NO. 96538-2

SUPREME COURT OF THE STATE OF WASHINGTON

STATE OF WASHINGTON, WASHINGTON STATE DEPARTMENT OF TRANSPORTATION,

Respondent,

v.

MULLEN TRUCKING 2005, LTD, a Canadian corporation or business entity d/b/a MULLEN TRUCKING LP; WILLIAM SCOTT and JANE DOE SCOTT, individually and the marital community composed thereof; SAXON ENERGY SERVICES, INC.; TAMMY J. DETRAY and GREGORY S. DETRAY, individually and the marital community composed thereof; G&T CRAWLERS SERVICE, a Washington business entity, MOTORWAYS TRANSPORT, LTD, a Canadian corporation; AMANDEEP SIDHU and JANE DOE SIDHU, individually and the marital community composed thereof,

Petitioners.

RESPONDENT'S ANSWER TO PETITIONS FOR REVIEW

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I. INTRODUCTION

This case involves two statutes that specifically govern and delineate liability for damages to public bridges caused by overhead bridge strikes. *See* RCW 46.44.020, .110. Pursuant to these statutes, the Washington State Department of Transportation (State or WSDOT) brought this lawsuit for the recovery of "all damages" that resulted when an over-height load being transported by a truck operated by Petitioner Mullen Trucking 2005, Ltd. (Mullen) struck and destroyed the Skagit River Bridge. Mullen, in turn, claimed Petitioner Motorways Transport, Ltd. (Motorways) was contributorily liable for the bridge collapse, and the State added Motorways to its suit.

The Court of Appeals correctly concluded that allowing Mullen and Motorways to reduce the amount of damages WSDOT could recover by allowing Mullen and Motorways to apportion fault to WSDOT under RCW 4.22.070 would contravene the directive of RCW 46.44.020 that "no liability may attach" to WSDOT, as well as the mandate of RCW 46.44.110 that makes Motorways also liable for the damages caused by the bridge strike.

The Court of Appeals followed long-established rules of statutory construction and controlling precedent in affirming the trial court's conclusion that Mullen and Motorways could not apportion fault to

WSDOT under RCW 4.22.070. Mullen and Motorways both seek review under RAP 13.4(b)(1) and (2). Motorways also requests review under RAP 13.4(b)(4). Neither Mullen nor Motorways satisfies any of these criteria. Accordingly, this Court should deny review.

II. STATEMENT OF THE CASE[1]

On May 23, 2013, Mullen transported an over-height load that struck several overhead supports on the Skagit River Bridge, causing the bridge to collapse into the river. CP at 323-24, 1168. WSDOT sued Mullen in negligence and sought only to recover damages for the repair and replacement of the bridge section Mullen collapsed. Mullen alleged that WSDOT and a second truck driver, Amandeep Sidhu, and Sidhu's employer, Motorways, were contributorily liable for the bridge collapse.[2] CP at 26.

After WSDOT added Motorways to the lawsuit, Mullen and Motorways sought to reduce their liability by the percentage of fault they claimed was attributable to the State. The trial court dismissed Mullen's and Motorways' contributory negligence affirmative defense and/or

[1] The substance of this statement of the case is taken directly from the Court of Appeals opinion. *State v. Mullen Trucking 2005, Ltd.*, 5 Wn. App. 787, 789-90, 428 P.3d 401 (2018).

[2] Mullen claimed that, as its truck approached the bridge in the right lane, a Motorways truck passed Mullen's truck in the left lane, forcing Mullen's truck to the right where less vertical clearance existed. CP at 48, 474.

counterclaim on summary judgment, ruling that under RCW 46.44.020, no fault may be apportioned to the State. CP at 1220-24. The Court of Appeals granted Mullen's Motion for Discretionary Review, which Motorways joined. CP at 1366-67.

The Court of Appeals affirmed the trial court decision, concluding that RCW 46.44.020 and .110, when read together, require that entities causing a strike on a bridge with a vertical clearance of 14 feet or more are liable for all damages caused to the bridge, and apportionment of fault to the State would be inconsistent with that requirement.[3] RCW 46.44.020 explicitly provides that "no liability" may attach to the State for damages that occur by reason of the existence of an overhead structure where, as here, the State provides at least 14 feet of vertical clearance. RCW 46.44.110 provides that "[a]ny person operating any vehicle is liable for any damage to any public highway, bridge, elevated structure, or other state property sustained as the result of any negligent operation thereof."

The Court of Appeals held these statutes unambiguously express a legislative determination that all financial liability for the damages to the Skagit River Bridge structure must be borne by Mullen and Motorways, not

[3] RCW 46.44.020 and .110 were enacted in the same year, in the same subchapter of the same bill. *See* Laws of 1937, ch. 186, subch. VI, §§ 48, 57, respectively. Section 57, which subjected persons who negligently or illegally damage a bridge to any and all liability, was entitled "Liability for damages to bridges." *See* App. 1 (excerpt of Laws of 1937, ch. 189).

the State.[4] The State's recovery against Mullen and Motorways cannot be reduced by an allocation of fault under RCW 4.22.070, for that would shift a portion of the financial responsibility to the State in contravention of RCW 46.44.020 and .110.

