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CHAPTER 221

[Substitute Senate Bill No. 3777]

PROPORTIONAL REGISTRATION OF VEHICLES

AN ACT Relating to proportionally licensed vehicles; amending section 19, chapter 106, Laws of 1963 as last amended by section 4, chapter 149, Laws of 1979 ex. sess. and RCW 46.85.190; and adding new sections to chapter 46.85 RCW.

Be it enacted by the Legislature of the State of Washington:

Section 1. Section 19, chapter 106, Laws of 1963 as last amended by section 4, chapter 149, Laws of 1979 ex. sess. and RCW 46.85.190 are each amended to read as follows:

Any owner whose application for proportional registration has been accepted shall preserve the records on which the application is based for a period of four years following the preceding year or period upon which ~~((said))~~ the application is based. These records shall be complete and shall include, but not be limited to, the following: Copies of prorational registration applications and supplements for all jurisdictions in which the fleet is prorated; proof of proportional or full registration with other jurisdictions; vehicle license or trip permits; temporary proration authorization permits; weight certificates indicating the unladen, ready for the road, weight of each vehicle in the fleet; periodic summaries of mileage by fleet and by individual vehicles; individual trip reports, driver's daily logs, or other source documents maintained for each individual trip which provide trip dates, points of origin and destinations, total miles traveled, miles traveled in each jurisdiction, routes traveled, vehicle equipment number, driver's full name, and all other information pertinent to each trip. Upon request of the department, the owner shall make such records available to the department~~((;))~~ at its designated office for audit as to accuracy of records, computations, and payments ~~((and assessment of deficiencies or allowances for credit. If the department determines that the applicant should have registered more vehicles in this state under the provisions of this chapter the department may deny him the right of any further benefits by reason of any reciprocal agreement or declaration until the fees, interest, and penalties for such additional vehicle or vehicles which should have been registered, have been paid. The fees, interest, and penalties determined to be due and owing under~~

~~the provisions of this paragraph shall be a lien upon all the property of the applicant, and such lien shall attach at the time the audit report has been mailed to such applicant by the department, and shall have the effect of an execution duly levied on such property and shall so remain until said additional fees, interest, and penalties so determined, are paid, or a sufficient amount of such property sold for the payment thereof).~~ The department shall assess and collect any unpaid fees and taxes found to be due the state and provide credits or refunds for overpayments as determined in accordance with formulas and other requirements prescribed in this chapter. If the owner fails to maintain complete records as required by this section, the department shall attempt to reconstruct or reestablish such records. However, if the department is unable to do so and the missing or incomplete records involve mileages accrued by vehicles while they are part of the fleet, the department may assess an amount not to exceed the difference between the proportional fees and taxes paid and one hundred percent of the fees and taxes. Further, if the owner fails to maintain complete records as required by this section, or if the department determines that the owner should have registered more vehicles in this state under the provisions of this chapter, the department may deny the owner the right of any further benefits provided by this chapter until any final audit assessment under this chapter has been satisfied.

The department may audit the records of any owner and may make arrangements with agencies of other jurisdictions administering motor vehicle registration laws for joint audits of any such owner. No assessment for deficiency or claim for credit may be made for any period for which records are no longer required. Any ~~((sums))~~ fees, taxes, penalties, or interest found to be due and owing the state upon audit shall bear interest ((of one)) at twelve percent per ((month)) annum from the ((date when they should have been paid)) end of the calendar year in which the deficiency is incurred until the date of ((actual)) payment. If the audit discloses a deliberate and wilful intent to evade the requirements of payment under RCW ~~((46.85.110 and))~~ 46.85.120, a penalty of ten percent shall also be assessed.

If the audit discloses that an overpayment to the state in excess of ~~((twenty=))~~ five dollars has been made, the department shall certify such overpayment to the state treasurer who shall issue a warrant for such overpayment to the vehicle operator. Overpayments shall bear interest at the rate of four percent per annum from the end of the calendar year in which the overpayment is incurred until the date of payment.

~~((All carriers registered under the provisions of this chapter shall maintain detailed mileage records on an individual vehicle basis. Such operating records shall be prepared for each trip and shall include dates, origin and destination points, total miles traveled, miles traveled in each state, vehicle equipment number, driver's full name, and all other information pertinent to the particular trip.))~~

NEW SECTION. Sec. 2. An owner of proportionally registered vehicles against whom an assessment is made under the provisions of RCW 46.85-.190 may petition for a reassessment thereof within thirty days after service upon the owner of the proportionally registered vehicles of notice thereof. If such petition is not filed within such thirty-day period, the amount of the assessment becomes final at the expiration thereof.

