

CHAPTER 372

S.B. No. 595

AN ACT

relating to the establishment of rates and charges to be assessed by motor carriers and to regulation of certain distributors; providing for penalties and an appropriation.

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

SECTION 1. Subsection (1), Section 1a, Chapter 314, Acts of the 41st Legislature, Regular Session, 1929 (Article 911b, Vernon's Texas Civil Statutes), as amended by Chapters 146 and 642, Acts of the 69th Legislature, Regular Session, 1985, is amended to read as follows:

1815

(1) Provided, however, that the term "Motor Carrier" and the term "Contract Carrier" as defined in the preceding Section shall not be held to include:

(a) Any person having a regular, separate, fixed, and established place of business, other than a transportation business, where goods, wares, and merchandise are kept in stock and are primarily and regularly bought from the public or sold to the public or manufactured or processed by such person in the ordinary course of the mercantile, manufacturing, or processing business, and who, merely incidental to the operation of such business, transports over the highways of this state such goods of which such person is the bona fide owner by means of a motor vehicle of which such person is the bona fide owner; [no]

(b) Any person transporting farm implements, livestock, livestock feedstuffs, dairy products, horticultural products, floral products, agricultural products, timber in its natural state, or wool and mohair of which such person is the bona fide owner on a vehicle of which he is the bona fide owner to and from the area of production and to and from the market or place of storage thereof; provided, however, if such person (other than a transportation company) has in his possession under a bona fide consignment contract livestock, wool, mohair, milk and cream, fresh fruits and vegetables, or timber in its natural state under contract, as an incident to a separate, fixed, and established business conducted by him the said possession shall be deemed ownership under this Act;

(c) Where merely incidental to a regular, separate, fixed, and established business, other than a transportation business, the transportation of employees, petroleum products, and incidental supplies used or sold in connection with the wholesale or retail sale of such petroleum products from the refinery or place of production or place of storage to the place of storage or place of sale and distribution to the ultimate consumer, in a motor vehicle owned and used exclusively by the marketer or refiner, or owned in whole or in part and used exclusively by the bona fide consignee or agent of such single marketer or refiner; as well as where merely incidental to a regular, separate, fixed, and established business, other than a transportation business, the transportation of petroleum, employees, material, supplies, and equipment for use in the departments of the petroleum business by the bona fide owner thereof in a vehicle of which he is the bona fide owner; bona fide consignee or agent as used herein being hereby defined and construed, for the purpose of this Act, to mean a person under contract with a single principal to distribute petroleum products in a limited territory and only for such single principal; [no]

(d) Any utility company using its own equipment transporting its own property over the highways;

(e) Any person transporting fresh iced fish or shellfish from a coastal production-landing point to an initial packing or freezing plant located not more than seventy-five miles inland from the coast of Texas, regardless of the distance of such initial packing or freezing plant from the coastal production-landing point, and regardless of whether or not such person owns said fish or shellfish; provided, however, that such person shall have first filed with the Railroad Commission of Texas certificates of insurance covering each motor vehicle to be used in such transportation with public liability and property damage insurance in the amounts required by the Commission for motor vehicles subject to its regulation;

(f) Any person transporting fresh vegetables, fresh fruits, or flax straw from the place where produced agriculturally and harvested to a point where the fresh fruits, vegetables, or flax straw are first processed, including but not limited to packing plants, canning plants, freezing plants and fiber or straw processing plants and regardless of whether or not such person owns said fresh fruits, fresh vegetables, or flax straw, provided such transportation does not exceed a total of seventy-five (75) miles in distance, except such transportation between points in the counties of Kinney, Uvalde, Maverick, Zavala, Dimmit, Webb, Zapata, Starr, Hidalgo, Cameron and Willacy, Texas; provided, however, that such person shall have first filed with the Railroad Commission of Texas certificates of insurance covering each motor vehicle to be used in such transportation with public liability and property damage insurance in the amounts required by the Commission for motor vehicles subject to its regulations; [no]

(g) Any person or company while engaged in transporting a mobile classroom or simulator driver education unit from one school district to another school district under contract between an education service center and a school district or districts; provided, however, that such person or company shall have first filed with the contracting agency certificates of insurance covering each motor vehicle to be used in such transportation with public liability and property damage insurance in the amounts required by the contracting agency;[-]

(h) [(g)] The transportation by motor vehicle for compensation by a member of a corporate family, as hereinafter defined, for other members of such corporate family of property (1) which one member of the corporate family leases for use in its primary business, or (2) of which one member of the corporate family is, or will become upon delivery, the bona fide owner, manufacturer, or producer, and which is produced, manufactured, or distributed as part of such corporate family member's primary business, other than a transportation business. Provided, however, that before engaging in the transportation, the parent corporation shall file with the Railroad Commission of Texas: (i) certificates of insurance covering each motor vehicle to be used in the transportation with public liability and property damage insurance in the amounts required by the Commission for motor vehicles subject to its regulation; and (ii) a notice of intent to provide the transportation together with a list of the subsidiaries involved and an affidavit that the parent corporation owns directly or indirectly a 100 percent interest in each of the participating subsidiaries. The notice required by this section shall be in a form prescribed by the Commission, and a copy of the notice shall be carried in the cab of all vehicles conducting the transportation. In this subsection, "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 percent interest. Any corporation electing to engage in the transportation authorized hereunder shall be deemed to have given its consent to allow authorized employees or representatives of the Commission to inspect the books and records of all members of the corporate family engaging in such transportation for the sole purpose of ensuring that all exempt transportation provided other members of the corporate family is in strict conformity with the provisions hereof;
or

