

HOUSE BILL 491

54TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2019

INTRODUCED BY

Natalie Figueroa and Christine Trujillo

Pursuant to House Rule 24-1, this document incorporates amendments that have been adopted prior to consideration of this measure by the House. It is a tool to show the amendments in context and is not to be used for the purpose of amendments.

AN ACT

RELATING TO MOTOR CARRIERS; MAKING IT AN UNFAIR PRACTICE TO TOW FROM OR IMMOBILIZE A MOTOR VEHICLE IN A PARKING FACILITY BASED ON CERTAIN PARKING OR MOTOR VEHICLE REGISTRATION VIOLATIONS; PROVIDING PENALTIES.

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

SECTION 1. A new section of the Unfair Practices Act is enacted to read:

"[NEW MATERIAL] UNATTENDED VEHICLES ON PARKING FACILITY-- NOTICE--REMOVAL--PROHIBITIONS.--

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A. Except as provided in Subsection B of this section, it is an unfair or deceptive trade practice for a person to have a motor vehicle towed from or immobilized in a parking facility only because a motor vehicle displays an expired validating sticker as defined in Section 66-1-4.19 NMSA 1978 or issued under the motor vehicle registration law of another state or country; is missing a license plate; occupies two parking spaces; is parked on the parking stripe; HJC→is parked on grass, landscaping or a curb;←HJC is backed into a parking space; has a flat tire; or is mechanically unfit or unsafe to be operated or moved upon the highways.

B. A contract to provide towing services shall not provide for having a motor vehicle towed from or immobilized in a parking facility only because the motor vehicle displays an expired validating sticker as defined in Section 66-1-4.19 NMSA 1978 or issued under the motor vehicle registration law of another state or country; is missing a license plate; occupies two parking spaces; is parked on the parking stripe; HJC→is parked on grass, landscaping or a curb;←HJC is backed into a parking space; has a flat tire; or is mechanically unfit or unsafe to be operated or moved upon the highways, unless the contract requires that the owner or operator of the motor vehicle be given at least HJC→ten←HJC HJC→seven←HJC days' written notice that the motor vehicle will be towed from the parking facility at the motor vehicle owner's or operator's

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expense if it is not removed from the parking facility. The written notice shall:

(1) state:

(a) the specific reason that the motor vehicle is subject to tow;

(b) that the motor vehicle will be towed at the expense of the owner or operator of the motor vehicle if the issue for which the motor vehicle is subject to tow is not corrected or the motor vehicle is not removed from the parking facility; and

(c) a telephone number that is answered twenty-four hours per day to enable the owner or operator of the motor vehicle to locate the vehicle; and

(2) be:

(a) hand-delivered to the owner or operator of the motor vehicle; or

(b) sent by certified mail, return receipt requested, to the owner or operator of the motor vehicle.

C. This section shall not be construed to:

(1) authorize the owner or operator of a motor vehicle to leave an unattended vehicle on property that is not designed or intended for the parking of vehicles; or

(2) have an effect on the disposition of abandoned motor vehicles pursuant to Section 66-3-119 or

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66-3-121 NMSA 1978.

D. A contract entered into or renewed on or after July 1, 2019 that is in conflict or inconsistent with this section is void and unenforceable.

E. For purposes of this section, "parking facility" means public or private property used Hf1→~~wholly or partly~~←Hf1 for restricted or paid vehicle parking that Hf1→**exclusively**←Hf1 serves multifamily housing, including a duplex, an apartment complex, a condominium, a townhouse or other property governed by a property owners' association."

SECTION 2. Section 65-2A-33 NMSA 1978 (being Laws 2003, Chapter 359, Section 33, as amended by Laws 2013, Chapter 73, Section 29 and by Laws 2013, Chapter 77, Section 29) is amended to read:

"65-2A-33. CRIMINAL AND CIVIL PENALTIES--UNFAIR TRADE PRACTICES.--

A. A person who knowingly makes a false statement of material fact under oath or penalty of perjury in a commission proceeding, whether orally or in writing, shall be guilty of perjury.

B. A person who willfully makes a false return of process or report to the commission or a member or employee of the commission, and a person who knowingly aids or abets a person who willfully makes a false return of process or report to the commission or a member or employee of the commission,

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shall be guilty of a felony, and upon conviction shall be imprisoned for not more than five years.