If a petition for reassessment is filed within the thirty-day period, the department shall reconsider the assessment and, if such petitioner has so requested in his petition, shall grant such petitioner an oral hearing and give such petitioner ten days notice of the time and place thereof. The department may continue the hearing from time to time. The decision of the department upon a petition for reassessment becomes final thirty days after service upon the petitioner of notice thereof.

Every assessment made by the department becomes due and payable at the time it becomes final and if not paid to the department when due and payable, there shall be added thereto a penalty of ten percent of the amount of the assessment.

Any notice of assessment, reassessment, oral hearing, or decision required by this section shall be served personally or by mail; if by mail, service shall be deemed to have been accomplished on the date such notice was deposited in the United States mail, postage prepaid, addressed to the owner of the proportionally registered vehicles at his address as it appears in the records of the department.

No injunction or writ of mandate or other legal or equitable process may be issued in any suit, action, or proceeding in any court against any officer of the state to prevent or enjoin the collection under this chapter of any fee or tax or any amount of fee or tax required to be collected, except as specifically provided for in chapter 34.04 RCW.

NEW SECTION. Sec. 3. If an owner of proportionally registered vehicles liable for the remittance of fees and taxes imposed by this chapter for which an assessment has become final fails to pay such fees and taxes, the amount thereof, including any interest, penalty, or addition to such fees and taxes together with any costs that may accrue in addition thereto, constitutes a lien in favor of the state upon all franchises, property, and rights to property, whether such property is employed by such person for personal or business use or is in the hands of a trustee, or receiver, or assignee for the benefit of creditors, from the date the fees and taxes were due and payable until the amount of the lien is paid or the property sold in payment thereof. The lien has priority over any lien or encumbrance whatsoever, except the lien of other state taxes having priority by law, and except that such lien is not valid as against any bona fide mortgagee, pledgee, judgment creditor, or purchaser whose rights have attached prior to the time the department has filed and recorded notice of such lien as provided in this chapter.

In order to avail itself of the lien created by this section, the department shall file with any county auditor a statement of claim and lien specifying the amount of delinquent fees and taxes, penalties, and interest claimed by the department. From the time of filing for record, the amount required to be paid constitutes a lien upon all franchises, property, and rights to property, whether real or personal, then belonging to or thereafter acquired by such person in the county. Any lien as provided in this section may also be filed in the office of the secretary of state. Filing in the office of the secretary of state is of no effect, however, until the lien or a copy thereof has been filed with the county auditor in the county where the property is located. When a lien is filed in compliance with this section and with the secretary of state, such filing has the same effect as if the lien had been duly filed for record in the office of the auditor in each county of this state.

NEW SECTION. Sec. 4. If an owner of proportionally registered vehicles for which an assessment has become final is delinquent in the payment of an obligation imposed under this chapter, the department may give notice of the amount of the delinquency by registered or certified mail to all persons having in their possession or under their control any credits or other personal property belonging to such owner or owing any debts to such owner, at the time of the receipt by them of such notice. Thereafter, a person so notified shall neither transfer nor make other disposition of such credits, personal property, or debts until the department consents to a transfer or other disposition. A person so notified shall, within twenty days after receipt of the notice, advise the department of any and all such credits, personal property, or debts in their possession, under their control or owing by them, as the case may be, and shall forthwith deliver such credits, personal property, or debts to the department or its duly authorized representative to be applied to the indebtedness involved.

If a person fails to answer the notice within the time prescribed by this section, it is lawful for the court upon application of the department and after the time to answer the notice has expired, to render judgment by default against such person for the full amount claimed by the department in the notice to withhold and deliver, together with costs.

