

SENATE BILL NO. 33

INTRODUCED BY M. CUFFE

BY REQUEST OF THE DEPARTMENT OF PUBLIC SERVICE REGULATION

A BILL FOR AN ACT ENTITLED: "AN ACT ELIMINATING CLASS C MOTOR CARRIER CLASSIFICATION AND REGULATIONS OF A CLASS C MOTOR CARRIER BY THE PUBLIC SERVICE COMMISSION; AMENDING SECTIONS 69-12-101, 69-12-201, 69-12-205, 69-12-301, 69-12-314, 69-12-321, 69-12-322, 69-12-323, 69-12-324, 69-12-404, 69-12-406, 69-12-407, 69-12-502, AND 69-12-611, MCA; REPEALING SECTIONS 69-12-302 AND 69-12-313, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Section 69-12-101, MCA, is amended to read:

"69-12-101. Definitions. Unless the context requires otherwise, in this chapter the following definitions apply:

(1) "Between fixed termini" or "over a regular route" means the termini or route between or over which a motor carrier usually or ordinarily operates motor vehicles, even though there may be periodical or irregular departures from the termini or route.

(2) "Certificate" means a certificate of public convenience and necessity or a certificate of compliance issued under this chapter.

(3) "Certificate of compliance" means written authorization to operate issued by the commission for Class A or Class E motor carriers that transport passengers declaring that the motor carrier meets the fitness requirements of this chapter.

(4) "Certificate of public convenience and necessity" means a written authorization to operate issued by the commission for Class A motor carriers that transport property or persons and property, ~~Class C motor carriers,~~ and Class D motor carriers declaring that the motor carrier service is required by the public convenience and necessity, as provided in this chapter.

(5) "Charter service" means a service used for the transportation of passengers by a motor carrier

1 with rates not subject to approval by the commission if:

2 (a) the transportation of passengers is based on a single contract;

3 (b) the contract is entered into in advance of the transportation and does not result from a
4 spontaneous, curbside agreement;

5 (c) the contract includes a single fixed charge and fares are not assessed per passenger;

6 (d) the passenger or group of passengers acquires exclusive use of the motor vehicle through the
7 contract; and

8 (e) when applied to a group of passengers being transported, the group of passengers travels
9 together to a specified destination.

10 (6) "Compensation" means the charge imposed on motor carriers for the use of the highways in
11 this state by motor carriers under 69-12-421.

12 (7) "Corporation" means a corporation, company, association, or joint-stock association.

13 (8) "Digital network" means any online-enabled application, software, website, or system offered or
14 utilized by a transportation network carrier that enables the prearrangement of rides with transportation network
15 carrier drivers.

16 (9) "For hire" means for remuneration of any kind, paid or promised, either directly or indirectly, or
17 received or obtained through leasing, brokering, or buy-and-sell arrangements from which a remuneration is
18 obtained or derived for transportation service.

19 (10) "Garbage" means ashes, trash, waste, refuse, rubbish, organic or inorganic matter that is
20 transported to a licensed transfer station, licensed landfill, licensed municipal solid waste incinerator, or
21 licensed disposal well. The term does not include wastewater and waste tires.

22 (11) "Household goods" means any of the following:

23 (a) personal effects and property used or to be used in a dwelling when they are a part of the
24 equipment or supply of the dwelling. The term does not include property moving from a factory or store unless
25 the property is purchased by a householder for use in a dwelling and is transported at the request of the
26 householder.

27 (b) furniture, fixtures, equipment, and the property of stores, offices, museums, institutions,
28 hospitals, or other establishments when those items are a part of the stock, equipment, or supply of the stores,

1 offices, museums, institutions, hospitals, or other establishments. The term does not include the stock-in-trade
2 of an establishment, whether consignor or consignee, other than used furniture and used fixtures, except when
3 transported as incidental to moving of the establishment or a portion of the establishment from one location to
4 another.

5 (c) articles, including objects of art, displays, and exhibitions that because of their unusual nature
6 or value, require the specialized handling and equipment usually employed in moving household goods and
7 other similar articles.

