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SENATE BILL 468

50TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2011

INTRODUCED BY

Rod Adair

AN ACT

RELATING TO THE REGULATION OF MOTOR CARRIERS; CREATING A FREE MARKET FOR MOTOR CARRIERS OF PERSONS OTHER THAN AMBULANCES; ELIMINATING THE REQUIREMENT FOR A CERTIFICATE OR PERMIT AND THE REGULATION OF TARIFFS FOR THOSE MOTOR CARRIERS; ENSURING EQUALITY OF FEES FOR APPLICANTS AND INTERVENORS; MAKING AN APPROPRIATION.

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

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

"65-2A-1. SHORT TITLE.--~~[Sections 1 through 40 of this act]~~ Chapter 65, Article 2A NMSA 1978 may be cited as the "Motor Carrier Act"."

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

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1 "65-2A-2. TRANSPORTATION POLICY.--It is the policy of
2 this state to foster the development, coordination and
3 preservation of a safe, sound and adequate motor carrier
4 system, requiring financial responsibility and accountability
5 on the part of motor carriers, providing for economic
6 regulation of ambulance services, motor carriers of [~~persons~~
7 ~~and~~] household goods and towing services performing
8 nonconsensual tows and by streamlining and promoting uniformity
9 of state regulation of motor carriers."

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

12 "65-2A-3. DEFINITIONS.--As used in the Motor Carrier Act:

13 A. "ambulance service" means the scheduled or
14 unscheduled compensated transportation over irregular routes of
15 passengers in ambulances;

16 [~~A.~~] B. "amendment" means a permanent change in the
17 type of service or territory authorized by an existing
18 certificate or permit;

19 [~~B.~~] C. "antitrust laws" means the laws of this
20 state relating to combinations in restraint of trade;

21 [~~C.~~] D. "base state" means the registration state
22 for an interstate motor carrier that either is subject to
23 regulation or is transporting commodities exempt from
24 regulation by the federal motor carrier safety administration
25 pursuant to the single state registration system;

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1 ~~[D.]~~ E. "cancellation" means the voluntary,
2 permanent termination of all or part of an operating authority;

3 ~~[E.]~~ F. "certificate" means the operating authority
4 issued by the commission to intrastate common motor carriers
5 ~~[of persons or household goods];~~

6 ~~[F.]~~ G. "change in a certificate or permit" means
7 the amendment, cancellation, change in tariff, change in form
8 of ownership, lease, reinstatement, transfer or voluntary
9 suspension of a certificate or permit;

10 ~~[G.]~~ H. "change of name" means a change in the
11 legal name of the owner of an operating authority or in the
12 does-business-as name of the motor carrier, but does not
13 include a change in the form of ownership;

14 ~~[H.]~~ I. "commission" means the public regulation
15 commission;

16 ~~[I.]~~ J. "common control" means control of more than
17 one operating authority of the same kind for the same or
18 overlapping territory;

19 ~~[J.]~~ K. "common motor carrier" means a person
20 offering compensated ambulance service or transportation of
21 household goods by motor vehicle to the general public,
22 ~~[whether]~~ over ~~[regular or]~~ irregular routes, ~~[or]~~ under
23 ~~[scheduled or]~~ unscheduled service, but does not include
24 commuter services;

25 ~~[K.]~~ L. "common tariff" means a tariff applying to

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1 two or more common motor carriers;

2 ~~[L-]~~ M. "commuter service" means a person who
3 provides seven- to fifteen-passenger motor vehicles to a
4 volunteer-driver commuter group that shares rides to and from
5 the workplace or training site, where participation is open to
6 the public and incidental to the primary work or training-
7 related purposes of the commuter group, and where the volunteer
8 drivers have no employer-employee relationship with the
9 commuter service;

10 ~~[M-]~~ N. "contract motor carrier" means a person
11 offering compensated ambulance service or transportation of
12 household goods by motor vehicle under individual agreements
13 with particular customers or shippers;

14 ~~[N-]~~ O. "control" means the power to direct or
15 cause the direction of the management and policies of a motor
16 carrier deriving from:

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

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

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

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

7 (5) a membership interest of ten percent or
8 more in a limited liability company, if the operating authority
9 is held by a limited liability company; or

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

13 ~~[P-]~~ P. "electronic filing" means submission of a
14 document by facsimile, electronic mail or other electronic
15 transmission;

16 ~~[P-]~~ Q. "financial responsibility" means the
17 ability to respond in damages for liability arising out of the
18 ownership, maintenance or use of a motor vehicle in the
19 provision of transportation services;

20 ~~[Q-]~~ R. "highway" means a way or place generally
21 open to the use of the public as a matter of right for the
22 purpose of vehicular travel, even though it may be temporarily
23 closed or restricted for the purpose of construction,
24 maintenance, repair or reconstruction;

25 ~~[R-]~~ S. "household goods" means personal effects

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1 and property used or to be used in a dwelling when a part of
2 the equipment or supply of the dwelling and other similar
3 property as the federal motor carrier safety administration may
4 provide by regulation, but shall not include property moving
5 from a factory or store, other than property the householder
6 has purchased to use in the householder's dwelling that is
7 transported at the request of, and the transportation charges
8 are paid to the carrier by, the householder;

9 ~~[S.]~~ T. "incidental carrier" means a motor carrier
10 of persons that transports passengers using vehicles designed
11 to transport sixteen or more passengers, including the driver,
12 and for which the customer pays either directly or indirectly;