NEW SECTION. Sec. 5. Whenever the owner of proportionally registered vehicles is delinquent in the payment of an obligation imposed under this chapter, and such delinquency continues after notice and demand for payment by the department, the department shall proceed to collect the amount due from such owner in the following manner: The department shall seize any property subject to the lien of such fees, taxes, penalties, and interest and thereafter sell it at public auction to pay the obligation and any and all costs that may have been incurred on account of the seizure and sale. Notice of the intended sale and the time and place thereof shall be given to the delinquent owner and to all persons appearing of record to have an interest in such property. The notice shall be given in writing at least ten

days before the date set for the sale by registered or certified mail addressed to the owner as appearing in the records of the department and, in the case of any person appearing of record to have an interest in such property, addressed to such person at his last known residence or place of business. In addition, the notice shall be published at least ten days before the date set for the sale in a newspaper of general circulation published in the county in which the property seized is to be sold. If there is no newspaper in such county, the notice shall be posted in three public places in the county for a period of ten days. The notice shall contain a description of the property to be sold, a statement of the amount due hereunder, the name of the owner of the proportionally registered vehicles, and the further statement that unless such amount is paid on or before the time fixed in the notice the property will be sold in accordance with law.

The department shall then proceed to sell the property in accordance with law and the notice, and shall deliver to the purchaser a bill of sale or deed which vests title in the purchaser. If upon any such sale the moneys received exceed the amount due to the state hereunder from the delinquent owner, the excess shall be returned to the delinquent owner and his receipt obtained therefor. The department may withhold payment of any such excess to the delinquent owner if any person having an interest in or lien upon the property has filed with the department their notice of such lien or interest prior to the sale pending determination of the rights of the respective parties thereto by a court of competent jurisdiction. If for any reason the receipt of the delinquent owner is not available, the department shall deposit such excess with the state treasurer as trustee for the delinquent owner.

NEW SECTION. Sec. 6. Whenever any assessment has become final in accordance with the provisions of this chapter, the department may file with the clerk of any county within the state a warrant in the amount of fees, taxes, penalties, interest, and a filing fee of five dollars. The clerk of the county wherein the warrant is filed shall immediately designate a superior court cause number for such warrant, and the clerk shall cause to be entered in the judgment docket under the superior court cause number assigned to the warrant the name of the delinquent owner of proportionally registered vehicles mentioned in the warrant, the amount of the fees, taxes, penalties, interest, and filing fee, and the date when such warrant was filed. The aggregate amount of such warrant as docketed constitutes a lien upon the title to, and interest in all real and personal property of named person against whom the warrant is issued, the same as a judgment in a civil case duly docketed in the office of the clerk. Such warrant so docketed is sufficient to support the issuance of writs of execution and writs of garnishment in favor of the state in the manner provided by law in the case of civil judgment, wholly or partially unsatisfied. The clerk of the court is entitled

to a filing fee of five dollars, which shall be added to the amount of the warrant.

NEW SECTION. Sec. 7. Whenever an owner of proportionally registered vehicles is delinquent in the payment of an obligation under this chapter the department may transmit notices of the delinquency to the attorney general who shall at once proceed to collect by appropriate legal action the amount due the state from the delinquent owner.

In a suit brought to enforce the rights of the state under this chapter, a certificate by the department showing the delinquency is prima facie evidence of the amount of the obligation, of the delinquency thereof, and of compliance by the department with all provisions of this chapter relating to such obligation.

NEW SECTION. Sec. 8. The foregoing remedies of the state in this chapter are cumulative, and no action taken by the department may be construed to be an election on the part of the state or any of its officers to pursue any remedy under this chapter to the exclusion of any other remedy provided for in this chapter.

NEW SECTION. Sec. 9. The department may initiate and conduct audits and investigations as may be reasonably necessary to establish the existence of any alleged violations of or noncompliance with the provisions of this chapter or any rules issued hereunder.

For the purpose of any audit, investigation, or proceeding under this chapter the director or any designee of the director may administer oaths and affirmations, subpoena witnesses, compel their attendance, take evidence, and require the production of any books, paper, correspondence, memoranda, agreements, or other documents or records which the department deems relevant or material to the inquiry.

In case of contumacy or refusal to obey a subpoena issued to any person, any court of competent jurisdiction upon application by the department, may issue to that person an order requiring him to appear before the director or the officer designated by him to produce testimony or other evidence touching the matter under audit, investigation, or in question. Failure to obey an order of the court may be punishable by contempt.

NEW SECTION. Sec. 10. Whenever a person has been required to pay a fee or tax pursuant to this chapter which amounts to an overpayment of five dollars or more, such person is entitled to a refund of the entire amount of such overpayment, regardless of whether or not a refund of the overpayment has been requested. Nothing in this subsection precludes anyone from applying for a refund of such overpayment if the overpayment is less than five dollars. Conversely, if the department or its agents has failed to charge and collect the full amount of fees or taxes pursuant to this chapter, which underpayment is in the amount of five dollars or more, the department shall

charge and collect such additional amount as will constitute full payment of the fees or taxes due.

