



# State of South Dakota

EIGHTY-FIRST SESSION  
LEGISLATIVE ASSEMBLY, 2006

400M0349

SENATE TRANSPORTATION COMMITTEE

ENGROSSED NO. **SB 25** - 01/17/2006

Introduced by: The Committee on Transportation at the request of the Public Utilities  
Commission

1 FOR AN ACT ENTITLED, An Act to revise certain provisions concerning motor carrier  
2 regulation and to transfer the authority to regulate motor carriers from the Public Utilities  
3 Commission to the Department of Revenue and Regulation.

4 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF SOUTH DAKOTA:

5 Section 1. That § 49-28-1 be amended to read as follows:

6 49-28-1. Terms used in this chapter mean:

- 7 (1) ~~"Commission," the Public Utilities Commission~~ "Department," the Department of  
8 Revenue and Regulation;
- 9 (2) "Corporation," a corporation, company, association, or joint stock association;
- 10 (3) "For hire," for remuneration of any kind, paid or promised for the transportation of  
11 persons or property. An occasional accommodative or reciprocal transportation  
12 service by a person not in the transportation business while on an errand for such  
13 person's benefit, is not a service for hire, even though the person transported shares  
14 in the cost or pays for the service;
- 15 (4) ~~"FHWA," Federal Highway Administration~~ "FMCSA," Federal Motor Carrier Safety



1           Administration;

2           (5) "Exempt motor carrier," an interstate motor carrier who is exempt from the ~~HHWA's~~  
3           FMCSA's jurisdiction over interstate transportation;

4           (6) "Regulated motor carrier," an interstate motor carrier who is subject to the ~~HHWA's~~  
5           FMCSA's jurisdiction over interstate transportation;

6           (7) "Motor carrier," any person, corporation, lessee, trustee, or receiver operating any  
7           motor vehicle, trailer, or semitrailer on any public highway in this state for the  
8           transportation of persons or property, for hire;

9           (8) "Motor vehicle," all vehicles or machines propelled by any power other than  
10           muscular used upon the public highways for the transportation of persons or property;

11           (9) "Permit," the permit authorized to be issued under this chapter;

12           (10) "Person," a natural person, firm, corporation, limited liability company,  
13           copartnership, company, association, joint stock company, or, the lessee, trustee, or  
14           receiver appointed by any court for any one of the foregoing;

15           (11) "Public highway," every street, alley, public road, public thoroughfare, or highway  
16           in this state;

17           (12) "Registration state," the state in which a regulated motor carrier selects to register its  
18           interstate motor carrier operations pursuant to 49 USC § 14504 and 49 CFR PART  
19           367 as of January 1, ~~1999~~ 2005;

20           (13) "Semitrailer," any vehicle of the trailer type, equipped with a kingpin assembly,  
21           designed and used in conjunction with a fifth wheel connecting device on a motor  
22           vehicle and constructed so that some part of its weight and that of its load rests upon  
23           or is carried by another vehicle;

24           (14) "Trailer," every vehicle without motive power designed to carry property or persons

1 wholly on its own structure and to be drawn by a motor vehicle;

2 (15) "Board," the Surface Transportation Board as defined in 49 USC § 13102(1) as of  
3 January 1, ~~1999~~ 2005;

4 (16) "Secretary," the secretary of the United States Department of Transportation as that  
5 term is defined in 49 USC § 13102(17) as of January 1, ~~1999~~ 2005.

6 Section 2. That § 49-28-3 be amended to read as follows:

7 49-28-3. Whether or not a motor vehicle, trailer, or semitrailer is operated by a motor carrier  
8 within the meaning of subdivisions 49-28-1(7) and (8) is a question of fact to be determined by  
9 the ~~Public Utilities Commission~~ department.

10 Section 3. That § 49-28-33 be amended to read as follows:

11 49-28-33. The ~~commission~~ department may pursuant to chapter 1-26 adopt rules to establish  
12 uniform procedures for the administration of the provisions of this chapter. Rules may be  
13 adopted by the ~~commission~~ department governing motor carriers in the following areas:

14 (1) Filing information and reports; and

15 (2) Registration and identification when performing interstate operations within the state.

16 The ~~director of the division of highway patrol~~ Director of the Division of Highway Patrol  
17 may promulgate reasonable rules pursuant to chapter 1-26 to promote safety of operations,  
18 standards, and safety of equipment. The rules shall conform as nearly as possible with the rules  
19 and regulations for safety of operations and equipment adopted by the U.S. Department of  
20 Transportation, pursuant to 49 U.S.C. Chapter 311 as amended through January 1, ~~1999~~ 2005.

