

1 SENATE CORPORATIONS AND TRANSPORTATION COMMITTEE SUBSTITUTE FOR
2 SENATE BILL 328

3 **51ST LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2013**

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10 AN ACT

11 RELATING TO MOTOR CARRIERS; AMENDING, REPEALING AND ENACTING
12 SECTIONS OF THE MOTOR CARRIER ACT; PROVIDING FOR COMMUNITY
13 QUALITY OF SERVICE STANDARDS; SIMPLIFYING AND CLARIFYING
14 ADMINISTRATIVE PROCEDURES; PROVIDING FOR ADDITIONAL UNFAIR
15 PRACTICES ACT CIVIL PENALTIES; PROVIDING FOR FEES.

16
17 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

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

20 "65-2A-2. TRANSPORTATION POLICY [PURPOSE].--It is the
21 policy of this state to foster the development, coordination
22 and preservation of a safe, sound and adequate motor carrier
23 system, requiring financial responsibility and accountability
24 on the part of motor carriers [~~providing for economic~~
25 ~~regulation of motor carriers of persons and household goods and~~

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1 ~~towing services performing nonconsensual tows and by~~
2 ~~streamlining and promoting uniformity of state] through state~~
3 ~~licensing and regulation of motor carriers."~~

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

6 "65-2A-3. DEFINITIONS.--As used in the Motor Carrier Act:

7 A. "ability to provide certificated service" means
8 that an applicant or carrier can provide reasonably continuous
9 and adequate transportation service of the type required by its
10 application or its operating authority in the territory
11 authorized or sought to be authorized;

12 B. "ambulance service" means the intrastate
13 transportation of sick or injured persons in an ambulance
14 meeting the standards established by the commission under the
15 Ambulance Standards Act;

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

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

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

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1 pursuant to the [~~single state~~] unified carrier registration
 2 system;

3 ~~[D.]~~ F. "cancellation of an operating authority"
 4 means the voluntary, permanent termination of all or part of an
 5 operating authority;

6 ~~[E.]~~ G. "certificate" means the [operating]
 7 authority issued by the commission to [~~intrastate common motor~~
 8 ~~carriers of persons or household goods~~] a person that
 9 authorizes the person to offer and provide a certificated
 10 service as a motor carrier;

11 H. "certificated service" means one of the
 12 following transportation services:

- 13 (1) an ambulance service;
- 14 (2) a household goods service;
- 15 (3) a shuttle service;
- 16 (4) a specialized passenger service; or
- 17 (5) a taxicab service;

18 ~~[F.]~~ I. "change in a certificate or permit" means
 19 the voluntary amendment, cancellation, [~~change in tariff~~]
 20 change in form of [~~ownership~~] legal entity of the holder,
 21 lease, reinstatement, transfer or voluntary suspension of a
 22 certificate or permit;

23 ~~[G. "change of name" means a change in the legal~~
 24 ~~name of the owner of an operating authority or in the does-~~
 25 ~~business-as name of the motor carrier, but does not include a~~

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1 ~~change in the form of ownership;]~~

2 J. "charter service" means the compensated
3 transportation of a group of persons in a motor vehicle who,
4 pursuant to a common purpose, under a single contract, at a
5 fixed charge for the motor vehicle and driver, have acquired
6 the exclusive use of the motor vehicle to travel together under
7 an itinerary either specified in advance or modified after
8 having left the place of origin;

9 ~~[H.]~~ K. "commission" means the public regulation
10 commission;

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

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

19 ~~K. "common tariff" means a tariff applying to two~~
20 ~~or more common motor carriers;]~~

21 L. "commuter service" means ~~[a person who provides~~
22 ~~seven to fifteen passenger motor vehicles]~~ the intrastate
23 transportation of passengers in motor vehicles having a
24 capacity of seven to fifteen persons, including the driver,
25 provided to a volunteer-driver commuter group that shares rides

1 to and from the workplace or training site, where participation
 2 is open to the public and incidental to the primary work or
 3 training-related purposes of the commuter group, and where the
 4 volunteer drivers have no employer-employee relationship with
 5 the commuter service;

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

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

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

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

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

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

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1 partnership;

2 ~~(5) a membership interest of ten percent or~~
3 ~~more in a limited liability company, if the operating authority~~
4 ~~is held by a limited liability company; or~~

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

8 ~~0. "electronic filing" means submission of a~~
9 ~~document by facsimile, electronic mail or other electronic~~
10 ~~transmission;]~~

11 M. "continuous and adequate service" means:

12 (1) for full-service carriers, reasonably
13 continuous availability, offering and provision of
14 transportation services through motor vehicles, equipment and
15 resources satisfying safety and financial responsibility
16 requirements under the Motor Carrier Act and commission rule,
17 which are reasonably adequate to serve the entire full-service
18 territory authorized in the certificate, with reasonable
19 response to all requests for service for the nature of
20 passenger service authorized, based on the nature of public
21 need, expense and volume of demand for the type of service
22 authorized during seasonal periods; and

23 (2) for general-service carriers, reasonably
24 continuous availability and offering of transportation services
25 through motor vehicles, equipment and resources satisfying

1 safety and financial responsibility requirements under the
2 Motor Carrier Act and commission rule for the nature of the
3 transportation service authorized in the certificate;

4 N. "contract driver" means a person who contracts
5 with a motor carrier as an independent contractor to drive a
6 vehicle pursuant to an operating authority issued to the motor
7 carrier;

8 O. "endorsement" means the specification in a
9 certificate of the territory in which the carrier is authorized
10 to operate, the nature of service to be provided by a
11 certificated passenger service and any additional terms of
12 service that may be reasonably granted or required by the
13 commission for the particular authority granted;

14 P. "fare" means the full compensation charged for
15 transportation by a tariffed passenger service;

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 R. "fitness to provide a transportation service"
21 means that an applicant or carrier complies with state law as
22 provided in the Motor Carrier Act or by rule of the commission;

23 S. "for hire" means that transportation is offered
24 or provided to the public for remuneration, compensation or
25 reward of any kind, paid or promised, either directly or

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1 indirectly;

2 T. "full service" means one of the following
3 certificated passenger services that are endorsed and required
4 to meet specific standards for the provision of service to or
5 throughout a community:

6 (1) an ambulance service;

7 (2) a scheduled shuttle service; or

8 (3) a municipal taxicab service;

9 U. "general service" means one of the following
10 certificated services that provides transportation services of
11 the type authorized, but is not required to provide
12 unprofitable or marginally profitable carriage:

13 (1) a general shuttle service;

14 (2) a general taxicab service;

15 (3) a specialized passenger service; or

16 (4) a household goods service;

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

22 W. "holder of an operating authority" means the
23 grantee of the operating authority or a person that currently
24 holds all or part of the right to exercise the authority
25 through a transfer by operation of law;

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

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

14 Y. "household goods service" means the intrastate
 15 transportation, packing and storage of household goods for
 16 hire;

17 ~~[T.]~~ Z. "interested person" means a motor carrier
 18 operating ~~[over the routes or]~~ in the territory involved in an
 19 application or grant of temporary authority, a person affected
 20 by an order of the commission or a rule proposed for adoption
 21 by the commission or a person the commission may deem
 22 interested in a particular matter;

23 ~~[U.]~~ AA. "interstate motor carrier" means a person
 24 providing compensated transportation in interstate commerce,
 25 whether or not the person is subject to regulation by the

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1 federal motor carrier safety administration;

2 [V.] BB. "intrastate motor carrier" means a
3 [person] motor carrier offering or providing [compensated]
4 transportation for hire by motor vehicle between points and
5 places in the state;

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

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

13 [Y.] DD. "lease of a certificate or permit" means an
14 agreement by which the [owner] holder of a certificate or
15 permit grants to another person the exclusive right to use all
16 or part of the certificate or permit for a specified period of
17 time in exchange for consideration, but does not include an
18 agreement between a motor carrier and its contract driver;

19 [Z.] EE. "lease of equipment" means an agreement
20 whereby a motor carrier obtains equipment owned by another
21 person for use by the motor carrier in the exercise of its
22 operating authority, but does not include an agreement between
23 a motor carrier and its contract driver;

24 [AA.] FF. "motor carrier" or "carrier" means a
25 person offering [compensated] or providing transportation of

1 persons, ~~[or]~~ property or household goods for hire by motor
 2 vehicle, whether in intrastate or interstate commerce;

3 ~~[BB.]~~ GG. "motor carrier organization" means an
 4 organization approved by the commission ~~[to discuss and propose~~
 5 ~~a common tariff for a group of motor carriers or]~~ to represent
 6 motor carriers ~~[that have adopted the common tariff]~~ and to
 7 discuss and propose industry interests and matters other than
 8 rates, as well as discussing and proposing rates and other
 9 matters pertaining to statewide tariffs;

10 ~~[GG. "motor carrier of persons" means a person who~~
 11 ~~provides compensated transportation of persons on a highway in~~
 12 ~~the state;~~

13 ~~DD.]~~ HH. "motor vehicle" or "vehicle" means a
 14 vehicle, machine, tractor, trailer or semitrailer propelled or
 15 drawn by mechanical power and used on a highway in the
 16 transportation of property, household goods or persons, but
 17 does not include a vehicle, locomotive or car operated
 18 exclusively on rails;

19 II. "nature of service" means the type of
 20 transportation service to be provided by a certificated
 21 passenger service as set forth in Subsection A of Section
 22 65-2A-8 NMSA 1978;

23 ~~[EE.]~~ JJ. "nonconsensual tow" means the compensated
 24 transportation of a motor vehicle by a towing service, if such
 25 transportation is performed at the request of a law enforcement

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1 officer or without the prior consent or authorization of the
2 owner or operator of the motor vehicle;

3 KK. "notice period" means the period of time
4 specified in Section 65-2A-6 NMSA 1978 following publication of
5 notice during which the commission may not act;

6 LL. "objection" means a document filed with the
7 commission by an interested person or a member of the public
8 during the notice period for an application for a certificate
9 or a permit, or for amendment, lease or transfer of a
10 certificate or permit, that expresses an objection to, or
11 provides information concerning, the matter before the
12 commission;

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

17 NN. "passenger" means a person other than the
18 driver of a motor vehicle transported in a motor vehicle;

19 OO. "passenger service" means a transportation
20 service offered or provided for the transportation of
21 passengers by motor vehicle;

22 [~~GG.~~] PP. "permit" means the [~~operating~~] authority
23 issued by the commission to [~~intrastate contract motor carriers~~
24 of persons or household goods] a person that authorizes the
25 person to offer and provide a permitted service as a motor

1 carrier;

2 QQ. "permitted service" means the intrastate
3 transportation of passengers or household goods for hire
4 pursuant to a contract between the motor carrier and another
5 person;

6 RR. "predatory rate or practice" means the knowing
7 and willful requirement by a carrier that a passenger or
8 shipper pay a rate, fare or other charge in excess of the rates
9 and charges or in a manner other than in accordance with terms
10 of service as provided by law, as provided in a tariff
11 governing the carrier or as provided in a pre-existing written
12 contract regarding the carriage, when such charge is made:

13 (1) by a passenger carrier as a prior
14 condition for the provision of transportation or continued
15 transportation of a passenger; or

16 (2) as a prior condition by a towing service
17 carrier performing nonconsensual tows or a household goods
18 service carrier for delivery of, release of or access to
19 vehicles or household goods by the shipper or registered owner;

20 ~~[HH.]~~ SS. "process" means, in the context of legal
21 process, an order, subpoena or notice issued by the commission
22 or an order, subpoena, notice, writ or summons issued by a
23 court;

24 ~~[II.]~~ TT. "property" means movable articles of
25 value, including cadavers, hazardous matter, farm products,

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1 livestock feed, stock salt, manure, wire, posts, dairy
2 products, livestock hauled in lots of twenty-five thousand
3 pounds or more, farm or ranch machinery and the items
4 transported by a towing service, but does not include household
5 goods or unprocessed farm products transported by a farmer from
6 the place of harvesting to market, storage or a processing
7 plant;

8 ~~[[J]]~~ UU. "protest" means a document in the form of
9 a pleading filed with the commission by ~~[an interested person]~~
10 a full-service carrier that expresses an objection to ~~[a~~
11 ~~matter]~~ an application before the commission for a certificate
12 for passenger service or for a permit for ambulance service or
13 for passenger service pursuant to a public-charge contract or
14 for amendment, lease or transfer of such a certificate or
15 permit:

16 (1) when the territory involved in the
17 application includes all or a portion of the full-service
18 territory of the protesting carrier; and

19 (2) for a carrier other than an ambulance
20 service carrier, when the grant of the application will, or
21 presents a reasonable potential to, impair, diminish or
22 otherwise adversely affect its existing provision of
23 full-service passenger service to the public within its
24 full-service territory;

25 VV. "public-charge contract" means a contract or

1 contractual arrangement between a motor carrier and a third
 2 party for passenger service that requires or allows the motor
 3 carrier to charge passengers a fare for the transportation
 4 service to be provided pursuant to the contract;

5 [KK.] WW. "rate" means a form of compensation
 6 charged, whether directly or indirectly, by a person for a
 7 transportation service subject to the jurisdiction of the
 8 commission;

