

**CHAPTER 37**

**S.B. No. 1313**

**AN ACT**

relating to the regulation of motor carriers; providing penalties.

*Be it enacted by the Legislature of the State of Texas:*

**SECTION 1.** Section 1, Chapter 314, Acts of the 41st Legislature, Regular Session, 1929 (Article 911b, Vernon's Texas Civil Statutes), is amended by amending Subsections (g) and (h) and adding Subsection (k) to read as follows:

(g) The term “motor carrier” means any person, firm, corporation, company, copartnership, association or joint stock association, and their lessees, receivers, or trustees appointed by any court whatsoever owning, controlling, managing, operating, or causing to be operated any motor-propelled vehicle used in transporting property for compensation or hire over any public highway in this state, where in the course of such transportation a highway between two or more incorporated cities, towns or villages is traversed.

Provided, that the term “motor carrier” as used in this Act shall not include, and this Act shall not apply to motor vehicles engaged in the transportation of property for compensation or hire between points:

- (1) Wholly within any one incorporated city, town or village;
- (2) Wholly within an incorporated city, town or village and all areas, incorporated or unincorporated, wholly surrounded by such city, town or village;
- (3) So situated that the transportation is performed wholly within an incorporated and immediately adjacent unincorporated area without operating within or through the corporate limits of more than a single incorporated city, town or village, except to the extent provided in (2) above; or
- (4) Wholly within the limits of a base incorporated municipality and any number of incorporated cities, towns and villages which are immediately contiguous to said base municipality.

Provided further, that motor carriers authorized to serve any incorporated city, town or village within the areas described in (2), (3), and (4) above, except carriers of commodities in bulk in tank trucks and all specialized motor carriers, may perform service for compensation or hire between all points within the areas described in (2), (3), and (4) above, on the one hand, and, on the other, authorized points beyond such areas without a certificate or permit authorizing service at all points within such areas when such transportation is incident to, or a part of, otherwise regulated transportation performed under a through bill of lading.

Provided further, that after notice and public hearing the Railroad Commission of Texas is hereby authorized, except as to operations of carriers of commodities in bulk in tank vehicles and all specialized motor carriers, from time to time and where necessary, to define and prescribe, and where necessary shall prescribe, commercial zones adjacent to and commercially a part of any specified incorporated municipality and within which operations as a motor carrier may be performed without a certificate or permit authorizing same and within which strictly local service wholly within such commercial zone may be performed at rates and charges other than those prescribed by the Commission. *A commercial zone shall consist of one or more whole counties. A commercial zone in existence on April 1, 1993, that includes only part of a county is hereby enlarged to include all of such county.* The Commission in so determining and prescribing the limits of any commercial zone shall take into consideration its powers and duties otherwise to administer and enforce the Motor Carrier Act considered in the light of the economic facts and conditions involved in each commercial zone or proposed commercial zone, particularly the effect that unregulated transportation for compensation or hire within such zone or proposed zone has had or may have upon fully regulated motor carriers operating in regulated intrastate commerce to, from and within such commercial zone. The Railroad Commission is empowered to prescribe such rules and regulations for operation of such transportation as the Commission deems in the public interest.

(h) The term “contract carrier” means any motor carrier as hereinabove defined transporting property for compensation or hire over any highway in this State other than as a common carrier or a specialized motor carrier.

(k) “Truckload quantity” means a single shipment that:

- (1) is transported for a single consignor who has exclusive use of the transporting vehicle; and
- (2) weighs 25,000 pounds or more or constitutes a capacity load under tariffs, rules, or regulations adopted by the Commission.

SECTION 2. Subdivision (4), Subsection (a), Section 4, Chapter 314, Acts of the 41st Legislature, Regular Session, 1929 (Article 911b, Vernon’s Texas Civil Statutes), is amended to read as follows:

(4) Notwithstanding any other provision of this Act or any existing Commission regulation, motor carriers other than specialized motor carriers and other than contract carriers subject to Commission-prescribed tariffs governing transportation of specialized commodities shall be permitted to deviate from the prescribed base rate (i) for shipments weighing in excess of 500 pounds but less than 10,000 pounds by an amount not to exceed five percent above or below such base rate; ~~and~~ (ii) *except as provided by Item (iii)*, for shipments weighing in excess of 10,000 pounds by an amount not to exceed 25 [15] percent above or below such base rate; and (iii) *for shipments of general commodities in a truckload quantity as authorized under Section 6(c) of this Act by an amount not to exceed 40 percent above or below such base rate*; provided, that a carrier or carriers electing to so deviate shall file notice thereof with the Commission. Such proposed deviation shall become effective five days after filing and receipt by the Commission. In the event the simplified base rate is thereafter increased or decreased, such increase or decrease shall be applied to any deviation rate published under this subdivision. Provided, however, that the Commission shall promptly provide notice to the public of any deviation under this subsection and with respect to any such deviation any interested party shall have the right to petition the Commission for suspension of such deviation within 15 days of such notice on the grounds that the deviation results in predatory pricing as hereinafter defined. The deviation shall remain in effect and shall not be suspended unless the Commission, after hearing, shall determine that suspension is warranted and so orders.

SECTION 3. Subdivision (12), Subsection (a), Section 4, Chapter 314, Acts of the 41st Legislature, Regular Session, 1929 (Article 911b, Vernon's Texas Civil Statutes), is amended to read as follows:

(12) The Commission is hereby directed to stringently enforce all provisions of this Act so as to promote, encourage, and ensure a safe, dependable, responsive, and adequate transportation system for the public as a whole. To this end, in addition to all other enforcement penalties and other relief provided in Section 16 of this Act, the Commission is hereby granted full power and authority to assess administrative penalties of up to \$10,000 for violation of any provision of this Act respecting safety, certificates, or rates or any Commission rule, regulation, or order respecting safety, certificates, or rates, by any motor carrier, shipper, or other person whomsoever. *The Commission may assess against a person an administrative penalty in excess of \$10,000 if the Commission finds that the person has knowingly committed multiple violations, in which event the Commission may impose an aggregate penalty of not more than \$25,000. In determining whether a person has knowingly committed multiple violations, the Commission may consider past violations of this Act.* Such administrative penalties may be assessed by the Commission after notice and hearing pursuant to the provisions of the Administrative Procedure and Texas Register Act (Article 6252-13a, Vernon's Texas Civil Statutes) and shall be cumulative of all other remedies available under this Act. All administrative penalties so assessed and collected shall be payable to the State Treasury and credited to a fund to be known and designated as the "Motor Carrier Act enforcement fund," which fund is hereby appropriated for use by the Commission and the Department of Public Safety in stringently enforcing the safety, certificate, rate, and other provisions of this Act.

SECTION 4. Section 4, Chapter 314, Acts of the 41st Legislature, Regular Session, 1929 (Article 911b, Vernon's Texas Civil Statutes), is amended by adding Subsection (f) to read as follows:

*(f)(1) Notwithstanding any other provision of this Act, before granting an application by a disadvantaged business for a certificate, the Commission shall require that the applicant make a prima facie case that it is fit, willing, and able to perform the proposed service and to meet the requirements of this Act and the regulations the Commission adopts under this Act. If the applicant makes a prima facie case, the Commission shall grant the application unless an opposing party shows that the applicant is not fit, willing, and able to perform the proposed service and to meet the requirements of this Act and the regulations the Commission adopts under this Act. In making a determination on granting the application, the Commission may not consider evidence presented by an opposing party that:*

(A) does not show that the applicant is not fit, willing, and able to perform the service proposed and to meet the requirements of this Act and the regulations the Commission adopts under this Act;

(B) shows that an opposing party or another carrier already adequately provides or could adequately provide the proposed service; or

(C) shows that a complaint has been or will be filed against the applicant for a violation of this Act, unless the complaint is in regard to a safety violation.

(2) An application by a disadvantaged business for a certificate under this subsection takes precedence over all other applications for certificates before the Commission.

(3) A certificate awarded under this subsection may not be transferred to another person for five years after the date the certificate is awarded unless the transferee also qualifies as a disadvantaged business under this subsection. This limitation applies even if the holder of the certificate seeks to transfer the certificate because the disadvantaged business is unable to maintain financial viability.

(4) Except as provided by Subdivision (5) of this subsection, the Commission shall revoke a certificate awarded under this subsection if the Commission determines that, during the period the transfer of the certificate is restricted under Subdivision (3) of this subsection, the holder of the certificate no longer qualifies as a disadvantaged business. The Commission shall require a disadvantaged business that is awarded a certificate under this subsection to notify the Commission during the period the transfer of a certificate is restricted under Subdivision (3) of this subsection of each change of ownership of the business the Commission by rule defines as significant. The Commission may revoke the certificate of a disadvantaged business that fails to provide notice required under this subdivision.

(5) The Commission may not revoke a certificate awarded under this subsection if the holder of the certificate no longer qualifies as a disadvantaged business because of a change in ownership of the business through devise or descent.

(6) In determining whether an applicant qualifies as a disadvantaged business under this subsection, the Commission may consider the actual management or control of the applicant as well as incidents of ownership. If the Commission determines that an applicant has used any method or device to enable a person or entity that is not a disadvantaged business to qualify for a certificate under this subsection, it shall deny the applicant status as a disadvantaged business under this subsection.

(7) In this subsection, "disadvantaged business" means:

(A) a corporation formed for the purpose of making a profit in which at least 51 percent of all classes of the shares of stock or other equitable securities are owned by one or more persons who are socially disadvantaged because of their identification as members of certain groups, including African Americans, Hispanic Americans, women, Asian Americans, American Indians, Alaska natives, and Pacific islanders, who have suffered the effects of discriminatory practices or similar insidious circumstances over which they have no control;

(B) a sole proprietorship for the purpose of making a profit that is 100 percent owned, operated, and controlled by a person described by Paragraph (A) of this subdivision;

(C) a partnership for the purpose of making a profit in which 51 percent of the assets and interest in the partnership is owned by one or more persons described by Paragraph (A) of this subdivision who have a proportionate interest in the control, operation, and management of the partnership's affairs; or

(D) a joint venture in which each entity in the joint venture is a disadvantaged business under this subdivision.

SECTION 5. Chapter 314, Acts of the 41st Legislature, Regular Session, 1929 (Article 911b, Vernon's Texas Civil Statutes), is amended by adding Section 4a to read as follows:

Sec. 4a. (a) A motor carrier or other interested person may apply to establish rates, charges, and other provisions for transportation services the carrier is authorized to perform under this Act. The Commission shall prescribe the form of the application.

(b) *The application must require the applicant to identify the proposed rate, charge, or other provision to be established but may not require a justification for the change based on cost.*

(c) *The Commission shall promptly provide notice to the public of the proposed rate, charge, or other provision in a weekly publication.*

(d) *Not later than the 10th day after the date the notice is published under Subsection (c) of this section, an interested party may petition the Commission to suspend the proposed rate, charge, or other provision.*

(e) *If an interested party does not file a suspension petition under Subsection (d) of this section within the period required by that subsection, notwithstanding any other provision of law, the proposed rate, charge, or other provision takes effect on the 15th day after the date notice is published under Subsection (c) of this section without a hearing or an order of the Commission. The Commission shall publish notice of a proposed rate, charge, or other provision that takes effect under this subsection as soon as practical after its effective date.*

(f) *If a suspension petition is filed as provided by Subsection (d) of this section, the proposed rate, charge, or other provision does not take effect automatically, the Commission shall consider the application for the proposed rate, charge, or other provision in the manner otherwise provided by this Act, and the applicant has the burden of proving that the proposed rate, charge, or other provision is just, reasonable, and compensatory.*

(g) *Not later than the 30th day after the date the notice is published under Subsection (c) of this section, the Commission shall conduct a hearing and enter an interim order suspending or affirming a proposed rate, charge, or other provision for which a suspension petition has been filed as provided by Subsection (d) of this section.*

SECTION 6. Subsection (d), Section 5a, Chapter 314, Acts of the 41st Legislature, Regular Session, 1929 (Article 911b, Vernon's Texas Civil Statutes), is amended to read as follows:

(d) Before any such application shall be granted, the Commission shall hear, consider and determine said application in accordance with Subsection (e) of Section 4 and Sections 8, 9, 11, 12, 13, 13a, 14, and 15 of *this Act* [~~Chapter 277, Acts of the Forty-first Legislature, Regular Session, as amended (Article 911b, Revised Civil Statutes of the State of Texas, 1925, as amended)~~], and if the Commission shall find any such applicant entitled thereto, it shall issue a certificate hereunder on such terms and conditions as is justified by the facts; otherwise said application shall be denied. In the event an applicant meets the requirements of Subsection (e) of Section 4, as well as other requirements of this Act [~~Article 911b~~], the Commission shall grant any application for a certificate of convenience and necessity authorizing operation as a "Specialized Motor Carrier" or any other common carrier unless it is established by the substantial evidence of record considered as a whole that (1) the services and facilities of the existing carriers serving the territory or any part thereof are adequate; or (2) there does not exist a public necessity for such service, or (3) the public convenience will not be promoted by granting said application. The order of the Commission granting or denying said application and the certificate issued thereunder shall be void unless the Commission shall set forth in its order full and complete findings of fact on the issues of adequacy of the services and facilities of the existing carriers, and the public need for the proposed service. Likewise, the Commission shall have no authority to grant any contract carrier application for the transportation of any commodities *other than a general commodity in a truckload quantity authorized under Subsection (c) of Section 6 of this Act* in any territory or between any points where it is established by substantial evidence in the record as a whole that the existing carriers are rendering [~~or are capable of rendering,~~] a reasonably adequate service in the transportation of such commodities.

SECTION 7. Subsection (c), Section 6, Chapter 314, Acts of the 41st Legislature, Regular Session, 1929 (Article 911b, Vernon's Texas Civil Statutes), is amended to read as follows:

(c) No application for permit shall be granted by the Commission until after a hearing nor shall any such permit be granted if the Commission shall be of the opinion that the proposed operation of any such contract carrier will impair the efficient public service of any authorized common carrier or common carriers then adequately serving the same territory. *A contract carrier who proposes to transport a general commodity in a truckload quantity does not*

impair the efficient public service of any other authorized carrier. For purposes of this subsection, "general commodity" means a commodity other than:

(1) a commodity that requires temperature control; or

(2) a commodity for which a specialized motor carrier is required for transportation under Section 1(i) of this Act.

SECTION 8. Effective January 1, 1994, Subsection (c), Section 6, Chapter 314, Acts of the 41st Legislature, Regular Session, 1929 (Article 911b, Vernon's Texas Civil Statutes), is amended to read as follows:

(c)(1) *The Commission shall grant an application for a permit to transport a general commodity in a truckload quantity if the Commission finds that:*

(A) *the applicant has presented sufficient evidence that the applicant has entered or will enter an eligible contract with the party the applicant proposes to serve; and*

(B) *the applicant is fit, willing, and able to perform the proposed services and to meet the requirements of this Act and the regulations the Commission adopts under this Act.*

(2) *Evidence that the applicant and the party the applicant proposes to serve have a contractual relationship for interstate or local transportation service is sufficient for the Commission to determine that the parties intend to enter a contract necessary for a permit under this subsection. The Commission may give consideration to information relating to the fitness of the applicant or the applicant's ability to meet requisite safety standards.*

(3) *A motor carrier that is not a party to the application proceeding may not present evidence at the proceeding. A motor carrier does not have standing to protest the issuance of a permit under this subsection unless the protesting motor carrier shows that it has generated at least \$25,000 in annual intrastate revenue from the party the applicant proposes to serve during each of the two years preceding the date of filing of the application.*

(4) *To have a permit granted under this subsection, an applicant must make a prima facie showing that it can meet the requirements in Subdivision (1) of this subsection. If the applicant makes a prima facie showing, the Commission shall grant the permit unless a protesting motor carrier shows that the applicant is unable to meet the requirements of Subdivision (1) of this subsection.*

(5) *The Commission may not limit the number of parties or eligible contracts to be served under a permit issued under this subsection.*

(6) *In this subsection, "eligible contract" means a valid contract to provide services for compensation in an amount not less than the lesser of:*

(A) *\$12,000 a year; or*

(B) *an amount for a year the Commission adopts by rule.*

(7) *For purposes of this subsection, "general commodity" means a commodity other than:*

