

Act No. 352
Public Acts of 1993
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January 13, 1994
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**STATE OF MICHIGAN
87TH LEGISLATURE
REGULAR SESSION OF 1993**

Introduced by Senators Honigman, Gast and Geake

ENROLLED SENATE BILL No. 581

AN ACT to amend sections 1, 2, 3, and 4 of article I, sections 3, 5, 7, and 7a of article II, sections 2, 4, 5a, and 6 of article III, section 2 of article IV, and sections 2, 6a, 6b, 10a, 14, and 14a of article V of Act No. 254 of the Public Acts of 1933, entitled as amended "An act to promote safety upon and conserve the use of public highways of the state; to provide for the supervision, regulation, and control of the use of such highways by all motor vehicles operated by carriers of property for hire upon or over such highways; to preserve, foster, and regulate transportation and permit the coordination of motor vehicle transportation facilities; to provide for the supervision, regulation, and control of the use of such highways by all motor vehicles for hire for such purposes; to classify and regulate carriers of property by motor vehicles for hire upon such public highways for such purposes; to give the Michigan Public Service Commission jurisdiction and authority to prevent evasion of this act through any device or arrangement; to insure adequate transportation service; to give the commission jurisdiction and authority to fix, alter, regulate, and determine rates, fares, charges, classifications, and practices of common motor carriers for such purposes; to require filing with the commission of rates, fares, and charges of contract carriers and to authorize the commission to prescribe minimum rates, fares, and charges, and to require the observance thereof; to prevent unjust discrimination; to prescribe the powers and duties of said commission with reference thereto; to provide for appeals from the orders of such commission; to confer jurisdiction upon the circuit court for the county of Ingham for such appeals; to provide for the levy and collection of certain privilege fees and taxes for such carriers for such purposes and the disposition of such fees and taxes; and to provide for the enforcement of this act; and to prescribe penalties for its violations," sections 1, 2, and 3 of article I, sections 3, 5, and 7 of article II, sections 2, 4, and 6 of article III, and sections 6a, 10a, 14, and 14a of article V as amended and section 4 of article I, section 7a of article II, section 5a of article III, and section 6b of article V as added by Act No. 399 of the Public Acts of 1982, section 2 of article IV as amended by Act No. 221 of the Public Acts of 1989, and section 2 of article V as amended by Act No. 249 of the Public Acts of 1989, being sections 475.1, 475.2, 475.3, 475.4, 476.3, 476.5, 476.7, 476.7a, 477.2, 477.4, 477.5a, 477.6, 478.2, 479.2, 479.6a, 479.6b, 479.10a, 479.14, and 479.14a of the Michigan Compiled Laws; and to add section 5 to article I, section 7c to article II, and article VI.

The People of the State of Michigan enact:

Section 1. Sections 1, 2, 3, and 4 of article I, sections 3, 5, 7, and 7a of article II, sections 2, 4, 5a, and 6 of article III, section 2 of article IV, and sections 2, 6a, 6b, 10a, 14, and 14a of article V of Act No. 254 of the Public Acts of 1933, sections 1, 2, and 3 of article I, sections 3, 5, and 7 of article II, sections 2, 4, and 6 of article III, and sections 6a, 10a, 14, and 14a of article V as amended and section 4 of article I, section 7a of article II, section 5a of article III, and section 6b of article V as added by Act No. 399 of the Public Acts of 1982, section 2 of article IV as amended by Act No. 221 of the Public Acts of 1989, and section 2 of article V as amended by Act No. 249 of the Public Acts of 1989, being sections 475.1, 475.2, 475.3, 475.4, 476.3, 476.5, 476.7, 476.7a, 477.2, 477.4, 477.5a, 477.6, 478.2, 479.2, 479.6a, 479.6b, 479.10a, 479.14, and 479.14a of the Michigan Compiled Laws, are amended and section 5 is added to article I, section 7c is added to article II, and article VI is added to read as follows:

ARTICLE I

Sec. 1. The words and phrases used in this act shall be construed as follows, unless the context shall otherwise require:

(a) "Motor vehicle" means any automobile, truck, trailer, semitrailer, truck tractor, road tractor, or any self-propelled or motor or mechanically driven vehicle, or any vehicle in anywise attached to, connected with, or drawn by any self-propelled or motor or mechanically driven vehicle, used upon any public highway of this state for the purpose of transporting property.

(b) "Public highway" means any public highway, road, street, avenue, alley, or thoroughfare of any kind, or any bridge, tunnel, or subway used by the public.

(c) "Commission" means the Michigan public service commission.

(d) "Person" means any individual, partnership, association, or corporation, and their lessees, trustees, or receivers appointed by any court.

(e) "For hire" means for remuneration or reward of any kind, paid or promised, either directly or indirectly.

(f) "Motor common carrier of property" means any person who holds himself or herself out to the public as being engaged in the business of a for hire common carrier as at the common law, either directly or through any device or arrangement, including but not limited to those who operate over fixed routes or within 1 mile of a fixed route or between fixed termini, in the transportation by motor vehicle from place to place upon or over the highways of this state, the property, or any property, or any class of property of others who may choose to employ the person.

(g) "The public" means that part or portion of the general public which the motor carrier is ready, able, willing, and equipped to serve.

(h) "Motor contract carrier of property" means any person providing motor vehicle transportation upon the highways of this state for a series of shipments under continuing agreement of not less than 1 year with a person which agreement provides for the assignment of motor vehicles exclusively for each such person while the vehicle is in the service of such person and which agreement is designed to meet the distinct needs of each such person. Lower rates, in and of themselves, shall not constitute a distinct need. A motor contract carrier that possesses a motor common carrier certificate of authority of that class set forth at section 5(6)(a) of article II may commingle authorized contract carrier shipments while providing common carrier service over fixed routes, without assigning any vehicle exclusively for the person or persons for whom contract service is provided. A motor contract carrier authorized to transport packages or articles weighing 70 pounds or less for 1 or more contract shippers may commingle such authorized packages or articles weighing 70 pounds or less in the same vehicle with commodities transported as a common or contract carrier, without assigning any vehicle exclusively for the person or persons for whom contract service is provided. A motor contract carrier authorized to transport coin, currency, or food stamps for 1 or more contract shippers, may commingle such authorized coin, currency, or food stamps in the same vehicle with commodities transported as a common or a contract carrier, without assigning any vehicle exclusively for the person for whom contract service is provided.