9 [LL.] XX. "record of a motor carrier" means an
 10 account, correspondence, memorandum, tape, disc, paper, book or
 11 transcribed information, or electronic data information,
 12 including the electronic hardware or software necessary to
 13 access the electronic data information in its document form,
 14 regarding the operation of a motor carrier;

15 [MM.] YY. "registration year" means a calendar
 16 year;

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

20 ~~OO.]~~ ZZ. "revocation" means the involuntary,
 21 permanent termination of all or part of an operating authority
 22 ordered by the commission for cause;

23 [PP.] AAA. "shipper" means a person who consigns or
 24 receives property or household goods for transportation;

25 [~~QQ.~~ "~~single state registration receipt~~" means the

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

6 ~~RR.]~~ BBB. "shuttle service" means the intrastate
7 transportation of passengers for hire pursuant to a set fare
8 for each passenger between two or more specified terminal
9 points or areas and includes both scheduled shuttle service and
10 general shuttle service as follows:

11 (1) "scheduled shuttle service" means a
12 shuttle service that transports passengers to and from an
13 airport both through prior arrangement and through presentment
14 at terminal locations, on the basis of a daily time schedule
15 filed with the commission, which must be met in a timely
16 fashion with a vehicle present at the terminal location
17 regardless of the number of passengers carried on any run, if
18 any, and includes general shuttle service; and

19 (2) "general shuttle service" means a shuttle
20 service that is not required to operate on a set schedule, that
21 may optionally use a grid map to specify distant or adjacent
22 terminal areas and that is not required to accept passengers
23 other than pre-arranged passengers;

24 CCC. "specialized passenger service" means the
25 intrastate transportation for hire of passengers with special

1 physical needs by specialized types of vehicles, or for
 2 specialized types of service to the public or community, as the
 3 commission may by rule provide;

4 DDD. "tariff" means a document filed by a [motor
 5 carrier of persons or household goods or a towing service
 6 performing nonconsensual tows] tariffed service carrier that
 7 has been approved by the commission and sets forth the
 8 transportation services offered by the motor carrier to the
 9 general public, including the rates, terms [and conditions] of
 10 service and applicable time schedules relating to those
 11 services; [including a common tariff;

12 SS.] EEE. "tariffed service" means one of the
 13 following transportation services authorized by the commission
 14 for the provision of service on the basis of rates and terms of
 15 service contained in a tariff approved by the commission:

16 (1) an ambulance service;

17 (2) a household goods service;

18 (3) a shuttle service;

19 (4) a specialized passenger service;

20 (5) a taxicab service; or

21 (6) a towing service performing nonconsensual

22 tows;

23 FFF. "taxicab association" means an association,
 24 cooperative or other legal entity whose members are taxicab
 25 drivers, which shall be treated in the same manner as any other

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1 applicant with regard to applications for a certificate for
2 general taxicab service or for full-service municipal taxicab
3 service, and shall be subject in the same manner to all other
4 provisions, requirements and limitations of the Motor Carrier
5 Act;

6 GGG. "taxicab service" means [a common motor
7 carrier engaged in unscheduled passenger transportation]
8 intrastate transportation of passengers for hire in a motor
9 vehicle having a capacity of not more than eight [passengers]
10 persons, including the driver, [not operated on a regular route
11 or between specified places, and that:

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

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

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

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

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

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

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

8 UU.] for which the passenger or other person
 9 engaging the vehicle is allowed to specify not only the origin
 10 and destination points of the trip but also, within reason, the
 11 route taken by the vehicle, any intermediate stop, any optional
 12 waiting at a stop and any other passengers transported during
 13 the trip and that charges a fare for use of the vehicle
 14 primarily on the basis of a drop-flag fee, cumulative mileage
 15 and cumulative wait time through a taxicab meter used to
 16 cumulate and display the fare to the passenger and includes
 17 both municipal taxicab service and general taxicab service, as
 18 follows:

19 (1) "municipal taxicab service" means a
 20 taxicab service that deploys vehicles at all times of the day
 21 and year, is centrally dispatched and reasonably responds to
 22 all calls for service within its endorsed full-service
 23 territory regardless of profitability of the individual trip,
 24 in addition to the transportation service provided by a general
 25 taxicab service; and

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1 (2) "general taxicab service" means a taxicab
2 service that need not be dispatched, that may pick up on-demand
3 passengers through flagging or at a taxicab stand or queue,
4 that need not deploy vehicles in any particular manner and that
5 may charge for trips to destination points or places outside of
6 the taxicab service's certificated territories on the basis of
7 a set fare;

8 HHH. "terms of service" means all terms, aspects,
9 practices, limitations, conditions and schedules of service
10 other than specific rate amounts pertaining to a tariffed
11 service;

12 III. "towing [~~services~~] service" means the use of
13 specialized equipment, including repossession services using
14 towing equipment, to transport or store:

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

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

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

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

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

25 (6) a motor vehicle repossessed or seized

1 pursuant to lawful authority;

2 ~~[VV.]~~ JJJ. "transfer of a certificate or permit"
3 means a permanent conveyance of all or part of a certificate or
4 permit;

5 ~~[WW.]~~ KKK. "transfer by operation of law" means
6 that ~~[the ownership of or]~~ all or a part of a grantee's
7 interest in [a certificate or permit] an operating authority
8 passes to [another] a fiduciary or other person by application
9 of established rules of law;

10 LLL. "transportation service" means transportation
11 subject to the jurisdiction of the commission, offered or
12 provided by a motor carrier, that requires the carrier to
13 obtain an operating authority from the commission under the
14 Motor Carrier Act, regardless of whether the motor carrier has
15 obtained appropriate operating authority from the commission;

16 MMM. "verification" means a notarized signature
17 verifying the contents of the document or other filing or a
18 signature verifying the contents of the document or other
19 filing under penalty of perjury, expressly providing that the
20 signatory swears or affirms the contents under penalty of
21 perjury as provided in Subsection A of Section 65-2A-33 NMSA
22 1978;

23 ~~[XX.]~~ NNN. "voluntary suspension" means the
24 commission-authorized cessation of use of all or part of a
25 certificate or permit at the request of the ~~[motor carrier]~~

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1 holder for a specified period of time, not to exceed twelve
2 consecutive months;

3 ~~[YY.] 000.~~ "warrant" means the ~~[operating]~~
4 authority issued by the commission to ~~[charter services, towing~~
5 ~~services, commuter services and motor carriers of property;~~
6 and] a person that authorizes the person to offer and provide a
7 warranted service as a motor carrier;

8 PPP. "warranted service" means one of the following
9 intrastate transportation services offered or provided for
10 hire:

11 (1) a charter service;

12 (2) a commuter service;

13 (3) a property transportation service; or

14 (4) a towing service; and

15 ~~[ZZ.] 000.~~ "weight-bumping" means the knowing and
16 willful statement of a fraudulent weight on a shipment of
17 household goods."

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

20 "65-2A-4. POWERS AND DUTIES OF THE COMMISSION.--

21 A. In accordance with the Motor Carrier Act, the
22 commission shall:

23 (1) issue operating authorities for a motor
24 carrier operating in New Mexico;

25 (2) establish minimum requirements for

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1 financial responsibility for [a] motor [~~carrier~~] carriers;
 2 provided that the financial responsibility standards required
 3 shall not be inconsistent with applicable federal standards;

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

9 (4) establish reasonable requirements with
 10 respect to continuous and adequate service to be provided under
 11 an operating authority;

12 (5) regulate the rates of [~~intrastate common~~
 13 ~~motor carriers of persons and household goods and towing~~
 14 ~~services performing nonconsensual tows~~] tariffed service
 15 carriers to the extent provided in the Motor Carrier Act,
 16 including rates and terms of service for storing household
 17 goods and motor vehicles;

18 (6) determine matters of public [~~convenience~~
 19 ~~and necessity~~] interest and other matters relating to
 20 authorities, rates, territories, nature of service and other
 21 terms of service of motor carriers;

22 (7) have jurisdiction to determine any matter
 23 under the Motor Carrier Act relating to any transportation
 24 service carrier that has not obtained an appropriate operating
 25 authority from the commission;

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1 (8) subpoena witnesses and records, enforce
2 its subpoenas through a court and, through the court, seek a
3 remedy for contempt;

4 ~~(8)~~ (9) hold a public hearing specific to a
5 protest or a request by the transportation division of the
6 commission that has been filed ~~[timely]~~ within the notice
7 period in opposition to or in consideration of an application;
8 ~~[and~~

9 ~~(9)~~ (10) create a statewide tariff for
10 household goods service carriers establishing maximum rates
11 that may be charged by carriers; and

12 (11) adopt rules, issue orders and conduct
13 activities necessary to implement and enforce the Motor Carrier
14 Act.

15 B. The commission may:

16 (1) designate inspectors who may inspect the
17 records of a motor carrier subject to the Motor Carrier Act and
18 who shall have the powers of peace officers in the state's
19 political subdivisions with respect to a law or rule that the
20 commission is empowered to enforce pursuant to Section 65-1-6
21 NMSA 1978, excluding the enforcement authority granted to the
22 motor transportation division of the department of public
23 safety;

24 (2) institute civil actions in the district
25 court of Santa Fe county in its own name to enforce the Motor

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1 Carrier Act, its orders and rules, and in the name of the state
 2 to recover assessments of administrative fines;

3 (3) from time to time, modify the type and
 4 nature of service, territory and terms [~~conditions and~~
 5 ~~limitations~~] of service of operating authorities previously
 6 issued, and change or rescind rates previously [~~adopted as~~
 7 ~~needed; and~~] approved;

8 (4) establish statewide tariffs as needed for
 9 voluntary and optional use by tariffed service carriers; and

10 (5) adopt rules to implement these powers."

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

13 "65-2A-5. APPLICATIONS IN GENERAL--MINISTERIAL GRANTS OF
 14 AUTHORITY--WHEN PUBLIC HEARINGS REQUIRED.--

15 A. A person shall file an application [~~if~~] for any
 16 matter for which commission approval is required. An
 17 application shall be made in writing, verified [~~under oath~~] and
 18 [~~be~~] in a form that contains information and is accompanied by
 19 proof of service upon interested persons as required by the
 20 commission.

21 B. The commission shall [~~streamline and~~] simplify
 22 to the extent possible the process for approving applications.
 23 The commission may hold a public hearing on its own initiative
 24 or specific to [~~a protest or request~~] an objection that has
 25 been [~~timely~~] filed within the notice period in opposition to

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1 or in consideration of an application.

2 C. The commission shall hold a public hearing on an
3 application whenever ~~[an interested person protests]~~ a protest
4 is filed concerning the application during the notice period or
5 the transportation division of the commission requests a
6 hearing during the notice period.

7 D. The commission may approve or deny an
8 application in whole or in part, or allow or require particular
9 terms of service as it may find reasonable and appropriate. If
10 no objection, protest or request for hearing by the
11 transportation division of the commission is filed during the
12 notice period, the commission may grant the application by
13 ministerial action, if the application complies with the
14 provisions of the Motor Carrier Act and the rules of the
15 commission regarding fitness, ability, financial responsibility
16 and safety."

17 SECTION 5. Section 65-2A-6 NMSA 1978 (being Laws 2003,
18 Chapter 359, Section 6) is amended to read:

19 "65-2A-6. NOTICE.--

20 A. ~~[If the Motor Carrier Act requires publication~~
21 ~~of]~~ The commission shall electronically publish notice
22 regarding an application before the commission for a
23 certificate or permit or for a change in a certificate or
24 permit, regarding proposed rulemaking, or regarding other
25 orders of the commission of general application, by posting a

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1 copy of the notice or document on the commission's internet web
 2 site and sending electronic mail to all motor carriers, public
 3 officials or agencies, or other persons or entities who have
 4 previously supplied electronic mail addresses to the commission
 5 for the purpose of publication, advising such persons of the
 6 filing and posting. If the commission in its discretion should
 7 also require publication by newspaper, the requirement is met
 8 if notice is published once in a newspaper of general
 9 circulation in the state. The commission shall not act on
 10 [~~the~~] an application for a certificate or permit or for an
 11 amendment, lease or transfer of a certificate or permit less
 12 than twenty days after the date notice was published.

13 B. Whenever the Motor Carrier Act requires
 14 publication of notice regarding [~~a~~] any other matter [~~other~~
 15 ~~than an application~~], the requirement is met if notice is
 16 published once in a newspaper of general circulation in the
 17 state. The commission shall not act on a matter less than ten
 18 days after the date notice was published."

19 SECTION 6. Section 65-2A-7 NMSA 1978 (being Laws 2003,
 20 Chapter 359, Section 7) is amended to read:

21 "65-2A-7. OPERATING AUTHORITIES IN GENERAL.--

22 A. No person shall offer or provide a
 23 transportation service for hire within the state without first
 24 obtaining an appropriate operating authority from the
 25 commission. Every motor carrier providing a transportation

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1 service shall meet and comply with the requirements of the
2 Motor Carrier Act and the lawfully adopted rules and orders of
3 the commission.

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

12 [~~B.~~] C. A motor carrier shall carry a copy of its
13 operating authority in each motor vehicle it operates in New
14 Mexico.

15 [~~C.~~] D. A [~~motor~~] certificated service carrier
16 shall render reasonably continuous and adequate service as the
17 commission may by rule prescribe.