III. RESTATEMENT OF THE ISSUE PRESENTED FOR REVIEW

Where RCW 46.44.020 provides that no liability may attach to the State for any damage to any structure over or across a public highway with a vertical clearance of at least 14 feet, and RCW 46.44.110 directs that any person moving any object upon a bridge is liable for all damages to a public bridge sustained as the result of any illegal operation or negligence, did the Court of Appeals err in applying long-established rules of statutory construction and controlling precedent in determining that WSDOT's claim for damages for defendants' destruction of the Skagit River Bridge could not be reduced by an allocation of fault—and thus liability—to the State under RCW 4.22.070?

[4] There are two additional defendants that chose not to join this appeal, Tammy DeTray, the pilot car driver, and Patty Auvil, assertedly DeTray's master. These defendants also potentially would be liable for damage to the Skagit River Bridge.

IV. ARGUMENT

A. Argument Summary

The Court of Appeals correctly applied well-settled rules of statutory construction and controlling precedent in concluding that Mullen and Motorways were not permitted to allocate fault to WSDOT under RCW 4.22.070. Any allocation of fault would reduce the State's recovery and thereby conflict with the unambiguous legislative directive in two specific statutes governing this action. RCW 46.44.020 mandates that in an action for damage to a bridge with a vertical clearance of 14 feet or more "**no liability may attach"** to the State. RCW 46.44.110 directs that the person operating a vehicle on the bridge is liable for "**all damages"** sustained as the result of any illegal or negligent operation. *State v. Mullen Trucking*, 5 Wn. App. 787, 428 P.3d 401, 406, ¶ 23 (2018).

When read together, RCW 46.44.020 and .110 statutorily preclude an allocation of fault under RCW 4.22.070. They also negate the State's duty to persons who strike a bridge with a vertical clearance of over 14 feet. Where, as here, the bridge has a vertical clearance of at least 14 feet, these statutes also negate any duty the State might otherwise owe where an over-height vehicle strikes the bridge.[5]

[5] The Court of Appeals correctly noted that article II, section 26 of the Washington State Constitution, provides that: "The Legislature shall direct by law and in what manner, and in what courts, suits may be brought against the state." Both RCW 46.44.020 and .110

Nothing about the Court of Appeals opinion conflicts with prior precedent or raises an issue of substantial public interest. Review under RAP 13.4(b)(1), (2), and (4) should be denied.

B. The Plain Language of RCW 46.44.020 Unambiguously Directs That, in an Action Brought by the State for Damage to a Bridge, "No Liability May Attach" to the State if the Bridge Provides 14 Feet or More of Vertical High Clearance

The facts are undisputed that the State provided at least 14 feet of vertical clearance on the bridge that Mullen's truck negligently struck and destroyed, knocking the bridge into the Skagit River. CP at 910, 1149. *Mullen*, 5 Wn. App. at 795, ¶ 20. RCW 46.44.020 addresses these facts directly. It reads as follows:

> It is unlawful for any vehicle unladen or with load to exceed a height of fourteen feet above the level surface upon which the vehicle stands. This height limitation does not apply to authorized emergency vehicles or repair equipment of a public utility engaged in reasonably necessary operation. The provisions of this section do not relieve the owner or operator of a vehicle or combination of vehicles from the exercise of due care in determining that sufficient vertical clearance is provided upon the public highways where the vehicle or combination of vehicles is being operated; and **no liability may attach to the state or to any county, city, town, or other political subdivision by reason of any damage or injury to persons or property by reason of the existence of any structure over or across any public highway where the vertical clearance above the roadway is fourteen feet or more**; or, where the vertical clearance is

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were enacted pursuant to this constitutional grant of authority to the Legislature. *Mullen*, 5 Wn. App. at 793-94, ¶¶ 16, 17.

> less than fourteen feet, if impaired clearance signs of a design approved by the state department of transportation are erected and maintained on the right side of any such public highway in accordance with the manual of uniform traffic control devices for streets and highways as adopted by the state department of transportation under chapter 47.36 RCW. If any structure over or across any public highway is not owned by the state or by a county, city, town, or other political subdivision, it is the duty of the owner thereof when billed therefor to reimburse the state department of transportation or the county, city, town, or other political subdivision having jurisdiction over the highway for the actual cost of erecting and maintaining the impaired clearance signs, but no liability may attach to the owner by reason of any damage or injury to persons or property caused by impaired vertical clearance above the roadway.

(Emphasis added.)

The Court of Appeals correctly read RCW 46.44.020 as showing a clear legislative intent to eliminate any state liability for damages that resulted from Mullen's oversized load striking the cross-supports on the Skagit River Bridge, which was more than 14 feet in height. The Court properly rejected Mullen's and Motorways' interpretation of RCW 46.44.020, which would have rendered the highlighted language meaningless by attaching liability to WSDOT through an allocation of fault under RCW 4.22.070. *See Taylor v. City of Redmond*, 89 Wn.2d 315, 319, 571 P.2d 1388 (1977) (courts must not construe statutes so as to nullify, void, or render meaningless or superfluous any actions or words).