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

18 ~~[U.]~~ V. "interstate motor carrier" means a person
19 providing compensated transportation in interstate commerce,
20 whether or not the person is subject to regulation by the
21 federal motor carrier safety administration;

22 ~~[V.]~~ W. "intrastate motor carrier" means a person
23 providing compensated transportation by motor vehicle between
24 points and places in the state;

25 ~~[W.]~~ X. "involuntary suspension" means the

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1 temporary cessation of use of all or part of an operating
2 authority ordered by the commission for cause for a stated
3 period of time or pending compliance with certain conditions;

4 ~~[X.]~~ Y. "irregular route" means that the route to
5 be used by a motor carrier is not restricted to a specific
6 highway within the territory the motor carrier is authorized to
7 serve;

8 ~~[Y.]~~ Z. "lease of a certificate or permit" means an
9 agreement by which the owner of a certificate or permit grants
10 to another the exclusive right to use all or part of the
11 certificate or permit for a specified period of time in
12 exchange for consideration;

13 ~~[Z.]~~ AA. "lease of equipment" means an agreement
14 whereby a motor carrier obtains equipment owned by another for
15 use by the motor carrier in the exercise of its operating
16 authority;

17 ~~[AA.]~~ BB. "motor carrier" means a person offering
18 compensated transportation of persons or property by motor
19 vehicle, whether in intrastate or interstate commerce;

20 ~~[BB.]~~ CC. "motor carrier organization" means an
21 organization approved by the commission to discuss and propose
22 a common tariff for a group of motor carriers or to represent
23 motor carriers that have adopted the common tariff;

24 ~~[CC.]~~ DD. "motor carrier of persons" means a person
25 who provides compensated transportation of persons on a highway

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1 in the state;

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

7 [EE.] FF. "nonconsensual tow" means the compensated
8 transportation of a motor vehicle by a towing service, if such
9 transportation is performed at the request of a law enforcement
10 officer or without the prior consent or authorization of the
11 owner or operator of the motor vehicle;

12 [FF.] GG. "operating authority" means a
13 certificate, permit, warrant [~~single trip ticket, single state~~
14 ~~registration receipt~~] or temporary authority issued by the
15 commission to a motor carrier;

16 [GG.] HH. "permit" means the operating authority
17 issued by the commission to intrastate contract motor carriers
18 [~~of persons or household goods~~];

19 [HH.] II. "process" means an order, subpoena or
20 notice issued by the commission or an order, subpoena, notice,
21 writ or summons issued by a court;

22 [II.] JJ. "property" means movable articles of
23 value, including cadavers, hazardous matter, farm products,
24 livestock feed, stock salt, manure, wire, posts, dairy
25 products, livestock hauled in lots of twenty-five thousand

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1 pounds or more, farm or ranch machinery and the items
2 transported by a towing service, but does not include household
3 goods or unprocessed farm products transported by a farmer from
4 the place of harvesting to market, storage or a processing
5 plant;

6 [JJ.] KK. "protest" means a document filed with the
7 commission by an interested person that expresses an objection
8 to a matter before the commission;

9 [KK.] LL. "rate" means a form of compensation
10 charged, whether directly or indirectly, by a person for a
11 transportation service subject to the jurisdiction of the
12 commission;

13 [LL.] MM. "record" means an account,
14 correspondence, memorandum, tape, disc, paper, book or
15 transcribed information regarding the operation of a motor
16 carrier;

17 [MM.] NN. "registration year" means a calendar
18 year;

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

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

25 PP. "shipper" means a person who consigns or

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1 receives goods for transportation;

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

8 RR.] QQ. "tariff" means a document filed by an
9 ambulance service, a motor carrier of ~~[persons or]~~ household
10 goods or a towing service performing nonconsensual tows that
11 has been approved by the commission and sets forth the
12 transportation services offered by the motor carrier to the
13 general public, including the rates, terms and conditions ~~[and~~
14 ~~applicable time schedules relating to those services,~~
15 ~~including]~~ and includes a common tariff;

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

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

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

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

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

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

10 ~~(1) is prearranged by contract or operated by~~
11 ~~hire on a regular route, allowing for deviation to pick up or~~
12 ~~drop off passengers, between specified or generally specified~~
13 ~~points; and~~

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

17 ~~UU.] RR.~~ "towing services" means the use of
18 specialized equipment, including repossession services using
19 towing equipment, to transport:

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

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

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

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

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

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

7 [~~VV.~~] SS. "transfer of a certificate or permit"
8 means a permanent conveyance of all or part of a certificate or
9 permit;

10 [~~WW.~~] TT. "transfer by operation of law" means that
11 the ownership of or interest in a certificate or permit passes
12 to another by application of established rules of law;

13 [~~XX.~~] UU. "voluntary suspension" means the
14 commission-authorized cessation of use of all or part of a
15 certificate or permit at the request of the motor carrier for a
16 specified period of time;

17 [~~YY.~~] VV. "warrant" means the operating authority
18 issued by the commission to charter services, towing services,
19 commuter services, [~~and~~] motor carriers of property and, except
20 for ambulance services, motor carriers of persons; and

21 [~~ZZ.~~] WW. "weight-bumping" means the knowing and
22 willful statement of a fraudulent weight on a shipment of
23 household goods."