18 [~~D. A motor carrier shall comply with lawfully~~
19 ~~adopted rules of the commission.~~]"

20 SECTION 7. Section 65-2A-8 NMSA 1978 (being Laws 2003,
21 Chapter 359, Section 8) is amended to read:

22 "65-2A-8. CERTIFICATES FOR [~~INTRASTATE COMMON MOTOR~~
23 ~~CARRIERS OF PERSONS~~] PASSENGER SERVICE.--

24 A. [~~A common motor carrier of persons shall not~~
25 ~~provide compensated intrastate transportation in the state~~

1 ~~without a certificate from the commission.]~~ The commission may
 2 issue a certificate for a passenger service as follows:

3 (1) a certificate for an ambulance service;

4 (2) a certificate for a shuttle service shall
 5 be endorsed for nature of service as a scheduled shuttle
 6 service or as a general shuttle service;

7 (3) a certificate for a specialized passenger
 8 service shall be endorsed for nature of service as provided by
 9 commission rule; and

10 (4) a certificate for a taxicab service shall
 11 be endorsed for nature of service as a municipal taxicab
 12 service or as a general taxicab service.

13 B. Except as provided in this section and in
 14 Section 65-2A-13 NMSA 1978, the commission shall issue a
 15 certificate allowing a person to provide [~~compensated~~
 16 ~~intrastate transportation as a common motor carrier of persons]~~
 17 passenger service after notice and public hearing requirements
 18 are met, if:

19 (1) the [~~person~~] applicant is fit [~~willing~~]
 20 and able to provide the transportation service to be authorized
 21 by the certificate;

22 (2) the [~~person~~] applicant is in compliance
 23 with the safety and financial responsibility requirements of
 24 the Motor Carrier Act, the rules of the commission and other
 25 applicable federal and state laws and rules; [~~and~~]

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1 (3) for an application for ambulance service,
2 the transportation service to be provided under the certificate
3 is or will serve a useful public purpose that is responsive to
4 a public demand or need; and

5 (4) the applicant has filed a tariff as
6 provided in Section 65-2A-20 NMSA 1978.

7 C. Before granting a certificate [~~to an intrastate~~
8 ~~common motor carrier of persons~~] for passenger service, the
9 commission shall consider any objections or protests that were
10 filed within the notice period.

11 D. Before granting a certificate for ambulance
12 service, the commission shall also consider the effect that
13 issuance of the certificate would have on existing [~~motor~~
14 ~~carriers; provided that the commission shall not find diversion~~
15 ~~of revenue or traffic from an existing motor carrier to be, in~~
16 ~~and of itself, sufficient grounds for denying the certificate~~]
17 ambulance service in the territory.

18 [~~D.~~] E. A certificate issued by the commission [~~to~~
19 ~~an intrastate common motor carrier of persons~~] for provision of
20 passenger service shall contain one or more endorsements, each
21 of which shall specify the:

- 22 (1) nature of service to be rendered;
23 (2) territory authorized to be served; and
24 (3) reasonable terms [~~conditions and~~
25 ~~limitations~~] of service as the [~~public convenience and~~

1 necessity] commission may allow or require [and, if necessary:

2 (a) ~~terminals between which service is~~
 3 ~~to be provided; or~~

4 (b) ~~routes, schedules and intermediate~~
 5 ~~and off-route points on the route for regular route service]~~
 6 for the particular certificate.

7 F. Territorial endorsements to a certificate for
 8 passenger service shall:

9 (1) be limited to territory sought in the
 10 application that will be served in a reasonably continuous and
 11 adequate manner beginning within thirty days of the issuance of
 12 the certificate or such other definite period or date as the
 13 commission may provide for a particular application and shall
 14 generally be authorized on the basis of county or incorporated
 15 municipal boundaries, subject to other specification reasonably
 16 allowed or required by the commission;

17 (2) except for shuttle services, authorize
 18 transportation between points and places within the specified
 19 territory, and from points and places within the specified
 20 territory to all points and places in the state and return,
 21 unless otherwise expressly allowed or specified in the terms of
 22 service in the endorsement to the certificate; and

23 (3) for shuttle services, provide for
 24 transportation between two or more specified end or
 25 intermediate terminal points or areas, and authorize pick-up or

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1 drop-off of passengers throughout a terminal area, but shall
2 not authorize transportation between points and places within a
3 single terminal area or the provision of transportation
4 services in any other areas of the state."

5 SECTION 8. Section 65-2A-9 NMSA 1978 (being Laws 2003,
6 Chapter 359, Section 9) is amended to read:

7 "65-2A-9. CERTIFICATES FOR [~~INTRASTATE COMMON MOTOR~~
8 ~~CARRIERS OF~~] HOUSEHOLD GOODS SERVICE.--

9 [~~A. A common motor carrier of household goods shall~~
10 ~~not provide compensated intrastate transportation in the state~~
11 ~~without a certificate from the commission.~~

12 B.] A. Except as provided in this section and in
13 Section 65-2A-13 NMSA 1978, the commission shall issue a
14 certificate allowing a person to provide [~~compensated~~
15 ~~intrastate transportation as a common motor carrier of~~]
16 household goods service after notice and public hearing
17 requirements are met, if the applicant:

18 (1) [~~the person~~] is fit [~~willing~~] and able to
19 provide the transportation to be authorized by the certificate;

20 (2) [~~the person~~] has a place of business and
21 stations equipment within the state and is in compliance with
22 the safety and financial responsibility requirements of the
23 Motor Carrier Act, the rules of the commission and other
24 applicable federal and state laws and rules; and

25 (3) [~~the transportation service to be provided~~

1 ~~under the certificate is or will serve a useful public purpose,~~
 2 ~~responsive to a public demand or need. The proposed~~
 3 ~~transportation service will be deemed to serve a useful public~~
 4 ~~purpose, responsive to a public demand or need, if the~~
 5 ~~application is for authority to provide:~~

6 (a) ~~transportation to a community not~~
 7 ~~regularly served by an authorized intrastate common motor~~
 8 ~~carrier of household goods;~~

9 (b) ~~transportation services that will be~~
 10 ~~a direct substitute for abandoned rail service to a community~~
 11 ~~if the abandonment results in the community not having rail~~
 12 ~~service and if the application is filed within one hundred~~
 13 ~~twenty days after the abandonment has been approved by the~~
 14 ~~commission or by the federal railway administration; or~~

15 (c) ~~transportation for the United States~~
 16 ~~government of used household goods that is incidental to a pack~~
 17 ~~and crate service on behalf of the department of defense] has~~
 18 ~~filed a tariff as provided in Section 65-2A-20 NMSA 1978.~~

19 [G.] B. Before granting a certificate for household
 20 goods service to an [~~intrastate common motor carrier of~~
 21 ~~household goods~~] applicant, the commission shall consider [~~the~~
 22 ~~effect that issuance of the certificate would have on existing~~
 23 ~~carriers; provided that the commission shall not find diversion~~
 24 ~~of revenue or traffic from an existing carrier to be, in and of~~
 25 ~~itself, sufficient grounds for denying the certificate] any~~

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1 objections that were filed within the notice period.

2 ~~[D.]~~ C. A certificate issued by the commission ~~[to~~
3 ~~an intrastate common motor carrier]~~ for provision of household
4 goods service shall contain one or more endorsements, each of
5 which shall specify:

6 (1) the territory to be served, which shall be
7 limited to territory sought in the application that will be
8 served in a reasonably continuous and adequate manner beginning
9 within thirty days of the issuance of the certificate or such
10 other definite period or date as the commission may provide for
11 a particular application, and shall generally be specified on
12 the basis of county boundaries, subject to other or further
13 specification by the commission by rule or in regard to a
14 particular application; and

15 (2) any reasonable terms of service that the
16 commission may allow or require for the particular
17 certificate."

18 SECTION 9. Section 65-2A-10 NMSA 1978 (being Laws 2003,
19 Chapter 359, Section 10, as amended) is amended to read:

20 "65-2A-10. PERMITS ~~[FOR INTRASTATE CONTRACT MOTOR~~
21 ~~GARRIERS OF PERSONS OR HOUSEHOLD GOODS]~~ .--

22 ~~[A. A contract motor carrier shall not provide~~
23 ~~compensated intrastate transportation of persons or household~~
24 ~~goods in the state without first having applied for and~~
25 ~~obtained a permit from the commission.~~

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1 ~~B.]~~ A. Except as provided in this section and in
 2 Section 65-2A-13 NMSA 1978, the commission shall issue a permit
 3 allowing a person to provide ~~[compensated intrastate]~~ permitted
 4 service for transportation ~~[as a contract motor carrier of~~
 5 ~~persons]~~ of passengers or household goods pursuant to contract
 6 after notice and public hearing requirements are met, if the
 7 applicant is:

8 (1) ~~[the person is]~~ fit ~~[willing and able]~~ to
 9 provide the transportation to be authorized by the permit; and

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

14 ~~(3) the transportation to be provided under~~
 15 ~~the permit is or will be consistent with the public interest.~~

16 ~~G.]~~ B. Before granting a permit to an ~~[intrastate~~
 17 ~~contract motor carrier of persons]~~ applicant, the commission
 18 shall consider

19 ~~[(1) the number of customers to be served by~~
 20 ~~the carrier;~~

21 ~~(2) the nature of the transportation proposed~~
 22 ~~to be provided;~~

23 ~~(3) whether granting the permit would endanger~~
 24 ~~or impair the operations of motor carriers to an extent~~
 25 ~~contrary to the public interest;~~

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1 ~~(4) the effect that denying the permit would~~
2 ~~have on the person applying for the permit and its customers;~~
3 ~~and~~

4 ~~(5) the changing character of the requirements~~
5 ~~of the applicant's customers.~~

6 ~~D. The commission shall not issue a permit to an~~
7 ~~intrastate contract motor carrier of persons if it finds that~~
8 ~~the authority sought will impair the provision of~~
9 ~~transportation services by a certificated intrastate common~~
10 ~~motor carrier of persons then serving the same territory.~~

11 ~~E. Before granting a permit to an intrastate~~
12 ~~contract motor carrier of household goods, the commission shall~~
13 ~~consider:~~

14 ~~(1) whether granting the permit would endanger~~
15 ~~or impair the operations of carriers to an extent contrary to~~
16 ~~the public interest; and~~

17 ~~(2) the effect that denying the permit would~~
18 ~~have on the person applying for the permit and its shippers.~~

19 ~~F.] any objections or protests that were filed~~
20 ~~within the notice period.~~

21 C. The commission shall not grant a permit for
22 ambulance or household goods service, or for provision of
23 passenger service pursuant to a public-charge contract, or for
24 a lease or transfer of such a permit, unless the applicant
25 holds a certificate for provision of the appropriate

1 certificated service in the territory to be served under
 2 contract. A carrier's operations pursuant to permits for
 3 contracts for ambulance service or household goods service, or
 4 for public-charge contracts for passenger service, shall be
 5 held to the same standards as are the carrier's certificated
 6 service operations. If the transportation to be provided under
 7 the contract is passenger service other than ambulance service,
 8 the contractual rates and terms of service affecting passengers
 9 shall be provided in the carrier's tariff.

10 D. The commission shall not issue a permit for
 11 passenger service if the contract or arrangement between the
 12 carrier and the other contracting party effectively excludes or
 13 otherwise impairs a certificated carrier's access to public
 14 places or the public's access to certificated carriers for the
 15 provision of transportation services by a certificated
 16 passenger service carrier then serving the same territory, and
 17 no permit issued may be used to effect such exclusion or
 18 impairment of certificated passenger service.

19 E. A permit issued by the commission shall specify
 20 the business of the [~~intrastate contract motor~~] carrier, the
 21 scope of the authority granted to it and the terms, conditions
 22 and limitations of the authority.

23 [~~G.~~] F. An [~~intrastate contract motor carrier of~~
 24 ~~persons or household goods~~] applicant for a permit shall file
 25 with the commission each contract under which it intends to

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1 operate. ~~[The commission shall approve a contract and~~
2 ~~authorize operations if it finds that the contract is~~
3 ~~consistent with the public interest and the provisions of this~~
4 ~~section.~~

5 H. ~~The commission shall not limit an intrastate~~
6 ~~contract motor carrier of persons or household goods to a fixed~~
7 ~~number of contracts.~~

8 I. ~~A motor carrier owning a certificate and a~~
9 ~~permit for the same type of service may use the same equipment~~
10 ~~for both common and contract services provided that shared use~~
11 ~~does not impair the provision of transportation services under~~
12 ~~the certificate]"~~

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

15 "65-2A-11. TEMPORARY AUTHORITY ~~[FOR INTRASTATE MOTOR~~
16 ~~CARRIERS OF PERSONS OR HOUSEHOLD GOODS].--~~

17 A. The commission may without notice grant
18 temporary ~~[operating]~~ authority to an ~~[intrastate motor carrier~~
19 ~~of persons or household goods]~~ applicant for a certificate or
20 permit or for amendment, lease or transfer of all or part of a
21 certificate or permit for a period not to exceed ~~[ninety days]~~
22 the duration of the application process, if it finds that:

23 (1) the notice period for such application has
24 not yet expired, the application is one directly involving
25 public safety, a governmental program or a specific public

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1 event, there is an urgent and immediate public need for such
 2 service and the public may be harmed by waiting for the notice
 3 period to expire;

4 (2) the applicant for temporary authority has
 5 a complete application for a certificate or permit or for
 6 amendment, lease or transfer of all or part of a certificate or
 7 permit, pending before the commission;

8 (3) the applicant is fit to provide the
 9 transportation service requested, is able to provide any
 10 certificated service requested and is in compliance with the
 11 safety and financial responsibility requirements of the Motor
 12 Carrier Act and the rules of the commission; and

13 [~~B.~~] (4) satisfactory proof of urgent and
 14 immediate need [~~shall be~~] has been made by [~~affidavit or other~~]
 15 verified proof as the commission shall by rule prescribe.