C. The Unequivocal Language of RCW 46.44.110 Makes Mullen and Motorways "Liable for All Damages" That Resulted From Their Negligent or Illegal Destruction of the Skagit River Bridge

The Court of Appeals properly held that RCW 46.44.110 unambiguously indicates the Legislature's intent to make a person who damages a bridge liable for "all damages." That statute provides:

> Any person operating any vehicle or moving any object or conveyance upon any public highway in this state or upon any bridge or elevated structure that is a part of any such public highway is **liable for all damages** that the public highway, bridge, elevated structure, or other state property may sustain as a result of any illegal operation of the vehicle or the moving of any such object or conveyance or as a result of the operation or moving of any vehicle, object, or conveyance weighing in excess of the legal weight limits allowed by law. This section applies to any person operating any vehicle or moving any object or contrivance in any illegal or negligent manner or without a special permit as provided by law for vehicles, objects, or contrivances that are overweight, overwidth, overheight, or overlength. Any person operating any vehicle is liable for any damage to any public highway, bridge, elevated structure, or other state property sustained as the result of any negligent operation thereof. When the operator is not the owner of the vehicle, object, or contrivance but is operating or moving it with the express or implied permission of the owner, the owner and the operator are jointly and severally liable for any such damage. Such damage to any state highway, structure, or other state property may be recovered in a civil action instituted in the name of the state of Washington by the department of transportation or other affected state agency. Any measure of damage determined by the department of transportation to its highway, bridge, elevated structure, or other property under this section is prima facie the amount of damage caused thereby and is presumed to be the amount

> recoverable in any civil action therefor. The damages available under this section include the incident response costs, including traffic control, incurred by the department of transportation.

(Emphasis added.) Liability explicitly attaches to the negligent operation of overheight "vehicles, objects, or contrivances" that causes damage to a public bridge.

The Court of Appeals correctly read RCW 46.44.020 and .110 together,[6] concluding that they unambiguously

> (1) limit vehicle height and require a vehicle's owner to operate due care as to the vertical clearance; (2) declare that "no liability may attach to the state" where it has provided at least 14 feet of clearance; and (3) assign to a negligent motorist liability for "all damages" to a public highway or bridge.

Mullen, 5 Wn. App. at 797, ¶ 23.

D. The Court of Appeals Appropriately Rejected Mullen's and Motorways' Request to Apportion Fault to the State Under RCW 4.22.070, Because Doing So Would Allow Liability to Attach to the State in Conflict With RCW 46.44.020 and Would Reduce the State's Recovery of Damages to the Bridge, in Whole or in Part, Rendering RCW 46.44.110 Meaningless

Mullen contends that, "[a]s no party alleges the State is 'liable' for the subject bridge strike, RCW 46.44.020 is inapplicable." Mullen Pet. for

[6] As noted above, in footnote 3, RCW 46.44.020 and .110 were enacted in the same year, in the same subchapter of the same bill. It is presumed that statutes relating to the same subject and passed during the same legislative session are imbued with the same spirit and actuated by the same policy, and are to be construed together. *Knack v. Dep't of Retirement Sys.*, 54 Wn. App. 654, 661, 776 P.2d 687 (1989).

Review at 7. The Court of Appeals recognized the obvious error in this reasoning:

> But, reducing the State's recovery would, in fact, shift a degree of liability of the State contrary to RCW 46.44.020. Apportioning fault to the State would also relieve the negligent motorist of its liability for "all damages" under RCW 46.44.110.

Mullen, 5 Wn. App. at 797, ¶ 23 (emphasis in original). The Court correctly concluded that "because the motorist liability statutes specifically relieve the State of liability under the factual circumstances of this case, and assign all liability to the negligent motorist, these statutes, and not RCW 4.22.070, govern." *Id.* at 797, ¶ 24.[7]

In concluding that the motorist liability statutes, RCW 46.44.020 and .110, specifically address liability in the circumstances of this case, which involves damage to a state bridge, the Court followed well-settled rules of statutory construction in determining that when one statute is specific and the other is general, the specific statute controls, regardless of when it was enacted. *See Mullen*, 5 Wn. App. at 797-98, ¶ 25, citing *Residents Opposed to Kittitas Turbines v. State Energy Facility Site*

[7] The Court of Appeals thus identified the conflict between RCW 46.44.020 and .110, on one hand, and RCW 4.22.070, on the other. Applying RCW 4.22.070 in this case could relieve Mullen and Motorways from some portion of their liability, which directly conflicts with the statutory mandate in RCW 46.44.020 and .110 that the vehicle operators, and not the State, are liable for all damages to the bridge caused by their negligence. Because there is a conflict, it was appropriate for the Court of Appeals to proceed to apply the "general-specific rule" of statutory construction. *See Univ. of Washington v. City of Seattle*, 188 Wn.2d 823, 833, 399 P.3d 519 (2017).

Evaluation Council (EFSEC), 165 Wn.2d 275, 309, 197 P.3d 1153 (2008). *See also Knack*, 54 Wn. App. at 661 (it is presumed that statutes relating to the same subject should be construed together). The Court of Appeals' decision does not, in any way, conflict with any decisions of this Court or the Court of Appeals and, therefore, review is unwarranted under RAP 13.4(b)(1) and (2).