24 SECTION 4. Section 65-2A-4 NMSA 1978 (being Laws 2003,
25 Chapter 359, Section 4) is amended to read:

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1 "65-2A-4. POWERS AND DUTIES OF THE COMMISSION.--

2 A. In accordance with the Motor Carrier Act, the
3 commission shall:

4 (1) issue operating authorities for a motor
5 carrier operating in New Mexico;

6 (2) establish minimum requirements for
7 financial responsibility for a motor carrier;

8 (3) establish safety requirements for
9 intrastate motor carrier motor vehicles and drivers subject to
10 the jurisdiction of the commission, provided that the safety
11 requirements shall not be inconsistent with or more stringent
12 than applicable federal safety standards;

13 (4) establish reasonable requirements with
14 respect to continuous and adequate service to be provided under
15 an operating authority;

16 (5) regulate the rates of intrastate common
17 motor carriers [~~of persons and household goods~~] and towing
18 services performing nonconsensual tows, including rates for
19 storing household goods and motor vehicles;

20 (6) determine matters of public convenience
21 and necessity relating to [~~motor carriers~~] ambulance services
22 and intrastate motor carriers of household goods;

23 (7) subpoena witnesses and records, enforce
24 its subpoenas through a court and, through the court, seek a
25 remedy for contempt;

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1 (8) hold a public hearing specific to a
2 protest or request that has been filed timely in opposition to
3 or in consideration of an application; and

4 (9) adopt rules, issue orders and conduct
5 activities necessary to implement and enforce the Motor Carrier
6 Act.

7 B. The commission may:

8 (1) designate inspectors who may inspect the
9 records of a motor carrier subject to the Motor Carrier Act and
10 who shall have the powers of peace officers in the state's
11 political subdivisions with respect to a law or rule that the
12 commission is empowered to enforce pursuant to Section 65-1-6
13 NMSA 1978, excluding the enforcement authority granted to the
14 motor transportation division of the department of public
15 safety;

16 (2) institute civil actions in the district
17 court of Santa Fe county in its own name to enforce the Motor
18 Carrier Act, its orders and rules, and in the name of the state
19 to recover assessments of administrative fines;

20 (3) from time to time, modify the type of
21 service, territory, terms, conditions and limitations of
22 [~~operating authorities~~] certificates or permits previously
23 issued, and change or rescind rates previously adopted as
24 needed; and

25 (4) adopt rules to implement these powers."

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1 SECTION 5. Section 65-2A-7 NMSA 1978 (being Laws 2003,
2 Chapter 359, Section 7) is amended to read:

3 "65-2A-7. OPERATING AUTHORITIES IN GENERAL.--

4 A. A certificate, permit or warrant shall be
5 effective from the date issued by the commission and shall
6 remain in effect until canceled or revoked. [~~A single state
7 registration receipt for interstate motor carriers shall be
8 effective only for the registration year for which it is
9 issued. A single trip ticket shall be effective only for the
10 duration of the trip for which it is issued.~~]

11 B. A motor carrier shall carry a copy of its
12 operating authority in each motor vehicle it operates in New
13 Mexico.

14 C. A motor carrier shall render reasonably
15 continuous and adequate service as the commission may by rule
16 prescribe.

17 D. A motor carrier shall comply with lawfully
18 adopted rules of the commission."

19 SECTION 6. Section 65-2A-8 NMSA 1978 (being Laws 2003,
20 Chapter 359, Section 8) is amended to read:

21 "65-2A-8. CERTIFICATES FOR [~~INTRASTATE COMMON MOTOR
22 CARRIERS OF PERSONS~~] AMBULANCE SERVICES.--

23 A. [~~A common motor carrier of persons~~] An ambulance
24 service shall not provide compensated intrastate transportation
25 in the state without a certificate from the commission.

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1 B. Except as provided in this section, the
2 commission shall issue a certificate allowing a person to
3 provide compensated intrastate transportation as [~~a common~~
4 ~~motor carrier of persons~~] an ambulance service after notice and
5 public hearing requirements are met, if:

6 (1) the person is fit, willing and able to
7 provide the [~~transportation~~] ambulance service to be authorized
8 by the certificate;

9 (2) the person is in compliance with the
10 safety and financial responsibility requirements of the Motor
11 Carrier Act, the rules of the commission and other applicable
12 federal and state laws and rules; and

13 (3) the [~~transportation~~] ambulance service to
14 be provided under the certificate is or will serve a useful
15 public purpose that is responsive to a public demand or need.

16 C. Before granting a certificate to an [~~intrastate~~
17 ~~common motor carrier of persons~~] ambulance service, the
18 commission shall consider the effect that issuance of the
19 certificate would have on existing [~~motor carriers~~] ambulance
20 services; provided that the commission shall not find diversion
21 of revenue or traffic from an existing [~~motor carrier~~]
22 ambulance service to be, in and of itself, sufficient grounds
23 for denying the certificate.