16 [~~G.~~] B. An applicant for temporary authority as a
 17 [~~common motor~~] tariffed service carrier shall file tariffs
 18 covering the transportation services for which temporary
 19 authority is being sought.

20 [~~D.~~ ~~After temporary authority has been granted, the~~
 21 ~~applicant shall give notice of the grant of temporary authority~~
 22 ~~to a motor carrier authorized to perform the service~~
 23 ~~temporarily authorized. If such motor carrier or the staff of~~
 24 ~~the transportation division of the commission files a written~~
 25 ~~request for a hearing within twenty-five days of the date~~

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1 ~~notice was mailed, the commission shall hold a public hearing~~
2 ~~and make such further determination with respect to the grant~~
3 ~~of temporary authority as the public interest may require.~~

4 ~~E. Intrastate] C.~~ If a hearing is held before a
5 hearing examiner for any reason on an application for a
6 certificate or permit or for amendment, lease or transfer of
7 all or part of a certificate or permit or for a tariff rate
8 increase, the applicant may move in such proceeding for a grant
9 of temporary authority or rate approval for a period not to
10 exceed the duration of the application process, and any
11 protesting carrier or the transportation division of the
12 commission may move in such proceeding for reconsideration or
13 modification of any grant of temporary authority previously
14 granted by the commission or the hearing examiner. The hearing
15 examiner in the proceeding shall hold an expedited preliminary
16 public hearing on the grant of temporary authority on the
17 issues in the proceeding and the testimony evidence presented
18 in the hearing on such procedural basis as the commission shall
19 by rule prescribe.

20 D. Motor carriers operating under temporary
21 authority shall comply with the requirements of the Motor
22 Carrier Act and the rules of the commission.

23 ~~[F.]~~ E. A grant of temporary authority shall not
24 create a presumption that permanent authority will be granted."

25 SECTION 11. Section 65-2A-12 NMSA 1978 (being Laws 2003,

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1 Chapter 359, Section 12) is amended to read:

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

3 ~~[A. It is unlawful for any commuter service,~~
 4 ~~charter service, towing service or motor carrier of property to~~
 5 ~~provide compensated intrastate transportation in the state~~
 6 ~~without a warrant from the commission.~~

7 B.] A. The commission shall issue a warrant that
 8 allows a person to provide [~~compensated intrastate~~
 9 ~~transportation~~] warranted service as a commuter service,
 10 charter service, towing service or motor carrier of property if
 11 the commission finds that the [~~person~~] applicant is in
 12 compliance with the financial responsibility and safety
 13 requirements of the Motor Carrier Act and the rules of the
 14 commission.

15 ~~[C. A person may protest an application for a~~
 16 ~~warrant if the person has reason to believe that the applicant~~
 17 ~~does not meet the safety or financial responsibility~~
 18 ~~requirements of the Motor Carrier Act and the rules of the~~
 19 ~~commission.]~~

20 B. A towing service carrier performing
 21 nonconsensual tows is subject to tariff rates and terms of
 22 service. A towing service carrier performing nonconsensual
 23 tows shall not use the same motor vehicles, equipment and
 24 facilities used by another warranted towing service carrier
 25 performing nonconsensual tows.

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1 ~~[D.]~~ C. A warrant shall not be transferred or
2 leased to another person.

3 ~~[E.]~~ D. The commission may without notice or a
4 public hearing cancel a warrant if the owner fails to operate
5 under the warrant for twelve consecutive months or fails to
6 provide proof of financial responsibility as required by the
7 commission for four consecutive months."

8 SECTION 12. Section 65-2A-13 NMSA 1978 (being Laws 2003,
9 Chapter 359, Section 13) is amended to read:

10 "65-2A-13. PROTESTS, ~~[OF APPLICATIONS FOR A CERTIFICATE~~
11 ~~OR PERMIT OR FOR A CHANGE IN A CERTIFICATE OR PERMIT]~~
12 OBJECTIONS AND HEARINGS.--

13 ~~[A. A contract motor carrier shall not protest an~~
14 ~~application for a certificate or for a change in a certificate.~~

15 ~~B. A common or contract motor carrier shall not~~
16 ~~protest an application for a permit or for a change in a~~
17 ~~permit.~~

18 ~~G. A common motor carrier shall not protest an~~
19 ~~application for a certificate or for a change in a certificate~~
20 ~~unless:~~

21 ~~(1) it possesses authority to handle, in whole~~
22 ~~or in part, the traffic for which the applicant seeks~~
23 ~~authority, or it has pending before the commission an~~
24 ~~application for authority for substantially the same traffic~~
25 ~~filed prior to the application to be protested; and~~

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1 ~~(2) it is willing and able to provide service~~
2 ~~that meets the reasonable needs of the customers or shippers~~
3 ~~involved; and~~

4 ~~(3) it has provided service within the scope~~
5 ~~of the protested application during the previous twelve-month~~
6 ~~period, or has actively and in good faith solicited service~~
7 ~~within the scope of the protested application during such~~
8 ~~period; or~~

9 ~~(4) the commission grants leave to intervene~~
10 ~~upon a showing of other interests that are not contrary to the~~
11 ~~provisions of the Motor Carrier Act.]~~

12 A. Any interested person or any member of the
13 public may provide information to the commission or express an
14 objection to any application for a certificate or permit, or
15 for amendment, lease or transfer of a certificate or permit,
16 during the notice period for the application by filing a
17 written objection in regard to the application. The commission
18 shall consider any objections filed in regard to determining
19 whether to hold a hearing on the application. The commission
20 is not required to hold a hearing pursuant to any objection but
21 may, in its discretion or on its own motion for any reason,
22 hold a hearing on any application for a certificate or permit
23 or for an amendment, lease or transfer of a certificate or
24 permit.

25 B. The commission shall hold a hearing on an

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1 application whenever a protest is filed within the notice
2 period or the transportation division of the commission files a
3 request for a hearing relative to an application within the
4 notice period. The commission shall allow a protesting carrier
5 to proceed as an intervenor in the application proceeding.

6 C. In any hearing held on an application:

7 (1) the applicant has the burden of proving
8 that the applicant meets the requirements of the Motor Carrier
9 Act and the rules of the commission for the application at
10 issue, the burden of demonstrating with reasonable specificity
11 the nature and scope of its proposed transportation service,
12 the burden of proving any particular factual matters that the
13 commission or the transportation division of the commission may
14 identify and require, the burden of proving any additional
15 allegations and matters of public interest that it may raise
16 and, if the application pertains to ambulance service, the
17 burden of proving that the ambulance service that currently
18 exists in the territory sought in the application is inadequate
19 and that the proposed service is directly responsive to a
20 public need and demand for the service proposed;

21 (2) a protesting carrier has the burden of
22 proving all matters of fact pertaining to its full-service
23 operation within its certificated full-service territory, the
24 burden of proving the potential impairment or adverse impact on
25 its existing full-service operation by the transportation

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1 service proposed by the applicant and the burden of proving all
2 other allegations and matters of public interest that it may
3 raise. The protesting carrier's proof should include, without
4 limitation, a demonstration with reasonable specificity of the
5 nature of the existing full service being provided, the volume
6 of passengers transported, economic analysis related to
7 expenses and revenues of the full-service operation and the
8 anticipated economic, business or functional effect of the
9 proposed service on the existing provision of, or rates for,
10 full-service transportation within the full-service territory;

11 (3) the commission may allow other interested
12 persons to intervene, either generally or on the basis of
13 specific facts or issues. A permissive intervenor has the
14 burden of proof for its position on all factual matters and
15 legal issues that it alleges and on which it is permitted to
16 intervene; and

17 (4) all parties to a hearing may base their
18 demonstration and proof on business data, experienced persons
19 and mathematical calculations. Expert testimony shall not be
20 required of any party but may be provided at the option of a
21 party.

22 D. The commission shall not grant an application:

23 (1) for a certificate or permit for ambulance
24 service, or for amendment, lease or transfer of such a
25 certificate or permit, if it finds after hearing that the

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1 existing ambulance service is provided on a reasonably
2 continuous and adequate basis in the territory in which the new
3 service is sought or that the holder of the certificate or
4 lessee providing the existing ambulance service in such
5 territory is willing and able to provide, and does subsequently
6 provide, reasonably continuous and adequate service within such
7 territory, as specified by commission order;

8 (2) for a new certificate for general taxicab
9 service within the full-service territory of a protesting
10 municipal taxicab service carrier; or

11 (3) for a certificate for any passenger
12 service other than those identified in Paragraphs (1) and (2)
13 of this subsection, or for a permit for passenger service other
14 than for an ambulance service pursuant to a public-charge
15 contract, or for amendment, lease or transfer of such a
16 certificate or permit, within a protesting full-service
17 carrier's full-service territory, if it finds after hearing
18 that the grant of the application presents a reasonable
19 potential to impair, diminish or otherwise adversely affect the
20 existing provision of full-service passenger service to the
21 public in the full-service territory or if the application is
22 otherwise contrary to the public interest in the full-service
23 territory. In considering the potential effect on provision of
24 transportation services to the public in regard to such an
25 application, the commission shall consider all evidence

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1 presented pertaining to such potential effect, including
 2 evidence of the effect that diversion of revenue or traffic may
 3 have on the provision of full-service passenger service to the
 4 community. Diversion of revenue or traffic from an existing
 5 motor carrier shall not, however, be sufficient grounds for
 6 denying the application without a showing that the diversion
 7 presents a reasonable potential to affect the provision of
 8 full-service passenger service to the community."

9 SECTION 13. Section 65-2A-14 NMSA 1978 (being Laws 2003,
 10 Chapter 359, Section 14) is amended to read:

11 "65-2A-14. CHANGES IN CERTIFICATES OR PERMITS.--

12 A. A change in a certificate or permit [~~or tariff~~]
 13 shall not be valid or effective without the approval of the
 14 commission.

15 B. The commission may, for good cause and after
 16 notice and public hearing requirements are met, authorize the
 17 following changes in all or part of a certificate or permit at
 18 the request of the [~~person owning the certificate or permit~~]
 19 holder if the commission finds:

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

22 ~~(2)]~~ (1) that the applicant for amendment,
 23 lease or transfer of a certificate for passenger service meets
 24 the requirements pursuant to Section [~~8 of the Motor Carrier~~
 25 ~~Act~~] 65-2A-8 NMSA 1978 for [~~an amendment of~~] a certificate [~~as~~

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1 ~~a common motor carrier of persons] for such passenger service;~~

2 ~~[(3) that the applicant meets the requirements~~
3 ~~pursuant to Section 10 of the Motor Carrier Act for an~~
4 ~~amendment of a permit as a contract motor carrier of persons;~~

5 ~~(4)] (2) that the applicant for amendment,~~
6 lease or a transfer of a certificate for household goods
7 service meets the requirements pursuant to Section ~~[9 of the~~
8 ~~Motor Carrier Act] 65-2A-9 NMSA 1978 for [an amendment of] a~~
9 ~~certificate [as a common motor carrier of] for such~~ household
10 ~~goods~~ service;

11 ~~[(5)] (3) that the applicant for amendment,~~
12 lease or a transfer of a permit meets the requirements pursuant
13 to Section ~~[10 of the Motor Carrier Act] 65-2A-10 NMSA 1978 for~~
14 ~~[an amendment of] such~~ a permit; ~~[as a contract motor carrier~~
15 ~~of household goods;~~

16 ~~(6) that for a transfer of all or part of a~~
17 ~~certificate or permit:~~

18 ~~(a) the transferee applicant is fit,~~
19 ~~willing and able to provide the authorized transportation~~
20 ~~services and to comply with the Motor Carrier Act and the rules~~
21 ~~of the commission;~~

22 ~~(b)] and~~

23 (4) in addition, that:

24 (a) for transfer or lease of all or part
25 of a certificate or permit, the transferor-applicant has

1 rendered reasonably continuous and adequate service in the
 2 territory to be transferred or leased prior to the application
 3 for lease or transfer; and

4 ~~[(e)]~~ (b) for transfer of all or a part
 5 of a certificate or permit, accrued taxes, rents, wages of
 6 employees and other indebtedness pertaining to all or part of a
 7 certificate or permit proposed to be transferred have been paid
 8 by the transferor-applicant or assumed by the transferee-
 9 applicant

10 ~~[(d) the transfer does not have the~~
 11 ~~effect of destroying competition or creating a monopoly; and~~

12 ~~(e) the transfer is not inconsistent~~
 13 ~~with the public interest; or~~

14 ~~(7) that for a lease of all or part of a~~
 15 ~~certificate or permit:~~

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

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

23 ~~(c) the lease does not have the effect~~
 24 ~~of destroying competition or creating a monopoly; and~~

25 ~~(d) the lease is not inconsistent with~~

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1 ~~the public interest~~].