21 Section 4. That § 49-28-36 be amended to read as follows:

22 49-28-36. No exempt motor carrier may perform interstate operations, to, from, within, or  
23 traversing this state unless it files an application for the registration of such operation with the  
24 ~~commission~~ department and the ~~commission~~ department approves the application by the

1 issuance of a registration permit.

2 In lieu of a registration permit, all regulated motor carriers shall comply with 49 U.S.C.  
3 § 13901 and 49 CFR PART 365 as of January 1, ~~1999~~ 2005, before performing any interstate  
4 operations to, from, within, or traversing this state.

5 Section 5. That § 49-28-36.1 be amended to read as follows:

6 49-28-36.1. The fee to accompany the filing of an application for registration as an exempt  
7 motor carrier is twenty-five dollars. However, no registration fee is required if the applicant has  
8 previously paid a registration fee for other interstate operations and is registered with the  
9 ~~commission~~ department at the time the application is received by the ~~commission~~ department.

10 Section 6. That § 49-28-36.2 be amended to read as follows:

11 49-28-36.2. An interstate motor carrier registered pursuant to § 49-28-36 is subject to  
12 regulation and control of the ~~Public Utilities Commission~~ department only to the extent  
13 permitted by the Constitution of the United States and acts of Congress relating to interstate  
14 commerce.

15 Section 7. That § 49-28-36.4 be amended to read as follows:

16 49-28-36.4. Any nonresident exempt motor carrier shall, before a registration permit is  
17 issued under this chapter, designate and maintain in this state an agent upon whom may be  
18 served all summonses or other lawful processes in any action or proceeding against such motor  
19 carrier arising from its carrier operations. Service of process upon or acceptance or  
20 acknowledgment of ~~such~~ the service by the agent has the same legal force and validity as if duly  
21 served upon the nonresident carrier personally. The designation of agent shall be in writing,  
22 shall give the name and address of the agent, and shall be filed in the office of the ~~commission~~  
23 department. Any nonresident regulated motor carrier shall file with its registration state the  
24 name of an agent to receive service of process from South Dakota pursuant to 49 USC

1 § 13303(b) and 49 USC § 13304 as of January 1, ~~1999~~ 2005. Upon failure of any nonresident  
2 motor carrier to file a designation of agent as provided by this section, the nonresident motor  
3 carrier shall be conclusively considered to have designated the secretary of state as such agent.  
4 Service of process upon or acceptance or acknowledgment of ~~such~~ the service by the secretary  
5 of state has the same legal force and validity as if duly served upon such nonresident carrier  
6 personally if notice of ~~such~~ the service and a copy of the process are immediately sent by  
7 registered mail by the secretary of state, to the nonresident carrier, if the carrier's address be  
8 known. Service of ~~such~~ the process upon the secretary of state shall be made by delivering to  
9 the secretary of state's office two copies of the process with a fee of three dollars to cover the  
10 costs of handling and mailing the process.

11 Section 8. That § 49-28-36.5 be amended to read as follows:

12 49-28-36.5. Registration permits issued by the ~~commission~~ department to exempt motor  
13 carriers shall continue in effect without payment of annual renewal fees if each exempt motor  
14 carrier pays an annual identification fee of five dollars for each motor vehicle operated in  
15 interstate movement within the borders of this state with not less than one identification fee to  
16 be paid annually on or before the thirty-first day of December of each year. However, in no  
17 instance may any exempt motor carrier be required to purchase or display more than one  
18 identification stamp for any one motor vehicle. Failure of an exempt motor carrier to pay a  
19 minimum of one identification fee or a regulated motor carrier to register with a registration  
20 state on or before the thirty-first day of December of any year, shall result in the cancellation of  
21 registration and no further interstate movement may be permitted until the motor carrier has  
22 re-registered in accordance with the rules of the ~~commission~~ department.

23 Section 9. That § 49-28-36.7 be amended to read as follows:

24 49-28-36.7. A motor carrier shall make an application for a single trip permit as provided

1 by § 49-28-36.6 and the permit secured at a port of entry or by such other means designated by  
2 the ~~commission~~ department prior to beginning movement over the state's highways. The  
3 application shall include the applicant's name and business address, a description of the vehicle,  
4 and the route of travel suggested for the trip.