(i) "Motor carrier" means both motor common carriers of property and motor contract carriers of property. Motor carrier does not include a private carrier.

(j) "Certificate of authority" means a certificate issued to a motor common carrier authorizing a transportation service that serves a useful public purpose responsive to a public demand or need, which certificate is issued under the terms of this act.

(k) "Permit" means the permit issued to motor contract carriers under the terms of this act.

(l) "Through any device or arrangement" means any and all methods, means, agreements, circumstances, operations, or subterfuges under which any person undertakes for hire to conduct, direct, control, or otherwise perform the transportation by motor vehicle of property upon the public highways of this state.

(m) "Modified procedure" means that administrative procedure by which the commission may consider evidence and testimony submitted in the form of verified statements in motor carrier matters without the necessity for an oral hearing.

(n) "Occasional accommodative service" means service limited to operations conducted by persons not regularly engaged in the transportation business of a motor common carrier or a motor contract carrier.

(o) "Required public purpose" means a purpose for which an applicant can provide adequate, economic, safe, effective, competitive, and equitable motor carrier service to satisfy a demonstrated public necessity, without creating excess service.

(p) "Fit", as applied to a proposed motor carrier service, means safe, suitable, and financially responsible as determined by the commission.

(q) "Private carrier" means any person engaged in the transportation of property by motor vehicle upon public highways where the transportation is incidental to, or in furtherance of, any commercial enterprise of the person, other than transportation.

(r) "General rate" means a rate applicable to 2 or more motor carriers which rate is filed pursuant to section 6b of article V.

(s) "Base rate, fare, or charge" means that nondiscounted rate, fare, or charge specified in a carrier's rate schedule on file with the commission.

(t) "Predatory rate" means a rate that is below its fully allocated costs. As used in this subdivision, "fully allocated costs" means total costs, including variable costs, plus an allocation of fixed costs.

Sec. 2. It is hereby declared to be the purpose and policy of the legislature in enacting this law to confer upon the commission the power and authority and to make it its duty to supervise and regulate the transportation of property by motor vehicle for hire upon and over the public highways of this state in all matters whether specifically mentioned herein or not, so as to: (a) Relieve all future undue burdens and congestion on the highways arising by reason of the use of the highways by motor vehicles operated by motor carriers; (b) protect and conserve the highways and protect the safety and welfare of the traveling and shipping public in their use of the highways; (c) promote competitive and efficient transportation services; (d) meet the needs of motor carriers, shippers, receivers, and consumers; (e) allow a variety of quality, price, and service options to meet changing market demands and the diverse requirements of the shipping public; (f) allow the most productive use of equipment and energy resources; (g) provide the opportunity for efficient and well-managed motor carriers to earn adequate profits and attract capital; (h) promote intermodal transportation; (i) prevent unjust discrimination; (j) promote greater participation by minorities in the motor carrier system; (k) provide and maintain service to small communities and small shippers; (l) prevent evasion of this act through any device or arrangement; (m) promote entrepreneurship in the motor carrier industry by allowing greater contract carrier economic and entry flexibility; and (n) promote the use of jointly considered and initiated rates, classifications, divisions, allowances, charges, or rules of motor carriers under commission approved agreements.

Sec. 3. (1) To enable the provisions of service for which there is an immediate and urgent need to a point or points or within a territory having no motor common carrier service capable of meeting that need, the commission may, upon a proper application, in its discretion and without hearings or other proceedings, grant temporary authority for that service by a motor common carrier by motor vehicle. The temporary authority, unless suspended or revoked for good cause, shall be valid until the commission has made a determination to grant or deny permanent authority. If after hearing permanent authority is granted, then corresponding temporary authority may be continued until the permanent authority becomes effective. The grant of temporary authority does not create a presumption that corresponding permanent authority will be granted thereafter.

(2) The commission may, upon a proper application which shall include specific definition of permit sought, in its discretion and without hearings or other proceedings, grant a temporary permit for that service by a motor contract carrier by motor vehicle. A temporary permit shall be granted, at the request of an applicant, in all cases, except when a safety or fitness related protest has been filed, which protest must include specific allegations necessary to state a prima facie case and reasonably inform the commission and the applicant of the nature of the allegations, with specific reference to the section or sections of all related statutes, rules, orders, and tariffs. The temporary permit, unless suspended or revoked for good cause, shall be valid until the commission has made a decision to grant or deny a permanent permit. The grant of a temporary permit creates no presumption that a corresponding permanent permit will be granted thereafter.

(3) Pending the determination of an application filed with the commission for approval of a consolidation or merger of the properties of 2 or more motor carriers, the commission may, in its discretion and without hearing or other proceedings, grant temporary approval, for a period not exceeding 60 days, of the operation of the motor carrier properties sought to be acquired by the person proposing in the pending application to acquire the properties, if it appears that failure to grant the temporary approval may result in destruction of or injury to the motor carrier properties sought to be acquired, or to interfere substantially with their future usefulness in the performance of adequate and continuous service to the public.

(4) Transportation service rendered under temporary authority shall be subject to all applicable provisions of this act and to the rules of the commission.

Sec. 4. (1) This section applies to all matters before the commission for which the commission has jurisdiction under article II or V.

(2) The commission or an employee to whom has been delegated the authority to make an initial decision in a matter related to a motor carrier:

(a) Shall, in any case in which an oral hearing is held, complete all evidentiary proceedings related to the matter not later than 180 days following institution of the proceeding, shall issue in writing the proposal for decision not later than 270 days following institution of the proceeding, and shall issue in writing the final decision not later than 300 days following institution of the proceeding.