24 D. A certificate issued by the commission to an
25 [~~intrastate common motor carrier of persons~~] ambulance service

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1 shall specify the:

2 (1) service to be rendered;

3 (2) territory to be served; and

4 (3) reasonable terms, conditions and

5 limitations as the public convenience and necessity may require

6 [~~and, if necessary:~~

7 (a) ~~terminals between which service is~~

8 ~~to be provided; or~~

9 (b) ~~routes, schedules and intermediate~~

10 ~~and off-route points on the route for regular route service]."~~

11 SECTION 7. Section 65-2A-10 NMSA 1978 (being Laws 2003,
12 Chapter 359, Section 10, as amended) is amended to read:

13 "65-2A-10. PERMITS FOR INTRASTATE CONTRACT MOTOR CARRIERS
14 [~~OF PERSONS OR HOUSEHOLD GOODS]~~.--

15 A. A contract motor carrier shall not provide
16 compensated intrastate transportation [~~of persons or household~~
17 ~~goods]~~ in the state without first having applied for and
18 obtained a permit from the commission.

19 B. Except as provided in this section, the
20 commission shall issue a permit allowing a person to provide
21 compensated intrastate transportation as a contract motor
22 carrier [~~of persons or household goods]~~ after notice and public
23 hearing requirements are met, if:

24 (1) the person is fit, willing and able to
25 provide the transportation to be authorized by the permit;

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1 (2) the person is in compliance with the
2 safety and financial responsibility requirements of the Motor
3 Carrier Act, the rules of the commission and other applicable
4 federal and state laws and rules; and

5 (3) the transportation to be provided under
6 the permit is or will be consistent with the public interest.

7 C. Before granting a permit to an [~~intrastate~~
8 ~~contract motor carrier of persons~~] ambulance service, the
9 commission shall consider:

10 (1) the number of customers to be served by
11 the [~~carrier~~] ambulance service;

12 (2) the nature of the transportation proposed
13 to be provided;

14 (3) whether granting the permit would endanger
15 or impair the operations of [~~motor carriers~~] ambulance services
16 to an extent contrary to the public interest;

17 (4) the effect that denying the permit would
18 have on the person applying for the permit and its customers;
19 and

20 (5) the changing character of the requirements
21 of the applicant's customers.

22 D. The commission shall not issue a permit to an
23 intrastate contract motor carrier [~~of persons~~] if it finds that
24 the authority sought will impair the provision of
25 transportation services by a certificated intrastate common

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1 motor carrier [~~of persons~~] then serving the same territory.

2 E. Before granting a permit to an intrastate
3 contract motor carrier of household goods, the commission shall
4 consider:

5 (1) whether granting the permit would endanger
6 or impair the operations of carriers to an extent contrary to
7 the public interest; and

8 (2) the effect that denying the permit would
9 have on the person applying for the permit and its shippers.

10 F. A permit issued by the commission shall specify
11 the business of the intrastate contract motor carrier, the
12 scope of the authority granted to it and the terms, conditions
13 and limitations of the authority.

14 G. An intrastate contract motor carrier [~~of persons~~
15 ~~or household goods~~] shall file with the commission each
16 contract under which it intends to operate. The commission
17 shall approve a contract and authorize operations if it finds
18 that the contract is consistent with the public interest and
19 the provisions of this section.

20 H. The commission shall not limit an intrastate
21 contract motor carrier [~~of persons or household goods~~] to a
22 fixed number of contracts.

23 I. A motor carrier owning a certificate and a
24 permit for the same type of service may use the same equipment
25 for both common and contract services provided that shared use

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1 does not impair the provision of transportation services under
2 the certificate."

3 SECTION 8. Section 65-2A-11 NMSA 1978 (being Laws 2003,
4 Chapter 359, Section 11) is amended to read:

5 "65-2A-11. TEMPORARY AUTHORITY FOR INTRASTATE COMMON OR
6 CONTRACT MOTOR CARRIERS [~~OF PERSONS OR HOUSEHOLD GOODS~~].--

7 A. The commission may without notice grant
8 temporary operating authority to an intrastate common or
9 contract motor carrier [~~of persons or household goods~~] for a
10 period not to exceed ninety days if it finds that:

11 (1) there is an urgent and immediate need for
12 such service; and

13 (2) the applicant for temporary authority has
14 a complete application for a certificate or permit, or for
15 amendment, lease or transfer of all or part of a certificate or
16 permit, pending before the commission.

17 B. Satisfactory proof of urgent and immediate need
18 shall be made by affidavit or other verified proof as the
19 commission shall by rule prescribe.

20 C. An applicant for temporary authority as a common
21 motor carrier shall file tariffs covering the transportation
22 services for which temporary authority is being sought.

23 D. After temporary authority has been granted to a
24 common motor carrier, the applicant shall give notice of the
25 grant of temporary authority to [~~a motor carrier~~] common motor

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1 carriers authorized to perform the service [~~temporarily~~
2 ~~authorized~~] in the same or overlapping territory. If such a
3 motor carrier or the staff of the transportation division of
4 the commission files a written request for a hearing within
5 twenty-five days of the date notice was mailed, the commission
6 shall hold a public hearing and make such further determination
7 with respect to the grant of temporary authority as the public
8 interest may require.

9 E. Intrastate motor carriers operating under
10 temporary authority shall comply with the requirements of the
11 Motor Carrier Act and the rules of the commission.

12 F. A grant of temporary authority shall not create
13 a presumption that permanent authority will be granted."

14 SECTION 9. Section 65-2A-12 NMSA 1978 (being Laws 2003,
15 Chapter 359, Section 12) is amended to read:

16 "65-2A-12. WARRANTS.--

17 A. It is unlawful for any commuter service, charter
18 service, towing service, [~~or~~] motor carrier of property or,
19 except for an ambulance service, a motor carrier of persons to
20 provide compensated intrastate transportation in the state
21 without a warrant from the commission.