2 C. The commission may, without notice or a public
3 hearing, authorize the following changes in all or part of a
4 certificate or permit at the request of the ~~[person owning the~~
5 ~~certificate or permit]~~ holder:

6 (1) voluntary cancellation of the certificate
7 or permit;

8 (2) voluntary suspension of the certificate or
9 permit for a period not to exceed twelve consecutive months;

10 (3) change in the form of ~~[ownership]~~ legal
11 entity or name of the holder of the certificate or permit;
12 ~~[and]~~

13 (4) reinstatement of the certificate or permit
14 following voluntary suspension of a period not exceeding twelve
15 consecutive months;

16 (5) change in control of a holder of the
17 certificate or permit through issuance or transfer of stock or
18 other legal interest in a holder that is a corporation,
19 partnership, trust or other legal business entity; and

20 (6) matters pertaining to transfers by
21 operation of law."

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

24 "65-2A-15. MULTIPLE OPERATING AUTHORITIES AND BUSINESS
25 TRADE NAMES ALLOWED ~~[COMMON CONTROL AND SHAM COMPETITION~~

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1 PROHIBITED].--

2 ~~[A. A person may simultaneously hold a certificate~~
 3 ~~as a common motor carrier, a permit as a contract motor carrier~~
 4 ~~and a warrant authorizing transportation by motor vehicle over~~
 5 ~~the same routes or within the same territory, if the commission~~
 6 ~~finds that the multiple operating authorities are consistent~~
 7 ~~with the public interest.~~

8 ~~B. A person shall not control more than one~~
 9 ~~certificate or more than one permit for the same kind of~~
 10 ~~service in the same territory.]~~

11 A. A person may simultaneously hold certificates
 12 for different kinds of certificated services, permits for
 13 different contracts and warrants for different kinds of
 14 warranted service within the same territory.

15 B. Any motor carrier that holds more than one
 16 certificate for the same kind and nature of certificated
 17 service in the same territory or more than one permit for the
 18 same contract shall file an application with the commission to
 19 consolidate such operating authorities.

20 C. The commission shall not grant any new operating
 21 authority to a motor carrier that [~~+~~] duplicates the
 22 operating authority of the same kind and for the same territory
 23 already held by that motor carrier. [~~or~~

24 ~~(2) is under common control with another motor~~
 25 ~~carrier that duplicates operating authority of the same kind or~~

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1 ~~for the same or overlapping territory already held by either of~~
2 ~~them.~~

3 ~~D. If two motor carriers come to be held in common~~
4 ~~control, and each motor carrier has operating authority that~~
5 ~~duplicates the operating authority of the other, then one of~~
6 ~~them shall have its operating authority modified to exclude the~~
7 ~~portion of the operating authority that is of the same kind and~~
8 ~~for the same territory, but shall be allowed to operate in the~~
9 ~~name and under the operating authority of the other motor~~
10 ~~carrier with which it is held in common control.~~

11 ~~E. Motor carriers of household goods possessing~~
12 ~~both a certificate and permit may transport mixed loads of~~
13 ~~common and contract motor carrier household goods.]~~

14 D. Certificated service carriers holding both a
15 certificate and permit or warrant for related services may use
16 the same vehicles and may transport passengers and property, or
17 mixed loads of household goods and property, pursuant to those
18 authorities in the same vehicles and on the same trip.

19 E. Every certificated, permitted or warranted
20 service carrier shall file with the transportation division of
21 the commission all business trade names under which the carrier
22 operates its service or services authorized and shall provide
23 the transportation division of the commission with proof of
24 financial responsibility for all business trade names in
25 addition to its legal name. The commission shall accept

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1 business trade names as submitted by a carrier. Filing with
 2 the transportation division of the commission shall not, by
 3 itself, establish or otherwise affect the ownership or right to
 4 use a business trade name under the intellectual property laws
 5 of the state of New Mexico."

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

8 "65-2A-16. INTERSTATE MOTOR CARRIERS.--

9 A. Foreign and domestic motor carriers, motor
 10 private carriers, leasing companies, brokers and freight
 11 forwarders shall not operate in interstate commerce in this
 12 state without first registering with a base state and paying
 13 all fees as required under the federal Unified Carrier
 14 Registration Act of 2005. The commission is authorized to
 15 register applicants and collect all fees without notice or a
 16 public hearing.

17 B. The commission is authorized to follow rules and
 18 collect fee assessments set by the federal secretary of
 19 transportation from foreign and domestic motor carriers, motor
 20 private carriers, leasing companies, brokers and freight
 21 forwarders, and do all things necessary to enable New Mexico to
 22 participate in the federal unified carrier registration system
 23 pursuant to the federal Unified Carrier Registration Act of
 24 2005, including the collection of an equal amount of revenue as
 25 was collected by the commission in the last registration year

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1 under Section 4005 of the federal Intermodal Surface
2 Transportation Efficiency Act of 1991 and the collection of an
3 equal amount of revenue annually from all other sources allowed
4 under the federal Unified Carrier Registration Act of 2005 in
5 the last year that such collections were not prohibited by
6 federal law.

7 C. The commission is the state agency in New Mexico
8 responsible for operation of the federal Unified Carrier
9 Registration Act of 2005, including participating in the
10 development, implementation and administration of the unified
11 carrier registration agreement. The commission is authorized
12 to follow rules governing the unified carrier registration
13 agreement issued under the unified carrier registration plan by
14 its board of directors.

15 D. Compliance by an interstate motor carrier with
16 the provisions of the federal Unified Carrier Registration Act
17 of 2005 shall not authorize a carrier to provide intrastate
18 transportation services in New Mexico. An interstate motor
19 carrier wishing to provide compensated transportation in
20 intrastate commerce shall apply for the appropriate intrastate
21 operating authority from the commission. A taxicab service or
22 [~~terminal~~] shuttle service traveling to or from a federally
23 licensed airport terminal facility located in the state of New
24 Mexico is engaged in nonexempt intrastate business within the
25 state regardless of a prior exemption if its service provides,

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1 with regard to any service run, for both:

2 (1) initiation of the transportation of one or
3 more passengers within this state; and

4 (2) delivery to a departure point within this
5 state of one or more passengers whose transportation on that
6 service run was initiated at a point within this state."

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

9 "65-2A-18. FINANCIAL RESPONSIBILITY.--

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

18 B. A motor carrier [~~or incidental carrier~~] shall
19 not operate on the highways of this state without having filed
20 with the commission proof of financial responsibility in the
21 form and amount as the commission shall by rule prescribe.

22 [~~The maximum amount of financial responsibility, as determined~~
23 ~~by the commission, for incidental carriers shall not exceed~~
24 ~~that required of other motor carriers.]~~

25 C. In prescribing minimum requirements for

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1 financial responsibility for motor carriers, the commission
2 shall adopt the same minimum liability insurance requirements
3 as those required by the federal motor carrier safety
4 administration for interstate motor carriers for all motor
5 vehicles for carriage of property or household goods and for
6 all passenger motor vehicles with such capacities. The
7 commission shall adopt reasonable minimum liability insurance
8 requirements for the use of passenger motor vehicles with
9 capacities less than those regulated by the federal motor
10 carrier safety administration and in doing so shall consider

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

14 (2) the number of passengers being transported
15 [(3)] and the nature of the transportation services provided by
16 the motor [carrier; and

17 ~~(4) other factors necessary to ensure that~~
18 ~~motor carriers maintain an appropriate level of financial~~
19 ~~responsibility] carriers using vehicles of those capacities.~~

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

- 25 (1) the financial stability of the carrier;

- 1 (2) previous loss history of the carrier;
- 2 (3) the safety record of the carrier;
- 3 (4) the size, nature of operations and other
- 4 operating characteristics of the carrier; and
- 5 (5) other factors necessary for the protection
- 6 of passengers, shippers and the public.

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

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

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

18 F. All motor carriers shall carry proof of
 19 financial responsibility in each motor vehicle they operate in
 20 this state."

21 SECTION 17. Section 65-2A-19 NMSA 1978 (being Laws 2003,
 22 Chapter 359, Section 19) is amended to read:

23 "65-2A-19. SAFETY REQUIREMENTS FOR MOTOR VEHICLES AND
 24 DRIVERS [~~USED IN COMPENSATED TRANSPORTATION~~].--

25 A. A motor carrier shall provide safe and adequate

underscored material = new
 [bracketed material] = delete

1 service, equipment and facilities for the rendition of
2 transportation services in this state.

3 B. The commission shall prescribe safety
4 requirements for drivers and for motor vehicles weighing
5 twenty-six thousand pounds or less or carrying fifteen or fewer
6 persons, including the driver, used by intrastate motor
7 carriers operating in this state. The commission may prescribe
8 additional requirements related to safety, including driver
9 safety training programs, vehicle preventive maintenance
10 programs, inquiries regarding the safety of the motor vehicles
11 and drivers employed by a motor carrier, and the
12 appropriateness of the motor vehicles and equipment for the
13 transportation services to be provided by the motor carrier.

14 C. A commuter service shall certify that it has a
15 program providing for an initial drug test for a person seeking
16 to be a commuter service driver. The program shall use
17 reasonable collection and analysis procedures to ensure
18 accurate results, require testing only for substances
19 controlled by federal regulation of commercial motor carriers
20 and ensure the confidentiality of the test results and medical
21 information obtained.

22 D. The motor transportation division of the
23 department of public safety may immediately order, without
24 notice or a public hearing, a motor vehicle to be taken out of
25 service for violation of a federal or state law or rule

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1 relating to safety if the violation would endanger the public
2 health or safety.

3 E. The commission shall implement rules requiring
4 carriers to obtain criminal background reports for all employed
5 or contract drivers of certificated service carriers and for
6 all other persons employed by certificated household goods
7 service carriers who enter private dwellings in the course of
8 household goods service."

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

11 "65-2A-20. TARIFFS.--

12 A. ~~[An intrastate common motor]~~ A tariffed service
13 carrier ~~[of persons or household goods or a towing service~~
14 ~~performing nonconsensual tows]~~ shall not commence operations or
15 perform a new service under its operating authority without
16 ~~[approval of a]~~ having an approved tariff ~~[from]~~ on file with
17 the commission.

18 B. ~~[An intrastate common motor carrier of persons~~
19 ~~or household goods and a towing service performing~~
20 ~~nonconsensual tows shall file with the commission proposed~~
21 ~~tariffs showing the rates, terms and conditions for~~
22 ~~transportation and related services between points in its~~
23 ~~territory. The rates shall be stated in terms of United States~~
24 ~~currency.]~~ A tariffed service carrier shall file with the
25 commission proposed tariffs showing the rates for

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1 transportation and all related activities and containing a
2 description of the type and nature of the service, territory
3 and all terms of service for transportation and related
4 services. The rates shall be stated in terms of United States
5 currency. Tariffs for individual carriers shall also include
6 the carrier's legal name, all business trade names used by the
7 carrier, contact information, information for service of
8 process, the territory authorized for each transportation
9 service listed in the tariff and any terms of service contained
10 in the operating authorities for that particular carrier. Each
11 tariffed service carrier operating pursuant to a statewide
12 tariff shall file with the commission a tariff statement
13 referencing the statewide tariff being used and include the
14 carrier's legal name, all business trade names used by the
15 carrier, contact information, information for service of
16 process, the territory authorized for that carrier and any
17 terms of service contained in the operating authority for that
18 particular carrier.

19 C. ~~[An intrastate common motor]~~ A tariffed service
20 carrier ~~[of persons or household goods or a towing service~~
21 ~~performing nonconsensual tows]~~ shall not charge, or permit its
22 ~~[bona fide]~~ agents, ~~[or]~~ employees or contract drivers to
23 charge, a different or additional rate, or to use different or
24 additional practices or terms of service, for transportation or
25 for a service rendered to or for the user of the service other

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1 than the rates and terms of service specified in approved
 2 tariffs in effect at the time, [~~The rates of an otherwise valid~~
 3 ~~tariff are not applicable when a medicaid program directly pays~~
 4 ~~for services~~] except:

5 (1) for ambulance and household goods service
 6 carriers, in accordance with rates and terms of service
 7 established by federal or state law for federal or state
 8 governmental programs or operations; and

9 (2) for tariffed passenger service carriers
 10 other than ambulance service carriers, in accordance with the
 11 rates and terms of service established by governmental programs
 12 or operations in which they voluntarily participate.

13 D. [~~An intrastate common motor~~] A tariffed service
 14 carrier [~~of persons or household goods or a towing service~~
 15 ~~performing nonconsensual tows~~] shall not pay or refund,
 16 directly or indirectly to any person, a portion of the rate
 17 specified in its approved tariff, offer to a person privileges
 18 or facilities, perform a service or remit anything of value,
 19 except:

20 (1) in accordance with tariffs approved by the
 21 commission;

22 (2) for ambulance and household goods service
 23 carriers, in accordance with rates and terms of service
 24 established by federal and state law for federal and state
 25 governmental entities, programs or operations;

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1 (3) for tariffed passenger service carriers
2 other than ambulance service carriers, in accordance with the
3 rates and terms of service established by governmental programs
4 or operations in which they voluntarily participate; or

5 (4) in settling or resolving a claim by a
6 customer.