5 Section 10. That § 49-28-41 be amended to read as follows:

6 49-28-41. The ~~commission~~ department shall cooperate with the ~~FHWA~~ FMCSA, in the  
7 administration of motor carrier laws, ~~and the commission.~~ The department may appear before  
8 the ~~FHWA~~ FMCSA, the secretary, or the board as a party litigant in all proceedings involving  
9 the regulation and control of motor carriers in interstate commerce if, in its opinion, the public  
10 interest of the state justifies such participation.

11 Section 11. That § 49-28-41.1 be amended to read as follows:

12 49-28-41.1. If the ~~commission~~ department determines upon its own motion or upon the  
13 petition of a resident of this state that it is in the best interests of the state, it may appear before  
14 the ~~FHWA~~ FMCSA, the secretary, or the board as a party in all proceedings involving the  
15 regulation and control of motor carriers in interstate commerce. If any matter is pending before  
16 the ~~FHWA~~ FMCSA, the secretary, or the board between a resident of this state as petitioner and  
17 a motor carrier doing business in this state and engaged in interstate transportation of freights,  
18 charging ~~such~~ the carrier with any violation of the Interstate Commerce Act, upon application  
19 of the petitioner, the ~~commission~~ department may appear therein and be substituted as a party  
20 in place of such petitioners and thereafter the matter shall be prosecuted by the ~~commission~~  
21 department at the expense of the state in the same manner as though originally begun by it.

22 Section 12. That § 49-28-45 be amended to read as follows:

23 49-28-45. All fees or money received by the ~~Public Utilities Commission~~ department under  
24 this chapter shall be reported monthly to and deposited with the state treasurer, and ~~by him~~

1 credited to the general fund of the state. Those fees and money so deposited shall be used to  
2 reimburse the state for the added expense which the state incurs in the administration and  
3 enforcement of this chapter and chapter 32-9, and for policing the highways over which such  
4 motor vehicles travel.

5 Section 13. That § 49-28-50 be amended to read as follows:

6 49-28-50. Each motor carrier shall prepare and file with the ~~Public Utilities Commission~~  
7 department, at such time, and in the form to be prescribed by the ~~commission~~ department,  
8 reports and statements giving to the ~~commission~~ department such information as it requires in  
9 order to perform its duties under this chapter.

10 Section 14. That § 49-28-51 be amended to read as follows:

11 49-28-51. Except as otherwise provided in this chapter or the rules adopted pursuant to this  
12 chapter, chapter 1-26 shall govern in all proceedings and investigations before the ~~Public~~  
13 ~~Utilities Commission~~ department in cases arising in connection with the performance by the  
14 ~~commission~~ department of its duties or the exercise of its jurisdiction under this chapter.

15 Section 15. That § 49-28-52 be amended to read as follows:

16 49-28-52. Orders and final determinations of the ~~Public Utilities Commission~~ department  
17 in all proceedings pursuant to this chapter shall be enforced in the manner provided by law for  
18 enforcement of orders of the ~~commission~~ department.

19 The ~~commission~~ department may apply to the circuit court in any circuit in which any person  
20 or motor carrier operates or maintains a principal headquarters for the enforcement of this  
21 chapter and the rules adopted pursuant thereto. ~~Such~~ The court shall have jurisdiction by writ  
22 of injunction, or by other proceedings, mandatory or otherwise, to restrict and enjoin any such  
23 person or motor carrier, its officers, agents, employees, or representatives, from further  
24 violations of the provisions of law or any lawful order, term, or condition prescribed by the

1 ~~commission department~~ and enjoining obedience thereto.

2 Section 16. That § 49-28-53 be amended to read as follows:

3 49-28-53. All final orders, determinations, or decisions of the ~~commission department~~ in  
4 proceedings brought pursuant to this chapter are subject to rehearing in accordance with  
5 ~~commission department~~ rules and are subject to review or appeal in accordance with chapter 1-  
6 26.

7 Section 17. That § 49-28-54 be amended to read as follows:

8 49-28-54. ~~It is the policy of this state to grant to nonresidents~~ Nonresidents of the state  
9 whose motor vehicle, trailer, or semitrailer is properly registered or licensed in a state or  
10 territory of the United States, the District of Columbia, or Canada, while engaged in interstate  
11 commerce in this state, ~~exemption shall be exempt~~ from the payment, in whole or in part, of  
12 ~~commission department~~ fees, if the granting of ~~such the~~ the exemption will, in the opinion of the  
13 ~~commission department~~, promote the securing of exemptions and privileges for citizens of this  
14 state operating motor vehicles, trailers, or semitrailers in other states, territories of the United  
15 States, the District of Columbia, or Canada.

