor Carrier Safety Regulations to:

3 1. A driver who is a regularly employed driver of a motor
4 carrier for a continuous period that began before July 1, 1986, if the driver continues
5 to be a regularly employed driver of the motor carrier; or

6 2. The motor carrier, with regard to a driver described under
7 item 1 of this subparagraph, if the motor carrier continues to employ the driver;

8 (ii) Limit a driver's time or hours on duty if:

9 1. The driver operates only within a 150 air mile radius of
10 the driver's normal work reporting location;

11 2. The driver returns to the driver's normal work reporting
12 location;

13 3. The driver is released from work within a period of 16
14 consecutive hours, not more than 12 of which are dedicated to driving, and is given at
15 least 8 consecutive hours off duty; and

16 4. Regardless of the number of motor carriers using the
17 driver's services, the driver:

18 A. If the employing motor carrier does not operate motor
19 vehicles every day of the week, has been on duty no more than 70 hours in a period of
20 7 consecutive days; or

21 B. If the employing motor carrier operates motor vehicles
22 every day of the week, has been on duty no more than 80 hours in a period of 8
23 consecutive days;

24 (iii) Require a driver to maintain a record of duty status if the driver
25 is not subject to item (ii) of this paragraph, except that, if a driver is on duty for a
26 period of more than 12 hours, the driver shall maintain a record of the driver's duty
27 status that:

28 1. For the first 12 hours of time on duty, accounts for all time
29 dedicated to driving; and

30 2. For all time on duty in excess of 12 hours, conforms to
31 federal regulations;

32 (iv) Apply the provisions of this paragraph or Parts 391 and 395 of
33 the Federal Motor Carrier Safety Regulations to a farmer, or an agent or employee of
34 a farmer, who operates farm equipment or a motor vehicle owned or operated by the
35 farmer in the transportation of supplies to a farm or the transportation of farm
36 products as defined in § 10-601 of the Agriculture Article within 150 air miles of the
37 farmer's farm; or

1 (v) Except in the case of bus drivers, apply the provisions of §
2 391.41(b)(1) through (11) of the Federal Motor Carrier Safety Regulations before
3 October 1, 2023 to any person who:

4 1. On October 1, 2003, was otherwise qualified to operate
5 and operated a vehicle or vehicle combination used in intrastate commerce with a
6 gross vehicle weight rating or gross combination weight rating of 10,001 pounds or
7 more and, after October 1, 2003, remained qualified to operate and continued to
8 operate such a vehicle;

9 2. Operates only in intrastate commerce; and

10 3. Has a mental or physical condition which would disqualify
11 the person under the Federal Motor Carrier Safety Regulations and:

12 A. The condition existed on October 1, 2003 or at the time of
13 the first physical examination after that date to which the person submitted as
14 required by regulations adopted by the Administration under subsection (k) of this
15 section; and

16 B. A physician who has examined the person has determined
17 that the condition has not substantially worsened and that no other disqualifying
18 medical or physical condition has developed since October 1, 2003 or the time of the
19 first required physical examination after that date.

20 (2) Nothing contained in this subsection limits regulation of the
21 qualifications or hours of service of a driver of a vehicle:

22 (i) In interstate commerce;

23 (ii) Transporting hazardous materials of a type and quantity
24 requiring placarding under Federal Hazardous Materials Regulations; or

25 (iii) Designed to transport 16 or more passengers, including the
26 driver.

27 (j) (1) Notwithstanding the provisions of § 14-107 of the Public Safety
28 Article, the Governor may delegate the power to declare a utility or transportation
29 emergency to the Secretary or the Secretary's designee.

30 (2) (i) The Secretary or the Secretary's designee may declare a utility
31 or transportation emergency.