(b) Shall, in the case of all other proceedings subject to this section, issue in writing the proposal for decision not later than 120 days following institution of the proceeding, and shall issue in writing the final decision not later than 180 days following institution of the proceeding.

(3) In extraordinary circumstances the commission may extend a time period established by this section. However, the total of all extensions with respect to any matter subject to this section shall not exceed 90 days.

Sec. 5. (1) This section applies to all matters before the commission for which the commission has jurisdiction under article III.

(2) The commission or an employee to whom has been delegated the authority to make an initial decision in the matter related to a motor carrier:

(a) Shall, in any case in which an oral hearing is held, in which the fitness of an applicant is not at issue, complete all evidentiary proceedings related to the matter not later than 90 days following institution of the proceeding; shall issue in writing the proposal for decision not later than 120 days following institution of the proceeding; and shall, issue in writing the final decision not later than 180 days following institution of the proceeding.

(b) Shall, in any case in which an oral hearing is held, in which the fitness of the applicant is at issue, complete all evidentiary proceedings related to the matter not later than 150 days following institution of the proceeding; shall issue in writing the proposal for decision not later than 210 days following institution of the proceeding; and shall issue in writing the final decision not later than 240 days following institution of the proceeding.

(c) Shall, in the case of all other proceedings subject to this section, issue in writing the final decision not later than 60 days following institution of the proceeding.

(3) In extraordinary circumstances the commission may extend the time period established by this section. However, the total of all extensions with respect to any matter subject to this section shall not exceed 90 days.

ARTICLE II

Sec. 3. An application for a certificate of authority shall be in writing, verified by affidavit, stating the experience of the applicant as a motor carrier, if any, the ownership and condition of the equipment and physical property of the applicant proposed to be used, that the vehicles of the applicant have passed an inspection within the immediately preceding 12 months pursuant to the requirements of the motor carrier safety act, Act No. 181 of the Public Acts of 1963, being sections 480.11 to 480.21 of the Michigan Compiled Laws, and 49 C.F.R. part 396, the support by shippers or receivers for the proposed service, the relation of the proposed service to the required public purpose to be served, and shall contain other information as the commission requires. The commission may request supplemental information from an applicant regarding accident records and citations issued to the applicant or drivers of the applicant within the immediately preceding 12 months when that information is considered necessary to make findings regarding the fitness of the applicant. Each application shall be accompanied by the required fees, proof of insurance before operations are commenced, and all other things required by law and the rules of the commission.

Sec. 5. (1) Except as provided in this section, the commission shall issue a certificate of authority to an applicant authorizing that it provide transportation subject to the jurisdiction of the commission under this article as a motor common carrier of property if the commission finds all of the following:

(a) The character and condition of the vehicles proposed to be operated by the applicant is such that they may be operated safely upon the public highways.

(b) That the applicant is fit, willing, and able to provide the transportation to be authorized by the certificate and to comply with this act and rules and regulations of the commission.

(c) On the basis of evidence presented, that the service proposed will serve a required public purpose, unless the commission finds that the transportation to be authorized by the certificate would create excess service by endangering the ability of the present carriers to provide adequate, economical, safe, and efficient service.

(d) That the service proposed is consistent with the transportation policy set forth in section 2 of article I.

(2) In making a finding under subsection (1), the commission shall consider and, to the extent applicable, make findings on at least all of the following:

(a) The transportation policy set forth in section 2 of article I.

(b) The existing available and adequate service in relation to the character and volume of available traffic.

(c) Whether the service proposed will create excess service inconsistent with the public interest. The commission shall not find diversion of revenue or traffic from an existing motor carrier to be in and of itself inconsistent with the public interest.

(d) The character of the bond or insurance proposed to be given to insure the protection of the public.

(e) Whether the applicant is fit, willing, and able to provide service commensurate with the extent of the certificate sought.

(3) A motor carrier may not protest an application to provide transportation filed under this section unless all of the following requirements are met:

(a) The protest is filed with the commission not later than 20 days following publication of the notice of the filing of the application in the biweekly bulletin.

(b) The motor carrier possesses a certificate of authority or permit authorizing it to handle, in whole or in part, the traffic for which an application is made.

(c) The motor carrier is willing and able to provide service that meets the reasonable needs of the shippers involved.

(d) The motor carrier has performed service within the scope of the application during the previous 12-month period.

(4) The commission may grant leave to intervene to a person other than a motor carrier or an applicant for a certificate of authority or permit upon a showing of other interests that are consistent with the transportation policy set forth in section 2 of article I. A petition to intervene shall not be granted unless filed with the commission not later than 20 days following publication of the notice of the filing of the application in the biweekly bulletin except for good cause shown.

(5) Any motor carrier having timely filed a protest or any intervenor having timely filed a petition to intervene may participate in person or by counsel, cross-examine witnesses, and offer testimony in support of, or in opposition to, the grant of a certificate of authority.

(6) Certificates of authority issued to motor common carriers of property under this act shall be of 3 classes:

(a) Certificates issued to motor carriers as may be operating over fixed routes or within 1 mile of a fixed route or between fixed termini.

(b) Certificates issued to motor carriers providing a transportation service within an 8-mile radius of a city having a population of 500,000 or more and including each city or village, a part of which is located within the 8-mile radius.

(c) Certificates issued to all other motor common carriers of property.

(7) The burden of proof shall be on the protestant to meet the requirement of subsection (2)(c).

Sec. 7. (1) All rates, fares, and charges made by any motor common carrier shall be just and reasonable, and shall not be unjustly discriminatory, prejudicial, or preferential. Contract motor carrier rates, fares, and charges made by common motor carriers holding both common carrier and contract carrier authority shall not be considered by the commission to be unjustly discriminatory, prejudicial, or preferential in determining compliance with this section. Existing carriers will be permitted to meet competitive rates without further justification to the commission. The commission shall take into account reasonable estimated or foreseeable future costs in determining whether rates, fares, and charges meet the requirements of this subsection.

(2) A motor common carrier shall not charge, demand, collect, or receive a greater or less or different remuneration for the transportation of property, or for any service in connection therewith, than the rates, fares, and charges which have been legally established and filed with the commission.

