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House Bill 5714 (Substitute H-1 as passed by the House)
Sponsor: Representative Michael D. McCready
House Committee: Transportation and Infrastructure
Senate Committee: Transportation

Date Completed: 11-12-14

CONTENT

The bill would amend the Motor Carrier Act to do the following:

- **Revise language pertaining to temporary authority to offer a service, and specify that temporary authority for a service would be valid for up to 60 days.**
- **Delete provisions for a temporary permit for a service by a motor contract carrier.**
- **Allow the Michigan Public Service Commission to issue an emergency temporary motor carrier authority to motor carriers of general commodities or household goods for up to 60 days.**
- **Require the Commission to issue a certificate of authority to a motor carrier of household goods if the Commission found that the carrier met certain conditions.**
- **Specify that a rate, fare, or charge made by a motor carrier of household goods would have to be just and reasonable, and establish certain conditions for rates, fares, and charges.**
- **Revise provisions concerning certificate renewal by an intrastate-only motor carrier of general commodities or a motor carrier of household goods.**
- **Extend certain prohibitions to brokers, and increase the maximum criminal fine from \$500 to \$1,000.**

Temporary Authority for Service

The temporary authority is valid until the Commission determines whether to grant or deny permanent authority. Under the Act, the Commission may, in its discretion and upon a proper application, grant temporary authority for service by a motor carrier by motor vehicle. Under the bill, the Commission could grant temporary authority unless a safety or fitness-related issue existed. The temporary authority would be valid for a maximum of 60 days, unless suspended or revoked for good cause.

The bill would eliminate language pertaining to temporary permits and consolidation and merger applications.

General Revisions, Motor Carriers of General Commodities

The Act prohibits a motor common carrier from operating any motor vehicle for the transportation of property for hire on any public highway in this State except in accordance with the Act, and without first having obtained a certificate of authority from the Commission. This requirement also applies to motor contract carriers. The bill would refer

instead to a "motor carrier of general commodities" and a "motor carrier of household goods".

"Motor carrier of general commodities" would mean "a person that is an authorized for-hire motor carrier, either directly or through any device or arrangement, of property other than household goods upon or over a public highway". "General commodity" would mean "any property other than household goods, hazardous materials, or passengers". "Motor carrier of household goods" would mean "a person that, either directly or through any device or arrangement, packs, loads, unloads, or transports household goods upon or over a public highway for the general public in exchange for payment".

The Act requires an application for a certificate of authority to be in writing and verified by affidavit. The bill instead would require the application to be on a form prescribed by the Commission. The Commission could reject, dismiss, or deny an application if the applicant failed to comply with the instructions on the application.

For a motor carrier of general commodities, the Commission must issue a certificate of authority to an applicant if the Commission finds that the applicant has satisfied certain requirements. The bill would require the applicant to have insurance in place to insure the protection of the public. The bill would eliminate the requirement that the service proposed will serve a useful public service, as well as other factors the Commission must consider in a decision to issue a certificate of authority.

A motor carrier of general commodities may not discontinue any service established under the Act without an order of the Commission. The bill would require a motor carrier of general commodities to provide written notice of discontinuance to the Commission in accordance with its rules.

Emergency Temporary Order

The bill would permit the Commission to issue an emergency temporary motor carrier authority valid for a time period specified by the Commission not to exceed 60 days to authorize transportation services for which there was an actual and immediate emergency. "Emergency" would be defined as that term is defined in 49 C.F.R. 390.5(1) (an occurrence, natural or man-made, which interrupts the delivery of essential services supplies, or otherwise immediately threatens human life or public welfare, provided such the event results in: a) a declaration of emergency by a person having the authority to declare an emergency, or b) a request by a police officer for tow trucks to move wrecked or disabled vehicles.) A motor carrier of general commodities could apply for such authority without paying a filing fee, in person, in writing, by telephone, or by e-mail. The Commission could revoke an emergency temporary authority if the transportation service were no longer necessary or for other good cause. A grant of emergency temporary authority would not create a presumption that the Commission would grant permanent authority to a motor carrier of general commodities. The process would be similar for motor carriers of household goods.

Motor Carriers of Household Goods

The bill would require the Commission to issue a certificate of authority to an applicant authorizing it to provide transportation as a motor carrier of household goods if the Commission found that the applicant had satisfied all of the following requirements:

- The character and condition of the vehicles proposed to be operated by the applicant were such that they could be operated safely.
- The applicant was fit, willing, and able to provide the transportation to be authorized.
- The proposed service was consistent with the Act's policy.