8 (12) "Motor carrier" means a person or corporation, or its lessees, trustees, or receivers appointed
9 by a court, operating motor vehicles upon a public highway in this state for the transportation of passengers,
10 household goods, or garbage for hire on a commercial basis, either as a common carrier or under private
11 contract, agreement, charter, or undertaking. A motor carrier includes a transportation network carrier.

12 (13) "Motor vehicle" includes vehicles or machines, motor trucks, tractors, or other self-propelled
13 vehicles used for the transportation of property or persons over the public highways of the state.

14 (14) "Person" means an individual, firm, or partnership.

15 (15) "Personal vehicle" means a vehicle that is used by a transportation network carrier driver in
16 connection with providing a prearranged ride and is:

17 (a) owned, leased, or otherwise authorized for use by the transportation network carrier driver; and

18 (b) not a taxicab, limousine, or for-hire vehicle.

19 (16) "Prearranged ride" means transportation provided by a driver to a rider, beginning when a
20 driver accepts a ride requested by a rider through a digital network controlled by a transportation network
21 carrier, continuing while the driver transports a requesting rider, and ending when the last requesting rider
22 departs from the personal vehicle. A prearranged ride does not include transportation provided using a taxicab,
23 limousine, or other for-hire vehicle pursuant to Title 69, chapter 12.

24 (17) "Public highway" means a public street, road, highway, or way in this state.

25 (18) "Railroad" means the movement of cars on rails, regardless of the motive power used.

26 (19) "Recyclable" means any material diverted from the solid waste stream that can be reused in
27 the production of heat or energy or as raw material for new products and for which markets exist.

28 (20) "Transportation network carrier" means an entity that uses a digital network or software

1 application service to connect passengers to transportation network carrier services provided by transportation
2 network carrier drivers. A transportation network carrier may not be deemed to control, direct, or manage the
3 personal vehicles or transportation network carrier drivers that connect to its digital network, except where
4 agreed to by written contract.

5 (21) "Transportation network carrier driver" or "driver" means an individual who:

6 (a) receives connections to potential riders and related services from a transportation network
7 carrier in exchange for payment of a fee to the transportation network carrier; and

8 (b) uses a personal vehicle to provide a prearranged ride to riders upon connection through a
9 digital network controlled by a transportation network carrier in return for compensation or payment of a fee.

10 (22) "Transportation network carrier rider" or "rider" means an individual or persons who use a
11 transportation network carrier's digital network to connect with a transportation network carrier driver who
12 provides prearranged rides to the rider in the driver's personal vehicle between points chosen by the rider.

13 (23) "Transportation network carrier services" means the transportation of a passenger between
14 points chosen by the passenger and prearranged with a transportation network carrier driver through the use of
15 a transportation network carrier digital network or software application."
16

17 **Section 2.** Section 69-12-201, MCA, is amended to read:

18 **"69-12-201. Supervision and regulation of motor carriers.** (1) The commission has the power and
19 authority and it is its duty to:

20 (a) supervise and regulate every motor carrier in this state;

21 (b) fix, alter, regulate, and determine specific, just, reasonable, equal, nondiscriminatory, and
22 sufficient rates, fares, charges, and classifications for Class A motor carriers;

23 (c) regulate the properties, facilities, operations, accounts, service, practices, and affairs of all
24 motor carriers;

25 (d) require the filing of annual and other reports, tariffs, schedules, or other data by motor carriers;

26 (e) supervise and regulate motor carriers in all matters affecting the relationship between motor
27 carriers and the traveling and shipping public.

28 (2) The commission may, by general order or otherwise, prescribe rules in conformity with this

1 chapter and applicable to any and all motor carriers.

2 ~~(3) The commission may fix and determine reasonable maximum or minimum rates for the operations~~
 3 ~~of any Class C motor carrier when rates are required for the best interests of public transportation."~~

4

5 **Section 3.** Section 69-12-205, MCA, is amended to read:

6 **"69-12-205. Rules to reflect differences between carrier classes.** (1) Except as provided in
 7 subsection (3), rules related to schedules, service, tariffs, rates, facilities, accounts, and reports must recognize
 8 the differences between types of Class A, ~~Class C~~, Class D, and Class E motor carriers, as defined in this
 9 chapter, and must be just, fair, and reasonable to the classes and types of motor carriers in relation to each
 10 other and to the public.

