

AN ACT

RELATING TO MOTOR CARRIER INSURANCE; REQUIRING INCIDENTAL CARRIERS TO PROVIDE EVIDENCE OF FINANCIAL RESPONSIBILITY TO THE PUBLIC REGULATION COMMISSION.

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

Section 1. Section 65-2A-3 NMSA 1978 (being Laws 2003, Chapter 359, Section 3) is amended to read:

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

A. "amendment" means a permanent change in the type of service or territory authorized by an existing certificate or permit;

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

C. "base state" means the registration state for an interstate motor carrier that either is subject to regulation or is transporting commodities exempt from regulation by the federal motor carrier safety administration pursuant to the single state registration system;

D. "cancellation" means the voluntary, permanent termination of all or part of an operating authority;

E. "certificate" means the operating authority issued by the commission to intrastate common motor carriers of persons or household goods;

F. "change in a certificate or permit" means the amendment, cancellation, change in tariff, change in form of ownership, lease, reinstatement, transfer or voluntary suspension of a certificate or permit;

G. "change of name" means a change in the legal name of the owner of an operating authority or in the does-business-as name of the motor carrier, but does not include a change in the form of ownership;

H. "commission" means the public regulation commission;

I. "common control" means control of more than one operating authority of the same kind for the same or overlapping territory;

J. "common motor carrier" means a person offering compensated transportation by motor vehicle to the general public, whether over regular or irregular routes, or under scheduled or unscheduled service, but does not include commuter services;

K. "common tariff" means a tariff applying to two or more common motor carriers;

L. "commuter service" means a person who provides seven- to fifteen-passenger motor vehicles to a volunteer-driver commuter group that shares rides to and from the workplace or training site, where participation is open to the public and incidental to the primary work or training-related

purposes of the commuter group, and where the volunteer drivers have no employer-employee relationship with the commuter service;

M. "contract motor carrier" means a person offering compensated transportation by motor vehicle under individual agreements with particular customers or shippers;

N. "control" means the power to direct or cause the direction of the management and policies of a motor carrier deriving from:

(1) ownership of a sole proprietorship, if the operating authority is held by an individual as a sole proprietor;

(2) ownership of ten percent or more of the voting stock of the corporation, if the operating authority is held by a corporation;

(3) a partnership interest in a general partnership, if the operating authority is held by a general partnership;

(4) an interest in a limited partnership of ten percent or more of the total value of contributions made to the limited partnership, or entitlement to ten percent or more of the profits earned or other compensation paid by the limited partnership, if the operating authority is held by a limited partnership;

(5) a membership interest of ten percent or

more in a limited liability company, if the operating authority is held by a limited liability company; or

(6) capacity as a trustee, personal representative or other person with a fiduciary duty to a motor carrier;

O. "electronic filing" means submission of a document by facsimile, electronic mail or other electronic transmission;

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

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

R. "household goods" means personal effects and property used or to be used in a dwelling when a part of the equipment or supply of the dwelling and other similar property as the federal motor carrier safety administration may provide by regulation, but shall not include property moving from a factory or store, other than property the householder has purchased to use in his dwelling that is transported at the request of, and the transportation charges are paid to the

carrier by, the householder;

S. "incidental carrier" means a motor carrier of persons that provides services for which the customer pays either directly or indirectly and that transports passengers in conjunction with the primary service that it provides;

T. "interested person" means a motor carrier operating over the routes or in the territory involved in an application or grant of temporary authority, a person affected by a rule proposed for adoption by the commission or a person the commission may deem interested in a particular matter;

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

V. "intrastate motor carrier" means a person providing compensated transportation by motor vehicle between points and places in the state;

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

X. "irregular route" means that the route to be used by a motor carrier is not restricted to a specific highway within the territory the motor carrier is authorized to serve;

Y. "lease of a certificate or permit" means an agreement by which the owner of a certificate or permit grants to another the exclusive right to use all or part of the certificate or permit for a specified period of time in exchange for consideration;

Z. "lease of equipment" means an agreement whereby a motor carrier obtains equipment owned by another for use by the motor carrier in the exercise of its operating authority;

AA. "motor carrier" means a person offering compensated transportation of persons or property by motor vehicle, whether in intrastate or interstate commerce;

BB. "motor carrier organization" means an organization approved by the commission to discuss and propose a common tariff for a group of motor carriers or to represent motor carriers that have adopted the common tariff;

CC. "motor carrier of persons" means a person who provides compensated transportation of persons on a highway in the state;

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

EE. "nonconsensual tow" means the compensated transportation of a motor vehicle by a towing service, if such

transportation is performed at the request of a law enforcement officer or without the prior consent or authorization of the owner or operator of the motor vehicle;

FF. "operating authority" means a certificate, permit, warrant, single trip ticket, single state registration receipt or temporary authority issued by the commission to a motor carrier;

GG. "permit" means the operating authority issued by the commission to intrastate contract motor carriers of persons or household goods;

HH. "process" means an order, subpoena or notice issued by the commission or an order, subpoena, notice, writ or summons issued by a court;