16 Section 18. That § 49-28-55 be amended to read as follows:

17 49-28-55. The ~~Department of Revenue and Regulation~~ department may make with like  
18 ~~commissions or~~ authorities of the other states and territories of the United States, the District  
19 of Columbia and Canada, whatever reciprocal agreements are necessary to carry out the policy  
20 declared and granted in § 49-28-54, notwithstanding the statutes of this state providing for the  
21 collection of ~~commission department~~ fees, ~~and the Department of Public Safety.~~ The department  
22 may do all things necessary to negotiate and perfect reciprocal agreements between like  
23 ~~commissions or~~ authorities in the various states and territories of the United States, the District  
24 of Columbia and Canada.

1 Section 19. That § 49-28-63 be amended to read as follows:

2 49-28-63. Any motor carrier which is subject to this chapter or, if any such motor carrier is  
3 a corporation, any director or officer thereof or any receiver, trustee, lessee, agent, or person  
4 acting for or employed by such corporation, who violates or fails to comply with or who  
5 procures, aids, or abets in the violation of any provision of this chapter, or who fails to obey,  
6 observe, or comply with any lawful order, decision, rule, regulation, direction, demand, or  
7 requirement of the ~~Public Utilities Commission~~ department, or any part or provision thereof, is  
8 guilty of a Class 2 misdemeanor.

9 Section 20. That § 49-28-65 be repealed.

10 ~~49-28-65. The inspectors of the Public Utilities Commission may place a person under arrest~~  
11 ~~without warrant for a violation of any provision of this chapter which is committed in the~~  
12 ~~presence of such inspector. Commission inspectors having been given such limited arrest~~  
13 ~~powers are not "law enforcement officers" for the purposes of § 23-3-27.~~

14 Section 21. That § 49-28-66 be amended to read as follows:

15 49-28-66. The inspectors of the Department of Public Safety ~~and the Public Utilities~~  
16 ~~Commission~~ or any law enforcement officer may require the driver of a commercial vehicle to  
17 stop a vehicle at any time for inspection to determine if the provisions of this chapter are being  
18 complied with. Any driver who fails to stop and submit ~~his~~ the driver's vehicle to such  
19 inspection is guilty of a Class 2 misdemeanor.

20 Section 22. That § 49-28-67 be repealed.

21 ~~49-28-67. Carriers regulated by this chapter are also subject to chapter 49-13 to the extent~~  
22 ~~that such chapter is applicable to complaints.~~

23 Section 23. That chapter 49-28 be amended by adding thereto a NEW SECTION to read as  
24 follows:

1       Notwithstanding any provisions of this chapter, the department may participate in and  
2       comply with the Unified Carrier Registration Act of 2005.

# State of South Dakota

EIGHTY-FIRST SESSION  
LEGISLATIVE ASSEMBLY, 2006

400M0350

SENATE TRANSPORTATION COMMITTEE

ENGROSSED NO. **SB 39** - 01/17/2006

Introduced by: The Committee on Commerce at the request of the Department of Public Safety

1 FOR AN ACT ENTITLED, An Act to revise certain provisions regarding petroleum and motor  
2 fuels testing, quality, and labeling.

3 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF SOUTH DAKOTA:

4 Section 1. That § 37-2-5 be amended to read as follows:

5 37-2-5. Terms used throughout §§ 37-2-5 to 37-2-24, inclusive, mean:

6 (1) "Alcohol," a colorless volatile flammable liquid containing no more than 1.25 percent  
7 of water used for the purpose of blending or mixing with gasoline for use in motor  
8 vehicles and commonly known as alcohol, ethanol or methanol;

9 (2) "ASTM," the American Society for Testing and Materials;

10 (3) "Aviation gasoline," a volatile hydrocarbon fuel free from suspended water and  
11 sediment matter and that is suitable for use as a fuel in an aviation spark ignition  
12 internal combustion engine designed for use in an aircraft;

13 (3A) "Biodiesel," a fuel comprised of mono-alkyl esters of long chain fatty acids derived  
14 from vegetable oils or animal fats, designated B100, and meeting the requirements  
15 of the American Society of Testing and Materials D 6751 as of January 1, 2005, and