-- The applicant had the required insurance in place to protect the public.

The Act requires a motor carrier of household goods to establish and file with the Commission actual rates and practices and rules of the contract carrier related to those rates. Under the bill, except as otherwise provided, before engaging in business, a motor carrier of household goods subject to this Act would have to print and file with the Commission schedules showing all rates, fares, and charges for the transportation of household goods, and would have to keep its facilities and the schedules open for public inspection.

A motor carrier of household goods would be prohibited from charging a predatory rate. The Commission would have to determine whether a motor carrier charged a predatory rate before it issued a certificate, and before the motor carrier commenced operations. A motor carrier of household goods could not receive or accept any person or property for transportation until it complied with these requirements; however, the requirements would not apply to a local move.

The bill would require a rate, fare, or charge made by a motor carrier of household goods to be just and reasonable, and not unjustly discriminatory, prejudicial, or preferential. A rate, fare, or charge under a contract with a manufacturer, store, or other entity would not be considered unjustly discriminatory, prejudicial, or preferential in a determination of compliance with this requirement.

A motor carrier of household goods could not charge or collect remuneration for its services that would be greater than, less than, or different from the rates, fares, and charges filed with the Commission. A motor carrier also could not refund or remit in any manner or by any device a portion of the rates, fares, or charges required to be collected by the tariffs on file with the Commission. These requirements would not apply to a local move.

Notwithstanding other provisions of the Act, the Commission could not investigate, suspend, revise, or revoke a rate, fare, or charge on the grounds that it was unreasonably high or low if all of the following requirements were met:

- The motor carrier of household goods notified the Commission that it wished the Commission to consider the rate, fare, or charge.
- The rate, fare, or charge was the product of independent action on the part of the motor carrier proposing it.
- The aggregate of increase and reductions in the rate, fare, or charge was not more than 20% above or below the base rate, fare, or charge in effect one year before the effective date of the proposed rate, fare, or charge.

A motor carrier may not protest a rate, fare, or charge that it proposed.

The bill would require a motor carrier of household goods that transports goods in both statewide and local moves to provide a reasonably accurate nonbinding estimate of the costs of the transportation. For a move of greater than 40 miles, the final charge for a shipment for which a nonbinding estimate was prepared would be that appearing in the motor carrier of household goods tariffs applicable to the transportation. A motor carrier would have to furnish a nonbinding estimate without charge and in writing to the shipper or other person responsible for payment of the freight charges. The motor carrier would have to retain a copy of the estimate as an addendum to the bill of lading.

At the time of delivery of a collect on delivery shipment for which a motor carrier had furnished an estimate, the shipper could request delivery of the shipment upon payment in a form acceptable to the carrier of an amount not to exceed 110% of the estimate. Upon payment, the motor carrier would have to relinquish possession of the shipment and would

have to defer demand for payment of any remaining charges for a period of 30 days after the date of delivery. This would not apply to a shipment delivered to a warehouse for storage at the shipper's request.

Public Service Commission

The Act requires the Commission to supervise and regulate all motor carriers of household goods, regulate and determine reasonable and sufficient rates, fares, charges, and classifications, and regulate the service and safety of operations of each motor carrier of household goods.

Under the bill, the the Commission also could do the following:

- Require the filing of annual and other reports, tariffs, schedules, and other data by motor carriers of household goods if that information were necessary for the administration or enforcement of the Act.
- Supervise and regulate motor carriers of household goods in all matters affecting the relation of motor carriers and the public and between motor carriers.
- Promulgate rules to promote highway safety.
- Promulgate rules in conformity with the Act applicable to all motor carriers of household goods.
- Do all things necessary to carry out and enforce the Act.

The Commission could not regulate or determine reasonable and sufficient rates, fares, charges, or classifications, or require the filing of tariffs and schedules, for local moves.

Intrastate Motor Carrier Authority & Certificate Renewal

The Act requires the Commission to furnish proper and sufficient identification for certain vehicles authorized to operate under the Act. The bill would require a decal and cab card for each vehicle that an intrastate-only motor carrier of general commodities or a motor carrier of household goods is authorized to operate. A cab card would have to be carried in the vehicle for which it was issued and a decal would have to be attached to a conspicuous location on the vehicle for which it was issued as directed by the Commission.

A motor carrier granted intrastate authority under the Act, including a UCR motor carrier operating intrastate, would have to comply with certain logo, account number, and identification number requirements. (A UCR motor carrier is a person subject to the Federal Unified Carrier Registration Act.)

