STATE OF OKLAHOMA

1st Session of the 52nd Legislature (2009)

COMMITTEE SUBSTITUTE
FOR ENGROSSED
SENATE BILL NO. 503 By: Bingman of the Senate

and

Thompson of the House

COMMITTEE SUBSTITUTE

An Act relating to motor vehicles; creating the Household Goods Act of 2009; providing short title; stating application; stating exceptions; defining terms; amending 47 O.S. 2001, Section 162, as amended by Section 2, Chapter 418, O.S.L. 2005 (47 O.S. Supp. 2008, Section 162), which relates to powers and duties of the Corporation Commission; modifying powers and authority of the Commission to regulate intrastate transportation of household goods; amending 47 O.S. 2001, Section 163, which relates to tariffs; requiring certificate to transport household goods for compensation; stating requirements; providing for promulgation of rules; deleting obsolete language; authorizing the Commission to establish a consumer complaint and mediation procedure; requiring certain record keeping; stating penalties; amending 47 O.S. 2001, Section 165, which relates to filing fees; requiring certain fee; authorizing Commission to set fee; providing fees to be deposited in certain revolving fund; amending 47 O.S. 2001, Section 166, which relates to certificates; requiring certificate by Commission for transportation of household goods; stating requirements for certification; amending 47 O.S. 2001, Section 166a, which relates to definitions; modifying definitions; stating application; amending 47 O.S. 2001, Section 169, which relates to insurance coverage for motor carriers; requiring insurance or bond prior to certification; removing requirement for filing certain bond pending judgment; requiring

insurance from certain licensed or approved insurance providers; conforming language; amending 47 O.S. 2001, Section 169.1, which relates to liability; stating liability for certain household goods carriers; amending 47 O.S. 2001, Section 169.2, which relates to claims procedures; conforming language; removing limitation on certain liability; amending 47 O.S. 2001, Section 169.3, which relates to burden of proof; conforming language; amending 47 O.S. 2001, Section 169.4, which relates to loss or damages; conforming language; amending 47 O.S. 2001, Section 169.5, which relates to claims; stating penalty procedures; amending 47 O.S. 2001, Section 170, which relates to vehicle size; stating procedures for certain motor carriers of household goods; providing for suspension or revocation of certificates; conforming language; amending 47 O.S. 2001, Section 1113, as last amended by Section 3, Chapter 335, O.S.L. 2008 (47 O.S. Supp. 2008, Section 1113), which relates to registration; modifying provisions relating to placement of certain registration decals; repealing 47 O.S. 2001, Section 161, which relates to application of motor carrier of household goods and used emigrant movables act; repealing 47 O.S. 2001, Section 163.1, which relates to tariff rate field agents; providing for codification; and providing an effective date.

BE IT ENACTED BY THE PEOPLE OF THE STATE OF OKLAHOMA:

SECTION 1. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 161A of Title 47, unless there is created a duplication in numbering, reads as follows:

A. This act shall be known and may be cited as the "Household Goods Act of 2009". The purpose of this act is to regulate intrastate transportation by motor carriers of household goods in such manner as to establish standards for public safety, fair

competitive practices, adequate and dependable service, and protection of shippers from deceptive or unfair practices.

B. The provisions of this act, except as specifically limited herein, shall apply to the intrastate transportation of household goods by motor carriers over public highways of this state; and the regulations of such transportation, and the procurement thereof and the provisions of facilities therefor, are hereby vested in the Corporation Commission.

Shipments contracted by the federal government, a state government, a tribal government or any local government or political subdivision thereof shall not be required to obtain a household goods certificate, but shall be regulated by the Commission to achieve compliance with safety requirements and size and weight limitations.

Nothing in this act shall be construed to interfere with the exercise by agencies of the government of the United States of its power of regulation of interstate commerce.