(3) A motor common carrier shall not refund or remit in any manner or by any device any portion of the rates, fares, and charges required to be collected by the tariffs on file with the commission or ordered by the commission.

(4) Nothing in this act shall prohibit a carrier from operating both as a motor common carrier and a motor contract carrier.

Sec. 7a. (1) Notwithstanding any other provision of this act, the commission may not investigate, suspend, revise, or revoke any rate, fare, or charge proposed by a motor common carrier on the grounds that the rate, fare, or charge is unreasonable on the basis that it is too high or too low if all the following requirements are met:

(a) The motor carrier notifies the commission that it wishes to have the rate, fare, or charge considered pursuant to this section.

(b) The rate, fare, or charge is the product of independent action on the part of the motor carrier proposing the rate, fare, or charge.

(c) The aggregate of increases and reductions in any such rate, fare, or charge is not more than 20% above or below the base rate, fare, or charge in effect 1 year before the effective date of the proposed rate, fare, or charge.

(2) A motor common carrier may not protest a rate, fare, or charge proposed under this section.

Sec. 7c. (1) Subject to subsection (2), a motor common carrier providing transportation of household goods subject to the jurisdiction of the commission may, subject to the provisions of this article, including the general tariff requirements of section 6 of this article, establish a rate for the transportation of household goods which is based on the carrier's written, binding estimate of charges for providing such transportation, which the shippers will be required to pay for the services included in the estimate.

(2) A rate established under this section shall be available on a nonpreferential basis to shippers and shall not result in charges to shippers which are predatory.

(3) Binding estimates shall be furnished in writing to the shipper or other person responsible for payment of the freight charges and a copy of each such estimate shall be retained by the carrier as an addendum to the bill of lading. All such estimates shall clearly indicate on their face that the estimate is binding on the carrier and that the charges shown are the charges that will be assessed for the services identified in the estimate. Binding estimates shall clearly describe the shipment and all services to be provided.

(4) Motor common carriers engaged in the transportation of household goods may provide nonbinding estimates of the approximate costs that will be assessed for the transportation of such shipments. Nonbinding estimates shall be reasonably accurate. Estimates of approximate costs shall not be binding on the carriers providing such estimates. The final charges on shipments moved on nonbinding estimates shall be those appearing in the carriers' tariffs applicable to the transportation. Nonbinding estimates, if provided, shall be furnished without charge and in writing to the shipper or other person responsible for payment of the freight charges. A copy of each such estimate shall be retained by the carrier as an addendum to the bill of lading. All such estimates shall clearly indicate on the face of the estimate that the estimate is not binding on the carrier and that the charges shown are the approximate charges that will be assessed for the services identified in the estimate. Nonbinding estimates shall clearly describe the shipment and all services to be provided.

(5) Motor common carriers furnishing nonbinding estimates shall enter the estimated charges on the bill of lading.

(6) At time of delivery of a collect on delivery shipment, except when the shipment is delivered to a warehouse for storage at the request of the shipper, on which a nonbinding estimate of the approximate costs has been furnished by the carrier pursuant to subsection (4), the shipper may request delivery of the shipment upon payment, in a form acceptable to the carrier, of an amount not exceeding 110% of the estimated charges. Upon request of the shipper, the carrier shall relinquish possession of the shipment upon payment of not more than 110% of the estimated charges and shall defer demand for the payment of the balance of any remaining charges for a period of 30 days following the date of delivery.

ARTICLE III

Sec. 2. (1) The commission, upon the filing of an application for a permit to operate as a motor contract carrier, shall ascertain and determine, under those reasonable rules as it promulgates, all of the following:

(a) Whether the character of business to be done by the applicant strictly conforms with the definition of a motor contract carrier.

(b) That the character and condition of the vehicles proposed to be operated by the applicant is such that they may be operated safely upon the public highways.

(c) The effect that denying the permit would have on the shippers of the applicant for the permit.

(2) Unless the commission determines that the character of business to be done does not strictly conform with the definition of a motor contract carrier; the transportation to be provided under the permit is or will be inconsistent with the transportation policy set forth in section 2 of article I; that the applicant is unfit; or that the vehicles of the applicant may not be operated safely upon the public highways, the application shall be granted, in whole or in part, and a permit issued upon lawful terms and conditions as the commission imposes, and subject to the rules promulgated by the commission, for the whole or for only the partial exercise of the privilege sought.

Sec. 4. An application for a permit shall be in writing, verified by affidavit, stating the experience of the applicant as a motor carrier, if any, the ownership and condition of the equipment and physical property of the applicant proposed to be used, that the vehicles of the applicant have passed an inspection within the immediately preceding 12 months pursuant to the requirements of the motor carrier safety act, Act No. 181 of the Public Acts of 1963, being sections 480.11 to 480.21 of the Michigan Compiled Laws, and 49 C.F.R. part 396, the support by shippers or receivers for the proposed service, the manner in which the proposed service strictly conforms to the definition of contract carriage, and shall contain other information as the commission requires. The commission may request supplemental information from an applicant regarding accident records and citations issued to the applicant or drivers of the applicant within the immediately preceding 12 months, when such information is considered necessary to make findings regarding the fitness of the applicant. Each application shall be accompanied by the required fees and all other things required by law and the rules of the commission.

Sec. 5a. (1) A motor carrier may not protest an application to provide transportation under this section unless all of the following requirements are met:

(a) The protest is filed with the commission not later than 20 days following publication of the notice of the filing of the application in the biweekly bulletin.

(b) The motor carrier possesses a permit or certificate of authority authorizing it to handle, in whole or in part, the traffic for which an application is made.

(c) The motor carrier is willing and able to provide service that meets the reasonable needs of the shippers involved.

(d) The motor carrier has performed service within the scope of the application during the previous 12-month period.

(2) The commission may grant leave to intervene to a person other than a motor carrier or an applicant for a certificate of authority upon a showing of other interests that are consistent with the transportation policy set forth in section 2 of article I. A petition to intervene will not be granted unless filed with the commission not later than 20 days following publication of the notice of the filing of the application in the biweekly bulletin except for good cause shown.

