
AUTO TRANSPORTATION

CHAPTER 91

(H. B. No. 155—Hardy of Slope.)

AUTO TRANSPORTATION COMPANIES

An Act To Amend and Re-enact Chapter 136, Laws of North Dakota for the Year 1923, Providing for the Supervision and Regulation of the Transportation of Persons and Property for Compensation Over Any Public Highway by Motor Propelled Vehicles; Defining Transportation Companies; Providing for Supervision and Regulation Thereof by the Board of Railroad Commissioners of the State of North Dakota; Providing for the Enforcement of the Provisions of This Act and for the Punishment of the Violation Thereof.

Be It Enacted By The Legislative Assembly of the State of North Dakota:

§ 1. (A) The term "corporation" when used in this act means a corporation, company or association, or joint stock association.

(B) The term "person" when used in this act means an individual, a firm or a co-partnership.

(C) The term "Commission" when used in this act means the Board of Railroad Commissioners of the State of North Dakota, or the Director of Public Works or such other board or body as may succeed to the powers and duties now held by the Board of Railroad Commissioners.

(D) The term "Auto transportation company," when used in this act means every corporation or person, their lessees, trustees, receivers or trustees appointed by any court whatsoever, owning, controlling, operating or managing any motor propelled vehicle not usually operated on or over rails used in the business of transporting persons, and, or property for compensation over any public highway in this state between fixed termini or over a regular route, and not operating exclusively within the incorporated limits of any city or town; provided, that the term "auto transportation company," as used in this act, shall not include corporations or persons, their lessees, trustees, receivers or trustees appointed by any court whatsoever, in so far as they own, control, operate or manage taxicabs, hotel busses, school busses, motor propelled vehicles operated exclusively in transporting agricultural, horticultural or dairy or other farm products from the point of production to the market, rural mail route maintained by the United States Government, or any other carrier which does not come within the term "auto transportation company" as herein defined.

(E) The term "public highway," when used in this act, means every street, road, or highway in this state, and shall include any highway, state road, county road, public street, avenue, alley, driveway, boulevard, or other place built, supported, maintained, controlled or used by the public or by the state, county, district, or municipal officers for the use of the public as a highway or for the transportation of persons and, or property, or as a place of travel or communication between different localities or communities.

(F) The words "between fixed termini or over a regular route," when used in this act, mean the termini or route between or over which any auto transportation company usually or ordinarily operates any motor propelled vehicles, even though there may be departures from the said termini or route, whether such departures be periodic or irregular. Whether or not any motor propelled vehicle is operated by any auto transportation company "between fixed termini or over a regular route" within the meaning of this act shall be a question of fact and the finding of the "Commission" thereon shall be final and shall not be subject to review.

(G) The word "permit" means the permit authorized to be issued by the Commission under the provisions of this act.

(H) The words "for compensation" mean for remuneration of any kind, paid or promised, either directly or indirectly. An occasional accommodative transportation service by a person not in the transportation business, while on an errand for himself, shall not be construed as a service for compensation, even though the person accommodated shares in or pays the cost of the service.

§ 2. No auto transportation company, nor corporation, nor person, nor its or their legal representatives, shall operate any motor propelled vehicle for the transportation of persons, and, or, property, for compensation on any public highway in this state except in accordance with the provisions of this act.

§ 3. Auto transportation companies are hereby divided into two classes for the purposes of this act, to be known as Class A Auto Transportation Companies and Class B Auto Transportation Companies. Class A Auto transportation companies shall embrace all auto transportation companies operating between fixed termini or over a regular route. Class B auto transportation companies shall embrace all auto transportation companies not operating between fixed termini or over a regular route.

§ 4. The "Commission" of the State of North Dakota is hereby vested with power and authority and it is hereby made its duty to supervise and regulate every auto transportation company in this state as such to fix just, fair, reasonable, sufficient and nondiscriminatory rates, fares, charges, classifications, rules and regulations of

each such auto transportation company, and to alter rates, rules and regulations; to regulate the accounts, service, rates of speed of such auto transportation and safety of operations of each such auto transportation company; to require the filing of annual and other reports, tariffs, schedules, or other data by such auto transportation companies; and to supervise and regulate auto transportation companies in all other matters affecting the relationship between such auto transportation companies and the traveling and shipping public. The Commission shall have power and authority, by general order or otherwise, to prescribe rules and regulations in conformity with this act, applicable to any and all such auto transportation companies; and within such limits shall have power and authority to make orders and to prescribe rules and regulations affecting auto transportation companies.