(A) *a commodity that requires temperature control; or*

(B) *a commodity for which a specialized motor carrier is required for transportation under Section 1(i) of this Act. [No application for permit shall be granted by the Commission until after a hearing nor shall any such permit be granted if the Commission shall be of the opinion that the proposed operation of any such contract carrier will impair the efficient public service of any authorized common carrier or common carriers then adequately serving the same territory.]*

SECTION 9. Section 6aa, Chapter 314, Acts of the 41st Legislature, Regular Session, 1929 (Article 911b, Vernon's Texas Civil Statutes), is amended to read as follows:

Sec. 6aa. The Commission is hereby vested with power and authority and it is hereby made its duty to prescribe rules and regulations covering the operation of contract carriers in competition with common carriers over the highways of this State and the Commission shall prescribe minimum rates, fares and charges to be collected by such contract carriers which shall not be less than the rates prescribed for common carriers for substantially the same service. *A contract carrier that holds a permit to transport a general commodity in a truckload quantity is subject to the rates established under Section 4(a)(4) of this Act.*

SECTION 10. Chapter 314, Acts of the 41st Legislature, Regular Session, 1929 (Article 911b, Vernon's Texas Civil Statutes), is amended by adding Section 6a to read as follows:

Sec. 6a. (a) *After making a delivery of a specialized commodity, a specialized motor carrier that holds a permit to transport a specialized commodity may transport on its return trip any specialized commodity, or other commodity the Commission by rule permits, without seeking additional authority from the Commission to transport the specialized commodity or other commodity if:*

(1) *the motor carrier uses:*

(A) *a flatbed-type vehicle; or*

(B) *any other type of vehicle the Commission by rule determines is suitable for transporting the specialized commodity or other commodity; and*

(2) *the transportation occurs on a route each point of which is within 75 miles of a point on the route that the specialized motor carrier used to make the initial transport of the specialized commodity.*

(b) *Not later than January 1, 1995, the Commission shall review all existing rates and charges for transportation allowed under this section and adjust the rates and charges under Section 4(a)(1) of this Act to reflect the increased efficiency and savings in cost obtained by using the authority granted under this section. The Commission shall consider the aggregate revenues earned by carriers transporting goods in both directions under this section in setting rates for shipments of specialized commodities and other commodities allowed to be transported under this section.*

(c) *In this section, "specialized commodity" means a commodity for which a specialized motor carrier is required for transportation under Section 1(i) of this Act.*

SECTION 11. Section 14, Chapter 314, Acts of the 41st Legislature, Regular Session, 1929 (Article 911b, Vernon's Texas Civil Statutes), is amended by amending Subsection (b) and adding Subsections (c) and (d) to read as follows:

(b) *To expedite the hearing and disposition of applications, the Examiner or authorized representative of the Commission shall have authority under orders of the Commission to hear applications which may be assigned to him by the Commission. ~~After~~ after the hearing of an application has been concluded by such representative or Examiner, the representative or Examiner and the Commission shall follow the timetable provided by Subsection (c) of this section [it shall be his duty promptly to make a written report to the Commission recommending disposition of said application. Such report and recommendation shall be accompanied by a brief narrative statement of the evidence, and shall contain such other information as such representative or Examiner may think advisable, or as may be required by the Commission]. Unless required by the Commission, it shall not be necessary for the reporter to transcribe said evidence in full, but it shall be sufficient to make a brief narrative statement giving the correct summary of such evidence; provided, however, the Commission shall have the authority to require said evidence, or any part thereof, to be transcribed in full if deemed advisable or necessary.*

(c)(1) *The representative or Examiner shall, not later than the seventh day after the concluding date of the hearing, notify each party of the representative's or Examiner's proposed decision. Not later than the 30th day after the concluding date of the hearing, the representative or Examiner shall submit a written proposal for a decision to the Commission.*

(2) *Notwithstanding any provision of law to the contrary, the Commission shall render its final decision not later than the 120th day after the concluding date of the hearing.*

(3) *On the written agreement of all parties the Commission may extend the deadline provided by Subdivision (2) of this subsection by not more than 60 days.*

(4) *A party to a hearing under this section may enforce the deadlines imposed by this subsection through a writ of mandamus or other appropriate equitable relief.*

(d) *The Commission shall adopt rules to require employees of the Commission to grant an application for a certificate of public convenience and necessity or a permit filed under any section of this Act without a hearing, a formal presentation to the Commission, or an order of the Commission not later than the 10th day after the date:*

(1) the period for protesting an application expires if no party has filed a protest to the issuance of the certificate or permit within the applicable period provided by this Act; or

(2) of withdrawal of a protest by the last party protesting the issuance of a certificate or permit.