22 B. The commission shall issue a warrant that allows
23 a person to provide compensated intrastate transportation as a
24 commuter service, charter service, towing service, [~~or~~] motor
25 carrier of property or, except for an ambulance service, a

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1 motor carrier of persons if the commission finds that the
2 person is in compliance with the financial responsibility and
3 safety requirements of the Motor Carrier Act and the rules of
4 the commission.

5 C. A person may protest an application for a
6 warrant if the person has reason to believe that the applicant
7 does not meet the safety or financial responsibility
8 requirements of the Motor Carrier Act and the rules of the
9 commission.

10 D. A warrant shall not be transferred or leased to
11 another person.

12 E. The commission may without notice or a public
13 hearing cancel a warrant if the owner fails to operate under
14 the warrant for twelve consecutive months."

15 SECTION 10. Section 65-2A-14 NMSA 1978 (being Laws 2003,
16 Chapter 359, Section 14) is amended to read:

17 "65-2A-14. CHANGES IN CERTIFICATES OR PERMITS.--

18 A. A change in a certificate, permit or tariff
19 shall not be valid or effective without the approval of the
20 commission.

21 B. The commission may, for good cause and after
22 notice and public hearing requirements are met, authorize the
23 following changes in all or part of a certificate or permit at
24 the request of the person owning the certificate or permit if
25 the commission finds:

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1 (1) that the proposed rates are reasonable,
2 non-predatory and nondiscriminatory for a change in a tariff;

3 (2) that the applicant meets the requirements
4 pursuant to Section [~~8 of the Motor Carrier Act~~] 65-2A-8 NMSA
5 1978 for an amendment of a certificate as [~~a common motor~~
6 ~~carrier of persons~~] an ambulance service;

7 (3) that the applicant meets the requirements
8 pursuant to Section [~~10 of the Motor Carrier Act~~] 65-2A-10 NMSA
9 1978 for an amendment of a permit as [~~a contract motor carrier~~
10 ~~of persons~~] an ambulance service;

11 (4) that the applicant meets the requirements
12 pursuant to Section [~~9 of the Motor Carrier Act~~] 65-2A-9 NMSA
13 1978 for an amendment of a certificate as a common motor
14 carrier of household goods;

15 (5) that the applicant meets the requirements
16 pursuant to Section [~~10 of the Motor Carrier Act~~] 65-2A-10 NMSA
17 1978 for an amendment of a permit as a contract motor carrier
18 of household goods;

19 (6) that for a transfer of all or part of a
20 certificate or permit:

21 (a) the transferee-applicant is fit,
22 willing and able to provide the authorized transportation
23 services and to comply with the Motor Carrier Act and the rules
24 of the commission;

25 (b) the transferor-applicant has

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1 rendered reasonably continuous and adequate service prior to
2 the application for lease or transfer;

3 (c) accrued taxes, rents, wages of
4 employees and other indebtedness pertaining to all or part of a
5 certificate or permit proposed to be transferred have been paid
6 by the transferor-applicant or assumed by the transferee-
7 applicant;

8 (d) the transfer does not have the
9 effect of destroying competition or creating a monopoly; and

10 (e) the transfer is not inconsistent
11 with the public interest; or

12 (7) that for a lease of all or part of a
13 certificate or permit:

14 (a) the lessee-applicant is fit, willing
15 and able to provide the authorized transportation services and
16 to comply with the Motor Carrier Act and the rules of the
17 commission;

18 (b) the lessor-applicant has rendered
19 reasonably continuous and adequate service prior to the
20 application for lease;

21 (c) the lease does not have the effect
22 of destroying competition or creating a monopoly; and

23 (d) the lease is not inconsistent with
24 the public interest.

25 C. The commission may, without notice or a public

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1 hearing, authorize the following changes in all or part of a
2 certificate or permit at the request of the person owning the
3 certificate or permit:

- 4 (1) cancellation of the certificate or permit;
- 5 (2) voluntary suspension of the certificate or
6 permit;
- 7 (3) change in the form of ownership of the
8 certificate or permit; and
- 9 (4) reinstatement of the certificate or permit
10 following voluntary suspension."

11 SECTION 11. Section 65-2A-18 NMSA 1978 (being Laws 2003,
12 Chapter 359, Section 18, as amended) is amended to read:

13 "65-2A-18. FINANCIAL RESPONSIBILITY.--

14 A. The commission shall prescribe minimum
15 requirements for financial responsibility for all motor
16 carriers, including incidental carriers pursuant to this
17 section. [~~Rules regarding financial responsibility of
18 incidental carriers shall be adopted by July 1, 2006 by the
19 commission, and implementation of the financial responsibility
20 requirements for incidental carriers shall begin on July 1,
21 2006.~~]

22 B. A motor carrier or incidental carrier shall not
23 operate on the highways of this state without having filed with
24 the commission proof of financial responsibility in the form
25 and amount as the commission shall by rule prescribe. The

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1 maximum amount of financial responsibility, as determined by
2 the commission, for incidental carriers shall not exceed that
3 required of other motor carriers.