E. The Court of Appeals Correctly Applied This Court's Decision in *Smelser v. Paul* in Concluding That RCW 46.44.020 and .110 Did Not Create an Immunity for the State, but Instead Eliminated the State's Liability and Imposed Liability on Mullen and Motorways to Pay All Damages

Mullen also argues that the Court of Appeals improperly relied upon this Court's recent decision in *Smelser v. Paul*, 188 Wn.2d 648, 657, 398 P.3d 1086 (2017), which held that a father owes no duty of care to his child and, therefore, could not be held negligent. *See* Mullen Pet. for Review at 15-16. Mullen's contention that *Smelser* did not hold that parental immunity bars consideration of contributory fault (Pet. at 16) is inaccurate and inapposite. The crux of the *Smelser* decision was that, because a parent owes no duty, that parent cannot be at fault. *Smelser*, 188 Wn.2d at 657. Because the father owed no legal duty, no fault could be allocated to him under RCW 4.22.070. *Id.* at 656.

Mullen and Motorways imply that, because a prior case referred to the non-liability provision in RCW 46.44.020 as an immunity, the use of that nomenclature was somehow binding on the Court of Appeals below. *See* Motorways Pet. for Review at 7-8 (citing *Otis Olwanger Trucking v. Moser*, 72 Wn. App. 114, 863 P.2d 609 (1983) (referring to RCW 46.44.020 as rendering the State statutorily immune from liability)). However, that prior reference is of no consequence in this case. Before this Court's decision in *Smelser*, a plethora of decisions had referred to the non-liability of parents as "parental immunity." *See*, *e.g.*, *Zellmer v. Zellmer*, 164 Wn.2d 147, 188 P.2d 497 (2008); *Stevens v. Murphy*, 69 Wn.2d 939, 421 P.2d 668 (1986); *Delay v. Delay*, 54 Wn.2d 63, 337 P.2d 1057 (1957). Yet, the long-standing characterization of this doctrine as an immunity did not prevent this Court from refining its analysis and carefully explaining that courts should not confuse "immunity" with the lack of tort duty. *Mullen*, 5 Wn. App. at 798-99, ¶ 27, citing *Smelser*, 188 Wn.2d at 653-56.

The Court of Appeals accurately determined that the effect of the non-liability language in RCW 46.44.020 is to eliminate any tort duty or liability on the part of the State for injuries caused by bridges with a vertical height clearance of 14 feet or more. Contrary to petitioners' contention, this provision, when read together with the language in RCW 46.44.110, makes Mullen and Motorways liable for "all damages" that resulted from the

overhead bridge strike that destroyed the Skagit River Bridge. RCW 46.44.020 creates a rule of liability, not immunity. *See New York State Thruway Auth. v. Maislin Bros. Transport, Ltd.*, 35 A.D. 2d 301, 315, NYS 2d 954 (1970) (statute prohibiting operation of vehicles on public highways with a height in excess of 13-1/2 feet subjected a transport company to absolute liability for damage to a bridge caused by a vehicle with a height greater than was statutorily permitted).

In addition, the inapplicability of RCW 4.22.070 and the imposition of all damages on a specific defendant is not unique to the circumstances of this case. Existing case law precludes an allocation of fault under RCW 4.22.070 when a statute imposes liability on a specific defendant to pay all damages. This is because that defendant's proportionate share of damages is the full amount. *Johnson v. Recreational Equip., Inc.*, 159 Wn. App. 939, 952-53, 247 P.3d 18 (2011) (comparative fault system adopted pursuant to RCW 4.22.070 did not impliedly repeal preexisting provision of the products liability statute, RCW 7.72.040(2)(e), under which a seller of a defective product under its own brand name is liable for 100 percent of damages resulting from the defective product and therefore no allocation of fault under RCW 4.22.070 is allowed).

F. Motorways Misinterprets and Misconstrues the Court of Appeals' Decision in an Effort to Assert an Issue of Substantial Public Interest

In addition to the arguments made by both Mullen and Motorways under RAP 13.4(b)(1) and (2), Motorways also seeks review pursuant to RAP 13.4(b)(4). However, the public interest that Motorways asserts does not exist either under their analysis or the holding of the Court of Appeals.

First, Motorways contends that the Court of Appeals' reading of RCW 46.44.020 means the statute can also apply to vehicles, like Motorways' truck, which was under 14 feet tall and which did not hit the bridge. *See* Motorways Pet. for Review at 16-18.[8] This characterization of the Court of Appeals' opinion misconstrues the Court's holding. In *Mullen*, 5 Wn. App. at 799, ¶ 28, the Court of Appeals was careful to limit its holding to the State's claim that Motorways drove its truck negligently by overtaking Mullen's truck on a narrow bridge, proximately causing Mullen to strike the overhead supports on the bridge that were above 14 feet. CP at 910, 1149. Specifically, the court held: "Because this claim concerns damage, by reason of the existence of any structure over or across any public highway," RCW 46.44.020 applies. *Id.* at 799, ¶ 28. RCW 46.44.020

[8] It is difficult for the State, and likely this Court, to fully analyze the errors alleged by Motorways in the decision of the Court of Appeals below, given the absence of any citation to the pages of the Court's opinion to which Motorways is actually referring. *See* RAP 13.4(b), (c)(4) (citation to Court of Appeals decision).

does not impose liability on Motorways, it eliminates the State's tort liability for this crash.

