

SOUTH AUSTRALIA

COMMERCIAL MOTOR VEHICLES (HOURS OF DRIVING) ACT, 1973

*This Act is reprinted pursuant to the Acts Republication Act 1967 and incorporates all amendments in force as at **1 March 1993**.*

It should be noted that the Act was not revised (for obsolete references, etc.) by the Commissioner of Statute Revision prior to the publication of this reprint.

SUMMARY OF PROVISIONS

Section

1. Short title
2. Commencement
3. Interpretation
4. Hours of driving
5. Driver's duty to keep authorized log book
6. As to issue of authorized log books
7. Duties of owners of motor vehicles in relation to duplicate pages of log books
8. Duty to produce log books, etc., when required by inspector
9. Offences in relation to possession of authorized log books
10. Offences against this Act
11. Defences
12. As to obligations of interstate drivers
13. Regulations

COMMERCIAL MOTOR VEHICLES (HOURS OF DRIVING) ACT, 1973

being

Commercial Motor Vehicles (Hours of Driving) Act, 1973,
No. 85 of 1973 [Assented to 13 December 1973]¹

as amended by

Commercial Motor Vehicles (Hours of Driving) Act Amendment Act, 1979, No. 3 of 1979 [Assented to 22 February 1979]
Statutes Amendment (Expiation of Offences) Act 1992 No. 71 of 1992 [Assented to 19 November 1992]²

¹ Came into operation 1 July 1974: *Gaz.* 28 March 1974, p. 1046.

² Came into operation 1 March 1993: *Gaz.* 18 February 1993, p. 600.

Note: 1. *Asterisks indicate repeal or deletion of text.*

2. *For the legislative history of the Act see Appendix 1. Entries appearing in the Appendix in bold type indicate the amendments incorporated since the last reprint.*

An Act to provide for the control and regulation of the hours of driving of drivers of certain motor vehicles, and for other purposes.

BE IT ENACTED by the Governor of the State of South Australia, with the advice and consent of the Parliament thereof, as follows:

Short title

1. This Act may be cited as the *Commercial Motor Vehicles (Hours of Driving) Act, 1973*.

Commencement

2. This Act shall come into operation on a day to be fixed by proclamation.

Interpretation

3. (1) In this Act, unless the contrary intention appears—

"authorized log book" means a log book issued under and in accordance with the provisions of this Act or under and in accordance with the provisions of a corresponding law of another State or Territory:

"commercial motor vehicle" or "motor vehicle" means a motor vehicle (including an articulated motor vehicle), as defined in the *Motor Vehicles Act, 1959-1973*, of an unladen mass exceeding 4.5 tonnes which is used or intended to be used for the carriage of passengers or goods for hire or reward, or in the course of any business or trade:

"corresponding law of another State or Territory" means a law of another State or of a Territory of the Commonwealth that requires, and regulates the keeping of, log books by drivers of commercial motor vehicles:

"inspector" means a member of the police force or a person appointed in writing as an inspector for the purposes of this Act by the Minister:

"road" means—

(a) a road, street or thoroughfare;

or

(b) any other place commonly used by the public or to which the public are permitted to have access:

"sleeper-cab motor vehicle" means—

(a) a commercial motor vehicle described in the certificate of registration of that motor vehicle issued under the law of any State or Territory of the Commonwealth as a sleeper-cab motor vehicle or sleeper-cab motor car;

or

(b) a commercial motor vehicle in which a certificate issued under this Act and certifying that the motor vehicle is a sleeper-cab motor vehicle is carried and displayed in accordance with this Act:

3.

"trailer" means a vehicle, or machine on wheels, that is not self-propelled and is constructed or adapted for being drawn by a motor vehicle (including any tow-bar or other attachment).

(2) Where in any proceedings for an offence against this Act it appears to a court that a vehicle is registered under the law of any State or Territory of the Commonwealth as a motor vehicle intended to be used for commercial purposes, the vehicle shall be deemed to be a commercial motor vehicle unless the contrary is proved.

