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HOUSE BILL 296

45TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2001

INTRODUCED BY

Joseph M Thompson

AN ACT

RELATING TO THE PUBLIC REGULATION COMMISSION; CLARIFYING TERMS AND DUTIES REGARDING THE OPERATION OF THE PUBLIC REGULATION COMMISSION; AMENDING SECTIONS OF THE NMSA 1978.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

Section 1. Section 8-8-7 NMSA 1978 (being Laws 1998, Chapter 108, Section 7) is amended to read:

"8-8-7. ADMINISTRATIVE SERVICES DIVISION--CHIEF CLERK. --

A. ~~[The chief of staff shall appoint a "chief clerk" who]~~ The director of the administrative services division of the commission shall record the judgments, rules, orders and other proceedings of the commission and make a complete index to the judgments, rules, orders and other proceedings; issue and attest all processes issuing from the commission and affix the seal of the commission to them; and

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1 preserve the seal and other property belonging to the
2 commi ssi on.

3 B. [~~The chief clerk shall direct~~] The
4 administrative services division [~~including~~] includes the
5 "corporations bureau" and shall perform the following
6 functions:

- 7 (1) case docketing;
- 8 (2) budget and accounting;
- 9 (3) personnel services;
- 10 (4) procurement; and
- 11 (5) information systems services.

12 C. The corporations bureau shall perform the
13 functions of the corporations department of the former state
14 corporation commi ssi on. "

15 Section 2. Section 63-7-1 NMSA 1978 (being Laws 1912,
16 Chapter 78, Section 1, as amended) is amended to read:

17 "63-7-1. PUBLIC REGULATION COMMISSION-- [~~TERMS~~] TERM
18 DEFINED-- OFFICE [~~ORGANIZATION~~]. --The [~~terms~~] term "commi ssi on"
19 [~~and "clerk" or "chief clerk" where~~], as used in [~~this article~~
20 ~~shall mean, respectively~~] Chapter 63, Article 7 NMSA 1978,
21 means the public regulation commission [~~and the chief clerk of~~
22 ~~the commi ssi on~~]. The office of the commission shall be
23 located in the city of Santa Fe, New Mexico. "

24 Section 3. Section 65-2-82 NMSA 1978 (being Laws 1981,
25 Chapter 358, Section 3, as amended) is amended to read:

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1 "65-2-82. DEFINITIONS. --As used in the Motor Carrier
2 Act:

3 A. "antitrust laws" means the laws of this state
4 relating to combinations in restraint of trade;

5 B. "broker" means a person not included in the
6 term "motor carrier" and not a bona fide employee or agent of
7 any motor carrier who, as principal or agent, sells or offers
8 for sale any transportation subject to the Motor Carrier Act
9 or negotiates for or holds himself out by solicitation,
10 advertisement or otherwise as one who sells, provides,
11 furnishes, contracts or arranges for that transportation;

12 C. "certificate" means a certificate of public
13 convenience and necessity issued under authority of the laws
14 of the state to common motor carriers;

15 D. [~~"clerk" or "chief clerk"~~] "chief of staff"
16 means the chief [~~clerk~~] of staff of the public regulation
17 commi ssi on;

18 E. "commission" means the public regulation
19 commi ssi on;

20 F. "common motor carrier" means a person who
21 undertakes, whether directly or indirectly or by lease of
22 equipment or operating rights or any other arrangement, to
23 transport persons or property or any class of property for the
24 general public by motor vehicle for compensation, whether over
25 regular or irregular routes and under scheduled or

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1 nonscheduled service, but does not include farm carriers;

2 G. "contract motor carrier" means a person not a
3 common motor carrier who, under individual contracts or
4 agreements and whether directly or indirectly or by lease of
5 equipment or operating rights or any other arrangements,
6 transports persons or property by motor vehicle for
7 compensation, but does not include farm carriers;

8 H. "farm carrier" means a motor vehicle registered
9 in this state being used in the transportation for hire of a
10 cargo consisting of one or several of the following: farm
11 produce, including grains, cotton, cottonseed, vegetables, hay
12 and other farm products; livestock feed; livestock; stock
13 salt; manure; wire; posts; dairy products; and farm or ranch
14 machinery except tractors weighing more than forty-five
15 thousand pounds;

16 I. "highway" means the public roads, highways,
17 streets and ways in this state;

18 J. "household goods" means:

19 (1) personal effects and property used or to
20 be used in a dwelling when a part of the equipment or supply
21 of the dwelling and other similar property as the commission
22 may provide by rule; except that this paragraph shall not be
23 construed to include property moving from a factory or store,
24 except property as the householder has purchased with intent
25 to use in his dwelling and that is transported at the request

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1 of, and the transportation charges paid to the carrier by, the
2 householder;

3 (2) furniture, fixtures, equipment and the
4 property of stores, offices, museums, institutions, hospitals
5 or other establishments when a part of the stock, equipment or
6 supply of stores, offices, museums, institutions, hospitals or
7 other establishments and other similar property as the
8 commission may provide by rule; except that this paragraph
9 shall not be construed to include the stock-in-trade of any
10 establishment, whether consignor or consignee, other than used
11 furniture and used fixtures, except when transported as
12 incidental to the moving of the establishment, or a portion
13 of it, from one location to another; and

14 (3) articles, including objects of art,
15 displays and exhibits, that, because of their unusual nature
16 or value, require the specialized handling and equipment
17 usually employed in moving household goods and other similar
18 articles as the commission may provide by rule; except that
19 this paragraph shall not be construed to include any article,
20 whether crated or uncrated, that does not, because of its
21 unusual nature or value, require the specialized handling and
22 equipment usually employed in moving household goods;

23 K. "interested parties" shall in all cases include
24 all carriers operating over the routes or any part thereof or
25 in the territory involved in an application for a certificate

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1 or permit or an application to file or change a schedule of
2 rates, charges or fares or a rule or practice, and other
3 parties as the commission may deem interested in the
4 particular matter;

5 L. "irregular route" means that the route to be
6 used by a motor carrier is not restricted to any specific
7 highway within the area the motor carrier is authorized to
8 serve;

9 M. "lease" means an arrangement whereby a motor
10 carrier augments his equipment by use of equipment owned by
11 others;

12 N. "license" means a license issued pursuant to
13 the Motor Carrier Act to a broker;

14 O. "motor carrier" includes common motor carriers,
15 contract motor carriers and any person performing for-hire
16 transportation service without authority from the commission
17 and farm carriers;

18 P. "motor vehicle" means a vehicle, machine,
19 tractor, trailer or semi-trailer propelled or drawn by
20 mechanical power and used upon the highways in the
21 transportation of property or persons, but does not include
22 any vehicle, locomotive or car operated exclusively on rail or
23 rails;

24 Q. "permit" means a permit issued under authority
25 of the laws of this state to contract motor carriers;

1 R. "person" means an individual, firm,
2 partnership, corporation, company, association or organization
3 and includes any trustee, receiver, assignee or personal
4 representative thereof;

5 S. "regular route" means a fixed, specific and
6 determined course to be traveled by a motor carrier's vehicles
7 rendering service to, from or between various points,
8 localities or municipalities in this state;

9 T. the "services" and "transportation" to which
10 the Motor Carrier Act applies include all vehicles operated
11 by, for or in the interest of any motor carrier irrespective
12 of ownership or of contract, express or implied, together with
13 all facilities and property controlled by any motor carrier
14 and used in the transportation of persons or property or in
15 the performance of any service in connection therewith;

16 U. "shipper" means a person who consigns or
17 receives goods for transportation;

18 V. "single-line rate" means a rate, charge or
19 allowance proposed by a single common motor carrier of
20 property that is applicable only over its line and for which
21 the transportation can be provided by that common motor
22 carrier;

23 W. "state" means New Mexico;

24 X. "towing company" means a common motor carrier
25 engaged in transporting for hire disabled or abandoned motor

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1 vehicles by means of a tow truck or flatbed vehicle carrier;
2 and

3 Y. "weight-bumping" means the knowing and willful
4 making or securing of a fraudulent weight on a shipment of
5 household goods that is subject to the jurisdiction of the
6 commission under the Motor Carrier Act. "

