

HOUSE BILL No. 2291

AN ACT relating to motor carriers; concerning the regulation thereof; amending K.S.A. 66-137, 66-177 and 66-1,110 and K.S.A. 2000 Supp. 66-138, 66-143, 66-1,112, 66-1,115, 66-1,116, 66-1,128, 66-1,129b, 66-1,139, 66-1,139a and 66-1a01 and repealing the existing sections.

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

New Section 1. The superintendent of the Kansas highway patrol and the commission are hereby authorized and empowered to enter into any contracts or agreements with the relevant federal agency that are appropriate to allow qualified investigators of the commission and officers of the highway patrol to conduct investigations necessary for the relevant federal authority to issue a safety fitness rating.

New Sec. 2. (a) Any motor carrier violating any statute, commission orders or rules and regulations relevant to motor carriers adopted by the state corporation commission shall be subject to a civil penalty of not less than \$100 and not more than \$1,000 for negligent violations, and not more than \$5,000 for intentional violations.

(b) In construing and enforcing a civil penalty in accordance with this section, any act, omission or failure of any officer, agent or other person acting for or employed by any motor carrier while acting within the scope of such person's employment, shall in every case be deemed the act, omission or failure of the motor carrier.

(c) Every day during which the motor carrier fails to comply with any order or direction of the commission, or any applicable statute, rule or regulation, shall constitute a separate and distinct violation.

(d) Civil penalties shall be enforced and collected by an attorney for the corporation commission in the appropriate district court.

(e) Civil penalties shall be remitted in accordance with the provisions of K.S.A. 75-4215, and amendments thereto, to the state treasurer. Upon receipt of each such remittance, the state treasurer shall deposit the entire amount in the state treasury to the credit of the motor carrier license fee fund.

(f) The commission is granted the power, by general order or otherwise, to prescribe reasonable rules and regulations for the assessment of administrative civil penalties and sanctions for violations of any statute, commission orders or rules and regulations adopted by the commission.

New Sec. 3. Any civil penalty may be compromised by the state corporation commission. In determining the amount of the penalty or the amount agreed in compromise, the appropriateness of the penalty to the size of the business, the gravity of the violation and the good faith of the person charged in attempting to achieve compliance, shall be considered. The amount of the penalty, when finally determined, or the amount agreed upon in compromise, may be deducted from any sums owing by the state of Kansas to the person charged or may be recovered, together with costs and the reasonable attorney fees of the commission staff or retained counsel in a civil action in the appropriate district court. In lieu of all or part of the civil penalty, the commission may consider and approve, before or at hearing, a requirement, negotiated with the commission's transportation division, that the person charged make payments to or expenditures for a project that is related to motor carrier safety regulation and benefits the industry or community as a whole.

Sec. 4. K.S.A. 66-137 is hereby amended to read as follows: 66-137. Any person who shall ~~willfully~~ *intentionally* make any false entry in the accounts, books of account, records, or memoranda kept by any common carrier or any public utility governed by the provisions of this act, or who shall ~~willfully~~ *intentionally* destroy, mutilate, alter or by any other means or device falsify the record of any such account, book of accounts, record or memorandum, or who shall ~~willfully~~ *intentionally* neglect or fail to make full, true and correct entries of such account, book of accounts, record or memorandum of all facts and transactions appertaining to such common carriers or public utilities business, or who shall falsely make any statement required to be made to the corporation commission, shall be deemed guilty of a felony, and upon the conviction shall be punished by a fine of not less than one thousand dollars nor more than five thousand dollars, or by imprisonment of not less than one year nor more than three years, or by both such fine and imprisonment. ~~Provided, That guilty of a severity level 7, nonperson felony, and in addition to the sentence authorized by law, be ordered to pay a fine in a sum not to exceed \$5,000.~~

The commission may, in its discretion issue orders specifying such operating, accounting or financial papers, records, books, blanks, tickets, stubs or documents, of carriers which may after a reasonable time be destroyed, and prescribing a length of time such books, papers or documents shall be preserved. ~~And provided further,~~ except that such orders shall be in harmony with those of the ~~interstate commerce commission~~ relevant federal agency.