(3) In calculating the mass of a vehicle for the purposes of this Act, the unladen mass of any trailer or other vehicle attached to the motor vehicle shall be taken into account.

(4) For the purposes of this Act the unladen mass of a motor vehicle or trailer is the mass without any load other than the petrol, oil, tools and accessories ordinarily carried thereon.

(5) In any proceedings in any court a certificate purporting to be signed by the officer for the time being in charge of the records kept under the law for the time being in force in any State or Territory of the Commonwealth relating to the registration or licensing of motor vehicles, containing particulars of the unladen mass of a particular vehicle or trailer as shown in those records shall be evidence of the unladen mass of that vehicle or trailer without proof of the signature or of the official character of the person purporting to have signed the certificate and without the production of any record or document upon which the certificate is founded.

Note: For definition of divisional penalties (and divisional expiation fees) see Appendix 2.

Hours of driving

4. (1) A person shall not drive a commercial motor vehicle in any of the following circumstances, namely, where—

- (a) he has driven a commercial motor vehicle for a continuous period of more than five hours immediately prior to that time;
- (b) he has driven a commercial motor vehicle for periods amounting in the aggregate to more than twelve hours within the period of twenty-four hours immediately preceding that time;
- (c) he has not had at least five consecutive hours of rest from driving in the period of twenty-four hours immediately preceding that time;
- (d) he has not had at least one period of twenty-four consecutive hours of rest from driving during the seven days immediately preceding that time or at least two such periods of rest, each of not less than twenty-four consecutive hours during the fourteen days immediately preceding that time.

Expiation fee: Where it is alleged that the driver drove for no more than 30 minutes overtime—Division 11 fee.

(2) Subject to this section—

- (a) any period during which the driver of a commercial motor vehicle drives or has driven a motor vehicle whether within or outside the State shall be taken into account in calculating any period of driving;

4.

- (b) any two or more periods of driving shall be deemed to be a continuous period of driving unless separated by intervals of not less than half an hour in which the driver has a reasonable opportunity to obtain rest and refreshment;

and

- (c) any time spent by the driver of a commercial motor vehicle on that motor vehicle while it is in motion, or on another moving vehicle for any purpose connected with or incidental to the journey of the commercial motor vehicle, shall be regarded as time spent in driving that motor vehicle.

(3) Where the driver of a commercial motor vehicle has at a certain time reached a point within 50 kilometres of his destination, as shown in his log book, without having driven for more than eleven hours in the period of twenty-four hours immediately preceding that time, then he may, notwithstanding the provisions of paragraph (b) of subsection (1) of this section, proceed to complete his journey to that destination.

(4) Where a commercial motor vehicle is a sleeper-cab motor vehicle in which at least two drivers are employed at all times while the motor vehicle is in motion, any time spent by a driver in the sleeping compartment of the motor vehicle and time spent by him in the vehicle but not in driving shall not be regarded as time spent by him in driving that vehicle for the purposes of calculating any period of driving by that driver, if it is proved that each of the drivers had at least twenty-four consecutive hours for rest and refreshment outside the motor vehicle during the period of ninety-six hours immediately preceding the end of the period in respect of which the calculation is made.

(5) While a person is driving a motor vehicle whose load, or the greater part of whose load consists of livestock or bees he shall be exempt from the provisions of subsection (1) of this section but if he subsequently drives a motor vehicle in circumstances in which he is not so exempt, then periods spent by him in driving a motor vehicle while exempt from the provisions of this Act shall be taken into account for the purpose of determining whether he may lawfully drive the motor vehicle on that subsequent occasion.

Driver's duty to keep authorized log book

5. (1) A person shall not drive a commercial motor vehicle unless he has in the motor vehicle in his possession an authorized log book that has been issued to him and has been duly completed in accordance with the requirements of this section.

Expiation fee: Division 11 fee.