C. As used in this act:

1. "Commission" means the Corporation Commission;

2. "Corporate family" means a group of corporations consisting of a parent corporation and all subsidiaries in which the parent corporation owns directly or indirectly one hundred percent (100%) interest;

3. "Household goods" means used personal effects and property of a dwelling;

4. "Household goods certificate" means a certificate of authority issued by the Corporation Commission to transport household goods within this state;

5. "Intercorporate hauling" means the transportation of household goods, by motor vehicle, for compensation, by a carrier which is a member of a corporate family, as defined in this section, when the transportation for compensation is provided for other members of the corporate family;

6. "Motor carrier of household goods" means a person transporting household goods for compensation or other consideration, with an origin and destination within this state;

7. "Motor vehicle" means any automobile, truck, truck-tractor, trailer or semitrailer or any motor bus or self-propelled vehicle not operated or driven upon fixed rails or tracks;

8. "Person" means any individual, firm, copartnership, limited partnership, corporation, limited liability corporation, company, association, or joint-stock association and includes any trustee, receiver, assignee, or personal representative thereof; and

9. "Public highway" means every public street, road, highway, or thoroughfare in this state, used by the public, whether actually dedicated to the public and accepted by the proper authorities or otherwise.

D. The terms and provisions of this act shall apply to commerce with foreign nations, or commerce among the several states of this Union, insofar as such application may be permitted under the provisions of the Constitution of the United States and the Acts of Congress.

SECTION 2. AMENDATORY 47 O.S. 2001, Section 162, as amended by Section 2, Chapter 418, O.S.L. 2005 (47 O.S. Supp. 2008, Section 162), is amended to read as follows:

Section 162. A. ~~It shall be the duty of the~~ The Corporation Commission is authorized to:

1. Supervise and regulate every motor carrier of household goods ~~or used emigrant movables and not operating exclusively within the limits of an incorporated city or town in this state~~;

2. ~~Fix or approve the maximum or minimum, or maximum and minimum rates, fares, charges, classifications and rules pertaining thereto, of each such motor carrier~~ Protect the shipping and general public by requiring liability insurance and cargo insurance of all motor carriers of household goods;

3. ~~Regulate and supervise the accounts, schedules and service of each such motor carrier; and for the conservation of the public highways~~ Ensure motor carriers of household goods are complying with applicable size and weight laws and safety requirements;

4. ~~Prescribe a uniform system and classification of accounts to be used, which among other things shall set up adequate depreciation~~

~~charges, and after such accounting system shall have been promulgated, such motor carriers shall use no other;~~

~~5. Require the filing of annual reports, and other data as required from time to time by the Commission; and~~

~~6.~~ Supervise and regulate such motor carriers in all other matters affecting the relationship between such carriers and the traveling and shipping public including, but not limited to, consumer protection measures and loss and damage claim procedures; and

5. Enforce the provisions of this act.

B. The Commission is authorized to promulgate rules applicable to ~~any or all motor carriers of~~ persons transporting household goods ~~or used emigrant movables~~.

C. 1. The Commission is authorized to administer a hazardous material transportation registration and permitting program for motor carriers engaged in transporting hazardous material upon or over the public highways and within the borders of the state.

2. The Commission shall promulgate rules implementing the provisions of this subsection. Rules promulgated pursuant to this subsection shall be consistent with, and equivalent in scope, coverage, and content to requirements applicable to operators of vehicles transporting hazardous materials contained in the report submitted to the Secretary of the United States Department of

Transportation, pursuant to 49 U.S.C. 5119(b), by the Alliance for Uniform Hazardous Material Transportation Procedures.

D. Nothing in this section shall be construed to remove or affect the jurisdiction of the Department of Environmental Quality to implement hazardous waste transportation requirements for federal hazardous waste program delegation to this state under the federal Resource Conservation and Recovery Act.

E. The Commission is authorized to promulgate rules and set fees applicable to interstate motor carriers, pertaining to carrier registration, operation of equipment and filing of proper proof of liability insurance.