7 Section 4. Section 65-2-106 NMSA 1978 (being Laws 1981,
8 Chapter 358, Section 27) is amended to read:

9 "65-2-106. WITNESSES--FEES AND CHARGES--ATTENDANCE AND
10 TESTIMONY REQUIRED--PRODUCTION OF DOCUMENTS REQUIRED--
11 COMPELLING ATTENDANCE AND TESTIMONY--OATHS--CERTIFICATIONS--
12 SUBPOENAS--SERVICE--QUORUM--INVESTIGATION--TAKING TESTIMONY.--

13 A. Each witness who [~~shall appear~~] appears before
14 the commission by its order shall receive for his attendance
15 the fees and mileage provided for witnesses in civil cases in
16 courts of record, which shall be audited and paid by the state
17 out of the [~~state corporation~~] public regulation commission
18 motor transportation fund upon the presentation of proper
19 vouchers; but no witness subpoenaed at the instance of parties
20 other than the commission [~~shall be~~] is entitled to
21 compensation from the state for attendance and travel.

22 B. No person shall be excused from attending and
23 testifying or from producing books and papers before the
24 commission or in obedience to the subpoena of the commission,
25 whether the subpoena [~~be~~] is signed or issued by one or more

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1 of the members of the commission in any investigation held by
2 or before the commission or in any cause or proceeding in any
3 court by or against the commission, relative to matters
4 provided for in the Motor Carrier Act, on the ground or for
5 the reason that the testimony or evidence, documentary or
6 otherwise, required of him may tend to incriminate him or
7 subject him to a penalty or forfeiture; provided that nothing
8 [~~herein~~] contained in this section shall be construed as
9 requiring any person to produce any books or papers or to
10 testify in response to any inquiry not pertinent to some
11 question lawfully before the commission or court for
12 determination. No person shall be prosecuted or subjected to
13 any penalty or forfeiture for or on account of any
14 transaction, matter or thing concerning [~~which~~] that he may be
15 required to testify or produce evidence, documentary or
16 otherwise, before the commission or in obedience to its
17 subpoena or in any such cause or proceedings; provided that no
18 person testifying [~~shall be~~] is exempted from prosecution and
19 punishment for perjury committed in so testifying.

20 C. In case of failure or refusal on the part of
21 any person to comply with any subpoena issued by the
22 commission or any member [~~thereof~~] of the commission or on the
23 refusal of any witness to testify or answer as to any matters
24 regarding which he may be lawfully interrogated, any district
25 court in this state or any judge thereof, on application of a

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1 member of the commission, may issue an attachment for the
2 person and compel him to comply with the subpoena and to
3 attend before the commission and produce the documents and
4 give his testimony upon the matters as may be lawfully
5 required, and the court or judge [~~shall have~~] has the power to
6 punish for contempt as in cases of disobedience of a like
7 subpoena issued by or from the court or a refusal to testify
8 therein.

9 D. Each of the members of the commission, for the
10 purposes mentioned in the Motor Carrier Act and in all
11 hearings before the commission, may administer oaths, certify
12 to official acts, issue subpoenas and compel the attendance of
13 witnesses and the production of books and papers.

14 E. Whenever the commission [~~shall make~~] makes any
15 order or determination or [~~issue~~] issues any subpoena, notice
16 or writ, notice thereof may be served on the person affected
17 [~~thereby~~] by delivering a copy of the order, subpoena, notice
18 or writ, signed by or in the name of any member of the
19 commission, to any person or an officer or agent of that
20 person as in the case of civil process, which service may be
21 executed by any member of the commission, any employee
22 [~~thereof~~] of the commission, the New Mexico state police or
23 [~~by~~] any sheriff in this state. A copy of the order,
24 subpoena, notice or writ, with the service endorsed thereon,
25 shall be returned to the commission and entered of record as a

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1 part of the proceeding, and the endorsement and return shall
2 be prima facie evidence that the order, subpoena, notice or
3 writ has been duly served.

4 F. Any two commissioners [~~shall~~] constitute a
5 quorum to conduct hearings, decide motions and make orders,
6 and the concurrence of at least two commissioners [~~shall be~~]
7 is required to make any order or determine any matter before
8 the commission. The commission may, however, by writing under
9 its seal, authorize any commissioner, its [~~clerk~~] chief of
10 staff or other person to investigate and take testimony as to
11 any matter pending before it. "

12 Section 5. EFFECTIVE DATE. -- The effective date of the
13 provisions of this act is July 1, 2001.