(2) The person to whom an authorized log book has been issued shall enter in duplicate in the log book in accordance with the directions contained in the log book such particulars as are necessary to show a complete record of the times and places at which periods—

- (a) spent by him in driving a commercial motor vehicle;
- (b) spent by him in resting from driving;

5.

and

(c) spent by him off duty,

began and ended.

Expiation fee: Division 11 fee.

(3) The person to whom an authorized log book has been issued shall use the pages of the log book serially in chronological order and shall complete each page of the log book in accordance with the directions contained in the log book, and, on completion of each page of the log book, shall verify the entries on the page by signing the page in the place indicated thereon.

Expiation fee: Division 11 fee.

(4) Where the person to whom an authorized log book has been issued is employed by some other person to drive a motor vehicle, he shall give or send to that other person, at intervals not exceeding one month in any case, every page marked "duplicate" in the log book that he is required to have completed up to that time.

Expiation fee: Division 11 fee.

(5) A person shall not deface or destroy any page of an authorized log book or remove any page of an authorized log book that is marked as an original page.

Expiation fee: Division 11 fee.

(6) A book purporting to be a log book intended to be issued under this Act or under the provisions of a corresponding law of another State or a Territory of the Commonwealth and produced in evidence in any proceedings before a court shall be evidence of the form of an authorized log book and of the directions in accordance with which the log book or any page thereof is to be kept or completed.

As to issue of authorized log books

6. (1) Any person shall, subject to compliance with this section, be entitled to obtain an authorized log book from an issuing officer at any police station or other place declared by proclamation to be a place at which authorized log books may be obtained.

(2) A person shall be entitled to obtain an authorized log book if—

(a) he tenders to the issuing officer such fee as is prescribed;

and

(b) he produces to the issuing officer a current licence authorizing him to drive a commercial motor vehicle issued under the law of this State or under the law of the State or Territory of the Commonwealth in which he ordinarily resides and—

(i) the authorized log book, if any, last issued to him under this Act or under a corresponding law of another State or Territory;

6.

or

- (ii) a statement in the prescribed form stating that he has never previously been issued with an authorized log book or that the last authorized log book issued to him has been accidentally lost or destroyed and giving such particulars as are prescribed in relation to periods of driving and rest from driving prior to the time of the application.

(3) Before issuing an authorized log book the issuing officer shall—

- (a) complete and sign the prescribed form of certificate as to the time and place of issue contained in the log book;
- (b) where an authorized log book has been produced for the purpose of obtaining a new log book, cancel all unused pages in the log book so produced;
- (c) enter in the appropriate place on the inner side of the front cover page of the authorized log book so produced, if any, the date of issue and page numbering of the new log book issued by him;

and

- (d) enter in the new log book prescribed particulars in relation to periods spent by the applicant in driving or resting from driving, as appear from the log book or statement produced under subsection (2) of this section.

(4) A person who—

- (a) forges or fraudulently alters an authorized log book;
- (b) with intent to evade any provision of this Act, or to enable any other person to evade any provision of this Act, lends an authorized log book to, or allows an authorized log book to be used by, any person other than the person to whom it was issued;
- (c) makes a false or misleading statement under subsection (2) of this section knowing it to be false or misleading;

or

- (d) makes a false or misleading entry in an authorized log book knowing it to be false or misleading;

shall be guilty of an offence and liable to a penalty, not exceeding five hundred dollars or imprisonment for six months.

Duties of owners of motor vehicles in relation to duplicate pages of log books

7. (1) The owner of a commercial motor vehicle shall, at intervals not exceeding one month in any case, obtain from every person whom he causes or permits to drive the motor vehicle every page marked "duplicate" in the authorized log book that the driver is required to have completed up to that time and shall, for a period of not less than three months after so obtaining any pages, retain those pages in chronological order at the place of business from which the motor vehicle normally operates.

Expiation fee: Division 11 fee.

