

1 HOUSE BILL NO. 338

2 INTRODUCED BY C. HINKLE

3
4 A BILL FOR AN ACT ENTITLED: "AN ACT REPEALING CLASS D MOTOR CARRIER CERTIFICATIONS;
5 AMENDING SECTIONS 69-12-101, 69-12-205, 69-12-301, 69-12-321, 69-12-323, 69-12-324, 69-12-404, 69-
6 12-407, AND 69-12-611, MCA; REPEALING SECTION 69-12-314, MCA; AND PROVIDING AN IMMEDIATE
7 EFFECTIVE DATE."

8
9 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

10
11 **Section 1.** Section 69-12-101, MCA, is amended to read:

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

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

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

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

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

26 (5) "Charter service" means a service used for the transportation of passengers by a motor carrier
27 with rates not subject to approval by the commission if:

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

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

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

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

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

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

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

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

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

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

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

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

25 (b) furniture, fixtures, equipment, and the property of stores, offices, museums, institutions, hospitals,
26 or other establishments when those items are a part of the stock, equipment, or supply of the stores, offices,
27 museums, institutions, hospitals, or other establishments. The term does not include the stock-in-trade of an
28 establishment, whether consignor or consignee, other than used furniture and used fixtures, except when

1 transported as incidental to moving of the establishment or a portion of the establishment from one location to
2 another.

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

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

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

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

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

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

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

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

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

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

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

26 (20) "Transportation network carrier" means an entity that uses a digital network or software
27 application service to connect passengers to transportation network carrier services provided by transportation
28 network carrier drivers. A transportation network carrier may not be deemed to control, direct, or manage the

1 personal vehicles or transportation network carrier drivers that connect to its digital network, except where
2 agreed to by written contract.

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

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

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

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

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

15 **Section 2.** Section 69-12-205, MCA, is amended to read:

16 **"69-12-205. Rules to reflect differences between carrier classes.** (1) Except as provided in
17 subsection (3), rules related to schedules, service, tariffs, rates, facilities, accounts, and reports must recognize
18 the differences between types of Class A, Class B, Class C, ~~Class D~~, and Class E motor carriers, as defined in
19 this chapter, and must be just, fair, and reasonable to the classes and types of motor carriers in relation to each
20 other and to the public.

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

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

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

3

4 **Section 3.** Section 69-12-301, MCA, is amended to read:

5 **"69-12-301. Classification of motor carriers.** (1) Motor carriers are divided into five classes to be
6 known as:

7 (a) Class A motor carriers;

8 (b) Class B motor carriers;

9 (c) Class C motor carriers; and

10 ~~(d) Class D motor carriers; and~~

11 ~~(e)~~(d) Class E motor carriers.

12 (2) Class A motor carriers include all motor carriers operating between fixed termini or over a regular
13 route and under regular rates or charges, based upon either station-to-station rates or upon a mileage rate or
14 scale.

15 (3) Class B motor carriers include all motor carriers operating under regular rates or charges based
16 upon either station-to-station rates or upon a mileage rate or scale and not between fixed termini or over a
17 regular route.

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

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

21 ~~(6)~~(5) Class E motor carriers include all transportation network carriers."

22

23 **Section 4.** Section 69-12-321, MCA, is amended to read:

24 **"69-12-321. Hearing on application for motor carrier certificate.** (1) (a) Upon the filing of an
25 application for a certificate by a Class A, Class B, Class C, ~~Class D~~, or Class E motor carrier, except a Class C
26 motor carrier authorized to operate under the terms of a contract as provided in 69-12-324, or upon the filing of
27 a request for a transfer of authority, the commission shall provide notice of the application to any interested
28 party.

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

5 (c) A protest related to an application by a motor carrier pursuant to 69-12-311(1)(a) or 69-12-
 6 312(1)(a) or by a Class E motor carrier is limited to a protest of the motor carrier's ability to meet the
 7 requirements of 69-12-323(5).