Sec. 5. K.S.A. 2000 Supp. 66-138 is hereby amended to read as follows: 66-138. (a) If any common carrier, ~~motor carrier holding a certificate, permit or license~~ or public utility governed by the provisions of this act violates any of the provisions of this act, or shall do any act herein prohibited, or fails or refuses to perform any duty enjoined upon it in this act, or fails, neglects or refuses to obey any lawful requirement or order made by the commission, or any final judgment or decree made by any court upon appeal from any order of the commission, it shall, for every such violation, failure or refusal, forfeit and pay to the state treasurer a sum not less than \$100 and not more than \$1,000 for such offense. Upon receipt of any such sum, the state treasurer shall credit the entire amount thereof to the public service regulation fund or the motor carrier license fee fund, as the case requires.

Such forfeiture shall be enforced and collected by the attorney general in any court of competent jurisdiction. The attorney general may appoint a corporation commission attorney as a special assistant attorney general for the purposes of enforcing and collecting any forfeiture contemplated herein. In construing and enforcing the provisions of this act, any act, omission or failure of any officer, agent or other person acting for or employed by any such public utility; ~~or common carrier or motor carrier holding a certificate, permit or license~~, while acting within the scope of such person's employment, shall in every case be deemed to be the act, omission or failure of such public utility; ~~or common carrier or motor carrier holding a certificate, permit or license~~, and every day during which any such public utility; ~~or common carrier or motor carrier holding a certificate, permit or license~~, or officer, agent or employee thereof, fails to comply with any order or direction of the commission, or to perform any duty required or enjoined by this act, shall constitute a separate and distinct violation of the provisions of this act.

(b) *The provisions of subsection (a), shall not apply to any motor carrier.*

Sec. 6. K.S.A. 2000 Supp. 66-143 is hereby amended to read as follows: 66-143. The corporation commission shall have power to intervene in any case pending before the *relevant* federal agency in which interstate rates, *service or safety* affecting the interest of Kansas *motor carriers, common carriers or shippers* are involved, and the commission is hereby empowered and directed to pay all expenses of investigation and prosecution of litigation instituted under this section out of the contingent fund of the commission.

Sec. 7. K.S.A. 66-177 is hereby amended to read as follows: 66-177. (a) Any public utility; ~~or common carrier or motor carrier holding a certificate, permit or license~~ willfully violating or evading any of the provisions of law for the regulation of such public utility; ~~or common carrier or motor carrier holding a certificate, permit or license~~ not otherwise specifically provided for shall, for each offense, forfeit and pay a penalty of not less than \$100 nor more than \$5,000. All penalties provided for herein shall be recovered by a civil action, to be instituted and prosecuted in the name of the state, by the county attorney of the county in which the offense has been committed, upon the direction of the corporation commission. If upon the trial of the action the jury finds for the plaintiff, the jury shall assess and return with their verdict the amount of the fine to be imposed upon the defendant and the court shall render judgment accordingly. All such penalties recovered shall be paid to the state treasurer pursuant to K.S.A. 20-2801, and amendments thereto, and the corporation commission may require the attorney general to assist such county attorney in the prosecution of such action. No bond for costs shall be required of the state in any such action.

(b) *The provisions of subsection (a), shall not apply to any motor carrier.*

Sec. 8. K.S.A. 66-1,110 is hereby amended to read as follows: 66-1,110. All “public motor carriers of property ~~or~~, *of household goods or of passengers*” as defined in this act are hereby declared to be common carriers within the meaning of the public utility laws of this state, and are hereby declared to be affected with a public interest and subject to this act and to the laws of this state, including the regulation of all rates and charges now in force or that hereafter may be enacted, pertaining to public utilities and common carriers as far as applicable, and not in conflict ~~herewith~~.