(2) Where the owner of a commercial motor vehicle has also been the driver thereof he shall retain in chronological order at the place of business from which the motor vehicle normally operates or in the motor vehicle, every page marked "duplicate" in each authorized log book that he is required to complete as the driver of the motor vehicle, for a period of not less than three months after the time at which he is required to complete that page.

Expiation fee: Division 11 fee.

Duty to produce log books, etc., when required by inspector

8. (1) Any person shall, upon being required to do so by an inspector, produce or cause to be produced for examination by the inspector every authorized log book or duplicate page of every authorized log book and any other record required by this Act to be kept by him or to be kept in a motor vehicle of which he is the driver or one of the drivers, and shall permit the inspector to make such copies of the log book, duplicate page or record as the inspector thinks fit and to endorse on the log book, duplicate page or record the inspector's initials and designation and the date, place and time of the examination.

Expiation fee: Division 11 fee.

(2) The entries in any authorized log book, in the duplicate pages of any such log book, or in any record kept by any person under this Act and any document certified by an inspector to be a true copy of the entries in an authorized log book, in the duplicate pages of an authorized log book or in any such record may be produced in evidence in any court as evidence of the making of the entries and of the matter therein recorded.

(3) The driver of a commercial motor vehicle shall, when directed by an inspector to do so, stop the vehicle and shall keep the vehicle stationary for so long as may be necessary for the inspector to complete an examination of any log book that the driver has been required to produce for the examination of the inspector.

Expiation fee: Division 11 fee.

(4) Where the driver of a motor vehicle has stopped the motor vehicle on the direction of an inspector, the inspector shall, if required to do so by the driver, enter in the authorized log book in the driver's possession the time at which the vehicle was stopped and the time at which it was allowed to proceed and the entry shall be signed by the inspector.

(5) The driver of a commercial motor vehicle shall, on being required to do so by an inspector, give his name and address to the inspector and truthfully answer such other questions as are put to him for the purpose of ascertaining the name and place of residence or place of business of the driver or the owner of the vehicle.

8.

(6) A person shall not falsely represent to an inspector that he is the person named in a licence or authorized log book.

(7) A person shall not hinder or obstruct an inspector in the execution of any power conferred or duty imposed on him by this Act.

Offences in relation to possession of authorized log books

9. A person shall not—

- (a) use or have in his possession an authorized log book issued to any other person;
- (b) use or have in his possession an authorized log book from which any page marked "original" has been removed;

or

- (c) use or have in his possession more than one authorized log book containing pages that have not been used or cancelled.

Expiation fee: Division 11 fee.

Offences against this Act

10. (1) A person who contravenes or fails to comply with any provision of this Act shall be guilty of an offence against this Act.

(2) A person who knowingly causes or permits any other person to drive a motor vehicle in this State in contravention of any of the requirements of this Act shall be guilty of an offence against this Act.

(3) A person who is guilty of an offence against this Act shall be liable on conviction to a penalty or punishment not exceeding the penalty or punishment expressly mentioned in respect of the offence or, if a penalty or punishment is not so mentioned, in the case of a first offence, to a penalty of not more than one hundred dollars, and in the case of a second or subsequent offence, to a penalty of not less than forty dollars and not more than two hundred dollars.

(4) Proceedings for offences against this Act shall be heard and determined summarily.

Defences

11. It shall be a defence—

- (a) to a charge for an offence against this Act that the matters alleged to constitute the offence arose from circumstances that the defendant could not reasonably be expected to have foreseen;

and

- (b) to a charge for an offence against a provision of this Act that requires a driver to have in his possession an authorized log book, or to make or complete an entry in an authorized log book, that—
- (i) the owner of the motor vehicle keeps at his place of business from which the motor vehicle ordinarily operates a current record containing all the information and particulars that are required to be recorded by the driver of the motor vehicle in an authorized log book;
 - (ii) the defendant has not in the course of his duties as the driver of the motor vehicle, during the period of seven days immediately preceding the completion of any period of driving been absent or been required to be absent from that place of business for a period of more than eleven hours;
- and
- (iii) the driver of the motor vehicle has not driven or been required to drive the motor vehicle outside a radius of one hundred kilometres from that place of business.