1 is registered with the United States Environmental Protection Agency as a fuel and  
2 fuel additive under section 211(b) of the Clean Air Act in effect on January 1, 2006;

3 (3B) "Biodiesel blend," a special blended fuel comprised of at least two percent by volume  
4 of biodiesel blended with petroleum-based diesel fuel, designated BXX. In the  
5 abbreviation BXX, the XX represents the volume percentage of biodiesel fuel in the  
6 blend;

7 (4) "Department," the Department of Public Safety;

8 (5) "Diesel fuel," a refined middle distillate hydrocarbon fuel free from suspended water  
9 and sediment matter that is suitable for use as a fuel in a ~~diesel~~ compression-ignition  
10 (diesel) internal combustion engine;

11 (5A) "Ether," methyl tertiary butyl ether;

12 (6) "Flash test" and "flash point," the flash point as determined by the method of the  
13 American Society for Testing Materials, using the instrument known as the Tagliabue  
14 closed cup tester;

15 (7) "Gasoline," a volatile hydrocarbon fuel free from suspended water and sediment  
16 matter that is practicable and suitable used as fuel in a spark ignition internal  
17 combustion engine;

18 (8) "Inspector," the secretary of the Department of Public Safety or any deputy or  
19 assistant appointed by the secretary for the purpose of enforcing the provisions of this  
20 chapter;

21 (9) "Kerosene," a hydrocarbon fuel intended for use in heating and illumination and  
22 having an American Petroleum Institute gravity of not less than forty degrees.  
23 Kerosene shall also include coal oil and burner oil;

24 (9A) "NIST," the National Institute of Standards and Technology;

1 (10) "Petroleum products," gasoline, alcohol blended fuels, kerosene, diesel fuel, aviation  
2 gasoline, burner oil, naphtha and lubricating oils.

3

4 Section 2. That § 37-2-6 be amended to read as follows:

5 37-2-6. The secretary of the Department of Public Safety may, pursuant to chapter 1-26, and  
6 in general conformity with ASTM and NIST standards in effect on January 1, 2005, promulgate  
7 rules:

8 (1) Establishing standards for the maximum volume percentages of ethanol, methanol,  
9 ether, and cosolvents in alcohol blended fuels;

10 (2) Establishing a program for and prescribing the methods to be used for the inspection  
11 and testing of alcohol blended fuels ~~and~~, petroleum products, biodiesel, and biodiesel  
12 blends;

13 (3) Requiring labeling of devices dispensing alcohol blended fuels, biodiesel, and  
14 biodiesel blends;

15 (4) Establishing standards setting the specifications and tolerance requirements for  
16 petroleum products, biodiesel, and biodiesel blends; and

17 (5) Regulating the filtering system to be used on devices dispensing alcohol blended  
18 fuels.

19 Section 3. That § 37-2-7 be amended to read as follows:

20 37-2-7. Specifications and methods for the examination and test of petroleum products shall  
21 be jointly determined by the Division of Commercial Inspection and Licensing and the director  
22 of ~~laboratories~~ the State Health Laboratory and shall be based upon ~~nationally recognized~~  
23 standards from the American Society for Testing and Materials and the National Institute for  
24 Standards and Technology as of January 1, 2005. ~~When so determined, and If adopted and~~

1 ~~published~~ as rules ~~and regulations~~ of the division in accordance with the provisions of chapter  
2 1-26, ~~such~~ the specifications shall be the specifications for such petroleum products sold in this  
3 state and official tests of ~~such~~ the petroleum products shall be based upon test specifications so  
4 determined, adopted, and promulgated.

5 Section 4. That § 37-2-8 be amended to read as follows:

6 37-2-8. The director of ~~laboratories~~ the State Health Laboratory, or other qualified  
7 laboratory, shall make ~~such~~ an analysis as may be requested by the secretary of the Department  
8 of Public Safety. Distillation tests shall be made in accordance with the methods for ~~such~~ the  
9 tests adopted by the American Society for Testing and Materials.

10 Section 5. That § 37-2-23 be repealed.

11 ~~— 37-2-23. Any inspector having knowledge of a violation of any of the provisions of §§ 37-2-~~  
12 ~~5 to 37-2-24, inclusive, must immediately enter complaint before a court of competent~~  
13 ~~jurisdiction against the person so offending, and in case of neglect to enter such complaint, such~~  
14 ~~inspector shall be punished as provided in § 37-2-16.~~