Moreover, the primary basis of the Court of Appeals ruling was that RCW 46.44.110 makes Mullen and Motorways liable for all damages in this case. Motorways argues that the Court of Appeals erred in considering RCW 46.44.110 and that this Court should ignore that statute. Motorways Pet. for Review at 19. There was no error. The Court of Appeals properly applied that statute when it held that "apportioning fault to the State would also relieve negligent motorists (Mullen and Motorways) of liability for 'all damages' under RCW 46.44.110" *Mullen*, 428 P.3d 401 at 406 [¶ 23].[9]

The Court of Appeals decision is carefully tailored to the narrow facts of this case, subjecting Motorways to liability and all damages that resulted from its negligence in forcing Mullen's truck to strike the support arches of the Skagit River Bridge, which had a vertical clearance of 14 feet and 8 inches. *See* RCW 46.44.020, .110.

V. CONCLUSION

Regardless of whether RCW 46.44.020 and .110 are read together to (1) statutorily preclude an allocation of fault under RCW 4.22.070, or (2) to negate the State's duty to persons who strike a bridge with a vertical

[9] This result is entirely consistent with established Washington law that there may be more than one proximate cause of an injury or event. *See* WPI 15.01.01.

clearance of 14 feet or more, or (3) to impose absolute liability for all damages on persons who cause damage to a bridge in such a manner as occurred in this case, the result is the same—Mullen and Motorways are liable for all damages that resulted from their negligent destruction of the Skagit River Bridge and they are precluded from reducing those damages.[10]

The Legislature made a policy decision to place the financial responsibility for overhead bridge strikes on a person/corporation that is physically in control of the over-legal-height load—the one entity who actively decides what speed, route, direction, and travel lane their load will be in as it approaches a bridge. The Legislature decided that commercial trucking companies, and not Washington taxpayers, will bear the financial brunt of damages caused when their over-legal-height load hits the overhead structure of a bridge.[11]

The reasoning of the Court of Appeals is sound, and it fully effectuates the unambiguous language and intent of the Legislature as set forth in RCW 46.44.020 and .110. The Court of Appeals' decision is fully consistent with long-settled rules of statutory construction and controlling

[10] As the State noted to the Court of Appeals, pursuant to WAC 468-38-050(5) (App. 2), operators of over-sized vehicles accept liability for any damages resulting from the use of that vehicle. *See Mullen*, 5 Wn. App. at 795 n.4, ¶ 20.

[11] As noted above at footnote 5, *supra*, article II, section 26 of the Washington Constitution grants authority to the Legislature to so limit state liability.

precedent, and it implicates no issue of substantial public interest. The Petitions for Review should be denied.

RESPECTFULLY SUBMITTED this 22nd day of January, 2019.

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DECLARATION OF SERVICE

I hereby declare that on the below date the original of the preceding RESPONDENT'S ANSWER TO PETITIONS FOR REVIEW was electronically filed in the Washington State Supreme Court and electronically served on the following parties, according to the Court's protocols for electronic filing and service:

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I declare under penalty of perjury under the laws of the state of Washington that the foregoing is true and correct.

DATED this 22nd day of January, 2019, at Tumwater, Washington.

/s/ *Tina Sroor*
TINA SROOR

Appendix 1

CHAPTER VI. SIZE, WEIGHT AND LOAD.

Width of vehicles.

SEC. 47. The total outside width of any vehicle or load thereon shall not exceed eight (8) feet except that in cases where pneumatic tires have been substituted for the same type or other type of tires and the same have been placed upon any vehicle which is in operation on the effective date of this act the maximum width from the outside of one wheel and tire to the outside of the opposite wheel and tire of eight (8) feet and six (6) inches shall be legal: *Provided,* That in no event shall the outside of the body of such vehicle or the load thereon exceed eight (8) feet: *Provided, further,* In any instance where it is necessary to extend a rear vision mirror beyond the extreme left of the body the same may be done at a height from the level surface upon which the vehicle stands of not less than six (6) feet, despite the fact that this results in a width in excess of eight (8) feet.

Height.

SEC. 48. It shall be unlawful for any vehicle unladen or with load to exceed a height of twelve (12) feet and six (6) inches above the level surface upon which the vehicle stands. This section shall not apply to authorized emergency vehicles or repair equipment of a public utility engaged in reasonably necessary operation. The provisions of this section shall not relieve the owner or operator of any vehicle or combination of vehicles from the exercise of due care in determining that sufficient vertical clearance is provided upon the public highways where such vehicle or combination of vehicles is being operated, and no liability shall attach to the state or to any county, city, town, or other political subdivision by reason of any damage or injury to persons or property by reason of the existence of any structure or otherwise where the vertical clearance above the roadway is less than twelve (12) feet

six (6) inches where sign posted to indicate vertical clearance of less than twelve (12) feet six (6) inches.

Overall length limitation.