The Commission may, at any time, by its order duly entered after a hearing had upon notice to the holder of any certificate hereunder, and an opportunity to such holder to be heard, at which it shall be proved that such holder wilfully violates or refuses to observe any of its proper order, rules or regulations, of any provisions of this act, suspend, revoke, alter or amend any certificate issued under the provisions of this section, but the holder of such certificate shall have all the rights of rehearing, review and appeal as to such order of the Commission as is provided for in Section 10 of this act.

The Commission shall have power and authority, by general order or otherwise, to prescribe rules and regulations in conformity with this act, applicable to any and all auto transportation companies. All rules and regulations in relation to schedules, service, tariffs, rates, facilities, accounts and reports shall have due regard for the difference existing between Class A and Class B auto transportation companies as herein defined, and shall be just, fair and reasonable as to said two classes of companies in their relation to each other, to the public and other common carriers.

In fixing the tariff or rates to be charged for the carrying of persons, and, or property, the Commission shall take into consideration, among other things, the kind and character of service to be performed, the public necessity therefor, and the effect of such tariff and rates upon other common carriers, if any, and as far as possible avoid detrimental or unreasonable competition with existing transportation service.

No time schedule, tariff or rates shall be put into effect or be changed or altered except upon hearing duly had and an order therefor by the Commission. Notice of such hearing shall be served upon any competing auto transportation company or railroad; provided, however, that in case of an emergency or where application

is made for minor or unimportant alterations of time schedules the Commission may, in its discretion, authorize the changing or alteration of time schedules without a hearing and prior to the service of such notice, but in that event notice shall be served within a reasonable time after such action on the part of the Commission and any competing auto transportation company or railroad affected by such change may, upon application, be entitled to a hearing upon such alteration or change.

No auto transportation company shall charge or demand or collect or receive a greater or less or different compensation for the transportation of passenger, and, or property, or for any service in connection therewith, than the rates, fares and charges which have been duly approved therefor by an order of the Commission; nor shall any auto transportation company refund or remit in any manner or by any device, any portion of the rates, fares and charges required to be collected by the Commission's order, nor extend to any shipper or person any privilege or facilities in the transportation of passengers, and, or property, except such as have been provided for by an order of the Commission.

§ 5. No auto transportation company shall hereafter operate for the transportation of persons and, or, property for compensation between fixed termini or over a regular route in this state, without first having obtained from the Commission under the provisions of this act, a certificate declaring that public convenience and necessity require such operation. Any right, privilege, certificate held, owned or obtained by an auto transportation company may be sold, assigned, leased, transferred or inherited as other property, only upon authorization by the Commission. The Commission shall have power, after hearing, when the applicant requests a certificate to operate in a territory already served by a certificate holder under this act to issue said certificate as prayed for; or for good cause shown to refuse to issue same or to issue it for the partial exercise only of said privilege sought, and may attach to the exercise of the rights granted by said certificate such terms and conditions as, in its judgment, the public convenience and necessity may require.

§ 6. Any auto transportation company making application for a certificate under this act shall file a petition with the Commission, duly verified, and which shall specify the following matters:

1. The name and address of the applicant and the names and addresses of its officers, if any.
2. The public highway or highways over which, and the fixed termini between which, or the route or routes over which it intends to operate, if the same are fixed.
3. The kind of transportation, whether passenger, and, or property, together with a full and complete description of the char-

acter of the vehicle or vehicles to be used, including the seating capacity of any vehicle to be used for passenger traffic and the tonnage of the vehicle to be used in freight traffic.

4. The proposed time schedule.

5. A schedule of the tariff or rates desired to be charged for the transportation of freight or passengers.

6. A complete and detailed description of the property proposed to be devoted to the public service.

7. A detailed statement showing the assets and liabilities of such applicant.

8. And such other or additional information as the Commission may by order require.

§ 7. Upon the filing of such petition the Commission shall fix a time and place for hearing thereon which shall not be less than ten (10) days after such filing. The Commission shall cause notice of hearing thereon to be served upon an officer or owner of any auto transportation company that, in the opinion of the Commission, might be affected by the granting of any such certificate, and upon a station agent of any railroad operating into or through any village or city located on the proposed route of the applicant, and on the State Highway Department, at least 10 days before the date of the hearing, and any such railroad or auto transportation company and the State Highway Department is hereby declared to be an interested party of said proceedings and may offer testimony for or against the granting of such certificate.