11 (2) (a) In establishing the tariff or rates to be charged by Class A motor carriers for the carrying of
 12 persons, the commission shall take into consideration the kind and character of service to be performed.

13 (b) In establishing the tariff or rates to be charged by Class A motor carriers for the carrying of
 14 property or persons and property, the commission shall take into consideration the public necessity of the
 15 service, the kind and character of service to be performed, and the effect of the tariff and rates on other
 16 transportation agencies, if any. The commission shall, as far as possible, avoid detrimental or unreasonable
 17 competition with existing railroad service or service furnished by a motor carrier.

18 (3) Except as provided in 69-12-341, a Class E motor carrier is not subject to commission rules
 19 related to schedules, tariffs, or rates."

20

21 **Section 4.** Section 69-12-301, MCA, is amended to read:

22 **"69-12-301. Classification of motor carriers.** (1) Motor carriers are divided into three ~~four~~ classes to
 23 be known as:

24 (a) Class A motor carriers;

25 ~~(b) Class C motor carriers;~~

26 ~~(c)~~(b) Class D motor carriers; and

27 ~~(d)~~(c) Class E motor carriers.

28 (2) Class A motor carriers include all motor carriers operating between fixed termini or over a

1 regular route and under regular rates or charges, based upon either station-to-station rates or upon a mileage
2 rate or scale.

3 ~~(3) Class C motor carriers include all motor carriers where the remuneration is fixed in and the
4 transportation service furnished under a contract, charter, agreement, or undertaking.~~

5 ~~(4)(3)~~ Class D motor carriers include all motor carriers operating motor vehicles transporting garbage.

6 ~~(5)(4)~~ Class E motor carriers include all transportation network carriers."
7

8 **Section 5.** Section 69-12-314, MCA, is amended to read:

9 **"69-12-314. Class D motor carrier certificate of public convenience and necessity.** (1) Class D
10 carriers shall conduct operations pursuant to a certificate of public convenience and necessity issued by the
11 commission authorizing the transportation of the commodities described in 69-12-301~~(4)~~(3). Class D carriers,
12 when applying for a new or additional certificate of public convenience and necessity, shall file an application
13 with the commission in accordance with the requirements of this chapter and the rules of the commission.

14 (2) A motor carrier may not possess a Class D motor carrier certificate of public convenience or
15 necessity or operate as a Class D motor carrier unless the motor carrier actually engages in the transportation
16 of garbage on a regular basis as part of the motor carrier's usual business operation."
17

18 **Section 6.** Section 69-12-321, MCA, is amended to read:

19 **"69-12-321. Hearing on application for motor carrier certificate.** (1) (a) Upon the filing of an
20 application for a certificate by a Class A, ~~Class C,~~ Class D, or Class E motor carrier, ~~except a Class C motor~~
21 ~~carrier authorized to operate under the terms of a contract as provided in 69-12-324,~~ or upon the filing of a
22 request for a transfer of authority, the commission shall provide notice of the application to any interested party.

23 (b) If a protest or a request for hearing is received, the commission shall fix a time and place for a
24 hearing on the application. The hearing must be set for not later than 60 days after receipt of a protest or a
25 hearing request. If a protest or a request for hearing is not received, the commission may act on the application
26 without a hearing as prescribed by commission rules.

27 (c) A protest related to an application by a motor carrier pursuant to 69-12-311(1)(a) or by a Class
28 E motor carrier is limited to a protest of the motor carrier's ability to meet the requirements of 69-12-323(5).

1 (2) A motor carrier referred to in 69-12-322, the department of transportation, the governing board
 2 or boards of any county, town, or city into or through which the route or service as proposed may extend, and
 3 any person or corporation concerned are interested parties to the proceedings and may offer testimony for or
 4 against the granting of the certificate.