II. "property" means movable articles of value, including cadavers, hazardous matter, farm products, livestock feed, stock salt, manure, wire, posts, dairy products, livestock hauled in lots of twenty-five thousand pounds or more, farm or ranch machinery and the items transported by a towing service, but does not include household goods or unprocessed farm products transported by a farmer from the place of harvesting to market, storage or a processing plant;

JJ. "protest" means a document filed with the commission by an interested person that expresses an objection to a matter before the commission;

KK. "rate" means a form of compensation charged,

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

LL. "record" means an account, correspondence, memorandum, tape, disc, paper, book or transcribed information regarding the operation of a motor carrier;

MM. "registration year" means a calendar year;

NN. "regular route" means a route used by a motor carrier within the territory in which the motor carrier is authorized to serve that is fixed by its operating authority;

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

PP. "shipper" means a person who consigns or receives goods for transportation;

QQ. "single state registration receipt" means the document issued annually to a motor carrier operating in interstate commerce evidencing that proof of financial responsibility and safety has been filed with the base state and that the annual per vehicle fees have been paid for that registration year;

RR. "tariff" means a document filed by a motor carrier of persons or household goods or a towing service performing nonconsensual tows that has been approved by the commission and sets forth the transportation services offered



by the motor carrier to the general public, including the rates, terms and conditions and applicable time schedules relating to those services, including a common tariff;

SS. "taxicab service" means a common motor carrier engaged in unscheduled passenger transportation in a motor vehicle having a capacity of not more than eight passengers, including the driver, not operated on a regular route or between specified places, and that:

(1) is licensed as a taxicab service by a state or local jurisdiction; or

(2) if not licensed or regulated by a state or local jurisdiction as a taxicab service, is offered by a person that:

(a) provides local transportation for a fare determined, except with respect to transportation to or from airport, train or bus terminals, primarily on the basis of the distance traveled; and

(b) does not primarily provide transportation to or from one or more airport, train or bus terminals;

TT. "terminal shuttle service" means a common motor carrier engaged in passenger transportation service that:

(1) is prearranged by contract or operated by hire on a regular route, allowing for deviation to pick up

or drop off passengers, between specified or generally specified points; and

(2) primarily provides transportation to or from one or more airport, train or bus terminals but may also provide for intermediate pickup or departure of passengers;

UU. "towing services" means the use of specialized equipment, including repossession services using towing equipment, to transport:

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

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

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

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

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

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

VV. "transfer of a certificate or permit" means a permanent conveyance of all or part of a certificate or permit;

WW. "transfer by operation of law" means that the ownership of or interest in a certificate or permit passes to

another by application of established rules of law;

XX. "voluntary suspension" means the commission-authorized cessation of use of all or part of a certificate or permit at the request of the motor carrier for a specified period of time;

YY. "warrant" means the operating authority issued by the commission to charter services, towing services, commuter services and motor carriers of property; and

ZZ. "weight-bumping" means the knowing and willful statement of a fraudulent weight on a shipment of household goods."

Section 2. Section 65-2A-18 NMSA 1978 (being Laws 2003, Chapter 359, Section 18) is amended to read:

"65-2A-18. FINANCIAL RESPONSIBILITY.--

A. The commission shall prescribe minimum requirements for financial responsibility for all motor carriers, including incidental carriers pursuant to this section. Rules regarding financial responsibility of incidental carriers shall be adopted by July 1, 2006 by the commission, and implementation of the financial responsibility requirements for incidental carriers shall begin on July 1, 2006.

B. A motor carrier or incidental carrier shall not operate on the highways of this state without having filed with the commission proof of financial responsibility in the

form and amount as the commission shall by rule prescribe. The maximum amount of financial responsibility, as determined by the commission, for incidental carriers shall not exceed that required of other motor carriers.

C. In prescribing minimum requirements for financial responsibility for motor carriers, the commission shall consider:

(1) the creation of sufficient incentives to motor carriers to maintain and operate their equipment in a safe manner;

(2) the number of passengers being transported;

(3) the nature of the transportation services provided by the motor carrier; and

(4) other factors necessary to ensure that motor carriers maintain an appropriate level of financial responsibility.

D. The commission may authorize a motor carrier to carry its own insurance in lieu of filing a policy of insurance, certificate showing the issuance of a policy of insurance or a surety bond. In approving an application to be self-insured, the commission shall consider:

(1) the financial stability of the carrier;

(2) previous loss history of the carrier;

(3) the safety record of the carrier;

(4) the size, nature of operations and other operating characteristics of the carrier; and

(5) other factors necessary for the protection of passengers, shippers and the public.

E. Notwithstanding any requirement of the New Mexico Insurance Code to the contrary, the commission may accept proof of public liability insurance from an insurer not authorized in New Mexico if:

(1) the insurance is for an interstate motor carrier transporting commodities exempt from regulation by the federal motor carrier safety administration participating in the single state registration system for those motor carriers; and

(2) the insurer is authorized to write public liability insurance in at least one other state.

F. All motor carriers shall carry proof of financial responsibility in each motor vehicle they operate in this state." \_\_\_\_\_