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

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

10 (2) the number of passengers being
11 transported;

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

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

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

22 (1) the financial stability of the carrier;

23 (2) previous loss history of the carrier;

24 (3) the safety record of the carrier;

25 (4) the size, nature of operations and other

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1 operating characteristics of the carrier; and

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

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

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

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

15 F. All motor carriers shall carry proof of
16 financial responsibility in each motor vehicle they operate in
17 this state."

18 SECTION 12. Section 65-2A-20 NMSA 1978 (being Laws 2003,
19 Chapter 359, Section 20) is amended to read:

20 "65-2A-20. TARIFFS.--

21 A. An intrastate common motor carrier [~~of persons
22 or household goods~~] or a towing service performing
23 nonconsensual tows shall not commence operations or perform a
24 new service under its operating authority without approval of a
25 tariff from the commission.

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1 B. An intrastate common motor carrier [~~of persons~~
2 ~~or household goods~~] and a towing service performing
3 nonconsensual tows shall file with the commission proposed
4 tariffs showing the rates, terms and conditions for
5 transportation and related services between points in its
6 territory. The rates shall be stated in terms of United States
7 currency.

8 C. An intrastate common motor carrier [~~of persons~~
9 ~~or household goods~~] or a towing service performing
10 nonconsensual tows shall not charge, or permit its bona fide
11 agents or employees to charge, a different rate for
12 transportation or for a service rendered to or for the user of
13 the service other than the rates specified in approved tariffs
14 in effect at the time. The rates of an otherwise valid tariff
15 are not applicable when a medicaid program directly pays for
16 services.

17 D. An intrastate common motor carrier [~~of persons~~
18 ~~or household goods~~] or a towing service performing
19 nonconsensual tows shall not refund, directly or indirectly, a
20 portion of the rate specified in its approved tariff, offer to
21 a person privileges or facilities, perform a service or remit
22 anything of value except in accordance with tariffs approved by
23 the commission.

24 E. A person may make a complaint in writing to the
25 commission that an individual or joint rate or practice is in

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1 violation of the Motor Carrier Act. The commission may suspend
2 the operation of a rate or practice for a period not to exceed
3 sixty days to investigate its reasonableness. If the
4 commission finds that an individual or joint rate charged by an
5 intrastate common motor carrier [~~of persons or household goods~~]
6 or a towing service performing nonconsensual tows, or an
7 individual or joint practice of any intrastate common motor
8 carrier [~~of persons or household goods~~] or any towing service
9 performing nonconsensual tows affecting the rate, is
10 unreasonable, predatory or discriminatory, the commission shall
11 prescribe the rate or the maximum or minimum rate to be
12 observed or the practice to be made effective.

13 F. The commission may establish and revise
14 statewide common tariffs for common motor carriers and towing
15 services performing nonconsensual tows."

16 SECTION 13. Section 65-2A-21 NMSA 1978 (being Laws 2003,
17 Chapter 359, Section 21) is amended to read:

18 "65-2A-21. RATES.--

19 A. An intrastate common motor carrier [~~of persons~~
20 ~~or household goods~~] and a towing service performing
21 nonconsensual tows shall observe reasonable, nonpredatory and
22 nondiscriminatory rates and practices for the transportation
23 services they provide. An unreasonable, predatory or
24 discriminatory charge for service is unlawful.

25 [~~B. Reduced rates for students traveling between~~

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1 ~~their homes and their schools and for persons sixty-five years~~
2 ~~of age or older shall not be considered discriminatory within~~
3 ~~the meaning of this section. A motor carrier shall not furnish~~
4 ~~free transportation to persons except to bona fide owners,~~
5 ~~officers or employees of the motor carrier and their~~
6 ~~dependents. Stockowners of incorporated motor carriers shall~~
7 ~~not be considered owners for purposes of this subsection.~~

8 ~~G.]~~ B. An intrastate common motor carrier [~~of~~
9 ~~persons or household goods]~~ or a towing service performing
10 nonconsensual tows shall not give an unreasonable advantage to
11 a person, point of entry, territory or classification of motor
12 carrier in any respect; provided that towing services
13 performing nonconsensual tows may charge rates lower than the
14 rates in their approved tariff to members of not-for-profit
15 motor clubs after those rates have been filed with the
16 commission; and further provided that this subsection shall not
17 be construed to apply to disadvantages to the transportation
18 service of other motor carriers.

19 ~~[D.]~~ C. A common motor carrier of household goods
20 shall establish and observe just and reasonable rates and
21 practices relating to the manner and method of presenting,
22 marking, packing and delivering household goods for
23 transportation and other matters relating to the transportation
24 of household goods.

25 ~~[E.]~~ D. An intrastate common motor carrier [~~of~~

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1 ~~persons or household goods~~] and a towing service performing
2 nonconsensual tows shall establish with each other reasonable
3 through routes and joint rates and practices. Participating
4 motor carriers shall have the duty to establish reasonable
5 practices in connection with joint transportation and
6 reasonable and equitable divisions of the joint rates adopted
7 so as not to unduly prefer or prejudice any participating motor
8 carrier.

9 [F-] E. In proceedings to determine the
10 reasonableness of rates, the commission shall authorize revenue
11 levels that are adequate under honest, economical and efficient
12 management to cover total operating expenses, including the
13 operation of leased motor vehicles, and depreciation, plus a
14 reasonable profit. The rules adopted by the commission to
15 implement this section shall allow a carrier to achieve revenue
16 levels that will provide a flow of net income, plus
17 depreciation, adequate to support prudent capital outlays,
18 ensure the repayment of a reasonable level of debt, permit the
19 raising of needed equity capital and attract and retain capital
20 in amounts adequate to provide a sound motor carrier
21 transportation system in the state."