C. A person who willfully makes a false entry in records required by the Motor Carrier Act or the rules of the commission, willfully destroys, mutilates or by other means willfully falsifies the records or willfully neglects or fails to make full, true and correct entries of all facts, shall be guilty of a felony and upon conviction shall be imprisoned for not more than five years.

D. An employee of the commission who divulges information about an inspection, examination or investigation of a record or of the property and facilities of a motor carrier, except insofar as may be authorized by the commission or a court of competent jurisdiction, shall be guilty of a misdemeanor and upon conviction shall be fined not more than one thousand dollars (\$1,000).

E. A person who violates or who procures, aids or abets in the violation of a provision of the Motor Carrier Act or a rule or order of the commission shall be guilty of a misdemeanor and upon conviction shall be fined not more than one thousand dollars (\$1,000), imprisoned for not more than ninety days, or both.

F. A motor carrier shall be guilty of a misdemeanor and upon conviction shall be fined not more than five hundred dollars (\$500), imprisoned for not more than six months, or

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both, if the motor carrier:

- (1) refuses to permit examination of its records;
- (2) conceals, destroys or mutilates its records;
- (3) attempts to conceal, destroy or mutilate its records; or
- (4) removes its records beyond the limits of the state for the purpose of preventing examination.

G. A person who commits weight-bumping shall be guilty of a felony and upon conviction shall be fined not less than one thousand dollars (\$1,000) nor more than ten thousand dollars (\$10,000), imprisoned for not more than two years, or both.

H. A person shall be assessed a civil penalty of not more than two thousand dollars (\$2,000) for each violation and not more than five thousand dollars (\$5,000) for each subsequent violation if the person knowingly engages in or authorizes an agent or other person to:

- (1) falsify the documents used in the transportation of household goods that evidence the weight of shipment; or
- (2) charge for accessorial services that are not performed, or for which the carrier is not entitled to be compensated, in a case in which such services are not

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reasonably necessary for the safe and adequate transportation of the shipment.

I. A law enforcement officer of the state shall arrest and the district attorney and attorney general shall prosecute a violation of the Motor Carrier Act.

J. It is an unfair and deceptive trade practice under the Unfair Practices Act for any transportation service carrier to offer or provide transportation services of a type for which, or in any territory in which, it is not authorized to do so by the commission. The attorney general or a person who has been damaged or who is likely to be damaged as the result of such unauthorized service, including a shipper, a passenger or an authorized transportation service carrier, may bring an action pursuant to the Unfair Practices Act against the transportation service carrier regarding such unauthorized service. Any such civil action shall be in addition to, and shall not bar, any investigation or civil or criminal enforcement action regarding the unauthorized service available to the attorney general or a district attorney, or available to the commission under the Motor Carrier Act.

K. It is an unfair and deceptive trade practice under the Unfair Practices Act for any transportation service carrier or its agent, employee or contract driver to charge or collect a predatory rate or to undertake a predatory practice in the provision of transportation services. The attorney

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general or a person who has been damaged or who is likely to be damaged as the result of a predatory rate or practice may bring an action pursuant to the Unfair Practices Act against the transportation service carrier regarding such predatory rate or practice. Any such civil action shall be in addition to, and shall not bar, any investigation or civil or criminal enforcement action regarding the predatory rate or practice available to the attorney general or a district attorney, or available to the commission under the Motor Carrier Act.

L. HJC→It←HJC HJC→Unless written notice is provided pursuant to Subsection B of Section 1 of this 2019 act, it←HJC is an unfair HJC→and←HJC HJC→or←HJC deceptive trade practice under the Unfair Practices Act for a towing service to perform a nonconsensual tow or immobilize a motor vehicle only because a motor vehicle displays an expired validating sticker as defined in Section 66-1-4.19 NMSA 1978 or issued under the motor vehicle registration law of another state or country; is missing a license plate; occupies two parking spaces; is parked on the parking stripe; HJC→is parked on grass, landscaping or a curb;←HJC is backed into a parking space; has a flat tire; or is mechanically unfit or unsafe to be operated or moved upon the highways. The attorney general or a person who has been damaged may bring an action pursuant to the Unfair Practices Act against the towing service. Any civil action shall be in addition to, and shall not bar, any investigation or civil or

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criminal enforcement action regarding the towing service that is available to the attorney general or a district attorney or that is available to the commission under the Motor Carrier Act."

SECTION 3. EFFECTIVE DATE.--The effective date of the provisions of this act is July 1, 2019.

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