NEW SECTION. Sec. 11. Judicial review and appeals under this chapter shall be governed by the Administrative Procedure Act, chapter 34.04 RCW.

NEW SECTION. Sec. 12. Sections 2 through 11 of this act shall be added to chapter 46.85 RCW.

Passed the Senate April 2, 1981.

Passed the House April 22, 1981.

Approved by the Governor May 14, 1981.

Filed in Office of Secretary of State May 14, 1981.

CHAPTER 222

[Substitute Senate Bill No. 3778]

RECIPROCAL AND PROPORTIONAL REGISTRATION OF VEHICLES— INTERSTATE COMMERCIAL VEHICLES, SINGLE CAB CARDS

AN ACT Relating to motor vehicles; amending section 2, chapter 106, Laws of 1963 and RCW 46.85.020; amending section 3, chapter 106, Laws of 1963 as last amended by section 1, chapter 92, Laws of 1977 ex. sess. and RCW 46.85.030; amending section 12, chapter 106, Laws of 1963 as last amended by section 1, chapter 115, Laws of 1973 and RCW 46.85.120; amending section 13, chapter 106, Laws of 1963 and RCW 46.85.130; amending section 5, chapter 51, Laws of 1971 and RCW 46.85.135; amending section 14, chapter 106, Laws of 1963 as amended by section 2, chapter 134, Laws of 1979 and RCW 46.85.140; amending section 22, chapter 106, Laws of 1963 and RCW 46.85.220; amending section 28, chapter 106, Laws of 1963 and RCW 46.85.280; amending section 29, chapter 106, Laws of 1963 as amended by section 116, chapter 32, Laws of 1967 and RCW 46.85.290; amending section 82.44.020, chapter 15, Laws of 1961 as last amended by section 230, chapter 158, Laws of 1979 and RCW 82.44.020; amending section 82.44-.050, chapter 15, Laws of 1961 as amended by section 3, chapter 199, Laws of 1963 and RCW 82.44.050; amending section 82.44.060, chapter 15, Laws of 1961 as last amended by section 233, chapter 158, Laws of 1979 and RCW 82.44.060; repealing section 23, chapter 106, Laws of 1963, section 115, chapter 32, Laws of 1967 and RCW 46.85.230; repealing section 24, chapter 106, Laws of 1963 and RCW 46.85.240; repealing section 25, chapter 106, Laws of 1963, section 99, chapter 136, Laws of 1979 ex. sess. and RCW 46.85.250; repealing section 26, chapter 106, Laws of 1963 and RCW 46.85.260; repealing section 2, chapter 94, Laws of 1967 ex. sess. and RCW 46.86.010; repealing section 3, chapter 94, Laws of 1967 ex. sess., section 200, chapter 158, Laws of 1979 and RCW 46.86.020; repealing section 4, chapter 94, Laws of 1967 ex. sess., section 201, chapter 158, Laws of 1979 and RCW 46.86.030; repealing section 5, chapter 94, Laws of 1967 ex. sess., section 1, chapter 42, Laws of 1975 1st ex. sess. and RCW 46.86.040; repealing section 6, chapter 94, Laws of 1967 ex. sess. and RCW 46.86.050; repealing section 7, chapter 94, Laws of 1967 ex. sess. and RCW 46.86.060; repealing section 8, chapter 94, Laws of 1967 ex. sess. and RCW 46.86.070; repealing section 9, chapter 94, Laws of 1967 ex. sess. and RCW 46.86.080; repealing section 10, chapter 94, Laws of 1967 ex. sess. and RCW 46.86.090; repealing section 11, chapter 94, Laws of 1967 ex. sess. and RCW 46.86.100; repealing section 12, chapter 94, Laws of 1967 ex. sess. and RCW 46.86.110; repealing section 13, chapter 94, Laws of 1967 ex. sess., section 2, chapter 42, Laws of 1975 1st ex. sess. and RCW 46.86.120; repealing section 14, chapter 94, Laws of 1967 ex. sess. and RCW 46.86.130; and repealing section 7, chapter 143, Laws of 1971 ex. sess. and RCW 46.86.140.

Be it enacted by the Legislature of the State of Washington: