




Senate Fiscal Agency  
P. O. Box 30036  
Lansing, Michigan 48909-7536



BILL ANALYSIS

Telephone: (517) 373-5383  
Fax: (517) 373-1986  
TDD: (517) 373-0543

Senate Bill 350 (as introduced 3-24-05)  
Sponsor: Senator Valde Garcia  
Committee: Commerce and Labor

Date Completed: 9-19-06

### **CONTENT**

**The bill would amend the Motor Carrier Act to add Article I-A ("Household Goods Consumer Protection") which would apply to the movement of household goods throughout the State; and to repeal Section 7c of Article II (Common Motor Carriers), which currently regulates the transportation of household goods.**

The bill also would amend Article V (Policy of State, Exemptions, Limitations, General Regulations and Procedure; Penalties; Miscellaneous) to specify that movers of household goods would be regulated as provided for under Article I-A.

Under Article I-A, "household goods" would mean any of the following:

**Article I-A would do all of the following:**

- **Prohibit a person from engaging in or offering to engage in the business of being a carrier of household goods unless licensed under the article by the Public Service Commission (PSC).**
- **Require the payment of application and license fees, and the disclosure of background information.**
- **Require a license applicant to have general liability insurance and cargo insurance.**
- **Require the PSC to list reasons for denial of licensure, and allow denied applicants either to correct incomplete applications or to apply for a limited or probationary license.**
- **Regulate estimates for the cost of service; require a carrier to offer options for reimbursement for damaged items; and require a written contract between a carrier and a consumer.**
- **Establish delivery and storage requirements.**
- **Prohibit certain carrier actions.**
- **Specify PSC responsibilities regarding enforcement of Article I-A.**
- **Prescribe sanctions and remedies for violations of the article.**

- Personal effects and property used or to be used in a dwelling when a part of the equipment or supply of that dwelling, but not property moving from a factory or store unless the owner has purchased the property with intent to use in his or her dwelling and the property is transported at the request of, and the transportation charges are paid to the carrier by, the householder.
- Furniture, fixtures, equipment, and the property of stores, offices, museums, institutions, hospitals, or other establishments when a part of the stock, equipment, or supply of the stores, offices, museums, institutions, hospitals, or other establishments except for the stock-in-trade of any establishment, whether consignor or consignee, other than used furniture and used fixtures, unless transported incidental to moving of the establishment or a portion of the establishment from one location to another.
- Articles, including objects of art, displays, and exhibits, that because of their unusual nature or value, require the specialized handling and equipment usually employed in moving household goods.

## Scope of Article I-A; Licensure

The bill specifies that Article I-A would apply to the movement of household goods within Michigan and Articles I, II, III, IV, and V of the Act would not apply to carriers regulated under Article I-A, except as otherwise provided in that article. (Currently, the PSC does not have jurisdiction under the Act over a vehicle operated entirely within a city or village, or over a motor carrier of property whose operations may extend not more than eight miles beyond the boundaries of a city or village with a population under 500,000. A certificate or permit is required under the Act, however, for the operation of a nonexempt motor carrier vehicle transporting property between a city with a population of 500,000 or more and a city or village located within the commercial zone (an eight-mile radius) of a city with a population of 500,000 or more, or between cities or villages within that zone.)

Under the bill, a person could not engage in or offer to engage in the business of being a carrier of household goods unless licensed under Article I-A. The PSC would have to issue a license to a carrier seeking licensure as a mover of household goods who complied with all of the following:

- Applied in the manner provided for by the PSC and disclosed the background information required under Article I-A.
- Submitted a \$500 application fee and a \$300 license fee.
- Was of good moral character.
- Paid the per-truck fee as provided in Section 2 of Article IV of the Act (MCL 478.2).

("Good moral character" would mean that term as defined in Public Act 381 of 1974, i.e., the propensity on the part of the person to serve the public in the licensed area in a fair, honest, and open manner (MCL 338.41). Section 2 of Article IV generally requires motor carriers to pay a \$100 annual fee per vehicle.)

