

1 HOUSE BILL 345

2 **53RD LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2017**

3 INTRODUCED BY

4 Roberto "Bobby" J. Gonzales

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10 AN ACT

11 RELATING TO MOTOR CARRIER SERVICES; REMOVING APPLICABILITY OF
12 THE MOTOR CARRIER ACT TO COMMUTER SERVICES.

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

15 SECTION 1. Section 65-2A-3 NMSA 1978 (being Laws 2003,
16 Chapter 359, Section 3, as amended by Laws 2013, Chapter 73,
17 Section 2 and by Laws 2013, Chapter 77, Section 2) is amended
18 to read:

19 "65-2A-3. DEFINITIONS.--As used in the Motor Carrier Act:

20 A. "ability to provide certificated service" means
21 that an applicant or carrier can provide reasonably continuous
22 and adequate transportation service of the type required by its
23 application or its operating authority in the territory
24 authorized or sought to be authorized;

25 B. "ambulance service" means the intrastate

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1 transportation of sick or injured persons in an ambulance
2 meeting the standards established by the commission under the
3 Ambulance Standards Act;

4 C. "amendment of a certificate or permit" means a
5 permanent change in the type or nature of service, territory or
6 terms of service authorized by an existing certificate or
7 permit;

8 D. "antitrust laws" means the laws of this state
9 relating to combinations in restraint of trade;

10 E. "base state" means the registration state for an
11 interstate motor carrier that either is subject to regulation
12 or is transporting commodities exempt from regulation by the
13 federal motor carrier safety administration pursuant to the
14 unified carrier registration system;

15 F. "cancellation of an operating authority" means
16 the voluntary, permanent termination of all or part of an
17 operating authority;

18 G. "certificate" means the authority issued by the
19 commission to a person that authorizes the person to offer and
20 provide a certificated service as a motor carrier;

21 H. "certificated service" means one of the
22 following transportation services:

- 23 (1) an ambulance service;
24 (2) a household goods service;
25 (3) a shuttle service;

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1 (4) a specialized passenger service; or

2 (5) a taxicab service;

3 I. "change in a certificate or permit" means the
4 voluntary amendment, cancellation, change in form of legal
5 entity of the holder, lease, reinstatement, transfer or
6 voluntary suspension of a certificate or permit;

7 J. "charter service" means the compensated
8 transportation of a group of persons in a motor vehicle who,
9 pursuant to a common purpose, under a single contract, at a
10 fixed charge for the motor vehicle and driver, have acquired
11 the exclusive use of the motor vehicle to travel together under
12 an itinerary either specified in advance or modified after
13 having left the place of origin;

14 K. "commission" means the public regulation
15 commission;

16 L. "commuter service" means the intrastate
17 transportation of passengers in motor vehicles having a
18 capacity of seven to fifteen persons, including the driver,
19 provided to a volunteer-driver commuter group that shares rides
20 to and from the workplace or training site, where participation
21 is open to the public and incidental to the primary work or
22 training-related purposes of the commuter group, and where the
23 volunteer drivers have no employer-employee relationship with
24 the commuter service;

25 M. "continuous and adequate service" means:

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1 (1) for full-service carriers, reasonably
2 continuous availability, offering and provision of
3 transportation services through motor vehicles, equipment and
4 resources satisfying safety and financial responsibility
5 requirements under the Motor Carrier Act and commission rule,
6 ~~[which]~~ that are reasonably adequate to serve the entire full-
7 service territory authorized in the certificate, with
8 reasonable response to all requests for service for the nature
9 of passenger service authorized, based on the nature of public
10 need, expense and volume of demand for the type of service
11 authorized during seasonal periods; and

12 (2) for general-service carriers, reasonably
13 continuous availability and offering of transportation services
14 through motor vehicles, equipment and resources satisfying
15 safety and financial responsibility requirements under the
16 Motor Carrier Act and commission rule for the nature of the
17 transportation service authorized in the certificate;

18 N. "contract driver" means a person who contracts
19 with a motor carrier as an independent contractor to drive a
20 vehicle pursuant to an operating authority issued to the motor
21 carrier;

22 O. "endorsement" means the specification in a
23 certificate of the territory in which the carrier is authorized
24 to operate, the nature of service to be provided by a
25 certificated passenger service and any additional terms of

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1 service that may be reasonably granted or required by the
2 commission for the particular authority granted;

3 P. "fare" means the full compensation charged for
4 transportation by a tariffed passenger service;

5 Q. "financial responsibility" means the ability to
6 respond in damages for liability arising out of the ownership,
7 maintenance or use of a motor vehicle in the provision of
8 transportation services;

9 R. "fitness to provide a transportation service"
10 means that an applicant or carrier complies with state law as
11 provided in the Motor Carrier Act or by rule of the commission;

12 S. "for hire" means that transportation is offered
13 or provided to the public for remuneration, compensation or
14 reward of any kind, paid or promised, either directly or
15 indirectly;

16 T. "full service" means one of the following
17 certificated passenger services that are endorsed and required
18 to meet specific standards for the provision of service to or
19 throughout a community:

- 20 (1) an ambulance service;
21 (2) a scheduled shuttle service; or
22 (3) a municipal taxicab service;

23 U. "general service" means one of the following
24 certificated services that provides transportation services of
25 the type authorized, but is not required to provide

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1 unprofitable or marginally profitable carriage:

2 (1) a general shuttle service;

3 (2) a general taxicab service;

4 (3) a specialized passenger service; or

5 (4) a household goods service;

6 V. "highway" means a way or place generally open to
7 the use of the public as a matter of right for the purpose of
8 vehicular travel, even though it may be temporarily closed or
9 restricted for the purpose of construction, maintenance, repair
10 or reconstruction;

11 W. "holder of an operating authority" means the
12 grantee of the operating authority or a person that currently
13 holds all or part of the right to exercise the authority
14 through a transfer by operation of law;

15 X. "household goods" means personal effects and
16 property used or to be used in a dwelling when a part of the
17 equipment or supply of the dwelling and other similar property
18 as the federal motor carrier safety administration may provide
19 by regulation, but shall not include property moving to or from
20 a factory or store, other than property the householder has
21 purchased to use in the householder's dwelling that is
22 transported at the request of, and the transportation charges
23 are paid to the carrier by, the householder;

24 Y. "household goods service" means the intrastate
25 transportation, packing and storage of household goods for

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1 hire;

2 Z. "interested person" means a motor carrier
3 operating in the territory involved in an application or grant
4 of temporary authority, a person affected by an order of the
5 commission or a rule proposed for adoption by the commission or
6 a person the commission may deem interested in a particular
7 matter;

8 AA. "interstate motor carrier" means a person
9 providing compensated transportation in interstate commerce,
10 whether or not the person is subject to regulation by the
11 federal motor carrier safety administration;

12 BB. "intrastate motor carrier" means a motor
13 carrier offering or providing transportation for hire by motor
14 vehicle between points and places in the state;

15 CC. "involuntary suspension" means the temporary
16 cessation of use of all or part of an operating authority
17 ordered by the commission for cause for a stated period of time
18 or pending compliance with certain conditions;

19 DD. "lease of a certificate or permit" means an
20 agreement by which the holder of a certificate or permit grants
21 to another person the exclusive right to use all or part of the
22 certificate or permit for a specified period of time in
23 exchange for consideration, but does not include an agreement
24 between a motor carrier and its contract driver;

25 EE. "lease of equipment" means an agreement whereby

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1 a motor carrier obtains equipment owned by another person for
2 use by the motor carrier in the exercise of its operating
3 authority, but does not include an agreement between a motor
4 carrier and its contract driver;

5 FF. "motor carrier" or "carrier" means a person
6 offering or providing transportation of persons, property or
7 household goods for hire by motor vehicle, whether in
8 intrastate or interstate commerce;

9 GG. "motor carrier organization" means an
10 organization approved by the commission to represent motor
11 carriers and to discuss and propose industry interests and
12 matters other than rates, as well as discussing and proposing
13 rates and other matters pertaining to statewide tariffs;

14 HH. "motor vehicle" or "vehicle" means a vehicle,
15 machine, tractor, trailer or semitrailer propelled or drawn by
16 mechanical power and used on a highway in the transportation of
17 property, household goods or persons, but does not include a
18 vehicle, locomotive or car operated exclusively on rails;

19 II. "nature of service" means the type of
20 transportation service to be provided by a certificated
21 passenger service as set forth in Subsection A of Section
22 65-2A-8 NMSA 1978;

23 JJ. "nonconsensual tow" means the compensated
24 transportation of a motor vehicle by a towing service, if such
25 transportation is performed at the request of a law enforcement

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1 officer or without the prior consent or authorization of the
2 owner or operator of the motor vehicle;

3 KK. "notice period" means the period of time
4 specified in Section 65-2A-6 NMSA 1978 following publication of
5 notice during which the commission may not act;

6 LL. "objection" means a document filed with the
7 commission by an interested person or a member of the public
8 during the notice period for an application for a certificate
9 or a permit, or for amendment, lease or transfer of a
10 certificate or permit, that expresses an objection to, or
11 provides information concerning, the matter before the
12 commission;

13 MM. "operating authority" means a certificate,
14 permit, warrant, unified carrier registration or temporary
15 authority issued by the commission to a motor carrier;

16 NN. "passenger" means a person other than the
17 driver of a motor vehicle transported in a motor vehicle;

18 OO. "passenger service" means a transportation
19 service offered or provided for the transportation of
20 passengers by motor vehicle;

21 PP. "permit" means the authority issued by the
22 commission to a person that authorizes the person to offer and
23 provide a permitted service as a motor carrier;

24 QQ. "permitted service" means the intrastate
25 transportation of passengers or household goods for hire

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1 pursuant to a contract between the motor carrier and another
2 person;

3 RR. "predatory rate or practice" means the knowing
4 and willful requirement by a carrier that a passenger or
5 shipper pay a rate, fare or other charge in excess of the rates
6 and charges or in a manner other than in accordance with terms
7 of service as provided by law, as provided in a tariff
8 governing the carrier or as provided in a preexisting written
9 contract regarding the carriage, when such charge is made:

10 (1) by a passenger carrier as a prior
11 condition for the provision of transportation or continued
12 transportation of a passenger; or

13 (2) as a prior condition by a towing service
14 carrier performing nonconsensual tows or a household goods
15 service carrier for delivery of, release of or access to
16 vehicles or household goods by the shipper or registered owner;

17 SS. "process" means, in the context of legal
18 process, an order, subpoena or notice issued by the commission
19 or an order, subpoena, notice, writ or summons issued by a
20 court;

21 TT. "property" means movable articles of value,
22 including cadavers, hazardous matter, farm products, livestock
23 feed, stock salt, manure, wire, posts, dairy products,
24 livestock hauled in lots of twenty-five thousand pounds or
25 more, farm or ranch machinery and the items transported by a

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1 towing service, but does not include household goods or
2 unprocessed farm products transported by a farmer from the
3 place of harvesting to market, storage or a processing plant;

4 UU. "protest" means a document in the form of a
5 pleading filed with the commission by a full-service carrier
6 that expresses an objection to an application before the
7 commission for a certificate for passenger service or for a
8 permit for ambulance service or for passenger service pursuant
9 to a public-charge contract or for amendment, lease or transfer
10 of such a certificate or permit:

11 (1) when the territory involved in the
12 application includes all or a portion of the full-service
13 territory of the protesting carrier; and

14 (2) for a carrier other than an ambulance
15 service carrier, when the grant of the application will, or
16 presents a reasonable potential to, impair, diminish or
17 otherwise adversely affect its existing provision of full-
18 service passenger service to the public within its full-service
19 territory;

20 VV. "public-charge contract" means a contract or
21 contractual arrangement between a motor carrier and a third
22 party for passenger service that requires or allows the motor
23 carrier to charge passengers a fare for the transportation
24 service to be provided pursuant to the contract;

25 WW. "rate" means a form of compensation charged,

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1 whether directly or indirectly, by a person for a
2 transportation service subject to the jurisdiction of the
3 commission;

4 XX. "record of a motor carrier" means an account,
5 correspondence, memorandum, tape, disc, paper, book or
6 transcribed information, or electronic data information,
7 including the electronic hardware or software necessary to
8 access the electronic data information in its document form,
9 regarding the operation of a motor carrier;

10 YY. "registration year" means a calendar year;

11 ZZ. "revocation" means the involuntary, permanent
12 termination of all or part of an operating authority ordered by
13 the commission for cause;

14 AAA. "shipper" means a person who consigns or
15 receives property or household goods for transportation;

16 BBB. "shuttle service" means the intrastate
17 transportation of passengers for hire pursuant to a set fare
18 for each passenger between two or more specified terminal
19 points or areas and includes both scheduled shuttle service and
20 general shuttle service as follows:

21 (1) "scheduled shuttle service" means a
22 shuttle service that transports passengers to and from an
23 airport both through prior arrangement and through presentment
24 at terminal locations, on the basis of a daily time schedule
25 filed with the commission, [~~which~~] that must be met in a timely

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1 fashion with a vehicle present at the terminal location
2 regardless of the number of passengers carried on any run, if
3 any, and that includes general shuttle service; and

4 (2) "general shuttle service" means a shuttle
5 service that is not required to operate on a set schedule, that
6 may optionally use a grid map to specify distant or adjacent
7 terminal areas and that is not required to accept passengers
8 other than pre-arranged passengers;

9 CCC. "specialized passenger service" means the
10 intrastate transportation for hire of passengers with special
11 physical needs by specialized types of vehicles, or for
12 specialized types of service to the public or community, as the
13 commission may by rule provide;

14 DDD. "tariff" means a document filed by a tariffed
15 service carrier that has been approved by the commission and
16 sets forth the transportation services offered by the motor
17 carrier to the general public, including the rates, terms of
18 service and applicable time schedules relating to those
19 services;

20 EEE. "tariffed service" means one of the following
21 transportation services authorized by the commission for the
22 provision of service on the basis of rates and terms of service
23 contained in a tariff approved by the commission:

24 (1) an ambulance service;

25 (2) a household goods service;

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- 1 (3) a shuttle service;
- 2 (4) a specialized passenger service;
- 3 (5) a taxicab service; or
- 4 (6) a towing service performing nonconsensual
- 5 tows;

6 FFF. "taxicab association" means an association,
7 cooperative or other legal entity whose members are taxicab
8 drivers, which shall be treated in the same manner as any other
9 applicant with regard to applications for a certificate for
10 general taxicab service or for full-service municipal taxicab
11 service and which shall be subject in the same manner to all
12 other provisions, requirements and limitations of the Motor
13 Carrier Act;

14 GGG. "taxicab service" means intrastate
15 transportation of passengers for hire in a motor vehicle having
16 a capacity of not more than eight persons, including the
17 driver, for which the passenger or other person engaging the
18 vehicle is allowed to specify not only the origin and
19 destination points of the trip but also, within reason, the
20 route taken by the vehicle, any intermediate stop, any optional
21 waiting at a stop and any other passengers transported during
22 the trip and that charges a fare for use of the vehicle
23 primarily on the basis of a drop-flag fee, cumulative mileage
24 and cumulative wait time through a taxicab meter used to
25 cumulate and display the fare to the passenger and includes

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1 both municipal taxicab service and general taxicab service, as
2 follows:

3 (1) "municipal taxicab service" means a
4 taxicab service that deploys vehicles at all times of the day
5 and year, is centrally dispatched and reasonably responds to
6 all calls for service within its endorsed full-service
7 territory regardless of profitability of the individual trip,
8 in addition to the transportation service provided by a general
9 taxicab service; and

10 (2) "general taxicab service" means a taxicab
11 service that need not be dispatched, that may pick up on-demand
12 passengers through flagging or at a taxicab stand or queue,
13 that need not deploy vehicles in any particular manner and that
14 may charge for trips to destination points or places outside of
15 the taxicab service's certificated territories on the basis of
16 a set fare;

17 HHH. "terms of service" means all terms, aspects,
18 practices, limitations, conditions and schedules of service
19 other than specific rate amounts pertaining to a tariffed
20 service;

21 III. "towing service" means the use of specialized
22 equipment, including repossession services using towing
23 equipment, to transport or store:

24 (1) a damaged, disabled or abandoned motor
25 vehicle and its cargo;

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1 (2) a motor vehicle to replace a damaged,
2 disabled or abandoned motor vehicle;

3 (3) parts and equipment to repair a damaged,
4 disabled or abandoned motor vehicle;

5 (4) a motor vehicle whose driver has been
6 declared unable to drive by a law enforcement officer;

7 (5) a motor vehicle whose driver has been
8 removed from the scene or is unable to drive; or

9 (6) a motor vehicle repossessed or seized
10 pursuant to lawful authority;

11 JJJ. "transfer of a certificate or permit" means a
12 permanent conveyance of all or part of a certificate or permit;

13 KKK. "transfer by operation of law" means that all
14 or a part of a grantee's interest in an operating authority
15 passes to a fiduciary or other person by application of
16 established rules of law;

17 LLL. "transportation service" means transportation
18 subject to the jurisdiction of the commission, offered or
19 provided by a motor carrier, that requires the carrier to
20 obtain an operating authority from the commission under the
21 Motor Carrier Act, regardless of whether the motor carrier has
22 obtained appropriate operating authority from the commission;

23 MMM. "verification" means a notarized signature
24 verifying the contents of the document or other filing or a
25 signature verifying the contents of the document or other

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1 filing under penalty of perjury, expressly providing that the
2 signatory swears or affirms the contents under penalty of
3 perjury as provided in Subsection A of Section 65-2A-33 NMSA
4 1978;

5 NNN. "voluntary suspension" means the commission-
6 authorized cessation of use of all or part of a certificate or
7 permit at the request of the holder for a specified period of
8 time, not to exceed twelve consecutive months;

9 000. "warrant" means the authority issued by the
10 commission to a person that authorizes the person to offer and
11 provide a warranted service as a motor carrier;

12 PPP. "warranted service" means one of the following
13 intrastate transportation services offered or provided for
14 hire:

- 15 (1) a charter service;
16 [~~(2)~~] ~~a commuter service;~~
17 ~~(3)~~] (2) a property transportation service; or
18 [~~(4)~~] (3) a towing service; and

19 QQQ. "weight-bumping" means the knowing and willful
20 statement of a fraudulent weight on a shipment of household
21 goods."

22 SECTION 2. Section 65-2A-12 NMSA 1978 (being Laws 2003,
23 Chapter 359, Section 12, as amended by Laws 2013, Chapter 73,
24 Section 11 and by Laws 2013, Chapter 77, Section 11) is amended
25 to read:

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1 "65-2A-12. WARRANTS.--

2 A. The commission shall issue a warrant that allows
3 a person to provide warranted service as a [~~commuter service~~]
4 charter service, towing service or motor carrier of property if
5 the commission finds that the applicant is in compliance with
6 the financial responsibility and safety requirements of the
7 Motor Carrier Act and the rules of the commission.

8 B. A towing service carrier performing
9 nonconsensual tows is subject to tariff rates and terms of
10 service. A towing service carrier performing nonconsensual
11 tows shall not use the same motor vehicles, equipment and
12 facilities used by another warranted towing service carrier
13 performing nonconsensual tows.

14 C. A warrant shall not be transferred or leased to
15 another person.

16 D. The commission may without notice or a public
17 hearing cancel a warrant if the owner fails to operate under
18 the warrant for twelve consecutive months or fails to provide
19 proof of financial responsibility as required by the commission
20 for four consecutive months."

21 SECTION 3. Section 65-2A-19 NMSA 1978 (being Laws 2003,
22 Chapter 359, Section 19, as amended by Laws 2013, Chapter 73,
23 Section 17 and by Laws 2013, Chapter 77, Section 17) is amended
24 to read:

25 "65-2A-19. SAFETY REQUIREMENTS FOR MOTOR VEHICLES AND

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1 DRIVERS.--

2 A. A motor carrier shall provide safe and adequate
3 service, equipment and facilities for the rendition of
4 transportation services in this state.

5 B. The commission shall prescribe safety
6 requirements for drivers and for motor vehicles weighing
7 twenty-six thousand pounds or less or carrying fifteen or fewer
8 persons, including the driver, used by intrastate motor
9 carriers operating in this state. The commission may prescribe
10 additional requirements related to safety, including driver
11 safety training programs, vehicle preventive maintenance
12 programs, inquiries regarding the safety of the motor vehicles
13 and drivers employed by a motor carrier, and the
14 appropriateness of the motor vehicles and equipment for the
15 transportation services to be provided by the motor carrier.

16 ~~[G. A commuter service shall certify that it has a~~
17 ~~program providing for an initial drug test for a person seeking~~
18 ~~to be a commuter service driver. The program shall use~~
19 ~~reasonable collection and analysis procedures to ensure~~
20 ~~accurate results, require testing only for substances~~
21 ~~controlled by federal regulation of commercial motor carriers~~
22 ~~and ensure the confidentiality of the test results and medical~~
23 ~~information obtained.~~

24 ~~D.]~~ C. The ~~[motor transportation]~~ New Mexico state
25 police division of the department of public safety may

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1 immediately order, without notice or a public hearing, a motor
2 vehicle to be taken out of service for violation of a federal
3 or state law or rule relating to safety if the violation would
4 endanger the public health or safety.

5 ~~[E-]~~ D. The commission shall implement rules
6 requiring carriers to obtain criminal background reports for
7 all employed or contract drivers of certificated service
8 carriers and for all other persons employed by certificated
9 household goods service carriers who enter private dwellings in
10 the course of household goods service."

11 **SECTION 4.** Section 65-2A-38 NMSA 1978 (being Laws 2003,
12 Chapter 359, Section 38, as amended by Laws 2013, Chapter 73,
13 Section 32 and by Laws 2013, Chapter 77, Section 32) is amended
14 to read:

15 "65-2A-38. EXEMPTIONS.--The Motor Carrier Act shall not
16 apply to:

17 A. school buses, provided that school buses shall
18 be subject to applicable school bus safety provisions
19 established by the state transportation director;

20 B. United States mail carriers, unless they are
21 engaged in other business as motor carriers of persons or
22 household goods;

23 C. hearses, funeral coaches or other motor vehicles
24 belonging to or operated in connection with the business of a
25 funeral service practitioner licensed by the state;

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D. a county or municipal public bus transportation system; ~~or~~

E. private carriers; or

F. commuter services."

SECTION 5. EFFECTIVE DATE.--The effective date of the provisions of this act is July 1, 2017.