Sec. 9. K.S.A. 2000 Supp. 66-1,112 is hereby amended to read as follows: 66-1,112. (a) The commission is hereby vested with power and authority and it shall be its duty to license, supervise and regulate every public motor carrier of property, *of household goods or of passengers* in this state, to the full extent not preempted by federal law, including fixing and approving reasonable maximum or minimum, or maximum and minimum rates, fares, charges, classifications and rules and regulations pertaining to the transportation of household goods or passengers as defined in 49 U.S.C. ~~40102~~ 13102. The commission shall prescribe rules and regulations related to uniform cargo liability, uniform bills of lading, uniform cargo credit and antitrust immunity for joint-line rates and routes, classifications and mileage guides. The commission is hereby vested with power and authority and it shall be its duty to license, supervise and regulate every public motor carrier ~~of property~~ transporting *property*, household goods or passengers in this state, and to regulate and supervise the accounts, schedules, service and method of operation of same; to prescribe a uniform system and classification of accounts to be used; to require the filing of annual and other reports and any other data; and to supervise and regulate public motor carriers ~~of property~~ transporting *property*, household goods or passengers in all matters affecting the relationship between such public motor carriers of property, *of household goods or of passengers* and the traveling and shipping public.

(b) The commission shall have power and authority, by general order or otherwise, to prescribe reasonable and necessary rules and regulations governing all such motor carriers. All laws relating to the powers, duties, authority and jurisdiction of the corporation commission over common carriers are hereby made applicable to all such motor carriers except as herein otherwise specifically provided.

(c) In order to insure nondiscriminatory, nonpreferential and just and reasonable rates, joint rates, fares, tolls, charges and exactions for all shippers, the commission shall establish rate-making procedures for all motor common and contract carriers, including collective rate-making procedures for joint consideration, initiation and establishment of such rates and charges for transporting household goods or passengers as defined in 49 U.S.C. ~~40102~~ 13102. The commission shall prescribe reasonable rules and regulations related to uniform cargo liability, uniform bills of lading, uniform cargo credit and antitrust immunity for joint-line rates and routes, classifications and mileage guides. Joint and collective rate-making shall be limited to:

(1) That which is necessary to formulate one or more joint rates as such term is used in K.S.A. 66-117, and amendments thereto;

(2) general rate increases or decreases if the tariff proposal gives shippers, under procedures approved by the state corporation commission, at least 15 days' notice of the proposal and an opportunity to present comments on it before a tariff is filed with the commission and if discussion of such increases or decreases is related to industry average carrier costs and does not include discussion related exclusively to individual markets or particular single-line rates;

(3) changes in commodity classifications;

(4) changes in tariff structures if discussion of such changes is related to industry average carrier costs and does not include discussion related exclusively to individual markets or particular single-line rates; and

(5) publishing of tariffs, filing of independent actions for individual members and changes in rules and regulations which are of at least substantially general application throughout the area in which such changes will apply.

(d) The provisions of K.S.A. 50-101 *et seq.*, and amendments thereto, shall not apply to the activities and procedures of persons, groups, agen-

cies, bureaus or other entities where such activities and procedures have received approval by order of the state corporation commission under this statute.

Sec. 10. K.S.A. 2000 Supp. 66-1,115 is hereby amended to read as follows: 66-1,115. It shall be unlawful for any “contract motor carrier of property or passengers” or “private motor carrier of property” to operate as a carrier of property or passengers within this state either in intrastate commerce or in interstate commerce without first having obtained from the corporation commission a license or permit or registered pursuant to 49 U.S.C. ~~11506~~ 14504. An application shall be made to the corporation commission in writing stating such information as the commission may request. Upon receipt of such information and on compliance with the regulations and payment of fees, the corporation commission shall issue a license or permit to such applicant.

Sec. 11. K.S.A. 2000 Supp. 66-1,116 is hereby amended to read as follows: 66-1,116. (a) It shall be unlawful for a public motor carrier of property, *of household goods* or of passengers, or a contract motor carrier of property or of passengers, to operate in interstate commerce regulated by the ~~interstate commerce commission~~ *relevant federal agency* without registering its motor vehicles in its base state pursuant to 49 U.S.C. ~~11506~~ 14504 in order to operate in Kansas.