5 ~~(3) The contracting parties referred to in 69-12-313(4) shall appear and offer testimony in support~~
 6 ~~of the applicant.~~

7 ~~(4)(3)~~ An application by a motor carrier pursuant to 69-12-311(1)(b), ~~by a Class C motor carrier,~~ or by
 8 a Class D motor carrier for a certificate of public convenience and necessity may be denied without a public
 9 hearing when the records of the commission demonstrate that the route or territory sought to be served by the
 10 applicant has previously been made the basis of a public investigation and finding by the commission that
 11 public convenience and necessity do not require the proposed motor carrier service. A hearing must be held if
 12 the applicant presents facts demonstrating that conditions over the route or in the territory and affecting
 13 transportation facilities have materially changed since the previous public investigation and finding and that
 14 public convenience and necessity now require the motor carrier operation."
 15

16 **Section 7.** Section 69-12-322, MCA, is amended to read:

17 **"69-12-322. Notice of hearing.** (1) Whenever a hearing is scheduled, whether as a result of a protest
 18 or request or upon the commission's own motion, the commission shall ~~cause~~ serve a copy of the petition and
 19 notice of hearing ~~to be served~~ upon an officer or owner of any motor carrier that in the opinion of the
 20 commission might be affected by the granting of the certificate and shall notify any other affected party at least
 21 10 days before the date of hearing.

22 (2) Notice of the hearing must be published:

23 ~~(a) in the legal advertising section of a local newspaper or newspapers determined by the commission~~
 24 ~~to have a circulation sufficient to reach the consuming public in the area under consideration for applications for~~
 25 ~~Class C authority; and~~

26 ~~(b) in appropriate newspapers determined by the commission to have sufficient statewide circulation~~
 27 ~~in the case of applications for Class A authority."~~
 28

1 **Section 8.** Section 69-12-323, MCA, is amended to read:

2 **"69-12-323. Decision on application.** (1) (a) Except as provided in subsection (1)(b), within 180 days
3 from the date of the completed filing of an application, the commission shall issue its finding, order, or decision
4 on the application and the evidence presented in support of the application at the time of the hearing.

5 (b) The commission may extend the time for making a decision to a date requested by the
6 applicant.

7 (2) (a) If after a hearing on the request for a certificate of public convenience and necessity the
8 commission finds from the evidence that public convenience and necessity require the authorization of the
9 service proposed or any part of the service proposed, a certificate of public convenience and necessity must be
10 issued. In determining whether a certificate of public convenience and necessity should be issued, the
11 commission shall consider:

12 (i) the transportation service being furnished or that will be furnished by any railroad or other
13 existing transportation agency;

14 (ii) the likelihood of the proposed service being permanent and continuous throughout 12 months
15 of the year; and

16 (iii) the effect that the proposed transportation service may have on other forms of transportation
17 service that are essential and indispensable to the communities to be affected by the proposed transportation
18 service or that might be affected by the proposed transportation service.

19 (b) For the purposes of issuing a certificate of public convenience and necessity to a Class D
20 motor carrier, a determination of public convenience and necessity may include a consideration of competition.

21 (3) The commission may issue the certificate as requested in the application or in part and may
22 attach terms and conditions to a certificate of public convenience and necessity for a motor carrier pursuant to
23 69-12-311(1)(b), ~~a Class C motor carrier,~~ or a Class D motor carrier that in its judgment public convenience and
24 necessity require.

25 (4) If a certificate is issued to a motor carrier as provided in this part, the certificate is in effect until
26 terminated by the commission for cause or until terminated by the owner's failure to comply with 69-12-402.

27 (5) (a) In determining whether to approve a certificate of compliance for a motor carrier pursuant to
28 69-12-311(1)(a) or for a Class E motor carrier, the commission shall consider only whether the applicant meets

1 the requirements of 69-12-415. The commission shall provide notice and may require a hearing in accordance
2 with 69-12-321.