As part of the licensure process, the applicant would have to disclose the following regarding the applicant, or a shareholder or person with an ownership interest in the applicant, in a manner provided for by the PSC:

- Any felony convictions in Michigan or any other state.
- Any misdemeanor convictions involving fraud, embezzlement, larceny, or misrepresentation.
- Any failure to satisfy any civil fines or administrative fines imposed by a local, state, or Federal governmental body or agency.
- Any pending criminal or administrative proceedings before a local, state, or Federal governmental body or agency.
- Any judgments or administrative findings or orders entered or filed by a state or Federal governmental body or agency.
- Any judgments or orders entered or filed regarding a violation of the Michigan Consumer Protection Act or the consumer protection provisions of Federal regulations administered by the Federal Motor Carrier Safety Administration of the U.S. Department of Transportation (49 CFR, Parts 375 and 377).
- Proof of compliance with the insurance requirements of Article I-A.
- Proof of compliance with the safety requirements imposed by the PSC by rule and, upon the PSC's request, a finding by the Department of State Police that the carrier was in compliance with the Motor Carrier Safety Act.

Upon denying an application for licensure as a carrier of household goods, the PSC would have to list, specifically, in writing the reasons for the denial. If the denial were based upon failure to make certain disclosures or complete the entire application, the PSC would have to indicate specifically those failures and allow the applicant a reasonable time to correct them. In the case of an applicant who completed the application and made all of the required disclosures but was denied licensure for specific reasons described by the PSC, the applicant could apply in writing to the PSC for a limited or probationary license. That request would have to be accompanied by an additional application fee of \$100.

The PSC could issue a limited or probationary license to an applicant that it determined was likely to serve the public in a fair and honest manner under the circumstances. The PSC could not issue a limited or probationary license to an applicant that did not comply with the article's insurance and safety requirements. The PSC would have to consider an

application for a limited or probationary license and respond to the applicant within 30 days after it was submitted. The PSC would have to issue a written order describing the reasons for the grant or denial. A limited or probationary license would be renewable in the same manner as a regular license.

In deciding whether to issue or deny a license, the PSC would have to seek to promote all of the following:

- Safety on the highways.
- Competition among movers.
- Entrepreneurship in the household goods industry.
- The use of all methods of pricing household goods moves, including the use of hourly, weight and distance, and piece methods of charging.
- Consumer protection.

#### Insurance Requirements

The bill would require a person seeking a license as a carrier moving household goods to have general liability insurance coverage required by the PSC under Section 9 of Article V of the Act and any rules promulgated under that section, insurance as required by law for employers or other people doing business in Michigan, and cargo insurance of the type and in the amount required under the bill. (Section 9 of Article V gives the PSC full power and authority to make insurance or bond requirements under uniform regulations as it deems necessary adequately to protect the interests of the public.)

The bill also would require a person seeking a license to have cargo insurance in the amount of at least \$50,000 per shipment.

#### Estimates, Replacement Costs, & Contracts

Before executing a contract for moving household goods, a carrier licensed under Article I-A would have to make a written estimate of the total cost of the move. Carriers would have the option of providing a binding or nonbinding estimate to the shipper. A place would have to be provided on the estimate form for shippers to initial their understanding that they were agreeing to either a binding or a nonbinding estimate of pricing. The estimate could be made using any method of pricing, including

hourly charges, piece charges, or weight and distance charges, and would have to include the method for computing reimbursement to the consumer for broken or damaged items. Any additional charges would have to be stated separately and itemized on the estimate. Binding and nonbinding estimates would have to describe clearly the shipment and all services to be provided and would have to be retained by the carrier as an addendum to the bill of lading. Movers of household goods furnishing nonbinding estimates would have to enter the estimated charges on the bill of lading. The estimate would have to contain a separate place on it for the consumer to initial or sign an acknowledgment of receipt of the consumer rights brochure described in the bill.