7 E. The commission shall post on its internet web
8 site electronic copies of all currently approved individual and
9 statewide tariffs, and all tariff statements filed by carriers
10 using statewide tariffs, in a manner to facilitate public
11 access, review and comparison of rates and terms of service. A
12 certificated passenger service carrier other than an ambulance
13 service carrier shall post its tariff rates in each vehicle
14 used in the provision of its transportation service.

15 F. A tariffed service carrier shall file an
16 application with the commission for any change in the tariff,
17 accompanied by the proposed tariff, at least twenty days prior
18 to implementation of the amended rates and terms of service
19 contained in the tariff. Except as provided in this section,
20 an amended tariff shall be approved and become effective twenty
21 days after filing of the application for a change in the
22 tariff. The commission shall post notice of each application
23 for a change in a tariff along with a copy of the proposed
24 tariff on the commission web site.

25 G. No changes in terms of service disapproved by

1 the transportation division of the commission as inconsistent
2 with the Motor Carrier Act, rule of the commission, the
3 individual operating authority of the carrier or otherwise in
4 violation of law shall become effective or be part of the
5 approved tariff. The following terms of service contained in a
6 tariff shall not be considered inconsistent with, or predatory
7 or discriminatory in nature under the Motor Carrier Act or
8 commission rule:

9 (1) a carrier may decline or terminate service
10 under circumstances that reasonably appear to present a
11 physical danger to the driver, to another employee of the
12 carrier or to passengers or, for carriers other than ambulance
13 service carriers, a danger to the condition of the motor
14 vehicle or cargo;

15 (2) a carrier is not responsible for
16 cancellations or delays due to weather or road conditions when
17 reasonably required for safety or when due to road
18 construction, road closures, law enforcement stops or similar
19 matters beyond the control of the carrier;

20 (3) a passenger service carrier may require
21 that all firearms carried by any passenger other than an
22 authorized law enforcement officer be unloaded and placed in a
23 locked area of the vehicle during transport, along with all
24 ammunition and any other weapons; or

25 (4) a passenger service carrier other than an

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1 ambulance service carrier may decline or terminate service when
2 the passenger cannot give an adequate description of, or
3 direction to, the destination or cannot transfer into or out of
4 the motor vehicle without requiring physical assistance from
5 the driver.

6 H. An application for amendment of tariff rates
7 that increases any tariff rate to a level greater than that
8 previously approved by the commission for a full-service
9 carrier or a towing service providing nonconsensual tows shall
10 not become effective until approved by the commission as
11 reasonable under Section 65-2A-21 NMSA 1978. The commission
12 shall hold a hearing appropriate to the type of transportation
13 service provided by the carrier for any such application, if
14 requested by the applicant or by the transportation division of
15 the commission, or if ordered in the discretion of the
16 commission. The commission may provide for reasonable periodic
17 rate increases for full-service carriers or towing services
18 providing nonconsensual tows pursuant to a rate escalator or
19 adjustment clause for any or all rates of a carrier on such
20 basis as the commission finds reasonable.

21 ~~[E.]~~ I. A person may make a complaint in writing to
22 the commission that ~~[an individual or joint]~~ a rate or
23 ~~[practice is]~~ term of service contained in a tariff, or a rate
24 otherwise charged or practice otherwise effected, is
25 inconsistent with or in violation of the Motor Carrier Act,

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

16 SECTION 19. 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~~] Tariffed service carriers shall observe
 22 [~~reasonable~~] nonpredatory and nondiscriminatory rates and
 23 [~~practices~~] terms of service for the transportation services
 24 they provide. [~~An unreasonable~~] A predatory or discriminatory
 25 charge for service is unlawful.

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1 B. Reduced rates for minor children accompanied by
2 an adult, for students traveling between their homes and their
3 schools and for persons sixty-five years of age or older shall
4 not be considered discriminatory [~~within the meaning of this~~
5 ~~section~~]. A motor carrier shall not furnish free
6 transportation to persons except to bona fide owners, officers,
7 [~~or~~] employees or other business personnel of the motor carrier
8 and their dependents. [~~Stock owners of incorporated motor~~
9 ~~carriers shall not be considered owners for purposes of this~~
10 ~~subsection.~~]

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

22 D. A [~~common motor carrier of~~] household goods
23 service carrier shall establish and observe [~~just and~~
24 ~~reasonable~~] nonpredatory and nondiscriminatory rates and
25 practices relating to the manner and method of presenting,

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1 marking, packing and delivering household goods for
 2 transportation and other matters relating to the transportation
 3 of household goods.

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

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

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1 SECTION 20. Section 65-2A-22 NMSA 1978 (being Laws 2003,
2 Chapter 359, Section 22) is amended to read:

3 "65-2A-22. TIME SCHEDULES.--

4 A. ~~[An intrastate common motor carrier of persons~~
5 ~~providing scheduled service to the general public shall file a~~
6 ~~proposed time schedule with its application for a certificate.~~
7 ~~The commission shall approve the time schedule before the~~
8 ~~schedule is put into effect.]~~ A scheduled shuttle service
9 carrier shall file a proposed time schedule with its tariff and
10 shall file any change in its schedule through an amended
11 tariff.

12 B. Failure by ~~[an intrastate common motor carrier~~
13 ~~of persons]~~ a scheduled shuttle service carrier to operate the
14 service on each day pursuant to commission rule as scheduled in
15 its tariff shall result in an appropriate penalty as the
16 commission, in its discretion, shall determine.

17 C. A time schedule shall not be designed to require
18 the operation of a motor vehicle between given terminals or
19 ~~[between way stations]~~ terminal areas at a rate of speed
20 greater than the maximum speed allowed."

21 SECTION 21. Section 65-2A-23 NMSA 1978 (being Laws 2003,
22 Chapter 359, Section 23) is amended to read:

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

25 A. ~~[An intrastate common motor]~~ A tariffed service

1 carrier may enter into discussions with another [~~intrastate~~
 2 ~~common motor~~] tariffed service carrier to establish a motor
 3 carrier organization. The organization shall obtain
 4 authorization from the commission before its members enter into
 5 any discussions concerning the rates contained in a [~~common~~
 6 statewide tariff. [~~The commission shall not enter an order~~
 7 ~~authorizing a motor carrier organization except after notice~~
 8 ~~and public hearing requirements are met.~~] The commission may
 9 authorize the creation of a motor carrier organization to
 10 discuss and promote industry matters, other than the rates of
 11 individual carriers, if the organization:

12 (1) allows any intrastate motor carrier
 13 authorized to provide the same type of service to become a
 14 member of the organization, and allows a member carrier to
 15 discuss [~~a tariff proposal filed with it, provided that only~~
 16 ~~those carriers with authority to participate in the~~
 17 ~~transportation to which the proposal applies may~~] matters
 18 before the organization and to vote upon [~~the~~] any proposal;

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

22 (3) does not file [~~a~~] an objection, protest or
 23 complaint with the commission against a tariff item
 24 independently published by or for the account of a member
 25 carrier;

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

5 ~~[(5) makes available, upon request, the name~~
6 ~~of the proponent of a rate or tariff item filed with it, admits~~
7 ~~the public to a meeting at which rates or tariff items will be~~
8 ~~discussed or voted upon and makes available the vote cast by a~~
9 ~~member carrier on a proposal before the motor carrier~~
10 ~~organization;~~

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

14 ~~(7) makes a final disposition of a rate or~~
15 ~~tariff item filed with the motor carrier organization within~~
16 ~~one hundred twenty days from the date the proposal is filed,~~
17 ~~except that if unusual circumstances require, the organization~~
18 ~~may extend the period, subject to review by the commission;~~

19 ~~(8) adopts reasonable quorum standards for its~~
20 ~~meetings; and~~

21 ~~(9) will propose common] (5) proposes matters~~
22 concerning statewide tariffs for approval by the commission.

23 B. A member carrier of the organization shall file
24 with the commission information as the commission may by rule
25 prescribe.

1 C. A motor carrier organization approved by the
2 commission pursuant to this section shall be subject to
3 accounting, record-keeping, reporting and inspection
4 requirements as the commission may by rule prescribe.

5 D. The commission may, upon complaint or upon its
6 own initiative, investigate and determine whether a motor
7 carrier organization previously authorized by it is not in
8 conformity with the requirements of this section or with the
9 terms and conditions upon which the motor carrier organization
10 was granted authorization. The commission may modify or
11 terminate its authorization of a motor carrier organization
12 found to be noncompliant with the requirements of this rule.

13 E. The antitrust laws of the state shall not apply
14 to discussions concerning general industry matters, terms of
15 service or any matters concerning a [common] statewide tariff,
16 including the rates contained in a statewide tariff, by member
17 carriers of a motor carrier organization authorized by the
18 commission.

19 ~~[F. The motor carrier organization shall obtain~~
20 ~~approval of a common tariff from the commission before its~~
21 ~~member carriers may operate pursuant to the common tariff. The~~
22 ~~commission shall not enter an order approving a common tariff~~
23 ~~except after notice and public hearing requirements are met.~~
24 ~~The commission may approve a common tariff if the common tariff~~
25 ~~is limited to matters relating to transportation services~~

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1 ~~provided by the member carriers party to the common tariff.~~
2 ~~The commission shall approve or disapprove a common tariff, in~~
3 ~~whole or in part, and may prescribe such terms and conditions~~
4 ~~as the public interest may require. The antitrust laws of the~~
5 ~~state shall not apply to common motor carriers who operate~~
6 ~~pursuant to a common tariff approved by the commission.~~

7 ~~G. In any proceeding in which a party to the~~
8 ~~proceeding alleges that a member carrier voted, discussed or~~
9 ~~agreed on a common tariff in violation of this section, that~~
10 ~~party has the burden of showing that the vote, discussion or~~
11 ~~agreement occurred. A showing of parallel behavior shall not~~
12 ~~by itself satisfy that burden.]"~~

13 SECTION 22. Section 65-2A-24 NMSA 1978 (being Laws 2003,
14 Chapter 359, Section 24) is amended to read:

15 "65-2A-24. MOTOR VEHICLE LEASES--DRIVER CONTRACTS.--

16 A. An intrastate motor carrier shall not lease a
17 motor vehicle or operate a leased motor vehicle [~~without~~
18 ~~approval of each motor vehicle lease from the commission]~~ in
19 the course of its transportation service except as provided by
20 commission rule. The commission may approve a motor vehicle
21 lease without notice or a public hearing.

22 [~~B. A motor carrier shall file a separate motor~~
23 ~~vehicle lease for each motor vehicle to be leased.~~

24 G. ~~The commission shall not approve a proposed~~
25 ~~motor vehicle lease if it finds that the purpose of the motor~~

1 ~~vehicle lease is to circumvent a provision of the Motor Carrier~~
2 ~~Act or rule of the commission.~~

3 ~~D. The commission shall by rule specify which of~~
4 ~~the two parties to a motor vehicle lease will be responsible~~
5 ~~for complying with the financial responsibility and safety~~
6 ~~requirements of the Motor Carrier Act and the rules of the~~
7 ~~commission.]~~

8 B. A motor carrier may use employed or contract
9 drivers or taxicab association member drivers in the provision
10 of a transportation service. Regardless of the provisions of
11 any written or oral agreement between a motor carrier and a
12 contract driver or taxicab association member driver, motor
13 carriers providing transportation services that use contract
14 drivers or taxicab association member drivers remain fully
15 responsible to the commission for complying with all provisions
16 of the Motor Carrier Act and commission rules applicable to
17 transportation service carriers.

18 C. Motor carriers providing intrastate
19 transportation services that use contract drivers or taxicab
20 association member drivers shall maintain, at their principal
21 places of business within the state, a current written
22 agreement with each such driver. No agreement with any
23 contract driver or taxicab association member driver shall
24 contain any provision contrary to a provision of the Motor
25 Carrier Act or a rule of the commission. Each written

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1 agreement shall contain a clause that requires the contract
2 driver or taxicab association member driver to adhere to all
3 provisions of the Motor Carrier Act and to all commission rules
4 applicable to transportation service carriers."

5 SECTION 23. Section 65-2A-25 NMSA 1978 (being Laws 2003,
6 Chapter 359, Section 25) is amended to read:

7 "65-2A-25. HOUSEHOLD GOODS OPERATIONS.--

8 A. ~~[An intrastate common motor carrier of]~~ The
9 commission shall establish a statewide tariff for household
10 goods services, containing terms of service and maximum rates
11 that household goods service carriers may charge the public.

12 B. A certificated household goods service carrier
13 shall be responsible for acts or omissions of its agents that
14 relate to the performance of household goods transportation
15 services, including accessorial or terminal services, that are
16 within the actual or apparent authority of the agent derived
17 from or ratified by the ~~[common motor carrier of]~~ certificated
18 household goods service carrier.

19 ~~[B. An intrastate common motor carrier of]~~

20 C. A certificated household goods service carrier
21 shall use reasonable care in selecting and retaining household
22 goods agents who are sufficiently knowledgeable, fit, willing
23 and able to provide adequate household goods transportation
24 services, including accessorial and terminal services, and to
25 fulfill the obligations imposed upon them by the Motor Carrier

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1 Act and by the [~~common motor~~] certificated household goods
2 service carrier.