(3) Any motor carrier having timely filed a protest or any intervenor having timely filed a petition to intervene may participate in person or by counsel, cross-examine witnesses, and offer testimony in support of, or in opposition to, the grant of the permit.

Sec. 6. (1) The commission shall supervise and regulate all motor contract carriers of property, require the filing of annual and other reports and other data by the motor contract carriers; promulgate rules covering the filing with the commission of the charges, and the operations of motor contract carriers in competition with motor common carriers over the highways of this state; and promulgate rules for the purpose of promoting safety upon the highways and the conservation of their use, to the end that the provisions of this act may be fully and completely carried out. The commission, by general order or otherwise, shall promulgate rules in conformity with this act applicable to all motor contract carriers, and to do all things necessary to carry out and enforce the provisions of this act.

(2) Each motor contract carrier, in a form as the commission prescribes and in accordance with the rules as the commission promulgates, shall establish and file with the commission actual rates and practices and rules of the contract carrier related to those rates. A motor contract carrier shall not be required with rate filings to submit evidence of the revenues and expenses to be realized in the performance of its authorized functions. A motor contract carrier shall make available to the commission its complete contract or contracts, but shall not be required to file such contract or contracts with the commission. A member of the commission, or a clerk, officer, or employee of the state shall not divulge or make known, in any manner whatsoever not provided by this section, to any person the rate filings of a contract carrier, unless a complaint has been brought by order of the commission against a contract carrier alleging that a rate of a contract carrier or practice or rule of the contract carrier related to the rate or value of service under that rate is predatory and in violation of this act. Rate filings of a contract carrier are exempt from disclosure under the freedom of information act, Act No. 442 of the Public Acts of 1976, being sections 15.231 to 15.246 of the Michigan Compiled Laws, unless a complaint has been brought by order of the commission against a contract carrier pursuant to this section. The commission shall review all rate filings to determine that such rate filings are not predatory. When the commission finds that a rate of a contract carrier or practice or rule of the contract carrier related to the rate or the value of service under that rate is predatory and in violation of this act, the commission shall prescribe the minimum rate or practice or rule. In making a predatory rate determination and when prescribing a minimum rate or practice or rule related to a rate for a motor contract carrier, the commission shall consider all of the following:

- (a) All revenues and costs associated with 1 specific contract or appendix to that contract.
- (b) The effect of a prescribed minimum rate or practice or rule on the movement of traffic by that carrier.
- (c) Other matters as the commission considers necessary.

(3) A motor contract carrier shall not receive or accept property for transportation upon the highways until the statement of charges has been filed with the commission.

ARTICLE IV

Sec. 2. (1) In addition to the license fees or taxes otherwise imposed upon motor carriers, there shall be assessed against and collected from each motor carrier for the administration of this act, an annual fee of \$100.00 for each self-propelled motor vehicle operated by or on behalf of the motor carrier, except as otherwise provided in this subsection. A motor carrier shall pay a fee of only \$50.00 for each self-propelled motor vehicle operated by or on behalf of the motor carrier, if the motor carrier begins operation of the vehicle after June 30 and has not previously paid a fee under this subsection for that vehicle. After payment of the \$100.00 annual fee for a motor vehicle, or the \$50.00 fee paid for a vehicle operated after June 30, or the \$50.00 fee paid for a vehicle used for the transportation of household goods if a motor carrier seeks to begin operating a self-propelled motor vehicle in place of another motor vehicle not leased to the motor carrier by an owner operator for which a fee was paid and surrenders the identification allocated to the motor vehicle by the commission, accompanied by a fee of \$10.00, a replacement identification shall be issued. If the owner operator replaces a vehicle while it is still leased to the same motor carrier to whom it was leased when the identification was issued, the replacement identification fee shall be \$10.00. For all other replacement vehicles, the fee shall be \$25.00 for each complete or partial calendar year quarter remaining in the year as of the date the replacement vehicle is to begin operating upon surrender of the identification allocated to the motor carrier by the commission. For each truck or tractor used exclusively for the transportation of household goods as defined by the commission, the annual fee shall be \$50.00.

(2) A motor carrier licensed in this state shall pay an annual fee of \$100.00 for each vehicle operated by the motor carrier which is registered in this state and operating entirely in interstate commerce. A motor carrier shall pay a fee

of only \$50.00 for each self-propelled motor vehicle operated by or on behalf of the motor carrier if the motor carrier begins operation of the vehicle after June 30 and has not previously paid a fee under this subsection for that vehicle.

(3) The commission may issue a temporary 72-hour permit for the operation of a vehicle subject to rules and conditions of the commission at a fee of \$10.00, which is in place of any other fee otherwise required under this section. The commission shall reserve the authority to deny or curtail the use of temporary permits authorized by this section.

(4) A motor carrier shall not operate any motor vehicle upon or over the highways of this state, except as otherwise provided in this act, while any of the fees imposed by this act remain unpaid. The commission is prohibited from extending the time of payment or permitting the operation while the delinquency continues.

(5) Motor carriers subject to this act shall not be required to pay the fee on operations of vehicles within the area described in section 2(1)(a) of article V.

(6) The commission shall cooperate with other state departments involved with the registration of commercial motor vehicles to implement a system whereby owners or drivers of commercial motor vehicles can obtain registration plates, decals, or tabs and pay the required fees at a single designated location, rather than at multiple locations.

ARTICLE V

Sec. 2. (1) This act shall not apply to any of the following:

(a) A vehicle operated entirely within a city or village of this state; or to a motor carrier of property whose operations may extend a distance of not more than 8 miles beyond the boundary of a city or village having a population of less than 500,000, if the origin and destination of the property being transported is within an 8-mile radius of the city or village. The territory within the external corporate limits of a city, even though it includes and embraces the area of 1 or more separately organized and existing cities, shall be considered a single city. Notwithstanding any other provision of this subdivision, a certificate or permit issued under this act is required for the operation of a vehicle of a motor carrier, other than a vehicle exempted under subdivisions (b) to (p), in the transportation of property between a city having a population of 500,000 or more and a city or village located within the commercial zone of a city having a population of 500,000 or more, or between cities or villages within that commercial zone. As used in this subdivision, "commercial zone" means the area within an 8-mile radius of a city having a population of 500,000 or more and includes all cities and villages, any part of which are located within that 8-mile radius.