SEC. 49. It shall be unlawful to operate upon the public highways of this state any vehicle having an overall length, with or without load, in excess of thirty-five (35) feet. It shall be unlawful for any person to operate upon the public highways of this state any combination of vehicles consisting of more than two vehicles. It shall be unlawful for any person to operate upon the public highways of this state any combination of vehicles which, with or without load, has an overall length in excess of sixty (60) feet or any combination of vehicles containing any vehicle which has a length in excess of thirty-five (35) feet: *Provided,* This length limitation shall not apply until January 1, 1939, to any vehicles or combination of vehicles in excess of such lengths without load and licensed in this state and lawfully operating upon the public highways of this state at the time of the taking effect of this act. Said length limitation shall not apply to vehicles transporting poles, pipe, machinery or other objects of a structural nature which cannot be dismembered and operated by a public utility when required for emergency repair of public service facilities or properties and when operated under special permit, but in respect to night transportation every such vehicle and the load thereon shall be equipped with a sufficient number of clearance lamps on both sides and marker lamps upon the extreme ends of any projecting load to clearly mark the dimensions of such load.

The load upon any vehicle operated alone, or the load upon the front vehicle of a combination of vehicles, shall not extend more than three (3) feet beyond the front wheels of such vehicle, or the front bumper, if equipped with front bumper.

No vehicle shall be operated upon the public highways of this state with a load extending beyond the rear of the vehicle a distance in excess of fifteen (15) feet.

Weight and load limit.

SEC. 50. (a) It shall be unlawful to operate any vehicle upon the public highways of this state, supported upon two (2) axles or less, with a gross weight, including load, in excess of twenty-four thousand (24,000) pounds, or with a gross weight upon any one (1) axle thereof in excess of eighteen thousand (18,000) pounds.

It shall be unlawful to operate any vehicle upon the public highways of this state, supported upon three (3) axles or more, with a gross weight, including load, in excess of thirty-four thousand (34,000) pounds, or with a gross weight upon any one (1) axle thereof in excess of fourteen thousand (14,000) pounds.

It shall be unlawful to operate any one (1) axle semi-trailer upon the public highways of this state, with a gross weight, including load, upon such one (1) axle in excess of eighteen thousand (18,000) pounds.

It shall be unlawful to operate any two (2) axle semi-trailer upon the public highways of this state, with a gross weight, including load, upon such two (2) axles in excess of twenty-six thousand (26,000) pounds, or with a gross weight upon any one of such axles in excess of fourteen thousand (14,000) pounds;

(b) Subject to the maximum axle and gross weights specified in subsection (a) above, it shall be unlawful to operate any vehicle or combination of vehicles with a gross weight, including load, in excess of that determined by the total area in square inches of brake lining capable of effective contact with the brake drum or drums of such vehicles or combination of vehicles multiplied by sixty (60)

pounds: *Provided,* Where, under the provisions of this act, vehicles are permitted to be operated upon the public highways of this state with service brakes on one axle only, the maximum gross weight, including load, as determined by this subsection, shall be determined by the total area in square inches of brake lining capable of effective contact with the brake drum or drums of such vehicle or combination of vehicles multiplied by one hundred (100) pounds: *Provided, further,* The provisions of this subsection shall apply only to the foot or service brakes of any such vehicle or combinations of vehicles;

(c) Subject to the maximum gross weights specified in subsection (a) above, it shall be unlawful to operate any vehicle upon the public highways of this state with a gross weight, including load, upon any tire concentrated upon the surface of the highway in excess of five hundred (500) pounds per inch width of such tire. For the purposes of this subsection, the width of tire in case of solid rubber or hollow center cushion rubber tires, so long as the use thereof may be permitted by the law, shall be measured between the flanges of the rim. For the purpose of this subsection, the width of tires in case of pneumatic tires shall be the cross section diameter measured from the inside of the walls at the widest point when inflated to the recommended inflation point and without load thereon;

(d) Subject to the maximum axle and gross weight specified in subsection (a) above, it shall be unlawful to operate any motor vehicle or combination of vehicles with a gross weight, including load, in excess of that determined by the following formula: Total gross weight, including load, in pounds equal 750 (L+40) in which L represents the overall distance in feet between the first axle and the last axle of such vehicle or combination of vehicles.

Penalty for violation.

Any person violating any of the provisions of this section shall be guilty of a misdemeanor and upon first conviction thereof shall be fined not less than ten dollars ($10.00) or more than twenty-five dollars ($25.00); upon second conviction thereof shall be fined not less than twenty-five dollars ($25.00) or more than fifty dollars ($50.00), and in addition thereto the court may suspend the certificate of license registration of the vehicle, or combination of vehicles last involved, for a period of time not to exceed thirty (30) days; upon a third or subsequent conviction shall be fined not less than fifty dollars ($50.00) or more than one hundred dollars ($100.00) and the court shall, in addition thereto, suspend the certificate of license registration of the vehicle, or combination of vehicles last involved, for not less than thirty (30) days: *Provided,* Whenever certificate of license registration is suspended under the provisions of this section the judge shall secure such certificate and immediately forward the same to the director of licenses with information concerning the suspension thereof.

Lawful weight of motor trucks and loads.