22 SECTION 14. Section 65-2A-23 NMSA 1978 (being Laws 2003,
23 Chapter 359, Section 23) is amended to read:

24 "65-2A-23. MOTOR CARRIER ORGANIZATIONS--COMMON TARIFFS.--

25 A. An intrastate common motor carrier of household

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1 goods may enter into discussions with another intrastate common
2 motor carrier of household goods to establish a motor carrier
3 organization. The organization shall obtain authorization from
4 the commission before its members enter into any discussions
5 concerning a common tariff. The commission shall not enter an
6 order authorizing a motor carrier organization except after
7 notice and public hearing requirements are met. The commission
8 may authorize the creation of a motor carrier organization if
9 the organization:

10 (1) allows a member carrier to discuss a
11 tariff proposal filed with it, provided that only those
12 carriers with authority to participate in the transportation to
13 which the proposal applies may vote upon the proposal;

14 (2) does not interfere with a member carrier's
15 right to establish its own tariff and does not change or cancel
16 an independently established tariff;

17 (3) does not file a protest or complaint with
18 the commission against a tariff item independently published by
19 or for the account of a member carrier;

20 (4) does not permit its employees or an
21 employee committee to file or act upon a proposal effecting a
22 change in a tariff item published by or for the account of a
23 member carrier;

24 (5) makes available, upon request, the name of
25 the proponent of a rate or tariff item filed with it, admits

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1 the public to a meeting at which rates or tariff items will be
2 discussed or voted upon and makes available the vote cast by a
3 member carrier on a proposal before the motor carrier
4 organization;

5 (6) prohibits a carrier to vote on behalf of
6 one or more other member carriers without specific written
7 notarized authority from the member carrier being represented;

8 (7) makes a final disposition of a rate or
9 tariff item filed with the motor carrier organization within
10 one hundred twenty days from the date the proposal is filed,
11 except that if unusual circumstances require, the organization
12 may extend the period, subject to review by the commission;

13 (8) adopts reasonable quorum standards for its
14 meetings; and

15 (9) will propose common tariffs for approval
16 by the commission.

17 B. A member carrier of the organization shall file
18 with the commission information as the commission may by rule
19 prescribe.

20 C. A motor carrier organization approved by the
21 commission pursuant to this section shall be subject to
22 accounting, recordkeeping, reporting and inspection
23 requirements as the commission may by rule prescribe.

24 D. The commission may, upon complaint or upon its
25 own initiative, investigate and determine whether a motor

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1 carrier organization previously authorized by it is not in
2 conformity with the requirements of this section or with the
3 terms and conditions upon which the motor carrier organization
4 was granted authorization. The commission may modify or
5 terminate its authorization of a motor carrier organization
6 found to be noncompliant with the requirements of this rule.

7 E. The antitrust laws of the state shall not apply
8 to discussions concerning a common tariff by member carriers of
9 a motor carrier organization authorized by the commission.

10 F. The motor carrier organization shall obtain
11 approval of a common tariff from the commission before its
12 member carriers may operate pursuant to the common tariff. The
13 commission shall not enter an order approving a common tariff
14 except after notice and public hearing requirements are met.
15 The commission may approve a common tariff if the common tariff
16 is limited to matters relating to transportation services
17 provided by the member carriers party to the common tariff.
18 The commission shall approve or disapprove a common tariff, in
19 whole or in part, and may prescribe such terms and conditions
20 as the public interest may require. The antitrust laws of the
21 state shall not apply to common motor carriers who operate
22 pursuant to a common tariff approved by the commission.

23 G. In any proceeding in which a party to the
24 proceeding alleges that a member carrier voted, discussed or
25 agreed on a common tariff in violation of this section, that

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1 party has the burden of showing that the vote, discussion or
2 agreement occurred. A showing of parallel behavior shall not
3 by itself satisfy that burden."

4 SECTION 15. Section 65-2A-27 NMSA 1978 (being Laws 2003,
5 Chapter 359, Section 27) is amended to read:

6 "65-2A-27. INVOLUNTARY SUSPENSION, REVOCATION OR
7 AMENDMENT OF OPERATING AUTHORITIES--REINSTATEMENT.--

8 A. The commission shall immediately suspend or
9 revoke, without notice or a public hearing, the operating
10 authority of a motor carrier for failure to continuously
11 maintain the forms and amounts of financial responsibility
12 prescribed by commission rule.

13 B. The commission may immediately suspend, without
14 notice or a public hearing, the operating authority of a motor
15 carrier for violation of a safety requirement of the Motor
16 Carrier Act, the commission's rules or the rules of the motor
17 transportation division of the department of public safety, if
18 the violation endangers the public health or safety.

19 C. The commission may, upon complaint or the
20 commission's own initiative and after notice and a public
21 hearing, if required, order involuntary suspension, revocation
22 or amendment, in whole or in part, of an operating authority
23 for failure to:

24 (1) comply with a provision of the Motor
25 Carrier Act;

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1 (2) comply with a lawful order or rule of the
2 commission;

3 (3) comply with a term, condition or
4 limitation of an operating authority; or

5 (4) render reasonably continuous and adequate
6 service under a certificate or permit.