The carrier would have to offer the consumer both of the following choices, attached to or made as a separate section of the estimate, to be signed or initialed by the consumer, noting his or her choice, regarding broken or damaged items:

- Depreciated value, reimbursing the depreciated value of the item or not less than \$2.25 per pound.
- Replacement value, reimbursing the replacement value of the item or not less than \$4 per pound.

The bill would require a written contract to be provided to the consumer. The contract would have to be signed and dated by the parties and include at least all of the following:

- The name, telephone number, and address where the carrier's employees were available during normal business hours.
- The date the contract was prepared and the proposed date of the move.
- The name and address of the consumer, the addresses where the items were to be picked up and delivered, and a telephone number where the consumer could be reached.
- An itemized breakdown and description and estimated total of all costs for all services.
- The acceptable forms of payment.

A carrier could combine the estimate and contract into one document as long as it complied with the bill. A contractual

provision that contravened the provisions of the bill would be voidable by the consumer.

### Delivery & Storage

Under Article I-A, a carrier would have to deliver and relinquish the household goods after payment of the amount in the estimate. The carrier could place the household goods in storage if payment were not made according to the contract.

Upon execution of a contract for moving household goods based upon a nonbinding estimate, if the cost of moving the goods exceeded the amount in the written nonbinding estimate, the carrier could seek additional payment after delivery of the goods upon the expiration of 30 days after the delivery.

Upon execution of a contract for moving household goods based upon a binding estimate, the estimate would constitute the total charges the carrier could collect from the consumer. Upon payment of the binding estimate, further collection of payments would not be allowed. A carrier could seek additional payment from the consumer for storage costs, however, if payment were not made according to the contract.

### Licensee Prohibitions

A person licensed under Article I-A could not do any of the following:

- Knowingly make a false statement, representation, or certification of any application, document, or record submitted under Article I-A.
- Misrepresent any of the following: a contract for service, bill of lading, or inventory household goods in the estimate; the time frame or schedule for delivery or storage of household goods; the price, size, nature, extent, qualities, or characteristics of moving or other services offered; the nature or extent of other goods, services, or amenities offered; or a consumer's rights, privileges, or benefits.
- Fail to honor or comply with all the provisions of a contract for services regarding the consumer's rights, benefits, and privileges under that contract.
- Withhold delivery or in any way hold household goods in storage against the expressed wishes of the consumer, if

payment had been made as described in the contract or estimate.

- Seek, solicit, or include in any contract a provision purporting to waive or limit any right or benefit provided to consumers under the Act.
- Advertise or solicit business unless the carrier's business address were clearly disclosed.
- Engage in any act that constituted fraud, misrepresentation, or failure to disclose a material fact in a transaction under Article I-A.
- Refuse or fail after notice to produce any document, record, or information required to be disclosed or produced under the Act.
- Knowingly make a materially false statement in response to any request or investigation conducted by the PSC.

### PSC Responsibilities

The PSC could promulgate rules to administer and enforce Article I-A, and could issue orders to enforce the article.

The PSC would have to develop a consumer rights brochure to be provided to carriers licensed under Article I-A for distribution to consumers.

### Violations, Sanctions, & Remedies

A person who violated Article I-A, a rule promulgated under it, or an order issued by the PSC under the article would be subject to one or more of the following after notice and opportunity for a hearing under the Administrative Procedures Act:

- Suspension or revocation of a license issued under Article I-A or denial of an application for licensure.
- A consent order.
- Probation or limitation of a license.
- Issuance of a cease and desist order.
- Restitution.
- An administrative fine of up to \$5,000 per offense.

A consumer could institute an action in a court of competent jurisdiction for damages or equitable relief regarding a violation of Article I-A by a licensee.

The PSC could institute an action in a court of competent jurisdiction for damages, equitable relief regarding a violation of

Article I-A by a licensee, a judgment or final administrative order for restitution on behalf of a consumer, or the collection of any civil or administrative fine imposed under the article. The PSC could institute an action in a court of competent jurisdiction for a civil fine of up to \$5,000 for a violation of the article by a licensee.