(b) A vehicle owned or operated by the state or the United States, or by a state or federal corporation, agency, or instrumentality.

(c) A vehicle owned or operated by an incorporated city, village, or school district, or by a county or township in the state or by a corporation, agency, or instrumentality of the state, for governmental purposes.

(d) A vehicle used exclusively for carrying United States mail.

(e) A vehicle used for the transportation of farm products, including livestock, when transported by other than the owner, from the farm to the market in the raw state, or used for the transportation of milk from the farm to milk stations, or trucks owned by a farmer bearing a farm truck license issued under section 801(1)(c) of the Michigan vehicle code, Act No. 300 of the Public Acts of 1949, as amended, being section 257.801 of the Michigan Compiled Laws, when being used by the farmer in hauling farm produce, livestock, or farm equipment, and supplies for other farmers for remuneration in kind or in labor, but not for money.

(f) A vehicle used for the transportation of fruits, eggs, poultry, fish and seafood, grain, vegetables, seeds, nursery stock, horticultural products, and sugar beets. This subdivision shall not exempt a vehicle transporting the commodities described in this subdivision in other than the raw state.

(g) A vehicle used for occasional accommodative service including seasonal transportation of perishable commodities even though the cost of the accommodative service and seasonal transportation of perishable commodities may be paid by the person accommodated.

(h) A dump truck having not more than 4 axles or any dump vehicle moving directly to and from a public highway, airport, or railroad or bridge construction site, when used for the transportation of sand, gravel, slag, stone, limestone, crushed stone, marl, pebbles, cinders, bituminous aggregates, asphalt, blacktop, dirt, or fill material, or any dump vehicle transporting commodities generally transported in the dump vehicle operating within an 8-mile radius of a city having a population of 500,000 or more and including all other cities or villages, any part of which is located within the 8-mile radius.

(i) A vehicle used to transport a vehicle that is temporarily disabled from a point within an 8-mile radius of a city having a population of 500,000 or more and including all other cities or villages, any part of which is located within the 8-mile radius to another point within that radius.

(j) A vehicle used for the transportation of pulpwood, logs, wood chips, bark, and sawdust when the vehicle is being used to move the commodities from a forest, woodlot, cutting site, sawmill, or chipping site to a market or railroad siding of not more than a 140-mile radius from the place where the vehicle is loaded.

(k) A vehicle having a manufacturer's rating of not more than 1-1/2 tons capacity or the equivalent gross vehicle weight rating used for the transportation of newspapers.

(l) A vehicle towing a disabled motor vehicle from the location at which it was disabled to another location or a vehicle towing a motor vehicle involved in an accident from the location of the accident to another location.

(m) A vehicle used in the transportation of livestock, poultry feed, chemicals, pesticides, and fertilizers on movements directly to a farm for use in agricultural production.

(n) A vehicle used for the transportation of property for compensation provided by a person who is a member of a corporate family for other members of the corporate family, if all of the following conditions are met:

(i) The parent corporation notifies the commission annually of its intent or the intent of 1 of its subsidiaries to provide the transportation.

(ii) The notice described in subparagraph (i) contains a list of participating subsidiaries and an affidavit that the parent corporation owns directly or indirectly a 100% interest in each of the subsidiaries.

(iii) The notice described in subparagraph (i) is accompanied by a fee of \$100.00.

(iv) The commission publishes the notice described in subparagraph (i) in the biweekly bulletin.

(v) A copy of the notice described in subparagraph (i) is carried in the cab of all vehicles conducting the transportation.

(o) A vehicle transporting animal and poultry feed or feed ingredients to sites of agricultural production or to a business enterprise engaged in the sale to agricultural producers of goods used in agricultural production.

(p) A vehicle transporting recyclable materials to or from a resource recovery facility. The terms "recyclable materials" and "resource recovery facility" have the meanings attributed to these terms in the solid waste management act, Act No. 641 of the Public Acts of 1978, being sections 299.401 to 299.437 of the Michigan Compiled Laws, except that the term recyclable materials does not include industrial scrap metal. This subdivision shall not be construed to exempt from this act a vehicle transporting new products.

(2) As used in subsection (1)(n), "corporate family" means a group of corporations consisting of a parent corporation and all subsidiaries in which the parent corporation owns directly or indirectly a 100% interest.

(3) None of the exemptions in this section, where applicable, apply to a vehicle entering this state from another state, foreign country, or subdivision of a state or foreign country that does not extend similar exemptions to vehicles from this state entering the state, foreign country, or subdivision.

Sec. 6a. (1) This section applies to all matters before the commission for which the commission has jurisdiction under article II.

(2) A change shall not be made in any general rate nor shall a change be made in any rate, fare, charge, or classification, or any rule or practice affecting the rate, fare, charge, or classification, or the value of the service thereunder, specified in any effective tariff of any motor carrier for hire, except for 30 days' notice, or 45 days' notice in a general rate increase or reduction, to the commission and to the public, filed and posted in accordance with section 6 of article II except that changes in rates, fares, charges, or classifications or the value of service thereunder made pursuant to section 7a of article II shall be made on 10 days' notice. The notice shall plainly state the change proposed to be made and the time when the change will take effect. The commission may, in its discretion, after good cause shown, allow changes upon less time than the notice specified in this subsection or modify the requirements in this section in respect to publishing, posting, and filing of tariffs, either in particular instances or by general order applicable to special or peculiar circumstances or conditions.