3 [~~G.~~] D. If the commission has reason to believe
4 from a complaint or investigation that a household goods agent
5 has violated Subsection G or H of Section [~~33 of the Motor~~
6 ~~Carrier Act~~] 65-2A-33 NMSA 1978, or is consistently unfit,
7 unwilling or unable to provide adequate household goods
8 transportation services, including accessorial and terminal
9 services, the commission may issue to that household goods
10 agent notice of the complaint, specific charges and the time
11 and place for a hearing on the complaint. The hearing shall be
12 held no later than sixty days after service of the complaint to
13 the household goods agent. The household goods agent has the
14 right to appear at the hearing and rebut the charges contained
15 in the complaint.

16 [~~D.~~] E. If the household goods agent does not
17 appear at the complaint hearing, or if the commission finds
18 that the household goods agent has violated Subsection G or H
19 of Section [~~33 of the Motor Carrier Act~~] 65-2A-33 NMSA 1978, or
20 is consistently unfit, unwilling or unable to provide adequate
21 household goods transportation services, including accessorial
22 and terminal services, the commission shall issue an order to
23 compel compliance by the household goods agent. Thereafter,
24 the commission may issue an order to limit or prohibit the
25 household goods agent from any involvement in the provision of

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1 household goods transportation services if, after notice and an
2 opportunity to be heard, it finds that the household goods
3 agent has failed to comply with the order within a reasonable
4 time after the date of its issuance, but in no event less than
5 thirty days after its issuance. A household goods agent may
6 file a petition with the commission seeking reconsideration of
7 an order entered by the commission pursuant to this section.

8 ~~[E.]~~ F. The commission shall adopt rules for the
9 following elements of household goods transportation services:

10 (1) ~~[rates]~~ methods of determining shipping
11 charges;

12 (2) cost estimates, for which charges shall be
13 subject to the antitrust laws of this state;

14 (3) inventory;

15 (4) weighing;

16 (5) receipts and bills of lading;

17 (6) liability based on value established
18 between the motor carrier and the shipper;

19 (7) equipment stationing by, and joint
20 transportation between ~~[common motor carriers of]~~, household
21 goods service carriers;

22 (8) household goods agents; and

23 (9) service standards.

24 ~~[F.]~~ G. In adopting reasonable rules for intrastate
25 ~~[common motor carriers of]~~ household goods service carriers,

1 the commission shall [~~consider:~~

2 ~~(1) the level of performance that can be~~
 3 ~~achieved by a well-managed motor carrier of household goods;~~

4 ~~(2) the degree of harm to individual shippers~~
 5 ~~that could result from a violation of the rule;~~

6 ~~(3) the need to deter abuses that result in~~
 7 ~~harm to shippers;~~

8 ~~(4) service requirements of motor carriers of~~
 9 ~~household goods;~~

10 ~~(5) the cost of compliance in relation to the~~
 11 ~~benefits to shippers to be achieved from such compliance; and~~

12 ~~(6) the need to encourage motor carriers of~~
 13 ~~household goods to offer service responsive to shippers' needs]~~
 14 balance the interests of shippers and carriers and consider and
 15 observe industry standards.

16 [~~G.~~] H. The antitrust laws shall not apply to
 17 discussions or agreements between [~~an intrastate common motor~~
 18 ~~carrier of]~~ a household goods service carrier and its
 19 authorized agents, whether or not an agent is also a [~~motor~~
 20 ~~carrier of]~~ household goods service carrier when related solely
 21 to:

22 (1) rates for the transportation of household
 23 goods under the authority of the principal carrier;

24 (2) accessorial, terminal, storage or other
 25 charges for transportation services incidental to the

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1 transportation of household goods transported under the
2 authority of the principal carrier;

3 (3) allowances relating to transportation of
4 household goods under the authority of the principal carrier;
5 or

6 (4) ownership of a [~~common motor carrier of~~]
7 household goods service carrier by an agent or membership on
8 the board of directors of any [~~common motor carrier of~~]
9 household goods service carrier by an agent."

10 SECTION 24. Section 65-2A-26 NMSA 1978 (being Laws 2003,
11 Chapter 359, Section 26) is amended to read:

12 "65-2A-26. HOUSEHOLD GOODS VOLUNTARY DISPUTE SETTLEMENT
13 [~~PROGRAMS~~] PROGRAM.--

14 A. [~~A common motor carrier of household goods may~~
15 ~~submit an application to~~] The commission [~~to~~] shall establish a
16 program to settle disputes, at the voluntary option of the
17 shipper, between shippers and [~~common motor carriers of~~] all
18 household goods service carriers concerning the transportation
19 of household goods, [~~The application shall be in a form and~~
20 ~~contain information as the commission may by rule require.~~

21 B. ~~The commission shall review and approve, within~~
22 ~~forty-five days of the filing of an application, a program for~~
23 ~~settling disputes concerning the transportation of household~~
24 ~~goods that meets the requirements of Subsection C of this~~
25 ~~section.~~

1 G. ~~The commission shall not approve a program for~~
 2 ~~settling disputes concerning the transportation of household~~
 3 ~~goods unless the program is]~~ which shall be a fair and
 4 expeditious method for settling disputes and complies with each
 5 of the following requirements and rules the commission may
 6 prescribe:

7 (1) the program is designed to prevent a
 8 [~~motor~~] household goods service carrier from having any special
 9 advantage in a case in which the shipper resides or does
 10 business at a place distant from the motor carrier's place of
 11 business;

12 (2) the program provides adequate notice of
 13 its availability, including a concise, understandable and
 14 accurate summary of the program and disclosure of the legal
 15 effects of using the program. The notice shall be given to the
 16 shipper before the shipper tenders the household goods to the
 17 motor carrier for transportation;

18 (3) upon request of a shipper, the motor
 19 carrier shall promptly provide forms and other information
 20 necessary to initiate an action to resolve a dispute under the
 21 program;

22 (4) a person authorized pursuant to the
 23 program to settle disputes shall be independent of the parties
 24 to the dispute and shall be capable, as determined by rules
 25 prescribed by the commission, to resolve disputes fairly and

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underscored material = new
 [bracketed material] = delete

1 expeditiously. The program shall ensure that a person chosen
2 to settle a dispute is authorized and able to obtain from the
3 shipper or motor carrier any material and relevant information
4 necessary to carry out a fair and expeditious decision-making
5 process;

6 (5) the person settling the dispute may charge
7 the shipper a fee of not more than twenty-five dollars (\$25.00)
8 for instituting a proceeding under the program if the program
9 is binding solely on the carrier, but shall not charge the
10 shipper a fee otherwise. The person settling the dispute shall
11 refund the fee to the shipper in a case in which the dispute is
12 settled in favor of the shipper, unless the person settling the
13 dispute determines that the refund is inappropriate;

14 (6) the program shall not require the shipper
15 to agree to use the dispute settlement program prior to the
16 time that a dispute arises;

17 (7) the program may provide for an oral
18 presentation of a dispute concerning transportation of
19 household goods by a party to the dispute or a party's
20 representative, but an oral presentation shall not be made
21 unless the parties to the dispute expressly agree to the
22 presentation and the date, time and location of the
23 presentation; and

24 (8) a person settling a dispute under the
25 program shall, as expeditiously as possible, but no later than

1 sixty days after receipt of written notification of the
 2 dispute, render a decision based on the information gathered;
 3 except that, in a case in which a party to the dispute fails to
 4 timely provide information that the person settling the dispute
 5 may reasonably require, the person settling the dispute may
 6 extend the sixty-day period for a reasonable period of time. A
 7 decision resolving a dispute may include remedies appropriate
 8 under the circumstances, including repair, replacement, refund
 9 or reimbursement for expenses and compensation for damages.

10 ~~[D.]~~ B. The commission may investigate at any time
 11 the functioning of ~~[a]~~ the program approved under this section
 12 and may, after notice and an opportunity to be heard, ~~[suspend~~
 13 ~~or revoke its approval]~~ take appropriate action against any
 14 household goods service carrier for failure to meet the
 15 requirements of this section and rules as the commission may
 16 prescribe.

17 ~~[E.]~~ C. In a court action to resolve a dispute
 18 between a shipper and a ~~[common motor carrier of]~~ household
 19 goods service carrier, concerning the transportation of
 20 household goods by the carrier, the shipper shall be awarded
 21 reasonable attorney fees if:

22 (1) the shipper submits a claim to the carrier
 23 within one hundred twenty days after the date the shipment is
 24 delivered or the date delivery is scheduled, whichever is
 25 later; ~~[and]~~

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1 (2) the shipper prevails in the court action;
2 and

3 [~~(3)~~] a dispute settlement program approved
4 under this section was not available for use by the shipper to
5 resolve the dispute; or

6 ~~(4)~~] (3) a decision resolving the dispute was
7 not rendered under [a] the dispute settlement program [~~approved~~
8 ~~under this section~~] within sixty days or an extension of the
9 sixty-day period; or

10 [~~(5)~~] (4) the court proceeding is to enforce a
11 decision rendered under [a] the dispute settlement program
12 [~~approved under this section~~] and is instituted after the
13 period for performance under the decision has elapsed.

14 [~~F.~~] D. In a court action to resolve a dispute
15 between a shipper and a [~~common motor carrier of~~] household
16 goods service carrier concerning the transportation of
17 household goods by the carrier, the carrier shall be awarded
18 reasonable attorney fees by the court only if the shipper
19 brought the action in bad faith:

20 (1) after resolution of the dispute under [a]
21 the dispute settlement program [~~approved under this section~~];
22 or

23 (2) after institution of a proceeding by the
24 shipper to resolve the dispute under [a] the dispute settlement
25 program [~~approved under this section~~] and before:

1 (a) the expiration of the sixty-day
2 period or extension of the sixty-day period for resolution of
3 the dispute; and

4 (b) a decision resolving the dispute is
5 rendered under the program."

6 SECTION 25. Section 65-2A-27 NMSA 1978 (being Laws 2003,
7 Chapter 359, Section 27) is amended to read:

8 "65-2A-27. INVOLUNTARY SUSPENSION, REVOCATION OR
9 AMENDMENT OF OPERATING AUTHORITIES--REINSTATEMENT.--

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

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

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

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- 1 (1) comply with a provision of the Motor
2 Carrier Act;
- 3 (2) comply with a lawful order or rule of the
4 commission;
- 5 (3) comply with a term [~~condition or~~
6 ~~limitation~~] of service of an operating authority or tariff; or
- 7 (4) render reasonably continuous and adequate
8 service under a certificate [~~or permit~~].

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

- 13 (1) the reasons for the involuntary suspension
14 no longer pertain; and
- 15 (2) the [~~owner~~] holder of the operating
16 authority is fit, [~~willing~~] and a certificate holder is able,
17 to provide the authorized transportation services, and [~~to~~] the
18 holder will comply with the Motor Carrier Act and the rules of
19 the commission."

20 SECTION 26. Section 65-2A-28 NMSA 1978 (being Laws 2003,
21 Chapter 359, Section 28) is amended to read:

22 "65-2A-28. DESIGNATION OF AN AGENT FOR SERVICE OF
23 PROCESS.--

24 A. An applicant for an operating authority shall
25 file with the commission an appointment in writing of a

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1 resident agent for service of process. The appointment shall
2 specify the address of the agent and shall stipulate that
3 service upon the appointed agent of process of the commission
4 or of a court shall have the same force and effect as if
5 service had been made personally upon the motor carrier within
6 this state. The appointment shall continue in force until the
7 motor carrier files an appointment of a substitute agent or
8 until liability against the motor carrier growing out of its
9 operations in the state has terminated. A copy of the
10 appointment, duly certified by the commission, shall be
11 accepted as sufficient evidence of appointment of an agent in a
12 court of the state.

13 B. If [~~a motor carrier owning~~] the holder of an
14 operating authority from the commission operates without
15 appointing a resident agent for service of process, or the
16 commission has unsuccessfully attempted to serve process upon
17 the designated resident agent, the [~~motor carrier~~] holder shall
18 be deemed to have appointed the secretary of state as its
19 resident agent for service of process in an action or
20 proceeding against the motor carrier growing out of an
21 accident, collision or transaction in which the motor carrier
22 may be involved by operating in this state.

23 C. If the secretary of state is served with process
24 directed to [~~a motor carrier owning~~] the holder of an operating
25 authority from the commission, the secretary of state shall

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1 forward the process by certified mail to the motor carrier at
2 the address shown on its last change of address report, annual
3 report or application with respect to its operating authority,
4 whichever is most recent. The secretary of state shall file a
5 certificate of service with the commission, which shall be
6 accepted as prima facie proof of service.

7 D. The secretary of state shall assess to the motor
8 carrier the fee prescribed in Section [~~36 of the Motor Carrier~~
9 ~~Act~~] 65-2A-36 NMSA 1978 for a process from a court served upon
10 the secretary of state but shall not charge a fee for service
11 of commission process.

12 E. The principal motor carrier of a household goods
13 agent shall be deemed to be the agent for service of process of
14 the household goods agent unless the household goods agent
15 notifies the commission in writing of the substitution of
16 another agent for service of process."