(i) *A person or company while engaged exclusively in transporting donated USDA commodities under contract with a state agency.*

SECTION 2. 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:

(a)(1) The Commission is hereby vested with power and authority and it is hereby made its duty to supervise and regulate the transportation of property for compensation or hire by motor vehicle on any public highway in this State, to fix, prescribe or approve the maximum or minimum or maximum and minimum rates, fares and charges of each motor carrier in accordance with the specific provisions herein contained, to prescribe rules and regulations necessary for the government of motor carriers, to prescribe rules and regulations for the safety of operations of each of such motor carriers, to require the filing of such monthly, annual or other reports and other data of motor carriers as the Commission may deem necessary, to prescribe the schedules and services of motor carriers operating as common carriers, and to supervise and regulate motor carriers in all matters affecting the relationship between such carriers and the shipping public whether herein specifically mentioned or not. To ensure nondiscriminatory rates, charges, and classifications for all shippers and users of regulated transportation services for which the Commission prescribes rates, charges, and classifications, the Commission shall establish collective ratemaking procedures for all commodities and services for which it prescribes rates, charges, and classifications. Those procedures must assure that respective revenues and costs of carriers engaged in the transportation of the particular commodity or service for which rates are prescribed are ascertained. Failure on the part of any carrier to comply with this subsection or the rules and regulations adopted under it may result in suspension or cancellation of the carrier's operating authority by the Commission.

(2) *The Commission shall, at the earliest date practicable after the effective date of this Act, investigate all existing rates and charges in effect on the effective date of this Act which relate to transportation of shipments of general commodities weighing in excess of 500 pounds by motor carriers other than specialized motor carriers and other than contract carriers subject to Commission-prescribed tariffs governing transportation of specialized commodities. Following such investigation, the Commission shall establish, pursuant to existing ratemaking procedures prescribed in Subdivision (1) of this subsection, simplified base rates and charges applicable on such shipments, which rates and charges shall be based on carriers' actual operating costs incurred in transporting the shipments for which such simplified rates and charges are prescribed plus a reasonable margin.*

(3) *Base rates and charges for shipments of general commodities weighing in excess of 500 pounds transported by motor carriers other than specialized motor carriers and other than contract carriers subject to Commission-prescribed tariffs governing transportation of specialized commodities shall be reviewed pursuant to the ratemaking procedures prescribed in Subdivision (1) of this subsection no less than annually by the Commission and, if necessary, shall be adjusted pursuant to the ratemaking procedures prescribed in Subdivision (1) of this subsection to ensure that such base rates and charges remain just and reasonable and to ensure that such base rates and charges continue to cover carriers' actual operating costs incurred in transporting involved shipments plus a reasonable margin. The annual base rate review required by this subsection shall be additional to any and all other procedures now available for review and adjustment by the Commission of rates on involved shipments weighing in excess of 500 pounds.*

(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) for shipments weighing in excess of 10,000 pounds by an amount not to exceed 15 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.*

(5) *"Predatory pricing" means the charging of rates, fares, or charges by a carrier which are below that carrier's actual operating costs or unreasonably above such costs or which are unduly discriminatory. A motor carrier regulated under this Act may not engage in predatory pricing. Any interested party, including any interested motor carrier and any interested shipper, may file a petition for suspension with the Commission seeking to have the Commission determine if predatory pricing exists. The Commission shall duly prescribe appropriate expedited procedures for hearing and for interim decision on any such complaint at the Commission conference next following completion of the hearing or as early thereafter as is reasonably possible. The Commission may charge a fee for the filing of any documents required to be filed with the Commission under Subdivision (4) of this subsection.*

(6) *Should the Commission determine that a carrier has engaged in predatory pricing as defined in Subdivision (5) of this subsection, the Commission may: (1) suspend the carrier's deviation from the base rate; (2) direct the carrier to charge and*

collect the base rate; and (3) direct the carrier to repay any overcharges and collect any undercharges.

(7) All rates, fares, and charges governing shipments weighing in excess of 500 pounds in effect on the effective date of this Act shall remain in effect until such time as the Commission completes the investigation and prescribes the base rates and charges which are required by this subsection. The deviation procedures provided in Subdivision (4) of this subsection shall become effective upon establishment of such base rates and charges, which shall be no later than January 1, 1988. The rates, fares, or charges in effect on January 1, 1988, shall be the rates, fares, or charges for the purposes of this Act until any or all of such base rates, fares, and charges shall be investigated and prescribed as new base rates, fares, and charges by the Commission.

(8) The Commission shall have power and authority after January 1, 1989, to review, after notice and hearing, the rates then in effect governing shipments weighing 500 pounds or less by motor carriers other than specialized motor carriers and other than contract carriers subject to Commission-prescribed tariffs governing transportation of specialized commodities, and following such review, if deemed necessary by the Commission to accomplish the objectives of this Act, the Commission may order that the deviation, suspension, and predatory pricing provisions and procedures of Subdivisions (3), (4), and (5) of this subsection applicable to shipments weighing in excess of 500 pounds but less than 10,000 pounds be likewise applicable to shipments weighing 500 pounds or less.

(9) The Commission shall also have power and authority to order, after notice and hearing, if deemed necessary to accomplish the objectives of this Act, that the deviation percentages provided in Subdivision (4) of this subsection be adjusted; provided, however, such deviation percentages shall not be decreased by the Commission so as to be less than five percent above or below the base rate for shipments weighing 10,000 pounds or less and shall not be less than 15 percent above or below the base rate for shipments weighing in excess of 10,000 pounds.

(10) The Commission shall also have power and authority to order, after notice and hearing, if deemed necessary to accomplish the objectives of this Act, that deviations from established rates be allowed in such amounts as deemed appropriate by the Commission on shipments transported by any one or more of the various classes of specialized motor carriers and by contract carriers subject to Commission-prescribed tariffs governing specialized commodities. Should the Commission order establishment of any deviations applicable to such shipments, the Commission shall further order in connection with establishment thereof that the suspension and predatory pricing provisions and procedures of Subdivisions (4) and (5) of this Act be applicable thereto.

(11) The Commission shall hold an annual state of the transportation industry conference commencing in 1988 at which the Commission shall consider and determine the current state of regulation of the transportation industry, including but not limited to whether existing rules, regulations, and rates are promoting a safe, stable, responsive, and adequate transportation system available to the public as a whole and are promoting and encouraging the continuing economic development of business and commerce in this state and are otherwise reasonably accomplishing the objectives of this Act. The Commission's findings shall be duly reported and made available to the public.

(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. 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.

(13) All commercial motor vehicles as defined in Subdivision (3), Section 1, Chapter 42, Acts of the 41st Legislature, 2nd Called Session, 1929 (Article 6701d-11, Vernon's Texas Civil Statutes), transporting property over the highways of this state other than pursuant to intrastate certificates or permits of public convenience and necessity granted by the Railroad Commission of Texas under the provisions of this Act or for-hire carriers operating in interstate commerce shall be required to be registered annually with the Commission by the owner and/or operator thereof. Such registration shall be accompanied by a registration fee of \$1 per vehicle. The Commission shall issue for each such vehicle registered under this subdivision a numbered certificate bearing the name and address of the vehicle owner which shall be carried in the vehicle at all times. Such registration fee shall be payable to the State Treasury and credited to the "Motor Carrier Act enforcement fund" for use by the Commission in administering this Act. No such motor vehicle shall be operated over the highways of this state unless the same shall have been registered in accordance with the provisions of this subdivision. In the event the owner or operator of any such vehicle may be found to be transporting property for hire over the highways of this state in violation of the provisions of this Act or the rules and regulations of the Commission, the Commission may, after notice and hearing in accordance with the provisions of the Administrative Procedure and Texas Register Act (Article 6252-13a, Vernon's Texas Civil Statutes) impose an administrative penalty on such owner or operator, or both, and on the involved shipper or receiver, or both, not to exceed \$10,000 and such owner, operator, shipper, or receiver shall also be subject to the penalties and other relief provided under Section 16 of this Act. In the event of such unlawful operation the Commission may also revoke or suspend the registration certificate for such vehicle issued under this subsection.

(14) Notwithstanding any other provision of law or regulation, the Department of Public Safety shall as soon as practicable after the effective date of this Act establish procedures under which all violations of the traffic laws of this state for which citations are issued by the department to vehicles registered with the Railroad Commission of Texas under certificates or permits of public convenience and necessity or under vehicle registration certificates issued under Subdivision (13) of this subsection shall be recorded not only in the name of the driver of the vehicle involved but also in the name of the person, company, or other entity owning the vehicle and, if different from the owner, the person, company, or other entity causing the vehicle to be operated over Texas highways. The Department of Public Safety shall report all such citations to the Railroad Commission of Texas no less frequently than on a monthly basis.

SECTION 3. 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 May 7, 1987, by the following vote: Yeas 31, Nays 0; and that the Senate concurred in House amendments on May 20, 1987, by a viva-voce vote; passed subject to the provisions of Article III, Section 49a of the Constitution of Texas. Passed the House, with amendments, on May 15, 1987, by a non-record vote; passed subject to the provisions of Article III, Section 49a of the Constitution of Texas.

Approved June 16, 1987.

Effective Aug. 31, 1987, 90 days after date of adjournment.