(b) It shall be unlawful for a public motor carrier of property, *of household goods* or of passengers, a contract motor carrier of property or of passengers, or a private motor carrier of property which is exempt from ~~interstate commerce commission~~ *federal* regulations, to operate in interstate commerce within this state, without having furnished the corporation commission, in writing such information as the commission may request covering observance of state police regulations and the payments of the fees. This act shall apply to all persons and motor vehicles engaged in interstate commerce only to the extent permitted by the constitution and laws of the United States.

Sec. 12. K.S.A. 2000 Supp. 66-1,128 is hereby amended to read as follows: 66-1,128. (a) Except as provided in subsection ~~(b)~~ (c) or pursuant to 49 U.S.C. ~~11506~~ 14504, no certificate, permit, or license shall be issued by the state corporation commission to any public motor carrier of property, *household goods* or passengers, contract motor carrier of property or passengers or private motor carrier of property, until the applicant has filed with the commission a liability insurance policy approved by the commission, in such reasonable amounts as the commission determines *by rules and regulations* is necessary to adequately protect the interest of the public with due regard to the number of persons and amount of property involved. Such amounts shall not be less than \$100,000 for personal injury or death to any one person in any one accident, \$300,000 for injury or death to two or more persons in any one accident and \$50,000 for loss to property of others in any one accident, which liability insurance shall bind the obligors to pay compensation for injuries to persons and loss of or damage to property resulting from the negligent operation of such carrier.

(b) The liability insurance policy required to be filed by any resident applicant shall be in an insurance company or association authorized to transact business in this state. Such policy of any nonresident applicant may be afforded by an insurance company not authorized to do business in this state which has given the commissioner of insurance of this state a power of attorney authorizing such commissioner to accept service on its behalf of notice or process in any action upon such policy. Such company not authorized to do business in this state shall have on file with such commissioner a form as prescribed by subsection (b) of K.S.A. 40-3106, and amendments thereto. A certificate of any insurance company or association, in a form approved by the state corporation commission certifying that there is in effect the liability insurance required by this section, may be filed in lieu of the insurance policy itself. In the event such certificate is filed, such company shall furnish to the commission upon its request a duplicate original of the insurance policy and all endorsements thereon. No other or additional bonds or licenses than those prescribed in this act shall be required of any motor carrier by any city or town or other agency of the state.

~~(b)~~ (c) Any public motor carrier of property, *household goods* or passengers, contract motor carrier of property or passengers or private motor carrier of property in whose name more than 25 motor vehicles are registered may qualify as a self-insurer by obtaining a certificate of self-insurance from the commissioner of insurance. Upon application of any such carrier, the commissioner of insurance may issue a certificate of self-insurance, if the commissioner is satisfied that such carrier is possessed and will continue to be possessed of ability to pay any judgment obtained against such carrier arising out of the ownership, operation, maintenance or use of any motor vehicle registered in such carrier's name.

(d) Upon notice and a hearing in accordance with the provisions of the Kansas administrative procedure act, the commissioner of insurance may cancel a certificate of self-insurance upon reasonable grounds. Failure to pay any judgment against a self-insurer, arising out of the ownership, operation, maintenance or use of a motor vehicle registered in such self-insurer's name, within 30 days after such judgment shall have become final, shall constitute reasonable grounds for the cancellation of a certificate of self-insurance.

Sec. 13. K.S.A. 2000 Supp. 66-1,129b is hereby amended to read as follows: 66-1,129b. (a) The provisions of 49 C.F.R. 173.5-agricultural operations; 49 C.F.R. 173.6-materials of trade; and 49 C.F.R. 173.8-exceptions for nonspecification packagings used in intrastate transportation, in effect on the effective date of this act, *or any later version as adopted by the commission in rules and regulations*, are hereby adopted.

(b) The following materials are authorized to be transported by intrastate farmers in nonspecification bulk packagings:

- (1) Agricultural products specified in 49 C.F.R. 173.5 (b)(2); and
- (2) flammable liquid petroleum distillates.

(c) Nonbulk packagings permanently secured to a transport vehicle and protected against leakage or damage in the event of an overturn, having a capacity of less than 450 liters (119 gallons) or less are authorized for the transportation of flammable liquid petroleum distillates.