(3) Upon the filing with the commission by any motor carrier for hire of any tariff or supplement showing any change in rates, fares, charges, or classification, or any rule or practice affecting the rate, fare, charge, or classification, or the value of the service thereunder, the commission, upon notice to the motor carrier, may postpone the date when the new rate, fare, charge, classification, rule, or practice shall become effective to a time not to exceed 60 days to give the commission opportunity to investigate the reasonableness of the proposed rate, fare, charge, classification, rule, or practice. The commission may proceed with an investigation upon at least 10 days' notice to the motor carrier as to the reasonableness of the rate, fare, charge, classification, rule, or practice. The investigation shall take precedence over all matters of a different nature pending before the commission under this act.

(4) Except in an emergency satisfactorily shown to the commission, a petition for suspension shall not be considered unless filed at least 10 days before the effective date of the proposed change in rate, charge, fare, classification, rule, or practice. The petition or order shall be definite and specific and a copy shall be served upon all motor carriers affected at the time of filing or issuance. However, service upon an agent who has issued and filed a tariff or schedule in behalf of a motor carrier or carriers shall be considered to be due and sufficient service upon the motor carrier or carriers. The petition or order must recite the specific facts relied upon to establish that failure to postpone will work a special hardship on the petitioner, that cannot otherwise be avoided.

(5) At any hearing involving a change in a rate, fare, charge, classification, rule, or practice, the burden of proof shall be upon the carrier to show that the proposed changed rate, fare, charge, classification, rule, or practice is just and reasonable.

Sec. 6b. (1) This section applies to all matters before the commission for which the commission has jurisdiction under article II. If 2 or more motor carriers desire to jointly consider and initiate rates, fares, classifications, divisions, allowances, charges, or rules of the motor carriers, those joint considerations and initiations shall only be conducted pursuant to an agreement which is submitted to, and approved by, the commission under rules promulgated by the commission. The commission shall by order approve the agreement if it finds that it conforms with the requirements of subsections (2) to (9). The commission shall not eliminate collective rate-making by application of its authority under this section.

(2) The motor carriers who are parties to an agreement approved by the commission under this section shall submit proposed rates, fares, classifications, divisions, allowances, charges, or rules of the motor carriers to the commission. The proposed rates, fares, classifications, divisions, allowances, charges, or rules of the motor carriers shall not be effective unless they are submitted to the commission and are permitted under the provisions of this act and the rules promulgated under this act.

(3) Each conference, bureau, committee, or other organization established pursuant to an agreement approved by the commission under this section shall maintain those accounts, records, files, and memoranda and shall submit to the commission information and the reports as prescribed by the commission. All the accounts, records, files, and memoranda shall be subject to inspection by the commission or its authorized representative.

(4) Each motor carrier which is a party to an agreement described in this section shall file with the commission a verified statement that specifies its name, its mailing address, and the telephone number of its main office; the names and addresses of each of its affiliates; the names, addresses, and affiliates of each of its officers and directors; the names, addresses, and affiliates of each person, who together with an affiliate owning or controlling any debt, equity, or security interest in it has a value of at least \$100.00. As used in this subsection:

(a) "Affiliate" means a person controlling, controlled by, or under common control or ownership with another person.

(b) "Ownership" means equity holdings in a business entity of at least 5%.

(5) A meeting of a conference, bureau, committee, or other organization established pursuant to an agreement approved by the commission under this section which includes motor carrier tariffs, rates, fares, or charges as matters of discussion or decision shall be open and all persons shall be allowed to attend meetings.

(6) Notice of the meeting described in subsection (5) must be posted at the principal place of business of the organization and at the commission at least 8 working days before the date of the meeting. The notice must contain the name of the organization, its address, its telephone number, a meeting docket or agenda, and the place, date, and time of the meeting.

(7) Minutes of a meeting described in subsection (5) shall be kept by the organization and shall become available to the general public and shall be submitted to the commission on or before the eighth working day after a meeting. Minutes of other meetings shall be maintained by the organization for 1 year after the meeting. Minutes for a meeting described in subsection (5) shall contain the date, time, and place of meeting; members present; members absent; and decisions taken. Votes on rates, fares, charges, or tariff items shall be recorded. Notice of other meetings described in subsection (5) shall be sent to the commission on or before the eighth working day after the meeting and shall contain the date, time, and place; members present; members absent; and purpose of meeting.

(8) The commission shall not approve under this section any agreement between or among carriers of different modes unless the agreement is limited to matters relating to transportation under joint rates or over through routes.

(9) The commission shall not approve under this section any agreement which establishes a procedure for the determination of any matter through joint consideration unless it finds that under the agreement there is accorded to each party the free and unrestrained right to take independent action after any determination is arrived at through the procedure.

(10) The commission, upon complaint by a shipper or receiver of freight transported under jointly considered and initiated rates and charges or by a carrier party to an agreement approved by the commission under this section, may investigate and determine whether any agreement previously approved by it under this section has been violated in a manner contrary to the transportation policy set forth in section 2 of article I. After investigation, the commission shall, by order, direct the parties to the agreement to cease and desist from violations of that agreement and this section if it finds the action necessary to assure conformity with the transportation policy. The effective date of any cease and desist order shall be postponed for a period which the commission determines to be reasonably necessary to avoid undue hardships. Any commission decision issued after December 28, 1982 which has terminated a previously approved agreement for reasons or on terms inconsistent with this section shall be null and void.

(11) An order shall not be entered under this section unless interested parties have been afforded reasonable notice and opportunity for hearing.

Sec. 10a. (1) The lease, contract, or arrangement under which a holder augments his or her equipment shall specify the period for which the equipment is to be operated, which shall not be less than 30 days, and shall include a provision that the vehicle has, within the immediately preceding 12 months, passed an inspection pursuant to the requirements of the motor carrier safety act, Act No. 181 of the Public Acts of 1963, being sections 480.11 to 480.21 of the Michigan Compiled Laws, and 49 C.F.R. part 396.

(2) The lease, contract, or arrangement shall specify the compensation to be paid by the lessee or party to the contract or arrangement for the rental or use of the equipment.

(3) The lease, contract, or arrangement shall specify the time and date or the circumstance on which the contract, lease, or other arrangement begins, and the time or circumstance on which it ends.