3 (b) An applicant seeking a certificate of compliance establishes a rebuttable presumption that it
4 meets the requirements of 69-12-415 by demonstrating compliance with insurance, bonding, and security
5 requirements established by the commission in accordance with 69-12-402."
6

7 **Section 9.** Section 69-12-324, MCA, is amended to read:

8 **"69-12-324. Special provisions when federal or state contract involved.** (1) A written contract
9 presented to the commission is sufficient proof that a motor carrier pursuant to 69-12-311(1)(a) or a Class E
10 motor carrier meets the requirements for a certificate of compliance or that a motor carrier pursuant to 69-12-
11 311(1)(b), ~~a Class C motor carrier,~~ or a Class D motor carrier meets the requirements for a certificate of public
12 convenience and necessity in accordance with the terms and conditions contained within the United States
13 government or state government contracts. Subject to the provisions of this section, a transportation movement
14 is considered to be:

15 (a) the transportation for hire of persons between two points within the state by a motor carrier
16 pursuant to the terms of a written contract between the carrier and the United States government or an agency
17 or department of the United States; or

18 (b) the transportation for hire of solid waste between two points within the state by a motor carrier
19 pursuant to the terms of a written contract between the carrier and the state government or an agency or
20 department of the state.

21 ~~(2) The Class C certificate of public convenience and necessity issued pursuant to the terms and~~
22 ~~conditions of the United States government or state government contract may be issued by the commission~~
23 ~~upon receipt of an executed copy of the United States government or state government contract. The certificate~~
24 ~~of public convenience and necessity may be issued without a public hearing.~~

25 ~~(3)(2)~~ The certificate issued pursuant to the terms of the United States government or state
26 government contract is authorized only for the duration of the United States government or state government
27 contract concerned. The certificate may be renewed for another definite term if the motor carrier is the motor
28 carrier authorized to operate under the United States government or state government contract."

1

2 **Section 10.** Section 69-12-404, MCA, is amended to read:

3 **"69-12-404. Suspension of certificate by petition.** (1) (a) A motor carrier may petition the
4 commission in writing to suspend its certificate for a period not to exceed 6 months. Only one additional 6-
5 month suspension may be requested and granted.

6 (b) The suspension of a certificate of public convenience and necessity requested by a motor
7 carrier pursuant to 69-12-311(1)(b), ~~by a Class C motor carrier,~~ or by a Class D motor carrier may be granted
8 upon a showing of present absence of public convenience and necessity or other showing of matters affecting
9 motor carrier transportation.

10 (2) (a) The suspension of a certificate of compliance for a motor carrier pursuant to 69-12-
11 311(1)(a) or for a Class E motor carrier as provided for in subsection (1) for a period of 12 consecutive months
12 automatically terminates a certificate of compliance and requires a motor carrier pursuant to 69-12-311(1)(a) or
13 a Class E motor carrier to reapply for a certificate of compliance.

14 (b) The suspension of a certificate of public convenience and necessity for a motor carrier
15 pursuant to 69-12-311(1)(b), ~~a Class C motor carrier,~~ or a Class D motor carrier as provided in subsection (1)
16 for a period of 12 consecutive months establishes a prima facie presumption of absence of public convenience
17 and necessity. If after notice and hearing the motor carrier pursuant to 69-12-311(1)(b), ~~the Class C motor~~
18 ~~carrier,~~ or the Class D motor carrier is unable to prove the existence of public convenience and necessity or
19 existing demand for the transportation service, the commission may cancel a certificate of public convenience
20 and necessity."

21

22 **Section 11.** Section 69-12-406, MCA, is amended to read:

23 **"69-12-406. Restriction on transportation of certain waste.** Except as provided in 69-12-324, a
24 Class A, ~~Class C,~~ or Class E motor carrier may not be authorized or permitted to transport garbage within the
25 state. This restriction does not apply to recyclables."

26

27 **Section 12.** Section 69-12-407, MCA, is amended to read:

28 **"69-12-407. Records and reports.** (1) All records, books, accounts, and files of a Class A, ~~Class C,~~

1 and Class D motor carrier in this state, as they relate to the business of transportation conducted by the motor
2 carrier, must at all times be subject to examination by the commission or by any authorized agent or employee
3 of the commission. The commission shall prescribe a uniform system of accounts and uniform reports covering
4 the operations of Class A, ~~Class C,~~ and Class D motor carriers. A motor carrier authorized to operate in
5 accordance with the provisions of this chapter shall keep its records, books, and accounts according to the
6 uniform system to the extent possible.

7 (2) Before April 1 of each year, unless this deadline has been extended for good cause by the
8 commission, a motor carrier authorized to engage in business shall file with the commission a report, under
9 oath, on a form prescribed and furnished by the commission.