(d) Except as authorized in subsections (b) and (c), the packagings must otherwise comply with the applicable requirements of 49 C.F.R. 171 through 180.

Sec. 14. K.S.A. 2000 Supp. 66-1,139 is hereby amended to read as follows: 66-1,139. (a) All interstate regulated public motor carriers of property, *of household goods* or of passengers or contract motor carriers of property or of passengers who operate a motor vehicle in Kansas shall register their motor vehicles in their base state pursuant to 49 U.S.C. ~~14506~~ 14504, unless exempted under the provision of K.S.A. 66-1,109, and amendments thereto.

(b) All intrastate public motor carriers of property, *household goods* or passengers, contract motor carriers of property or passengers, and private motor carriers of property shall register with the state corporation commission all trucks or truck tractors as defined by K.S.A. 8-126, and amendments thereto, and all other passenger vehicles used to transport persons for hire, used in the operation of their business as such, except those used in operations exempted under the provisions of K.S.A. 66-1,109, and amendments thereto.

(c) Interstate motor carriers which have been granted authority by the commission to transport commodities exempt from the jurisdiction of the ~~interstate-commerce-commission~~ *relevant federal authority* and who operate for hire or who operate as private motor carriers shall register all trucks or truck tractors as defined by K.S.A. 8-126, and amendments thereto, and all other passenger vehicles used to transport persons for hire, used in the operation of their business as such, except those used in operations exempted under the provisions of K.S.A. 66-1,109, and amendments thereto. For the purpose of assisting in paying the cost of supervision and regulation of motor carriers, every such carrier shall annually pay to the commission for each calendar year a regulatory fee of \$10 for each truck, truck tractor or passenger vehicle registered with the commission. No fee shall be charged for a trailer or semitrailer. *Interstate motor carriers that are already registered pursuant to subsection (a), shall not be required to register under this subsection.*

(d) All applications for registration shall be made on forms furnished by the commission. Applications for registration of interstate common or

contract motor carriers shall include on the application the quantity of trucks, truck tractors or passenger vehicles used by the motor carriers on which a fee is required to be paid. Applications for registration of intra-state common or contract motor carriers, private motor carriers, and interstate exempt motor carriers shall include the complete vehicle identification numbers and the year and make of all trucks, truck tractors or passenger vehicles used by the motor carrier, on which a fee is required to be paid, and the application shall be accompanied by the required fee. The fees shall be due January 1 and shall be paid not later than January 15. Upon receipt of the application and fee, the commission shall issue to the carrier appropriate credentials for each vehicle registered.

(e) The commission shall remit all moneys received by it or for it in payment of fees imposed under this section to the state treasurer ~~daily in accordance with the provisions of K.S.A. 75-4215, and amendments thereto.~~ Upon receipt of each such remittance, the state treasurer shall deposit the entire amount thereof in the state treasury ~~and the same shall be credited~~ to the *credit of the* motor carrier license fees fund.

Sec. 15. K.S.A. 2000 Supp. 66-1,139a is hereby amended to read as follows: 66-1,139a. All amounts collected under K.S.A. 66-1,139, and amendments thereto, for the purpose of registration of motor vehicles, pursuant to 49 U.S.C. ~~41506~~ *14504*, shall be remitted by the state corporation commission to the state treasurer daily. The state treasurer shall deposit the entire amount in the state treasury and credit such amount to the base state registration clearing fund which is hereby created. Payments due and owing to participating states pursuant to 49 U.S.C. ~~41506~~ *14504* and refunds for overpayment shall be made from such fund. The state corporation commission shall reconcile such clearing fund monthly with balances remitted monthly.

Sec. 16. K.S.A. 2000 Supp. 66-1a01 is hereby amended to read as follows: 66-1a01. (a) The state corporation commission shall charge and collect fees for the purposes and in the amounts as prescribed in this section. Such fees shall be paid to the state corporation commission at the time of filing the original papers or application in the case.