A person who violated Article I-A would be guilty of a misdemeanor and would have to be imprisoned for up to 90 days, fined up to \$10,000, or both.

The bill specifies that the remedies and penalties in Article I-A would be cumulative and relief under one remedy would not bar relief under any other remedy.

### Repeal

Under Section 7c of Article II, which the bill would repeal, a motor common carrier providing transportation of household goods subject to jurisdiction of the PSC may establish a rate for the transport of household goods that is based on the carrier's written, binding estimate of charges for providing such transportation, which the shippers must pay for the services included in the estimate. In establishing the rate, the carrier is subject to certain provisions contained in the Act, including those governing general tariff requirements. A rate must be available on a nonpreferential basis to shippers and may not result in charges to shippers that are predatory.

Section 7c requires binding estimates to be furnished in writing to the shipper or other person responsible for payment of the freight charges. The carrier must retain a copy of each estimate as an addendum to the bill of lading. All estimates must indicate clearly on their face that an estimate is binding on the carrier and that the charges shown are the charges that will be assessed for the identified services. Binding estimates must describe clearly the shipment and all services to be provided.

Under Section 7c, motor common carriers that transport household goods may provide nonbinding estimates of the approximate costs that will be assessed for the service. Nonbinding estimates must be reasonably accurate, and estimates of approximate costs are not binding on the carriers that provide estimates. The final charges on

shipments moved on nonbinding estimates must be those appearing in the carriers' tariffs applicable to the transportation. Nonbinding estimates, if provided, must be furnished without charge and in writing to the shipper or other person who is responsible for paying the freight charges. The carrier must retain a copy of each estimate as an addendum to the bill of lading, and each estimate must indicate clearly on its face that it is not binding on the carrier and that charges shown are approximate for the services identified in the estimate. Nonbinding estimates must describe clearly the shipment and all services to be provided. Motor common carriers furnishing nonbinding estimates must enter the estimated charges on the bill of lading.

Section 7c specifies that upon delivery of a collect-on-delivery shipment for which a nonbinding estimate of the approximate costs has been furnished, the carrier, upon request of the shipper, must relinquish possession of the shipment upon payment of not more than 110% of the estimated charges and must defer demand for payment of any remaining charges for 30 days following the date of delivery, unless the shipment is delivered to a warehouse for storage at the shipper's request.

MCL 479.2 et al.

Legislative Analyst: Patrick Affholter

### **FISCAL IMPACT**

This bill would change the regulatory requirements for household goods movers. The bill would include a new \$500 application fee for a carrier and also increase the license fee from \$50 to \$300. According to the Public Service Commission, in 2005 the current fee structure generated \$120,800 through the registration of 167 carriers and 1,739 vehicles. Under the bill, assuming that carriers were required to reapply and obtain licenses under the new structure, the revenue would increase by \$125,250 to an estimated \$246,050 in the first year when application fees would be levied under the new system. In addition, local movers who are currently exempt would be required to obtain licenses. This has the potential perhaps to double the number of licensees, providing additional revenue of approximately \$250,000 in the

first year. Ongoing license revenue from licensed household movers is estimated at approximately \$325,000 annually, an increase of approximately \$204,300. This additional revenue would be used to cover some of the increased costs of administering the Act, including reviewing applicants, granting probationary or temporary licenses, and developing a consumer rights brochure. Any remaining revenue would be transferred to the Department of State Police to cover the cost of enforcement activities.

The bill also includes authorization for the Public Service Commission to assess an administrative fine of up to \$5,000 against a licensee found to be in violation of the Act. The amount of revenue that would be generated from this fine would depend on the number of violators assessed. Revenue from administrative fines would go to the General Fund.

The bill's criminal penalties would have an indeterminate fiscal impact on local government. There are no data to indicate how many offenders would be convicted of the proposed offense. Local governments would incur the costs of incarceration in local facilities, which vary by county. Additional penal fine revenue would benefit public libraries.

Fiscal Analyst: Lindsay Hollander  
Elizabeth Pratt  
Maria Tyszkiewicz

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