(4) The lease, contract, or arrangement shall vest in the holder of the vehicle exclusive possession and control of the vehicle for the entire term of the lease, contract, or arrangement.

(5) The lease, contract, or arrangement shall provide that any operation of the vehicle shall be conducted under the exclusive supervision, direction, and control of the holder.

(6) The lease, contract, or arrangement shall provide that the vehicle, at all times, while being operated under the lease, contract, or arrangement, shall be operated only by persons who are employees of the holder who stand in relation to the holder as employee to employer.

(7) The lease, contract, or arrangement shall be in the manner, form, and further content as the commission by rule provides.

(8) The lease, contract, or arrangement shall be executed in quadruplicate; the original shall be filed with the commission. One copy shall be retained by the authorized motor carrier in whose service the equipment is to be operated, 1 copy shall be retained by the owner of the equipment, and 1 copy shall be carried on the equipment specified in the lease, contract, or arrangement during the entire period of the contract, lease, or other arrangement.

(9) Nothing in this section shall apply to the interchange with other certificated motor common carriers or the multiple certification of motor carrier equipment when specific approval and authority to interchange the equipment has been or is granted by the commission.

(10) The provisions of subsection (1) shall not apply to or be required of or between movers of household goods, when the equipment is used to transport household goods as defined by the commission.

Sec. 14. (1) Upon complaint in writing by any person, firm, corporation, association, mercantile, agricultural or manufacturing society, or by any body politic, municipal organization, common carrier, or motor carrier, that any of the motor common carrier rates, fares, charges, or classifications, or any joint rate or rates of any motor common carrier are, in any respect unreasonable or unjustly discriminatory or otherwise in violation of this act, or that any practice whatsoever affecting the transportation of property by any such motor common carrier or any service in connection therewith is in any respect unreasonable or unjustly discriminatory, or that any service of such motor common carrier is inadequate, or that this act or any order, rule, or practice established by the commission applicable to the motor common carrier, or motor common carrier charges filed with the commission by the motor common carrier, in any respect has been violated or deviated from, or is being violated or deviated from by such motor common carrier; or upon a complaint against any motor contract carrier that this act or any order, rule, or practice established by the commission applicable to the motor contract carrier has been violated or deviated from, or is being violated or deviated from, the commission shall notify the parties complained of that complaint has been made, and shall furnish a copy of the complaint with the notice, and 20 days after the notice has been given, the commission may proceed to investigate the complaint as provided in this section. Only the commission, on its motion, may bring a complaint against a contract carrier for predatory rates, practices, or rules pursuant to section 6(2) of article III. Before proceeding to make the investigation, the commission shall give the motor carrier and the complainants at least 10 days' notice of the time and place when and where the matters will be considered and determined, and the parties shall be entitled to be heard and shall have process to enforce the attendance of witnesses. If upon investigation of a motor common carrier, any matters complained of are found to be in violation of this act, the commission shall determine and by order fix and order substituted therefor the practice, service, or charges as shall conform to this act and the rules of the commission applicable to the motor common carrier. If upon investigation of a motor contract carrier, any matters complained of are found to be in violation of this act, the commission shall determine and by order fix and order substituted therefor the practice, service, or minimum rate as shall conform to this act and the rules of the commission applicable to the motor contract carrier. The order shall further provide that the parties complained of shall cease and desist from the violation and conform to the terms of the order. The commission shall cause a certified copy of each order to be delivered to the parties affected thereby, which order shall of its own force take effect and become operative 20 days after the service of the order. All motor common carriers to which the order applies shall on or before the date when the order becomes effective, make changes in schedules on file as shall be necessary to make the same conform to the order. All motor contract carriers to which the order applies shall, on or before the date the order becomes effective, conform their practice, service, or minimum rate to the order. Certified copies of all other orders of the commission shall be delivered to the parties affected in like manner, and, unless otherwise prescribed in this act, shall take effect within the time thereafter as the commission prescribes.

(2) When the commission believes that any provision in this act or any rule or order of the commission made in pursuance of this act, has been or is being violated, or that any charges have been made or collected or service performed in violation thereof, and that an investigation relating thereto should be made, the commission may on its own motion or on the application of anyone investigate the suspected violation. Before making the investigation, the commission shall present to the parties alleged to be guilty of the violations a statement in writing setting forth the matters to be investigated. Thereafter, on 10 days' notice to the parties of the time and place of the investigation, the commission may proceed to investigate the matters complained of in the same manner, and make like orders, as if the investigation had been made upon complaint. An investigation, inquiry, or hearing which the commission has power to undertake or to hold may be undertaken or held by or before any commissioner or any employee of the commission when so directed by the commission or its chairperson. The commissioner or employee shall submit findings of fact and conclusions of law to the commission. If the findings of fact and conclusions of law are approved and confirmed by the commission and ordered filed in its office, they shall be the decision and the order of the commission. All investigations, inquiries, or hearings of a commissioner or an employee are considered as the investigation, inquiry, and hearing of the commission.

Sec. 14a. (1) A motor common carrier may not commence operations under permanent authority granted to it by the commission for 20 days after issuance of the order, nor before a certificate has been issued.

(2) A motor contract carrier may not commence operations under permanent authority granted to it by the commission before a permit has been issued.

ARTICLE VI

Sec. 1. The commission shall supervise and regulate the safety of operations of each motor carrier. The commission may promulgate rules for the purpose of promoting safety upon the highways and the conservation of their use.

Sec. 2. Upon request of the commission, the department of state police shall review the operation of an intrastate motor carrier to determine whether the carrier is in compliance with applicable safety related laws and rules and issue a report within 60 days after completion of its review to the commission.

Sec. 3. The public service commission, in cooperation with the department of state police, will develop and implement by rule or order a motor carrier safety rating system within 12 months after the effective date of this article. In the rating system, an unsatisfactory rating shall not be imposed without an on-site safety review being conducted by the department of state police.

This act is ordered to take immediate effect.

Secretary of the Senate.

Co-Clerk of the House of Representatives.

Approved _____

Governor.