32 (ii) 1. During the time in which a [declared] utility or
33 transportation emergency DECLARED UNDER THIS SUBSECTION exists, the Secretary
34 or the Secretary's designee shall waive the maximum hours-of-service time limits
35 contained in this section, or in regulations [promulgated pursuant thereto] ADOPTED
36 UNDER THIS SECTION for all interstate and intrastate drivers providing direct
37 assistance in restoring utility services affected by a utility emergency.

1 [(iii)] 2. This waiver shall include the hours of duty status accrued
2 by, and shall apply only to, drivers providing direct assistance in restoring utility
3 services affected by a utility emergency in the State, or to drivers of emergency
4 vehicles operated under the direction of State and local governments or their agents
5 when providing direct assistance in clearing and opening State highways and local
6 streets and roads to allow free flow of traffic.

7 ~~(III) THE PROVISIONS OF THIS SECTION DO NOT APPLY TO AN~~
8 ~~INCIDENTAL DRIVER DURING A TIME WHEN A UTILITY EMERGENCY IS DECLARED~~
9 ~~UNDER THIS SUBSECTION.~~

10 (III) 1. NOTWITHSTANDING THE OTHER PROVISIONS OF THIS
11 SUBSECTION AND § 14-107 OF THE PUBLIC SAFETY ARTICLE, DURING A UTILITY
12 EMERGENCY AN INCIDENTAL DRIVER SHALL BE EXEMPT FROM PART 395 OF THE
13 FEDERAL MOTOR CARRIER SAFETY REGULATIONS IF THE UTILITY COMPANY HAS
14 PREFILED, AS SPECIFIED BY THE SECRETARY OR THE SECRETARY'S DESIGNEE, A
15 UTILITY EMERGENCY RESPONSE NOTIFICATION PLAN AND AN INCIDENTAL DRIVER
16 SAFETY PLAN IN ACCORDANCE WITH THIS SUBPARAGRAPH.

17 2. A UTILITY EMERGENCY RESPONSE NOTIFICATION PLAN
18 MUST INCLUDE THE UTILITY COMPANY'S PROCEDURE FOR NOTIFYING THE
19 SECRETARY OR SECRETARY'S DESIGNEE WITHIN 4 HOURS AFTER THE UTILITY
20 COMPANY RESPONDS TO A UTILITY EMERGENCY.

21 3. AN INCIDENTAL DRIVER SAFETY PLAN MUST INCLUDE
22 THE PROCEDURES THAT THE UTILITY COMPANY WILL FOLLOW TO ENSURE THAT AN
23 INCIDENTAL DRIVER WILL NOT DRIVE DURING A UTILITY EMERGENCY IF THE
24 INCIDENTAL DRIVER HAS NOT HAD SUFFICIENT REST TO ENSURE THAT THE
25 INCIDENTAL DRIVER MAINTAINS THE ABILITY TO DRIVE SAFELY.

26 (3) (i) All declarations issued under this [section] SUBSECTION shall
27 indicate the nature of the utility or transportation emergency, the area or areas
28 threatened, and the conditions which have brought it about.

29 (ii) A declaration shall be disseminated by a means calculated to
30 bring its contents to the attention of the general public, in the areas affected by the
31 declaration.

32 (4) Within 10 days of the issuance of any declaration issued under this
33 [section] SUBSECTION, the Secretary or the Secretary's designee shall notify the
34 Governor of the nature of the declaration.

35 (5) A {utility or} transportation emergency declared by the Secretary or
36 the Secretary's designee may not extend for more than ~~3~~ 5 days, unless renewed by
37 the Governor pursuant to § 14-107 of the Public Safety Article.