(b) (1) For the purposes of certificates issued under K.S.A. 66-125, and amendments thereto, to authorize the issuance of stock, bonds or other evidences of indebtedness, except as otherwise provided in this paragraph (1), the commission shall charge and collect an application fee of \$10 to accompany each application and processing fees which shall be set by rules and regulations adopted by the commission and shall reflect the costs incurred by the commission to process such application.

Notwithstanding the foregoing provisions of this paragraph (1), whenever an application is made for a certificate to authorize the issuance of stocks, bonds or other evidences of indebtedness and the ~~federal interstate commerce commission~~ *relevant federal authority* has authorized the issuance of the same issue of such stocks, bonds or other evidences of indebtedness, the commission shall charge and collect an application fee of \$10 to accompany each application and a processing fee of \$25 which shall be paid on or before issuance of such certificate.

(2) Whenever an application is made for a certificate of convenience and authority to provide interexchange telecommunications services or competitive local exchange carrier services, the commission shall charge and collect an application fee of \$250 which shall accompany the application.

(3) With regard to the regulation of motor carriers, the commission shall charge and collect fees in accordance with the following schedule:

For application for motor common carrier certificate.....	\$25
For application for motor carrier permit or license, except no fee shall apply to motor carriers regulated by the <del>interstate commerce commission</del> <i>relevant federal authority</i> .....	10
For application for extension, rerouting, removal of restrictions or transfer of motor common carrier certificate and motor common carrier license.....	10
If increases proposed in rates, fares or charges when hearing is required .....	25

(4) The commission shall charge a fee for copies, other than mimeographed or printed copies, of applications, orders, certificates, schedules

and duplicate motor-carrier equipment identification cards and a fee for copies of passenger, *household goods* or property motor common carrier lists, both fees in amounts approved by the director of accounts and reports under K.S.A. 45-219, and amendments thereto.

(c) There is hereby created in the state treasury the public service regulation fund. The commission shall remit all moneys received by or for it in payment of the fees imposed for certificates authorizing the issuance of stock, bonds or other evidences of indebtedness under paragraph (1) of subsection (b) to the state treasurer ~~daily~~ *in accordance with the provisions of K.S.A. 75-4215, and amendments thereto*. Upon the receipt of each such remittance, the state treasurer shall deposit the entire amount thereof in the state treasury ~~and the entire amount thereof shall be credited~~ to the *credit of the public service regulation fund*. All expenditures from the public service regulation fund shall be made in accordance with appropriation acts upon warrants of the director of accounts and reports issued pursuant to vouchers approved by the chairperson of the state corporation commission or by a person or persons designated by such chairperson.

(d) There is hereby created in the state treasury the motor carrier license fees fund. The commission shall remit all moneys received by or for it in payment of the fees imposed for regulation of motor carriers under paragraphs (2) and (3) of subsection (b) to the state treasurer ~~daily~~ *in accordance with the provisions of K.S.A. 75-4215, and amendments thereto*. Upon the receipt of each such remittance, the state treasurer shall deposit the entire amount thereof in the state treasury ~~and the entire amount thereof shall be credited~~ to the *credit of the motor carrier license fees fund*. All expenditures from the motor carrier license fees fund shall be made in accordance with appropriation acts upon warrants of the director of accounts and reports issued pursuant to vouchers approved by the chairperson of the state corporation commission or by a person or persons designated by such chairperson.

Sec. 17. K.S.A. 66-137, 66-177 and 66-1,110 and K.S.A. 2000 Supp. 66-138, 66-143, 66-1,112, 66-1,115, 66-1,116, 66-1,128, 66-1,129b, 66-1,139, 66-1,139a and 66-1a01 are hereby repealed.

Sec. 18. This act shall take effect and be in force from and after its publication in the statute book.

I hereby certify that the above BILL originated in the HOUSE, and passed that body

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\_\_\_\_\_  
*Speaker of the House.*

\_\_\_\_\_  
*Chief Clerk of the House.*

Passed the SENATE \_\_\_\_\_

\_\_\_\_\_  
*President of the Senate.*

\_\_\_\_\_  
*Secretary of the Senate.*

APPROVED \_\_\_\_\_

\_\_\_\_\_  
*Governor.*