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

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

14 (4) An application by a motor carrier pursuant to 69-12-311(1)(b) or 69-12-312(1)(b), by a Class C
 15 motor carrier, ~~or by a Class D motor carrier~~ for a certificate of public convenience and necessity may be denied
 16 without a public hearing when the records of the commission demonstrate that the route or territory sought to
 17 be served by the applicant has previously been made the basis of a public investigation and finding by the
 18 commission that public convenience and necessity do not require the proposed motor carrier service. A hearing
 19 must be held if the applicant presents facts demonstrating that conditions over the route or in the territory and
 20 affecting transportation facilities have materially changed since the previous public investigation and finding and
 21 that public convenience and necessity now require the motor carrier operation."
 22

23 **Section 5.** Section 69-12-323, MCA, is amended to read:

24 **"69-12-323. Decision on application.** (1) (a) Except as provided in subsection (1)(b), within 180
 25 days from the date of the completed filing of an application, the commission shall issue its finding, order, or
 26 decision on the application and the evidence presented in support of the application at the time of the hearing.

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

28 (2) ~~(a)~~ If after a hearing on the request for a certificate of public convenience and necessity the

1 commission finds from the evidence that public convenience and necessity require the authorization of the
2 service proposed or any part of the service proposed, a certificate of public convenience and necessity must be
3 issued. In determining whether a certificate of public convenience and necessity should be issued, the
4 commission shall consider:

5 ~~(i)~~(a) the transportation service being furnished or that will be furnished by any railroad or other
6 existing transportation agency;

7 ~~(ii)~~(b) the likelihood of the proposed service being permanent and continuous throughout 12 months
8 of the year; and

9 ~~(iii)~~(c) the effect that the proposed transportation service may have on other forms of transportation
10 service that are essential and indispensable to the communities to be affected by the proposed transportation
11 service or that might be affected by the proposed transportation service.

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

14 (3) The commission may issue the certificate as requested in the application or in part and may attach
15 terms and conditions to a certificate of public convenience and necessity for a motor carrier pursuant to 69-12-
16 311(1)(b) or 69-12-312(1)(b), ~~or a Class C motor carrier, or a Class D motor carrier~~ that in its judgment public
17 convenience and necessity require.

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

20 (5) (a) In determining whether to approve a certificate of compliance for a motor carrier pursuant to
21 69-12-311(1)(a) or 69-12-312(1)(a) or for a Class E motor carrier, the commission shall consider only whether
22 the applicant meets the requirements of 69-12-415. The commission shall provide notice and may require a
23 hearing in accordance with 69-12-321.

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

27

28 **Section 6.** Section 69-12-324, MCA, is amended to read:

1 **"69-12-324. Special provisions when federal or state contract involved.** (1) (a) A written contract
 2 presented to the commission is sufficient proof that a motor carrier pursuant to 69-12-311(1)(a) or 69-12-
 3 312(1)(a) or a Class E motor carrier meets the requirements for a certificate of compliance or that a motor
 4 carrier pursuant to 69-12-311(1)(b) or 69-12-312(1)(b), or a Class C motor carrier, ~~or a Class D motor carrier~~
 5 meets the requirements for a certificate of public convenience and necessity in accordance with the terms and
 6 conditions contained within the United States government or state government contracts.

7 (b) Subject to the provisions of this section, a transportation movement is considered to be:

8 ~~(a)~~ the transportation for hire of persons between two points within the state by a motor carrier
 9 pursuant to the terms of a written contract between the carrier and the United States government or an agency
 10 or department of the United States; ~~or,~~

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

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

18 (3) The certificate issued pursuant to the terms of the United States government or state government
 19 contract is authorized only for the duration of the United States government or state government contract
 20 concerned. The certificate may be renewed for another definite term if the motor carrier is the motor carrier
 21 authorized to operate under the United States government or state government contract."
 22

23 **Section 7.** Section 69-12-404, MCA, is amended to read:

24 **"69-12-404. Suspension of certificate by petition.** (1) (a) A motor carrier may petition the
 25 commission in writing to suspend its certificate for a period not to exceed 6 months. Only one additional 6-
 26 month suspension may be requested and granted.