A certificate granted to an intrastate-only motor carrier or a motor carrier of household goods terminates on December 31 of the calendar year during which the certificate was issued, and must be renewed between October 1 and December 1 of the year it expires. Under the bill, if the Commission determined that a renewal application received before December 1 was incomplete, the Commission would have to send a notice of noncompliance to the motor carrier, but could not assess a late fee against a motor carrier that complied with terms of the notice by December 31 of the year in which the application was required to be made.

The Commission would have to give an applicant whose certificate was cancelled or terminated for failure to renew on January 1 of the year for which an application should have been made until December 31 to comply with the renewal requirements. Upon receipt of all required materials, the Commission would have to grant a 60-day temporary authority to an intrastate-only motor carrier of general commodities or a motor carrier of household goods. A motor carrier that did not comply with the renewal requirements before January 1

of the next renewal year would have to apply for an original certificate of authority and would have to pay the appropriate fee, as well as applicable late fees for the previous year.

Prohibited Activities

The Act specifies a misdemeanor penalty for certain prohibited activities undertaken by motor carriers, shippers, or consignees, or their officers, employees, or agents. The bill would include brokers in these provisions. The bill also would prohibit any of these parties from operating without the authority required under the Act, advertising services without obtaining the authority to do so, or acting as a broker of household goods. Currently, the misdemeanor is punishable by a \$500 maximum fine or up to six months imprisonment, or both. The bill would increase the maximum fine to \$1,000.

Repealed Sections

The bill would repeal Section 5 of Article I, Sections 4, 6, 7, 7a, 7b, 7c, and 11 of Article II, Section 5a of Article III, Section 1a of Article IV, Section 4 of Article V, and Section 3 of Article VI of the Act.

Those sections do the following:

- Govern the Commission's decision-making under Article III (contract motor carriers).
- Require the publication of notice when an application for a certificate of authority is filed.
- Require motor carriers to maintain schedules showing rates, fares, and charges, and prohibit predatory rates.
- Require motor carriers' rates, fares, and charges to be just and reasonable and not unjustly discriminatory, prejudicial, or preferential.
- Prohibit the Commission from investigating, suspending, revising, or revoking a proposed rate, fare, or charge on the ground that it is too high or too low under certain circumstances.
- Require a motor carrier that establishes a route with another carrier to establish certain rules for its operation.
- Require a carrier transporting household goods to establish rates based on binding estimates.
- Require the Commission to authorize motor carriers of property to interchange equipment and furnish through service under general rules or special orders when that will serve the public interest.
- Prohibit a motor carrier from protesting an application to provide transportation unless certain requirements are met.
- Require a motor carrier to pay a \$50 fee to protest an application for a certificate of authority.
- Establish certain duties of the State Highway Commissioner and county road commissions.
- Require the Commission to develop a motor carrier safety rating system.

MCL 475.1 et al.

Legislative Analyst: Jeff Mann

FISCAL IMPACT

The bill would have an indeterminate fiscal impact on the Public Service Commission (PSC) within the Department of Licensing and Regulatory Affairs, and no fiscal impact on local units of government. The bill would make some changes to administrative functions within the PSC with regard to motor carriers. For example, the bill would eliminate the requirement for the biweekly mailing of notices for hearings, applications, and other hearings, which would save an indeterminate amount each year. In fiscal year 2013-14, the PSC spent a total of \$54,600 in mailing services from motor carrier fees, which support the regulation of

motor carriers. Removing the requirement for these mailings would reduce future mailing expenditures by some amount.

The bill also would remove several PSC regulatory requirements and responsibilities with regard to transporters of general commodities, and add similar requirements and responsibilities to sections regarding transporters of household goods engaged in nonlocal moves. It is unknown how these changes would affect PSC operations. If the change is merely a recategorization of carriers under the relevant articles of the Motor Carrier Act, then the change would have no fiscal impact. If, however, the change would cause certain carriers to no longer be subject to those regulations, and others to become subject to them, then the fiscal impact could be positive or negative depending on how many carriers would be subject to those requirements relative to the current number.

Finally, the bill would increase the misdemeanor fine for various violations of the Motor Carrier Act from \$500 to \$1,000. Any increased revenue from these fines would benefit public libraries

Fiscal Analyst: Josh Sefton

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This analysis was prepared by nonpartisan Senate staff for use by the Senate in its deliberations and does not constitute an official statement of legislative intent.