SEC. 51. It shall be unlawful to operate any motor truck upon the public highways of this state, supported upon two (2) axles and having a gross weight, including load, in excess of twelve thousand (12,000) pounds, singly or in combination with a semi-trailer, with a wheelbase between the first and second axles thereof of less than eight (8) feet.

It shall be unlawful to operate any motor truck upon the public highways of this state, supported upon three (3) axles or more, having a gross weight, including load, in excess of twelve thousand (12,000) pounds, singly or in combination with a semi-trailer, with a wheelbase between the first and second axles thereof of less than eight (8) feet or a wheelbase between the second and third axles thereof of less than three (3) feet, six (6) inches.

It shall be unlawful to operate any motor truck upon the public highways of this state, supported upon two (2) axles and having a gross weight, including load, in excess of twelve thousand (12,000) pounds, in combination with a trailer, with a wheelbase between the first and second axles thereof of less than ten (10) feet.

It shall be unlawful to operate any motor truck upon the public highways of this state, supported upon three (3) axles or more, having a gross weight, including load, in excess of twelve thousand (12,000) pounds, in combination with a trailer, with a wheelbase between the first and second axles thereof of less than ten (10) feet or a wheelbase between the second and third axles thereof of less than three (3) feet, six (6) inches.

Combination of vehicles.

It shall be unlawful to operate any combination of vehicles consisting of a motor truck and semi-trailer upon the public highways of this state with a gross weight upon such semi-trailer in excess of twelve thousand (12,000) pounds with a wheelbase between the last axle of the motor truck and the first axle of the semi-trailer of less than twelve (12) feet.

Trailer.

It shall be unlawful to operate any trailer upon the public highways of this state, supported upon two (2) axles and having a gross weight, including load, in excess of twelve thousand (12,000) pounds with a wheelbase between the first and second axles thereof of less than twelve (12) feet.

It shall be unlawful to operate any trailer upon the public highways of this state, supported upon three (3) axles or more, having a gross weight, including load, in excess of twelve thousand (12,000) pounds with a wheelbase between the first and second axles thereof of less than twelve (12) feet or a wheelbase between the second and third axles thereof of less than three (3) feet, six (6) inches.

It shall be unlawful to operate any combination of vehicles, consisting of a motor vehicle and trailer, with a combined gross weight in excess of ten thousand (10,000) pounds, with a wheelbase between the last axle of the motor vehicle and the first axle of the trailer of less than ten (10) feet.

For the purposes of this section, wheelbase shall be measured upon a straight line from center to center of the vehicle axles designated.

Passenger type vehicles, loads carried on fenders.

SEC. 52. No passenger type vehicle shall be operated on any public highway with any load carried thereon extending beyond the line of the fenders on the left side of such vehicle nor extending more than six (6) inches beyond the line of the fenders on the right side thereof.

Draw bar or connection between vehicles in combination.

SEC. 53. The draw bar or other connection between vehicles in combination shall be of sufficient strength to hold the weight of the towed vehicle on any grade where operated. No trailer shall whip, weave or oscillate or fail to follow substantially in the course of the towing vehicle. When a disabled vehicle is being towed by means of bar, chain, rope, cable or similar means and the distance between the towed vehicle and the towing vehicle exceeds fifteen (15) feet there shall be fastened on such connection in approximately the center thereof a white flag or cloth not less than twelve (12) inches square.

Towing of disabled vehicle.

Local authorities may restrict use of highways.

SEC. 54. Local authorities with respect to public highways under their jurisdiction may prohibit the operation thereon of motor trucks or other vehicles or may impose limits as to the weight thereof, or any other restrictions as may be deemed necessary, whenever any such public highway by reason of rain, snow, climatic or other conditions, will be seriously damaged or destroyed unless the operation of vehicles thereon be prohibited or restricted or the permissible weights thereof reduced: *Provided,* The

governing authorities of incorporated cities and towns shall not prohibit the use of any city street designated by the director of highways as forming a part of the route of any primary state highway through any such incorporated city or town by vehicles or any class of vehicles or impose any restrictions or reductions in permissible weights unless such restriction, limitation, or prohibition, or reduction in permissible weights be first approved in writing by the director of highways.

The local authorities imposing any such restrictions or limitations, or prohibiting any use or reducing the permissible weights shall do so by proper ordinance or resolution and shall erect or cause to be erected and maintained signs designating the provisions of the ordinance or resolution in each end of the portion of any public highway affected thereby, and no such ordinance or resolution shall be effective unless and until such signs are erected and maintained.

Director may restrict use of highways.

The director of highways shall likewise have authority as hereinabove granted to local authorities to determine by resolution and to impose restrictions upon any basis as to the weight of vehicles or class of vehicles operated upon any primary state highway and such restrictions and limitations shall be effective when signs giving notice thereof are erected upon the primary state highway or at the limits of the portion thereof affected by such resolution.

Permit for excess size and weight.

SEC. 55. The director of highways with respect to primary state highways and local authorities with respect to public highways under their jurisdiction may, in their discretion, upon application in writing and good cause being shown therefor, issue a special permit in writing authorizing the applicant to operate or move a vehicle or combination of vehicles of a size, weight of vehicle or load exceeding the maxi-

mum specified in this act, or otherwise not in conformity with the provisions of this act upon any public highway under the jurisdiction of the authority granting such permit and for the maintenance of which said authority is responsible.