17 SECTION 27. Section 65-2A-29 NMSA 1978 (being Laws 2003,
18 Chapter 359, Section 29) is amended to read:

19 "65-2A-29. REPORTS AND RECORDS.--

20 A. The commission shall establish reasonable
21 requirements with respect to reports, records and uniform
22 systems of accounts and preservation of records for motor
23 carriers.

24 B. The commission may require [~~a motor carrier~~
25 ~~owning~~] any holder of an operating authority from the

1 commission or any lessee of an authority to prepare and
2 transmit to the commission an annual report of its operations.
3 The report shall be in the form, contain specific information,
4 including financial information, and be due on a date as the
5 commission may by rule require. Financial data filed by motor
6 carriers in annual reports shall not be made available for
7 inspection by the public.

8 C. The commission or its employees or duly
9 authorized agents shall, at all times, have access to:

10 (1) land, buildings, improvements to real
11 property and equipment of motor carriers used in connection
12 with their operations; and

13 (2) records kept by motor carriers.

14 D. The commission may, by order, require a motor
15 carrier subject to the Motor Carrier Act, or its officers or
16 agents, to produce within this state at such reasonable time
17 and place as it may designate, original or certified copies of
18 records regardless of where they are kept by the motor carrier
19 when their production is pertinent to a matter before the
20 commission, in order that the commission may examine them. No
21 trade secret or business confidentiality immunity or privilege
22 may be asserted by the motor carrier in response to such an
23 order or request; provided that nothing in this provision shall
24 prevent a carrier from moving for, or the commission from
25 entering, an appropriate protective order to preserve the

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1 carrier's trade secrets or business confidentiality from
2 further disclosure, nor shall this provision or any production
3 required under this provision waive or diminish the carrier's
4 trade secret or business confidentiality immunity or privilege
5 as to persons other than the commission.

6 E. The motor transportation division of the
7 department of public safety shall furnish to the commission all
8 information needed or required by the commission to carry out
9 its responsibilities when the information is obtainable only
10 through field enforcement.

11 F. All applications, protests, objections,
12 amendments to filings, operating authorities, tariffs,
13 pleadings or any other documents filed in docketed proceedings
14 not subject to confidentiality orders are public records and
15 shall, as soon as practical, be made electronically available
16 to the public."

17 SECTION 28. Section 65-2A-30 NMSA 1978 (being Laws 2003,
18 Chapter 359, Section 30) is amended to read:

19 "65-2A-30. UNAUTHORIZED CARRYING OF PERSONS PROHIBITED.--
20 [~~A motor~~] Except in the case of an emergency, a transportation
21 service carrier not authorized to transport [persons]
22 passengers shall not carry a [person] passenger, including a
23 hitchhiker, except on-duty employees of the motor carrier or
24 commission representatives on official business [~~or in case of~~
25 an emergency] in a vehicle used in the provision of

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1 transportation service under its operating authority."

2 SECTION 29. Section 65-2A-33 NMSA 1978 (being Laws 2003,
3 Chapter 359, Section 33) is amended to read:

4 "65-2A-33. CRIMINAL AND CIVIL PENALTIES--UNFAIR TRADE
5 PRACTICES.--

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

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

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

24 D. An employee of the commission who divulges
25 information about an inspection, examination or investigation

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

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

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

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

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

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

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

24 G. A person who commits weight-bumping shall be
25 guilty of a felony and upon conviction shall be fined not less

1 than one thousand dollars (\$1,000) nor more than ten thousand
2 dollars (\$10,000), imprisoned for not more than two years, or
3 both.

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

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

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

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

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

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

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

24 **SECTION 30.** Section 65-2A-36 NMSA 1978 (being Laws 2003,
25 Chapter 359, Section 36) is amended to read:

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1 "65-2A-36. FEES.--

2 A. The commission shall charge and collect the
3 following fees:

4 (1) for filing an application for a
5 certificate ~~[as an intrastate common motor carrier of persons~~
6 ~~or household goods]~~ or an application for an amendment of a
7 certificate, or for any protest or permissive intervention in
8 regard to such application, two hundred fifty dollars (\$250);

9 (2) for filing an application for a permit ~~[as~~
10 ~~an intrastate contract motor carrier of persons or household~~
11 ~~goods]~~ or an application for amendment of a permit, or for any
12 protest or permissive intervention in regard to such
13 application, two hundred fifty dollars (\$250);

14 (3) for filing an application for a warrant
15 ~~[as an intrastate commuter service, charter service, towing~~
16 ~~service or motor carrier of property]~~, twenty-five dollars
17 (\$25.00);

18 (4) for filing an application or motion for
19 ~~[intrastate] temporary authority [as a common or contract motor~~
20 ~~carrier of persons or household goods]~~, one hundred dollars
21 (\$100);

22 ~~[(5) for filing an application for extension~~
23 ~~of temporary authority, fifty dollars (\$50.00)];~~

24 ~~(6)]~~ (5) for filing an application for a
25 change in ~~[an intrastate]~~ a tariff for a tariffed service

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underscored material = new
[bracketed material] = delete

1 carrier, two hundred dollars (\$200);

2 [~~7~~] (6) for filing an application for lease
3 or transfer of a certificate or permit, or for any protest or
4 permissive intervention in regard to such application, two
5 hundred dollars (\$200);

6 [~~8~~] (7) for filing an application for
7 reinstatement of a certificate or permit following voluntary or
8 involuntary suspension, one hundred dollars (\$100);

9 [~~9~~] (8) for filing an application for
10 voluntary suspension of a certificate or permit, fifteen
11 dollars (\$15.00);

12 [~~10~~] (9) for filing an application for a
13 single trip ticket, five dollars (\$5.00) per vehicle per trip;

14 [~~11~~] ~~for a single state registration receipt~~
15 ~~for interstate motor carriers, ten dollars (\$10.00) per vehicle~~
16 ~~per registration year or portion of a registration year;~~

17 [~~12~~] (10) for filing a change [~~of name~~] in
18 the legal name of any holder of an operating authority, or a
19 change of business trade name or the addition or deletion of a
20 business trade name of any holder or lessee of an operating
21 authority, ten dollars (\$10.00);

22 [~~13~~] ~~for filing proof of financial~~
23 ~~responsibility, fifteen dollars (\$15.00) per filing;~~

24 [~~14~~] (11) for filing an equipment lease, five
25 dollars (\$5.00) per vehicle leased;

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[bracketed material] = delete

1 [~~(15)~~] (12) for a miscellaneous filing, five
2 dollars (\$5.00) per document;

3 [~~(16)~~] (13) for certifying copies of a record,
4 order or operating authority, [~~fifteen dollars (\$15.00)~~] the
5 charge per page provided by law for governmental agencies;

6 [~~(17)~~] (14) for copies of written commission
7 documents or records, [~~one dollar (\$1.00) per page~~] the charge
8 per page provided by law for governmental agencies, in addition
9 to any applicable certification charge; and

10 [~~(18)~~] (15) for copies of other commission
11 records, including electronic media, an amount set by the
12 commission, in addition to any applicable certification charge.

13 B. The secretary of state shall charge and collect
14 a fee of four dollars (\$4.00) for each process from a court
15 served upon the secretary of state as the designated agent for
16 service of process by operation of law.

17 C. The "motor transportation fee fund" is created
18 in the state treasury. The commission shall collect all fees
19 at the time an application is filed or service is provided, and
20 shall remit them to the state treasurer, who shall deposit them
21 in the fund. At the end of each month, the state treasurer
22 shall transfer the unencumbered balance in the fund to the
23 state road fund.

24 D. If a fee has been erroneously paid, the person
25 having paid the fee may apply for a refund in writing to the

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1 commission no later than sixty days after the erroneous
2 payment. Upon approval of the application by the commission,
3 the amount erroneously paid shall be refunded from the motor
4 transportation fee fund to the person who made the payment.

5 E. An application shall be fully completed within
6 sixty days or the fee submitted with the application shall be
7 forfeited to the state. If the applicant renews the
8 application, ~~he~~ the applicant shall pay the applicable fee."

9 SECTION 31. Section 65-2A-37 NMSA 1978 (being Laws 2003,
10 Chapter 359, Section 37) is amended to read:

11 "65-2A-37. ELECTRONIC FILING AND CERTIFICATION OF
12 DOCUMENTS--ELECTRONIC PAYMENT OF FEES.--

13 A. The commission may adopt rules permitting the
14 electronic filing, submission and service of documents by
15 facsimile, electronic mail or other electronic transmission,
16 including original documents, and the certification of
17 electronically filed documents when filing or certification is
18 required or permitted pursuant to the Motor Carrier Act. The
19 rules shall provide for the appropriate treatment of electronic
20 filings to satisfy requirements for original documents or
21 copies and shall provide the requirements for signature with
22 respect to electronic filings. If the commission accepts
23 electronic filing of a document, it may accept for filing a
24 document containing ~~a copy of~~ a signature line, however made.

25 B. The commission may accept a credit or debit card

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1 or other means of payment, in lieu of cash or check, as payment
 2 of a fee pursuant to the Motor Carrier Act. The commission
 3 shall determine those credit or debit cards or other means of
 4 payment that may be accepted for payment."

5 SECTION 32. Section 65-2A-38 NMSA 1978 (being Laws 2003,
 6 Chapter 359, Section 38) is amended to read:

7 "65-2A-38. EXEMPTIONS.--The Motor Carrier Act shall not
 8 apply to:

9 A. school buses, provided that school buses shall
 10 be subject to applicable school bus safety provisions
 11 established by the state transportation director;

12 B. United States mail carriers, unless they are
 13 engaged in other business as [~~common or contract~~] motor
 14 carriers of persons or household goods;

15 C. hearses, funeral coaches or other motor vehicles
 16 belonging to or operated in connection with the business of a
 17 funeral service practitioner licensed by the state;

18 D. a county or municipal public bus transportation
 19 system; or

20 E. private carriers."

21 SECTION 33. A new section of the Motor Carrier Act is
 22 enacted to read:

23 "[NEW MATERIAL] TRANSITION.--

24 A. Except as provided in this section,
 25 certificates, permits and warrants issued to a motor carrier by

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 [bracketed material] = delete

1 the commission prior to July 1, 2013 shall remain in effect,
2 subject to the provisions of the Motor Carrier Act, the
3 Ambulance Standards Act and the commission's rules.

4 B. Certificates for limousine service and for tour
5 and sightseeing service issued prior to July 1, 2013 shall, on
6 and after that date, become certificates for specialized
7 passenger service endorsed for the same territory and with the
8 same additional terms of service as in the preexisting
9 certificate, and for nature of service as provided by
10 commission rule. The commission may require holders of such
11 certificates to exchange their certificates for newly issued
12 certificates.

13 C. Each certificate for terminal shuttle service,
14 shared-ride service and bingo bus service issued prior to July
15 1, 2013 shall, on and after that date, become a certificate for
16 shuttle service endorsed for the same territory and with the
17 same additional terms of service as in the preexisting
18 certificate, and for nature of service as general shuttle
19 service. The commission may require holders of such
20 certificates to exchange their certificates for newly issued
21 certificates.

22 D. Each certificate for taxicab service issued
23 prior to July 1, 2013 shall become void on and after that date
24 and shall be replaced by a certificate for taxicab service
25 endorsed for the same territory and with the same additional

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1 terms of service as in the preexisting certificate, but
2 endorsed also for nature of service as a municipal taxicab
3 service or a general taxicab service or both, depending on the
4 actual nature of service provided by the holder within the
5 certificated territory directly or under lease of the
6 certificate continuously for the immediately prior twelve-month
7 period. The commission may provide for reasonable procedures
8 regarding replacement of certificates and shall issue new
9 certificates effective on July 1, 2013.

10 E. Each certificate for shuttle service issued
11 prior to July 1, 2013 shall become void on and after that date
12 and shall be replaced by a certificate for shuttle service
13 endorsed for the same terminals or terminal areas and with the
14 same additional terms of service as in the preexisting
15 certificate, but endorsed also for nature of service as a
16 scheduled shuttle service or a general shuttle service or both,
17 depending on the actual nature of service provided by the
18 holder directly or under lease of the certificate continuously
19 for the immediately prior twelve-month period. The commission
20 may provide by order for reasonable procedures regarding
21 replacement of certificates and shall issue new certificates
22 effective on July 1, 2013.

23 F. The common tariff of the New Mexico movers and
24 warehousemen's association shall, on July 1, 2013, become the
25 individual tariff of each of the individual member carriers of

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1 the New Mexico movers and warehousemen's association using that
2 common tariff on June 30, 2013.

3 G. The commission shall not deny the application of
4 a person applying for a new household goods service certificate
5 during the period from July 1, 2013 through June 30, 2015
6 solely on the grounds that the applicant has provided household
7 goods service without an appropriate operating authority. The
8 commission may consider the nature of the applicant's
9 unauthorized operations or the applicant's response to prior
10 notices or efforts of the commission directed to the applicant,
11 as well as any matters of public safety, financial liability
12 and consumer issues involved in the applicant's unauthorized
13 transportation service, in determining the applicant's fitness
14 for the grant of a certificate."

15 SECTION 34. REPEAL.--Sections 65-2A-17 and 65-2A-40 NMSA
16 1978 (being Laws 2003, Chapter 359, Sections 17 and 40) are
17 repealed.

18 SECTION 35. EFFECTIVE DATE.--The effective date of the
19 provisions of this act is July 1, 2013.