

## LEGISLATIVE BILL 412

Approved by the Governor March 11, 1993

Introduced by Transportation Committee: Kristensen, 37, Chairperson;  
Byars, 30; Day, 19; Fisher, 35; Pedersen, 39;  
Pirsch, 10; Schmitt, 41

AN ACT relating to the Public Service Commission; to amend sections 75-128, 75-302, 75-303, 75-304, 75-305, 75-306, 75-309, 75-311, and 75-348, Reissue Revised Statutes of Nebraska, 1943; to provide for transportation contracts with the Department of Social Services as provided; to provide duties for the commission; to harmonize provisions; and to repeal the original sections.

Be it enacted by the people of the State of Nebraska,

Section 1. That section 75-128, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

75-128. It is hereby declared to be the policy of the Legislature that all matters presented to the commission be heard and determined without delay. All matters requiring a hearing shall be set for hearing at the earliest practicable date and in no event, except for good cause shown, which showing shall be recited in the order, shall the time fixed for hearing be more than six months after the date of filing of the application, complaint, or petition on which such hearing is to be had. Except as otherwise provided in section 75-121 and except for good cause shown, a decision of the commission shall be made and filed within thirty days after completion of the hearing or after submission of affidavits in nonhearing proceedings. Applications for commission approval of specific new rates or charges or changes in existing rates or charges for telephone service which have not been heard and determined within six months and thirty days from the date the application was filed may be put into effect by the common carrier, in an amount not to exceed seventy-five percent of the total amount of the application, subject to refund of any amount collected in excess of the amount which would have been collected under the new or changed rates or charges as finally approved by the commission. The refund shall include an interest payment at a rate of interest determined by the commission, except that the rate of interest shall not exceed the overall rate of return which the common carrier is authorized to earn. When making its final determination on the application, the commission shall not consider the rates and charges of the company put into effect pending such final determination. This section shall not apply to rates or charges placed into effect under section 75-616. In the case of any proceeding upon which a hearing is held, the transcript of testimony shall be prepared and submitted to the commission prior to entry of an order, except that it shall not be necessary to have prepared

prior to commission decision the transcripts of testimony on hearings involving noncontested proceedings and hearings involving emergency rate applications under section 75-121. For each application, complaint, or petition filed with the Public Service Commission, except those filed under sections 75-301 to 75-335 and section 4 of this act, there shall be charged a filing fee to be determined by the commission, but in an amount not to exceed the sum of fifty dollars payable at the time of such filing. There shall also be charged to persons regulated by the commission a hearing fee of fifty dollars for each half day of hearings if the person regulated by the commission files an application, complaint, or petition which necessitates a hearing.

Sec. 2. That section 75-302, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

75-302. For purposes of sections 75-301 to 75-322.04 and sections 4 and 5 of this act and in all rules and regulations ~~prescribed~~ adopted and promulgated by the commission pursuant ~~thereto~~ to such sections, unless the context otherwise requires:

(1) Person shall mean any individual, firm, copartnership, corporation, company, association, or joint-stock association and shall include any trustee, receiver, assignee, or personal representative thereof;

(2) Commission shall mean the Public Service Commission;

(3) Certificate shall mean a certificate of public convenience and necessity issued under Chapter 75, article 3, to common carriers by motor vehicle;

(4) Permit shall mean a permit issued under Chapter 75, article 3, to contract carriers by motor vehicle;

(5) Intrastate commerce shall mean commerce between any place in this state and any other place in this state and not in part through any other state;

(6) Highway shall mean the roads, highways, streets, and ways in this state. Any way or means of egress or ingress used by motor dump trucks engaged in construction work shall be construed as a highway for purposes of sections 75-301 to 75-322.04 and sections 4 and 5 of this act;

(7) Motor vehicle shall mean any vehicle, machine, tractor, trailer, or semitrailer propelled or drawn by mechanical power and used upon the highways in the transportation of passengers or property but shall not include any vehicle, locomotive, or car operated exclusively on a rail or rails;

(8) Motor carrier shall mean any person who or which owns, controls, manages, operates, or causes to be operated any motor vehicle used to transport passengers or property over any public highway in this state;

(9) Private carrier shall mean any motor carrier which owns, controls, manages, operates, or causes to be operated a motor vehicle to transport passengers or property to or from its facility, plant, or place of business or to deliver to purchasers its products, supplies, or raw materials (a) when such transportation is within the scope of and furthers

a primary business of the carrier other than transportation and (b) when not for hire. Nothing in ~~such~~ sections ~~75-301 to 75-322.04~~ shall apply to private carriers except section 75-307 as it applies to private carriers;

(10) Common carrier shall mean any person who or which undertakes to transport passengers or property for the general public in intrastate commerce by motor vehicle for hire, whether over regular or irregular routes, upon the highways of this state;

(11) Contract carrier shall mean any motor carrier which transports passengers or property for hire other than as a common carrier, except that any contract carrier which provides for hire transportation services on or before January 1, 1972, designed to meet the distinct needs of each individual customer or a specifically designated class of customers shall not have any limitation as to the number of customers it can serve within the class; and

(12) Civil penalty shall mean any monetary penalty assessed by the commission due to a violation of Chapter 75, article 3, or section 75-126 as such section applies to any person or carrier specified in Chapter 75, article 3, any term, condition, or limitation of any certificate or permit issued pursuant to Chapter 75, article 3, or any rule, regulation, or order of the commission issued pursuant to Chapter 75, article 3.

Sec. 3. That section 75-303, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

75-303. Sections 75-301 to 75-322.04 and sections 4 and 5 of this act shall apply to the transportation of passengers or property by motor carriers for hire engaged in intrastate commerce except for the following:

(1) A motor carrier for hire engaged in the transportation of school children and teachers to and from school;

(2) A motor carrier for hire operated in connection with a part of a streetcar system;

(3) A motor carrier for hire engaged in the transportation of newspapers under a contract with the publisher or a distributor thereof if no other property or person is being transported for hire on the same load with such newspapers;

(4) ~~The operation~~ Operation of any motor carrier owned in any city or village of this state engaged in the transportation of property within such city or village or within a radius of five miles beyond the corporate limits thereof;

(5) ~~To~~ Transportation by motor vehicle of ranch, dairy, or farm products, including livestock, ~~being transported by motor vehicle~~ from or to any ranch, dairy, farm, feedlot, or market;

(6) ~~To~~ Transportation by motor vehicle of supplies or merchandise ~~being transported by motor vehicle~~ from or to any ranch, dairy, feedlot, or farm for use thereon when originating at or destined to a neighboring trading point or points;

(7) ~~To ambulances~~ Ambulances or their owners, ~~to~~ hearses, or ~~to~~ automobiles used exclusively as an incident to conducting a funeral;

(8) ~~To motor~~ Motor vehicles owned and operated by any industrial, processing, or manufacturing plant when used by such plant in the transportation of raw materials and supplies to its plant or plants; or in the delivery of its products, supplies, or raw materials to purchasers thereof, when not for hire;

(9) ~~To star route carriers employed by the post office department of the United States while operating~~ Operation of a motor vehicle not exceeding one-half ton manufacturer's rated capacity by a star route carrier employed by the United States Postal Service on their his or her regular routes;

(10) ~~To wrecked or disabled motor vehicles being transported~~ Transportation of wrecked or disabled motor vehicles by winch or tow truck;

(11) ~~To a~~ A motor carrier exempt by ~~the provisions of~~ subdivision (1) of this section ~~who~~ which hauls for hire; (a) persons of a religious, fraternal, educational, or charitable organization, (b) pupils of a school to athletic events, (c) players of American Legion baseball teams when the point of origin or termination is within five miles of the domicile of the carrier, and (d) the elderly, as defined in section 13-1203, and their spouses and dependents under a contract with a municipality or county authorized in section 13-1208;

(12) ~~To motor~~ Motor vehicles owned and operated by farmers or ranchers when hauling gravel or other road building material by agreement with the county board of the county in which their farms or ranches are situated for use upon the public roads within such county and when the compensation for the use of such motor vehicles ~~shall~~ does not exceed the reimbursement for the motor vehicle fuel used during such hauling;

(13) A motor carrier operated by a city and engaged in the transportation of passengers, and such exempt operations shall be no broader than those authorized in intrastate commerce at the time the city or other political subdivision assumed ownership of the operation;

(14) Motor vehicles owned and operated by a nonprofit organization which has been exempted from the payment of federal income taxes, as provided by section 501(c)(4), Internal Revenue Code, ~~of 1954~~; transporting solely those persons over age sixty, those persons who are spouses and dependents of persons over age sixty, and the handicapped;

(15) A motor carrier engaged in the transportation of passengers operated by a transit authority created under and acting pursuant to the laws of the State of Nebraska;

(16) A motor carrier operated by a municipality or county as authorized in section 13-1208, in the transportation of the elderly;

(17) Motor vehicles having a seating capacity of twenty or less; which are operated by a governmental subdivision or a qualified public-purpose organization, as defined in section 13-1203, engaged in the transportation of passengers in the state; and

(18) A motor carrier engaged in the transportation or

movement of livestock and poultry feed, or livestock and poultry feed and related health products and supplements when transported in the same vehicle, between a livestock and poultry feed manufacturer and the manufacturer's dealer as long as such transportation is performed on a vehicle licensed under the provisions of section 60-305.09 or 60-331.

Sec. 4. The Department of Social Services may contract for transportation for its clients with a contractor which does not hold a certificate or which is not otherwise exempt under section 75-303 only if:

(1) The proposed contractor is the individual who will personally drive the vehicle in question;

(2) The only compensation to the contractor for the transportation is paid by the department at a rate no greater than that provided for reimbursement of state employees pursuant to section 81-1176 for the costs incurred in the transportation; and

(3) There is no certified motor carrier serving the area in which the client needs transportation or the certified motor carrier serving the area is incapable of providing the specific service in question by its own written statement or as determined by the commission upon application of the certified motor carrier or the department.

Sec. 5. The commission, in consultation with the Department of Social Services, shall adopt and promulgate rules and regulations governing minimum liability insurance requirements, equipment standards, driver qualification requirements, and the issuance and filing of notice for any contractor utilized by the department pursuant to section 4 of this act.

Sec. 6. That section 75-304, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

75-304. The commission may, from time to time, establish such just and reasonable classifications of groups of carriers, included in the terms common carrier or contract carrier, as the special nature of the services performed by such carriers ~~shall~~ require and adopt and promulgate such just and reasonable rules, regulations, and requirements, to be observed by the carrier so classified or grouped, as the commission deems necessary or desirable in the public interest and as are consistent with the provisions of sections 75-301 to 75-322.04 and sections 4 and 5 of this act. All certificates and permits; ~~heretofore or hereafter~~ issued by the commission; shall be construed and interpreted, and the operations authorized thereunder shall be tested and determined, in accordance with such classification so established and any rule, regulation, or requirement prescribed by the commission relating to such carrier so classified.

Sec. 7. That section 75-305, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

75-305. For ~~the purpose~~ purposes of sustaining the administration and enforcement of sections 75-301 to 75-322.04 and sections 4 and 5 of this act, there is hereby fixed an application fee of seventy-five dollars payable by the applicant at the time of filing the application, except that such fee shall not apply to applications under sections 4 and 5 of this act. In addition thereto, every motor carrier

subject to ~~the provisions of such~~ sections 75-301 to 75-322.04 and sections 4 and 5 of this act shall pay an annual fee not exceeding the sum of twenty-five dollars for each motor vehicle operated, which fee shall be fixed by the commission and shall not exceed the amount actually necessary to sustain the administration and enforcement of such sections. When the applicant has registered his or her motor vehicles under ~~the provisions of~~ section 60-305.09, such fee of twenty-five dollars shall be payable on whichever shall be the lesser of (1) the proportion of his or her fleet so registered or (2) the number of motor vehicles owned by him or her and actually used in intrastate business within this state, except that such annual fee for any truck-trailer or tractor-trailer combination shall be forty dollars. In the case of a truck-trailer or tractor-trailer combination, only one license plate shall be required for such combination. Such annual fees shall be due and payable on or before January 1 and shall be delinquent on March 1 of each year after such permit or certificate ~~shall have~~ has been issued. If the initial certificate or permit is issued to a motor carrier on or after July 1, the fee shall be fifty percent of the annual fee. Such fees shall be paid to and collected by the commission and ~~deposited with~~ remitted to the State Treasurer within thirty days ~~from the receipt thereof. The money so received shall be paid into the state treasury and by the State Treasurer placed in~~ of receipt for credit to the General Fund.

Sec. 8. That section 75-306, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

75-306. Receipt for the payment of annual fees shall be issued by the commission in triplicate. The original shall be delivered to the motor carrier and two copies retained by the commission. The commission shall issue a license plate or plates and renewal tab or tabs to any motor carrier who is in compliance with the provisions of sections 75-301 to 75-322.04 and sections 4 and 5 of this act and the rules and regulations of the commission, except contract carriers operating pursuant to section 4 of this act, for the purpose of identification of motor carriers subject to ~~the provisions of~~ such sections and to distinguish ~~the same~~ them from other commercial motor carriers not subject to such sections. The Director of Motor Vehicles shall prepare a form of license plates and renewal tabs for such motor carriers and furnish a sufficient supply of ~~the same~~ such license plates and renewal tabs to the commission.

Sec. 9. That section 75-309, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

75-309. Except for operations pursuant to a contract authorized by sections 4 and 5 of this act, it ~~it~~ shall be unlawful for any common or contract carrier by motor vehicle subject to the provisions of Chapter 75, articles 1 and 2, and sections 75-301 to 75-322.04 and sections 4 and 5 of this act to engage in any intrastate operations on any public highway in Nebraska unless there is in force with respect to such common carrier a certificate of public convenience and necessity, or a permit to such contract carrier, issued by the commission authorizing such operations.

Sec. 10. That section 75-311, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

75-311. (1) A certificate shall be issued to any qualified applicant, ~~therefor~~, authorizing the whole or any part of the operations covered by the application, if it is found after notice and hearing that (a) the applicant is fit, willing, and able properly to perform the service proposed and to conform to the provisions of sections 75-301 to 75-322.04 and sections 4 and 5 of this act and the requirements, rules, and regulations of the commission ~~thereunder~~ under such sections and ~~that~~ (b) the proposed service, to the extent to be authorized by the certificate, whether regular or irregular, passenger or property, is or will be required by the present or future public convenience and necessity. Otherwise such application shall be denied.

(2) A permit shall be issued to any qualified applicant therefor, authorizing in whole or in part the operations covered by the application, if it appears after notice and hearing from the application or from any hearing held ~~thereon~~ on the application that (a) the applicant is fit, willing, and able properly to perform the service of a contract carrier by motor vehicle and to conform to the provisions of ~~such~~ sections ~~75-301 to 75-322.04~~ and the lawful requirements, rules, and regulations of the commission ~~thereunder~~ under such sections and ~~that~~ (b) the proposed operation, to the extent authorized by the permit, will be consistent with the public interest by providing services designed to meet the distinct needs of each individual customer or a specifically designated class of customers as defined in subdivision (11) of section 75-302. Otherwise; such application shall be denied.

(3) No person shall at the same time hold a certificate as a common carrier and a permit as a contract carrier authorizing operation for the transportation of property by motor vehicles over the same route or within the same territory unless the commission finds that it is consistent with the public interest and with the policy declared in section 75-301.

(4) After the issuance of a certificate or permit, the commission shall review the annual reports of all common or contract carriers filed with the commission to determine if there are insufficient operations in the transportation of regulated commodities to justify the commission's finding that such common or contract carrier has willfully failed to perform transportation under ~~the provisions of~~ sections 75-301 to 75-322.04 and sections 4 and 5 of this act and rules and regulations promulgated ~~thereunder~~ under such sections. If the commission determines that there is such insufficiency of operations, then the commission shall commence proceedings under ~~the provisions of~~ section 75-315 to revoke the certificate or permit involved.

(5) This section shall not apply to operations pursuant to a contract authorized by sections 4 and 5 of this act.

Sec. 11. That section 75-348, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

75-348. Except as otherwise provided, it shall be unlawful

for any common, contract, or private carrier of property by motor vehicle in interstate commerce to operate any motor vehicle within this state without first having registered with the Public Service Commission in accordance with ~~the provisions of~~ sections 75-348 to 75-358, except that it shall not be necessary for such common, contract, or private carrier to prove public convenience and necessity as a condition for such registration. ~~The provisions of sections~~ Sections 75-348 to 75-358 shall not apply to motor vehicles leased for thirty days or less and shall not apply to motor vehicles on which annual fees are paid under ~~the provisions of~~ section 75-305 and which are owned and operated by common carriers or contract carriers which presently hold or which in the future may hold certificates of public convenience and necessity or permits issued by the Public Service Commission pursuant to ~~the provisions of~~ sections 75-301 to 75-322.04 and sections 4 and 5 of this act.

Sec. 12. That original sections 75-128, 75-302, 75-303, 75-304, 75-305, 75-306, 75-309, 75-311, and 75-348, Reissue Revised Statutes of Nebraska, 1943, are repealed.