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HOUSE BILL 311

**54TH LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION, 2020**

INTRODUCED BY

Natalie Figueroa

AN ACT

RELATING TO MOTOR CARRIERS; MAKING IT AN UNFAIR PRACTICE TO TOW FROM OR IMMOBILIZE A MOTOR VEHICLE IN A PARKING FACILITY FOR DISPLAYING AN EXPIRED VALIDATING STICKER; 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.--"

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 pursuant to the motor vehicle registration laws of .217014.2

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1 another state or country.

2 B. A contract to provide towing services shall not  
3 provide for having a motor vehicle towed from or immobilized in  
4 a parking facility only because the motor vehicle displays an  
5 expired validating sticker as defined in Section 66-1-4.19 NMSA  
6 1978 or issued pursuant to the motor vehicle registration laws  
7 of another state or country unless the contract requires that  
8 the owner or operator of the motor vehicle be given at least  
9 seven days' written notice that the motor vehicle will be towed  
10 from the parking facility at the motor vehicle owner's or  
11 operator's expense if it is not removed from the parking  
12 facility. The written notice shall:

13 (1) state:

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

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

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

24 (2) be:

25 (a) hand-delivered to the owner or

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1 operator of the motor vehicle;

2 (b) sent by certified mail, return  
3 receipt requested, to the owner or operator of the motor  
4 vehicle; or

5 (c) a sticker affixed to a window of the  
6 motor vehicle; provided that the sticker shall measure not less  
7 than sixteen square inches in area and shall not be affixed in  
8 a manner that might interfere with the safe operation of the  
9 vehicle.

10 C. This section shall not be construed to:

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

14 (2) have an effect on the disposition of  
15 abandoned motor vehicles pursuant to Section 66-3-119 or  
16 66-3-121 NMSA 1978.

17 D. A contract entered into or renewed on or after  
18 July 1, 2020 that is in conflict or inconsistent with this  
19 section is void and unenforceable.

20 E. For purposes of this section, "parking facility"  
21 means public or private property used wholly or partly for  
22 restricted or paid vehicle parking that serves multifamily  
23 housing, including a duplex, an apartment complex, a  
24 condominium, a townhouse or other property governed by a  
25 property owners' association."

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

5           "65-2A-33. CRIMINAL AND CIVIL PENALTIES--UNFAIR TRADE  
6 PRACTICES.--

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

11           B. A person who willfully makes a false return of  
12 process or report to the commission or a member or employee of  
13 the commission, and a person who knowingly aids or abets a  
14 person who willfully makes a false return of process or report  
15 to the commission or a member or employee of the commission,  
16 shall be guilty of a felony, and upon conviction shall be  
17 imprisoned for not more than five years.

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

25           D. An employee of the commission who divulges

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

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

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

17 (1) refuses to permit examination of its  
18 records;

19 (2) conceals, destroys or mutilates its  
20 records;

21 (3) attempts to conceal, destroy or mutilate  
22 its records; or

23 (4) removes its records beyond the limits of  
24 the state for the purpose of preventing examination.

25 G. A person who commits weight-bumping shall be

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1 guilty of a felony and upon conviction shall be fined not less  
2 than one thousand dollars (\$1,000) nor more than ten thousand  
3 dollars (\$10,000), imprisoned for not more than two years, or  
4 both.

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

10 (1) falsify the documents used in the  
11 transportation of household goods that evidence the weight of  
12 shipment; or

13 (2) charge for accessorial services that are  
14 not performed, or for which the carrier is not entitled to be  
15 compensated, in a case in which such services are not  
16 reasonably necessary for the safe and adequate transportation  
17 of the shipment.

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

21 J. It is an unfair and deceptive trade practice  
22 under the Unfair Practices Act for any transportation service  
23 carrier to offer or provide transportation services of a type  
24 for which, or in any territory in which, it is not authorized  
25 to do so by the commission. The attorney general or a person

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1 who has been damaged or who is likely to be damaged as the  
2 result of such unauthorized service, including a shipper, a  
3 passenger or an authorized transportation service carrier, may  
4 bring an action pursuant to the Unfair Practices Act against  
5 the transportation service carrier regarding such unauthorized  
6 service. Any such civil action shall be in addition to, and  
7 shall not bar, any investigation or civil or criminal  
8 enforcement action regarding the unauthorized service available  
9 to the attorney general or a district attorney, or available to  
10 the commission under the Motor Carrier Act.

11 K. It is an unfair and deceptive trade practice  
12 under the Unfair Practices Act for any transportation service  
13 carrier or its agent, employee or contract driver to charge or  
14 collect a predatory rate or to undertake a predatory practice  
15 in the provision of transportation services. The attorney  
16 general or a person who has been damaged or who is likely to be  
17 damaged as the result of a predatory rate or practice may bring  
18 an action pursuant to the Unfair Practices Act against the  
19 transportation service carrier regarding such predatory rate or  
20 practice. Any such civil action shall be in addition to, and  
21 shall not bar, any investigation or civil or criminal  
22 enforcement action regarding the predatory rate or practice  
23 available to the attorney general or a district attorney, or  
24 available to the commission under the Motor Carrier Act.

25 L. Unless written notice is provided pursuant to

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1 Subsection B of Section 1 of this 2020 act, it is an unfair or  
2 deceptive trade practice pursuant to the Unfair Practices Act  
3 for a towing service to perform a nonconsensual tow or  
4 immobilize a motor vehicle only because a motor vehicle  
5 displays an expired validating sticker as defined in Section  
6 66-1-4.19 NMSA 1978 or issued pursuant to the motor vehicle  
7 registration laws of another state or country. The attorney  
8 general or a person who has been damaged may bring an action  
9 pursuant to the Unfair Practices Act against the towing  
10 service. Any civil action shall be in addition to, and shall  
11 not bar, any investigation or civil or criminal enforcement  
12 action regarding the towing service that is available to the  
13 attorney general or a district attorney or that is available to  
14 the commission under the Motor Carrier Act."

15 SECTION 3. EFFECTIVE DATE.--The effective date of the  
16 provisions of this act is July 1, 2020.