7 D. The commission may approve an application for
8 reinstatement of an operating authority following involuntary
9 suspension if it finds, after notice and public hearing
10 requirements are met, that:

11 (1) the reasons for the involuntary suspension
12 no longer pertain; and

13 (2) the owner of the operating authority is
14 fit, willing and able to provide the authorized transportation
15 services and to comply with the Motor Carrier Act and the rules
16 of the commission."

17 SECTION 16. Section 65-2A-36 NMSA 1978 (being Laws 2003,
18 Chapter 359, Section 36) is amended to read:

19 "65-2A-36. FEES.--

20 A. The commission shall charge and collect the
21 following fees:

22 (1) for filing an application for a
23 certificate as an intrastate common motor carrier, ~~[of persons~~
24 ~~or household goods]~~ two hundred fifty dollars (\$250);

25 (2) for filing an application for a permit as

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1 an intrastate contract motor carrier, [~~of persons or household~~
2 ~~goods~~] two hundred fifty dollars (\$250);

3 (3) for filing an application for a warrant as
4 an intrastate commuter service, charter service, towing
5 service, [~~or~~] motor carrier of property or, except for an
6 ambulance service, a motor carrier of persons, twenty-five
7 dollars (\$25.00);

8 (4) for filing an application for intrastate
9 temporary authority as a common or contract motor carrier, [~~of~~
10 ~~persons or household goods~~] one hundred dollars (\$100);

11 (5) for filing an application for extension of
12 temporary authority, fifty dollars (\$50.00);

13 (6) for filing an application for a change in
14 an intrastate tariff, two hundred dollars (\$200);

15 (7) for filing an application for lease or
16 transfer of a certificate or permit, two hundred dollars
17 (\$200);

18 (8) for filing an application for
19 reinstatement of a certificate or permit following voluntary or
20 involuntary suspension, one hundred dollars (\$100);

21 (9) for filing an application for voluntary
22 suspension of a certificate or permit, fifteen dollars
23 (\$15.00);

24 [~~(10) for filing an application for a single~~
25 ~~trip ticket, five dollars (\$5.00) per vehicle per trip;~~

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1 ~~(11)~~ for a single state registration receipt
2 for interstate motor carriers, ten dollars (~~\$10.00~~) per vehicle
3 per registration year or portion of a registration year;

4 ~~(12)~~ (10) for filing a change of name, ten
5 dollars (\$10.00);

6 ~~[(13) for filing proof of financial~~
7 ~~responsibility, fifteen dollars (\$15.00) per filing;~~

8 ~~(14)~~ (11) for filing an equipment lease, five
9 dollars (\$5.00) per vehicle leased;

10 ~~[(15)]~~ (12) for a miscellaneous filing, five
11 dollars (\$5.00) per document;

12 ~~[(16)]~~ (13) for certifying copies of a record,
13 order or operating authority, fifteen dollars (\$15.00);

14 ~~[(17)]~~ (14) for copies of written commission
15 documents or records, one dollar (\$1.00) per page, in addition
16 to any applicable certification charge; ~~and~~

17 ~~(18)]~~ (15) for copies of other commission
18 records, including electronic media, an amount set by the
19 commission, in addition to any applicable certification charge;
20 and

21 (16) for each intervention on an application
22 for a certificate or permit, two hundred fifty dollars (\$250)
23 to be paid by the intervenor.

24 B. The secretary of state shall charge and collect
25 a fee of four dollars (\$4.00) for each process from a court

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1 served upon the secretary of state as the designated agent for
2 service of process by operation of law.

3 C. The "motor transportation fee fund" is created
4 in the state treasury. The commission shall collect all fees
5 at the time an application is filed or service is provided and
6 shall remit them to the state treasurer, who shall deposit them
7 in the fund. At the end of each month, the state treasurer
8 shall transfer the unencumbered balance in the fund to the
9 state road fund.

10 D. If a fee has been erroneously paid, the person
11 having paid the fee may apply for a refund in writing to the
12 commission no later than sixty days after the erroneous
13 payment. Upon approval of the application by the commission,
14 the amount erroneously paid shall be refunded from the motor
15 transportation fee fund to the person who made the payment.

16 E. An application shall be fully completed within
17 sixty days or the fee submitted with the application shall be
18 forfeited to the state. If the applicant renews the
19 application, ~~[he]~~ the applicant shall pay the applicable fee."

20 SECTION 17. TEMPORARY PROVISION--TRANSITION.--A
21 certificate or permit held on June 30, 2011 by an intrastate
22 motor carrier of persons, other than an ambulance service,
23 shall be null and void on July 1, 2011. Upon surrender of a
24 certificate or permit prior to July 1, 2011, the public
25 regulation commission shall issue a warrant to an intrastate

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1 motor carrier of persons, other than an ambulance service, if
2 the motor carrier has valid proof of financial responsibility
3 and current vehicle inspection certificates on file with the
4 commission. The commission shall not charge the warrant
5 application fee otherwise required in Section 65-2A-36 NMSA
6 1978.

7 SECTION 18. REPEAL.--Sections 65-2A-17, 65-2A-22 and
8 65-2A-30 NMSA 1978 (being Laws 2003, Chapter 359, Sections 17,
9 22 and 30) are repealed.

10 SECTION 19. EFFECTIVE DATE.--The effective date of the
11 provisions of this act is July 1, 2011.