10 (3) In addition to other reporting requirements, a Class D motor carrier shall provide sufficient
11 information to the commission to show that the carrier is entitled to possess the Class D motor carrier certificate
12 of public convenience and necessity under the requirements of 69-12-314.

13 (4) (a) To ensure safety with respect to transportation network carrier drivers affiliated with Class E
14 motor carriers, the commission may conduct audits of a Class E motor carrier, but not more than twice
15 annually.

16 (b) A Class E motor carrier shall, upon request from the commission, provide to the commission up
17 to 1,000 unique identification numbers, each of which has been assigned by the motor carrier to an individual
18 transportation network carrier driver affiliated with the motor carrier.

19 (c) The commission may request from the Class E motor carrier copies of records held by the
20 motor carrier for up to 10 of the motor carrier's drivers, who may be identified in the request only by the driver's
21 unique identification number.

22 (d) The Class E motor carrier shall comply with the request in an electronic format acceptable to
23 the commission within 1 business day after receiving the request.

24 (e) The Class E motor carrier may redact the records provided to the commission under
25 subsection (4)(d) to protect the individual privacy of the transportation network carrier's drivers, including
26 information that could be used to identify a driver. Information that a Class E motor carrier may redact includes
27 but is not limited to the transportation network carrier driver's name, address, and social security number, other
28 than the last four digits.

1 (5) Except as required by Article II, section 9 or 10, of the Montana constitution, the records
2 obtained by the commission under subsection (4) may not be publicly disclosed by the commission."
3

4 **Section 13.** Section 69-12-502, MCA, is amended to read:

5 **"69-12-502. Prohibition on deviation from rate schedules.** It is unlawful for any Class A motor
6 carrier to charge, demand, receive, or collect any greater or less rate, charge, or fare than that fixed by the
7 commission for the transportation service provided. ~~When maximum or minimum rates have been established~~
8 ~~for any service provided by any Class C motor carrier, it shall likewise be unlawful for the carrier to charge,~~
9 ~~demand, receive, or collect any greater compensation or rate than that established for the service by any~~
10 ~~applicable maximum rate or any less compensation or rate than that established by any applicable minimum~~
11 ~~rate.~~ It shall also be unlawful for any Class A motor carrier ~~or any Class C motor carrier subject to maximum or~~
12 ~~minimum rates~~ to refund or remit, in any manner or by any device, any portion of the rates, fares, and charges
13 required to be collected under the schedule of the Class A carrier on file with the commission ~~or under the~~
14 ~~maximum or minimum rates established by the commission for the Class C carrier."~~

15

16 **Section 14.** Section 69-12-611, MCA, is amended to read:

17 **"69-12-611. Leasing of power equipment.** (1) All Class A, ~~Class C,~~ and Class D motor carriers
18 subject to the jurisdiction of the commission may lease power equipment for the purpose of performing
19 transportation movements within the state. The leasing of power units must be in writing.

20 (2) All leases must contain:

21 (a) the full names and addresses of negotiating parties;

22 (b) a complete description of each vehicle involved;

23 (c) a provision that the sole possession, responsibility, control, and direction of each vehicle
24 resides with the lessee for the entire term of the lease;

25 (d) a provision that the lessee assumes full responsibility for all regulatory fees;

26 (e) the amount of compensation to be paid for use of the vehicle while under the lease and the
27 method by which the compensation is determined;

28 (f) the renewal conditions of the lease, if any; and

1 (g) the term length of the lease.

2 (3) A copy of the lease must be maintained in each leased vehicle at all times. Each leased power
3 unit must display in a conspicuous place on both sides of the vehicle the identity and address of the lessor and
4 lessee and the certificate number under which the power unit is operating.

5 (4) The leasing of power units by an authorized carrier to a noncertificated carrier is prohibited."
6

7 **NEW SECTION. Section 15. Repealer.** The following sections of the Montana Code Annotated are
8 repealed:

9 69-12-302. Class C contract requirements.

10 69-12-313. Class C motor carrier certificate of public necessity.
11

12 **NEW SECTION. Section 16. Effective date.** [This act] is effective on passage and approval.

13 - END -