27 (b) The suspension of a certificate of public convenience and necessity requested by a motor carrier
 28 pursuant to 69-12-311(1)(b) or 69-12-312(1)(b), or by a Class C motor carrier, ~~or by a Class D motor carrier~~

1 may be granted upon a showing of present absence of public convenience and necessity or other showing of
2 matters affecting motor carrier transportation.

3 (2) (a) The suspension of a certificate of compliance for a motor carrier pursuant to 69-12-311(1)(a)
4 or 69-12-312(1)(a) or for a Class E motor carrier as provided for in subsection (1) for a period of 12 consecutive
5 months automatically terminates a certificate of compliance and requires a motor carrier pursuant to 69-12-
6 311(1)(a) or 69-12-312(1)(a) or a Class E motor carrier to reapply for a certificate of compliance.

7 (b) The suspension of a certificate of public convenience and necessity for a motor carrier pursuant to
8 69-12-311(1)(b) or 69-12-312(1)(b), or a Class C motor carrier, ~~or a Class D motor carrier~~ as provided in
9 subsection (1) for a period of 12 consecutive months establishes a prima facie presumption of absence of
10 public convenience and necessity. If after notice and hearing the motor carrier pursuant to 69-12-311(1)(b) or
11 69-12-312(1)(b), or the Class C motor carrier, ~~or the Class D motor carrier~~ is unable to prove the existence of
12 public convenience and necessity or existing demand for the transportation service, the commission may
13 cancel a certificate of public convenience and necessity."
14

15 **Section 8.** Section 69-12-407, MCA, is amended to read:

16 **"69-12-407. Records and reports.** (1) All records, books, accounts, and files of a Class A, Class B,
17 and Class C, ~~and Class D~~ motor carrier in this state, as they relate to the business of transportation conducted
18 by the motor carrier, must at all times be subject to examination by the commission or by any authorized agent
19 or employee of the commission. The commission shall prescribe a uniform system of accounts and uniform
20 reports covering the operations of Class A, Class B, and Class C, ~~and Class D~~ motor carriers. A motor carrier
21 authorized to operate in accordance with the provisions of this chapter shall keep its records, books, and
22 accounts according to the uniform system to the extent possible.

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

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

1 ~~(4)~~(3) (a) To ensure safety with respect to transportation network carrier drivers affiliated with Class E
2 motor carriers, the commission may conduct audits of a Class E motor carrier, but not more than twice
3 annually.

4 (b) A Class E motor carrier shall, upon request from the commission, provide to the commission up to
5 1,000 unique identification numbers, each of which has been assigned by the motor carrier to an individual
6 transportation network carrier driver affiliated with the motor carrier.

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

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

12 (e) The Class E motor carrier may redact the records provided to the commission under subsection
13 ~~(4)~~ (3)(d) to protect the individual privacy of the transportation network carrier's drivers, including information
14 that could be used to identify a driver. Information that a Class E motor carrier may redact includes but is not
15 limited to the transportation network carrier driver's name, address, and social security number, other than the
16 last four digits.

17 ~~(5)~~(4) Except as required by Article II, section 9 or 10, of the Montana constitution, the records
18 obtained by the commission under subsection ~~(4)~~ (3) may not be publicly disclosed by the commission."
19

20 **Section 9.** Section 69-12-611, MCA, is amended to read:

21 "**69-12-611. Leasing of power equipment.** (1) All Class A, Class B, and Class C, ~~and Class D~~ motor
22 carriers subject to the jurisdiction of the commission may lease power equipment for the purpose of performing
23 transportation movements within the state. The leasing of power units must be in writing.

24 (2) All leases must contain:

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

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

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

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

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

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

5 (g) the term length of the lease.

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

9 (4) The leasing of power units by an authorized carrier to a noncertificated carrier is prohibited."
10

11 NEW SECTION. Section 10. Repealer. The following section of the Montana Code Annotated is
12 repealed:

13 69-12-314. Class D motor carrier certificate of public convenience and necessity.
14

15 NEW SECTION. Section 11. Effective date. [This act] is effective on passage and approval.
16

- END -