38 (k) (1) ~~NOTWITHSTANDING THE PROVISIONS OF § 14-107 OF THE PUBLIC~~
39 ~~SAFETY ARTICLE, A UTILITY COMPANY MAY DECLARE A UTILITY EMERGENCY.~~

1 (2) (4) ~~BEFORE A UTILITY COMPANY MAY EXERCISE THE AUTHORITY~~
2 ~~TO DECLARE A UTILITY EMERGENCY, THE UTILITY COMPANY SHALL FILE A PLAN~~
3 ~~WITH THE SECRETARY OR THE SECRETARY'S DESIGNEE.~~

4 (II) ~~THE PLAN SHALL ESTABLISH THE PROCEDURES THAT THE~~
5 ~~UTILITY COMPANY WILL FOLLOW TO ENSURE THAT AN INCIDENTAL DRIVER WILL~~
6 ~~NOT DRIVE DURING A UTILITY EMERGENCY IF THE INCIDENTAL DRIVER HAS NOT~~
7 ~~HAD AN AMOUNT OF REST SUFFICIENT TO ENSURE THAT THE DRIVER MAINTAINS~~
8 ~~THE ABILITY TO DRIVE SAFELY.~~

9 (III) ~~A UTILITY COMPANY IS NOT REQUIRED TO FILE A NEW PLAN~~
10 ~~EACH TIME THE UTILITY COMPANY INTENDS TO DECLARE A UTILITY EMERGENCY.~~

11 (3) ~~IF A UTILITY COMPANY DECLARES A UTILITY EMERGENCY, THE~~
12 ~~UTILITY COMPANY SHALL NOTIFY THE SECRETARY OR THE SECRETARY'S DESIGNEE~~
13 ~~OF THE NATURE OF THE DECLARATION WITHIN 24 HOURS OF THE DECLARATION.~~

14 (4) ~~THE PROVISIONS OF THIS SECTION DO NOT APPLY TO AN~~
15 ~~INCIDENTAL DRIVER DURING A TIME WHEN A UTILITY EMERGENCY IS DECLARED~~
16 ~~UNDER THIS SUBSECTION ON NOTIFICATION BY A UTILITY COMPANY THAT IT IS~~
17 ~~RESPONDING TO A UTILITY EMERGENCY, THE SECRETARY OR SECRETARY'S~~
18 ~~DESIGNEE SHALL:~~

19 (I) REQUIRE THE UTILITY COMPANY TO INDICATE THE NATURE OF
20 THE UTILITY EMERGENCY, THE AREAS THREATENED, THE CONDITIONS WHICH HAVE
21 BROUGHT IT ABOUT, AND THE DURATION OF THE UTILITY COMPANY'S EXPECTED
22 RESPONSE, NOT TO EXCEED 5 DAYS;

23 (II) DETERMINE WHETHER A UTILITY EMERGENCY, AS DEFINED IN
24 THIS SECTION, EXISTED AT THE TIME OF THE UTILITY COMPANY'S RESPONSE AND, IF
25 SO, DECLARE THAT A UTILITY EMERGENCY EXISTED STARTING AT THAT TIME; AND

26 (III) IF A UTILITY EMERGENCY DOES NOT EXIST, NOTIFY THE
27 UTILITY COMPANY THAT IT IS NOT ENTITLED TO AND MAY NOT EXERCISE THE
28 RELIEF PROVIDED TO INCIDENTAL DRIVERS UNDER SUBSECTION (J) OF THIS
29 SECTION.

30 (2) A UTILITY EMERGENCY TO WHICH A UTILITY COMPANY RESPONDS
31 MAY NOT EXTEND MORE THAN 5 DAYS AFTER THE DATE THAT THE UTILITY
32 COMPANY FIRST NOTIFIES THE SECRETARY OR SECRETARY'S DESIGNEE OF ITS
33 RESPONSE UNLESS:

34 (I) THE UTILITY COMPANY PROVIDES A RENEWAL NOTIFICATION
35 TO THE SECRETARY OR SECRETARY'S DESIGNEE; AND

36 (II) THE SECRETARY OR SECRETARY'S DESIGNEE DOES NOT
37 REJECT THE RENEWAL.

1 (L) For the purposes of subsection (i) of this section, the Administration shall
2 adopt regulations requiring physical examinations for intrastate commercial motor
3 vehicle drivers.

4 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect
5 October 1, 2005.