SECTION 12. Subsections (g), (j), and (k), Section 139, Uniform Act Regulating Traffic on Highways (Article 6701d, Vernon's Texas Civil Statutes), are amended to read as follows:

(g)(1) Any officer of the Texas Department of Public Safety may enter or detain any motor vehicle on any street or highway subject to this section or to any regulation adopted by the Director in accordance with this section. In addition, any officer or employee of the Texas Department of Public Safety certified for this purpose by the Director may enter the premises of a motor carrier to inspect lands, buildings, and equipment and copy or verify the correctness of any records, reports, or other documents required to be kept or made pursuant to the regulations adopted by the Director under this section. The Department may conduct the inspection at a reasonable time on stating the purpose and presenting to the motor carrier appropriate credentials and a written statement to the carrier from the Department of the officer's or employee's inspection authority.

(2) A person commits an offense if the person fails to permit an inspection authorized by this subsection. An offense under this subsection is a Class C misdemeanor.

(3) In addition to the penalty provided by Subdivision (2) of this subsection, a person who fails to permit an inspection under this subsection is liable to the state in an amount not to exceed \$1,000. The attorney general may bring suit to collect the penalty provided by this subdivision in a court in the county in which the violation is alleged to have occurred or in Travis County.

(j) A person who violates this section or ~~convicted of a violation of~~ a regulation adopted under this section is subject to an administrative ~~[a civil]~~ penalty in an amount to be set by the Railroad Commission of Texas by rule. The amount may not exceed the maximum penalties provided for violations of current federal regulations and their subsequent amendments under the Hazardous Materials Regulations (49 C.F.R. Parts 101-199) and the Federal Motor Carrier Safety Regulations (49 C.F.R. Parts 386 and 388-399). The commission shall administer the penalty in the same manner as provided by Section 4(a)(12), Chapter 314, Acts of the 41st Legislature, Regular Session, 1929 (Article 911b, Vernon's Texas Civil Statutes) ~~[not to exceed \$200 for each day of noncompliance or for each act of noncompliance. The action may be brought in any court of competent jurisdiction in the county in which the violation occurred].~~

(k) A penalty recovered in a suit or an administrative proceeding brought under this section shall be deposited to the credit of the Motor Carrier Act enforcement ~~[state highway]~~ fund.

SECTION 13. Section 6bb, Chapter 314, Acts of the 41st Legislature, Regular Session, 1929 (Article 911b, Vernon's Texas Civil Statutes), is repealed.

SECTION 14. (a) The changes in law made by Sections 3 and 12 of this Act apply only to an offense or a violation committed on or after the effective date of this Act. For purposes of this section, an offense or violation is committed before the effective date of this Act if any element of the offense or violation occurs before that date.

(b) An offense or violation committed before the effective date of this Act is governed by the law in effect when the offense or violation was committed, and the former law is continued in effect for this purpose.

SECTION 15. On the effective date of this Act, a commercial zone that was created by the Railroad Commission of Texas under Subsection (g), Section 1, Chapter 314, Acts of the 41st Legislature, Regular Session, 1929 (Article 911b, Vernon's Texas Civil Statutes), that exists on that date, and that contains a portion of a county is reconfigured to include the remainder of each county partially contained in the zone.

SECTION 16. (a) Except as provided by Subsection (b) of this section, this Act takes effect September 1, 1993.

(b) Section 8 of this Act takes effect January 1, 1994.



SECTION 17. The importance of this legislation and the crowded condition of the calendars in both houses create an emergency and an imperative public necessity that the constitutional rule requiring bills to be read on three several days in each house be suspended, and this rule is hereby suspended.

Passed the Senate on March 31, 1993, by a viva-voce vote; passed the House on April 7, 1993, by a non-record vote.

Approved April 19, 1993.

Effective Sept. 1, 1993, except § 8 eff. Jan. 1, 1994.