As to obligations of interstate drivers

12. Notwithstanding anything in this Act, it shall be sufficient compliance by the driver of a motor vehicle with the provisions of this Act relating to the keeping of authorized log books or the making of entries therein by him if, as regards periods of driving and periods of rest taken, and other relevant matters occurring, in any State or Territory before entering this State, all entries required by this Act to be made in an authorized log book are made at the time of, or as soon as practicable after, entering this State.

Regulations

13. (1) The Governor may make such regulations as are contemplated by this Act, or as he deems necessary or expedient for the purposes of this Act.

- (2) Without limiting the generality of subsection (1) of this section, those regulations may—
- (a) prescribe matters relating or incidental to the issue and control of authorized log books;
 - (b) prescribe requirements to be complied with in relation to authorized log books and in relation to entries to be made therein;
 - (c) provide that part of the information required by this Act to be recorded in a log book may be recorded instead by means of an instrument that complies with stipulations made in the regulations and provide that where information is so recorded the provisions of this Act shall apply with such exceptions and modifications as may be specified in the regulations in relation to any such record;
 - (d) prescribe forms and fees for the purposes of this Act;
 - (e) prescribe the requirements with which motor vehicles must comply in order to be certified as sleeper-cab motor vehicles;

10.

(f) prescribe the circumstances in which and the person or persons by whom certificates are to be issued certifying that certain motor vehicles are sleeper-cab motor vehicles;

(g) prescribe the manner in which any such certificate shall be displayed in the motor vehicle in respect of which it is issued;

and

(h) prescribe a penalty not exceeding one hundred dollars for the breach of any regulation.

(3) The regulations may provide for exemptions from all or any of the provisions of this Act in respect of any class of commercial motor vehicles, in respect of commercial motor vehicles carrying any class of load, or in respect of commercial motor vehicles operated under conditions, or in circumstances prescribed in the regulations, and any such regulation may prescribe conditions upon which any such exemption may be granted, or shall be operative.

APPENDIX 1

Legislative History

(entries in bold type indicate amendments incorporated since the last reprint)

Section 3(1):	definition of "commercial motor vehicle" amended by 3, 1979, s. 2(a)
Section 3(3):	amended by 3, 1979, s. 2(b)
Section 3(4):	amended by 3, 1979, s. 2(c)
Section 3(5):	amended by 3, 1979, s. 2(d)
Section 4(1):	amended by 71, 1992, s. 3(1) (Sched.)
Section 5(1) - (3):	amended by 71, 1992, s. 3(1) (Sched.)
Section 5(4):	amended by 3, 1979, s. 3; 71, 1992, s. 3(1) (Sched.)
Section 5(5):	amended by 71, 1992, s. 3(1) (Sched.)
Section 7(1):	amended by 3, 1979, s. 4(a)-(c); 71, 1992, s. 3(1) (Sched.)
Section 7(2):	amended by 3, 1979, s. 4(d), (e); 71, 1992, s. 3(1) (Sched.)
Section 8(1) and (3):	amended by 71, 1992, s. 3(1) (Sched.)
Section 9:	amended by 71, 1992, s. 3(1) (Sched.)

APPENDIX 2

DIVISIONAL PENALTIES AND EXPIATION FEES

At the date of publication of this reprint divisional penalties and expiation fees are, as provided by section 28a of the *Acts Interpretation Act 1915*, as follows:

Division	Maximum imprisonment	Maximum fine	Expiation fee
1	15 years	\$60 000	—
2	10 years	\$40 000	—
3	7 years	\$30 000	—
4	4 years	\$15 000	—
5	2 years	\$8 000	—
6	1 year	\$4 000	\$300
7	6 months	\$2 000	\$200
8	3 months	\$1 000	\$150
9	-	\$500	\$100
10	-	\$200	\$75
11	-	\$100	\$50
12	-	\$50	\$25