§ 8. In determining whether or not a certificate should be issued, the Commission shall give reasonable consideration to the transportation service being furnished or that could be furnished by any railroad and the effect which such proposed transportation service may have upon other forms of transportation service which are essential and indispensable to the communities to be affected by such proposed transportation service or that might be affected thereby, and to the traffic already existing upon the route proposed to be traveled and the effect that such proposed service may have upon the existing travel upon said route and the excess cost of maintaining such highway on account of the installation of such additional service, if any. The Commission shall avoid as far as possible, consistent with the public interest, the duplication of transportation service.

§ 9. The Commission shall in the granting of certificate to operate any auto transportation company, for transporting persons, and, or property, for compensation require the owner or operator to first procure liability and property damage insurance from a com-

pany licensed to make liability insurance in the State of North Dakota or a surety bond of a company licensed to write surety bonds in the State of North Dakota in such amounts as the Commission may fix as being adequate for the protection of the interests of the public, with due regard to the hazard and density of traffic, which insurance policy or surety bond shall guarantee the payment of any final judgment obtained against the insured for death or injury to persons or loss or damage to property, not exceeding the amounts determined by the Commission and specified in such policy or bond, resulting from the negligence of such auto transportation company. Each policy of insurance or surety bond required, shall be filed with the Commission and kept in full force and effect, and failure so to do shall be cause for the revocation of the certificate.

§ 10. In all respects in which the Commission has power and authority under this act, applications and complaints may be made and filed with it and notices issued thereon, hearing held, opinions, orders and decisions made and filed, petitions for rehearing filed and acted upon, and appeals from such orders and decisions may be taken by any party to the District Court of the county where such hearing was held under the same terms and conditions as are provided for upon appeals to the District Court from Orders and decisions of the Board of Railroad Commissioners in the State of North Dakota by the provisions of Chapter 192, Session Laws of North Dakota for 1919.

§ 11. Every officer, agent or employee of any corporation, and every other person who violates or fails to comply with, or who procures, aids or abets in the violation of any provisions of this act, or who fails to obey, observe or comply with any order, decision, rule or regulation, direction, demand or requirement or any part or provision thereof, is guilty of a misdemeanor and punishable as such.

§ 12. Miscellaneous fees shall be as follows :

All applications for certificate of public convenience and necessity or a renewal thereof shall be accompanied by an application fee of not less than \$15 nor more than \$30, to be fixed in each instance by the Commission.

Application for transfer of a certificate of public convenience and necessity	\$5.00
Application for the mortgaging of a certificate of public convenience and necessity	5.00
Application for the issuance of a duplicate certificate of public convenience and necessity	3.00
For copies of any records of the Commission pertaining to auto transportation companies—per one hundred words or portion thereof15

All sums collected hereunder shall be turned over by the Commission to the State Treasurer within thirty days after their receipt and by him credited to a special fund to be used by the Commission upon proper voucher and audit by the State Auditing Board for the expenses of said Commission in administering the provisions of this act.

§ 13. For the purpose of carrying out the provisions of this act, there is hereby created in the State treasury a state fund to be known as the "Auto Transportation Fund." All fees collected by the Commission as herein provided shall be paid into the state treasury monthly and shall be credited to the said "Auto Transportation Fund."

§ 14. Every Class B auto transportation company now operating or which shall hereafter operate in this state shall, at the time of the issuance of such permit and annually thereafter on or between April 1st and April 15th of each calendar year, pay a minimum fee of \$10 for each motor propelled vehicle used by any such company for the transportation of persons; and, if the passenger seating capacity of such vehicle exceeds eight passengers, a further fee computed on the basis of 50c per passenger for such additional seating capacity shall be paid. For each motor propelled vehicle used by any such company for transporting property for hire, every such company shall pay a minimum fee of \$10 at the time and in the manner aforesaid; and, if the rated capacity of any such vehicle exceeds three tons, an additional fee computed on the basis of \$2 for each additional rated ton capacity shall be paid.

§ 16. Any auto transportation company shall forfeit all rights under a certificate issued under the provisions of this act by non-use thereof for a period of sixty days.

§ 17. All acts and parts of acts in so far as they conflict with the provisions of this act are hereby repealed.

§ 18. If any section, subsection, sentence, clause or phrase of this act is for any reason held to be unconstitutional, such decision shall not affect the validity of the remaining portion of this act.

§ 19. EMERGENCY.] This act is hereby declared to be an emergency measure and shall take effect and be in force from and after its passage and approval.

Approved March 7, 1925.

NOTE: This chapter carries emergency clause but did not receive the two-thirds vote of the members present in each house as required by law.

See Senate Journal, March 3rd, 1925—Page 23.

See House Journal, February 24th, 1925—Page 27.