In any instance where the vehicle is of a heavy duty type or carries an excessive load, such permit may be granted: *Provided,* Such vehicle is licensed for the maximum gross weight allowed by law.

The application for any such permit shall specifically describe the vehicle or vehicles and load to be operated or moved and the particular public highways for which permit to operate is requested, and whether such permit is requested for a single trip or for continuous operation.

The director of highways or local authority is authorized to issue or withhold such permit at his or its discretion; or, if such permit is issued, to limit the number of trips, or to establish seasonal or other time limitations within which the vehicles described may be operated on the public highways indicated, or otherwise to limit or prescibe conditions of operation of such vehicle or vehicles when necessary to assure against undue damage to the road foundations, surfaces or structures or safety of traffic, and may require such undertaking or other security as may be deemed necessary to compensate for any injury to any roadway or road structure.

Every such permit shall be carried in the vehicle or combination of vehicles to which it refers and shall be open to inspection by any peace officer or authorized agent of any authority granting such permit, and no person shall violate any of the terms, conditions or restrictions of such special permit.

Officers may weigh vehicles.

SEC. 56. Any peace officer is authorized to require the operator of any vehicle or combination of vehicles to stop and submit to a weighing of the same either by means of a portable or stationary scale and

may require that such vehicle be driven to the nearest public scale.

Whenever a peace officer, upon weighing a vehicle and load, as above provided, determines that the weight is unlawful, such officer may, in addition to any other penalty provided, require the driver to stop the vehicle in a suitable place and remain standing until such portion of the load is removed as may be necessary to reduce the gross weight of such vehicle to such limit as permitted under this act. All materials unloaded shall be cared for by the owner or operator of such vehicle at the risk of such owner or operator.

It shall be unlawful for any operator of a vehicle to fail or refuse to stop and submit the vehicle and load to a weighing, or to fail or refuse, when directed by an officer upon a weighing of the vehicle to stop the vehicle and otherwise comply with the provisions of this section.

Liability for damage to bridges.

SEC. 57. Any person operating any vehicle or moving any object or conveyance upon any public highway in this state or upon any bridge or elevated structure which is a part of any such public highway shall be liable for all damages which said public highway, bridge or elevated structure may sustain as a result of any illegal operation of such vehicle or the moving of any such object or conveyance or as a result of the operation or moving of any vehicle, object or conveyance weighing in excess of the legal weight limits allowed by law. This section shall apply to any person operating any vehicle or moving any object or contrivance in any illegal or negligent manner or without a special permit as by law provided for vehicles, objects or contrivances of overweight, overwidth, overheight or overlength. Any person operating any vehicle shall be liable for any damage to any public highway, bridge or elevated structure sustained as the result of any negligent

operation thereof. When such operator is not the owner of such vehicle, object or contrivance but is so operating or moving the same with the express or implied permission of the owner thereof, then said owner and the operator shall be jointly and severally liable for any such damage. Such damage to any primary state highway or structure may be recovered in a civil action instituted in the name of the State of Washington by the director of highways. Any measure of damage to any public highway determined by the director of highways by reason of this section shall be *prima facie* the amount of damage caused thereby and shall be presumed to be the amount recoverable in any civil action therefor.

CHAPTER VII. EXPLOSIVES AND INFLAMMABLES.

Vehicle transporting explosives must be placarded.

SEC. 58. Any motor vehicle used for the transportation of explosives must be marked or placarded on both sides and the front and rear with the word *"Explosives"* in bold red letters not less than six inches (6") high upon a white background: *Provided,* That this section shall not apply to any motor vehicle used occasionally for personal delivery by the owner thereof for private use.

Restrictions.

SEC. 59. Explosives shall not be transported in any trailer or semi-trailer, nor shall any trailer or semi-trailer be attached to a motor vehicle transporting explosives. No metal, metal tools, carbides, oils, matches, firearms, caps, inflammable liquids, acids, oxidizing or corrosive compounds shall be carried on the bed of any motor vehicle transporting explosives. The floor of any such motor vehicle shall be tight to prevent any sifting through and the inside of the body shall be free from any exposed metal likely to come in contact with the explosives. The body shall be so constructed and explosives so loaded as to insure against any explosives falling or otherwise escaping from the vehicle. No vehicle

Appendix 2

WAC 468-38-050

Special permits for extra-legal loads.

(5) **What specific responsibility and liability does the state assign to the permit applicant through the special permit?** Permits are granted with the specific understanding that the permit applicant shall be responsible and liable for accidents, damage or injury to any person or property resulting from the operation of the vehicle covered by the permit upon public highways of the state. The permit applicant shall hold blameless and harmless and shall indemnify the state of Washington, department of transportation, its officers, agents, and employees against any and all claims, demands, loss, injury, damage, actions and costs of actions whatsoever, that any of them may sustain by reason of unlawful acts, conduct or operations of the permit applicant in connection with the operations covered by the permit.

ATTORNEY GENERAL'S OFFICE, TORTS DIVISION

January 22, 2019 - 2:25 PM

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