SECTION 3. AMENDATORY 47 O.S. 2001, Section 163, is amended to read as follows:

Section 163. A. No ~~common carrier by motor vehicle, unless otherwise provided by this act, shall engage in the transportation of household goods or used emigrant movables unless the rates, fares, and charges upon which the same are transported by said carrier have been published, filed and are in effect in accordance with the provisions of this act~~ person shall transport household goods for compensation or other consideration in intrastate commerce without a valid certificate issued by the Corporation Commission.

B. ~~All charges made by any motor carrier for any intrastate service rendered or to be rendered by any motor carrier in the transportation of household goods or used emigrant movables, or in~~

~~connection therewith, shall be just and reasonable and every unjust and unreasonable charge for such service or any part thereof is prohibited and declared unlawful~~ The Commission shall promulgate rules ensuring consumer protection and loss and damage claim procedures.

C. ~~In the exercise of its power to prescribe just and reasonable rates, fares, and charges for the transportation of household goods or used emigrant movables by common carriers by motor vehicle, and classifications, regulations and practices relating thereto, the Commission shall give due consideration, among other factors, to the need, in the public interest, of adequate and efficient transportation service by such carriers at the lowest cost consistent with the furnishing of such service; and to the need of revenues sufficient to enable such carriers to provide such service at a reasonable return to the carrier.~~

~~D. Every common carrier by motor vehicle shall file with the Commission, publish, and keep open to public inspection tariffs showing all the rates, fares, and charges for transportation, and all services in connection therewith, of household goods or used emigrant movables in intrastate commerce between points on its own route and points on the route of any other such carrier when a through route and joint rate shall be established. The tariffs required by this section shall be published, filed and posted in such form and manner and shall contain such information as the~~

~~Commission by regulations shall prescribe; and the Commission is authorized to reject any tariff filed with it the form of which is not consistent with this section and with such regulations. Any tariff so rejected by the Commission shall be void and its use shall be unlawful. The Commission is further authorized in its discretion to suspend, upon complaint of any interested person or upon its own motion, the effectiveness of any tariff or portion thereof filed with it, where it appears said tariff or portion thereof may not be consistent with this section or the regulations of the Commission, and shall set the motion for hearing; and after hearing the Commission shall, within ninety (90) days after hearing, amend or reject the tariff or portion thereof so filed, upon determination as to whether or not it is consistent with this section and with the regulations of the Commission.~~

~~E. No common carrier of household goods or used emigrant movables by motor vehicle shall charge or demand or collect or receive a greater, or less, or different compensation for transportation or for any service in connection therewith between the points enumerated or distances set out in such tariff than the rates, fares, and charges specified in the tariffs in effect at the time; and no such carrier shall refund or remit in any manner or by any device, directly or indirectly, any portion of the rates, fares, or charges so specified, or extend to any person any privileges or facilities for transportation in intrastate commerce except such as~~

~~are specified in its tariffs. All actions at law for the recovery of undercharges or overcharges, or any part thereof, shall be begun within three (3) years from the time the cause of action accrues and not thereafter.~~

~~F. No change shall be made in any rate, fare, charge, or classification, or any rule, regulation, or practice affecting such rate, fare, charge, or classification, or the value of the service thereunder, specified in any effective tariff or a common carrier of household goods or used emigrant movables by motor vehicle, except after thirty (30) days' notice of the proposed change filed and posted in accordance with this section. Such notice shall plainly state the change proposed to be made and the time when such change will take effect. The Commission may, in its discretion and for good cause shown, allow such change upon notice less than that herein specified or modify the requirements of this section with respect to posting and filing of tariffs either in particular instances or by general order applicable to specific or peculiar circumstances or conditions.~~

~~G. It shall be the duty of every contract carrier of household goods or used emigrant movables by motor vehicle to establish and observe reasonable actual rates and charges, which shall not be lower than the published common carrier rates and charges, for any service rendered or to be rendered in the transportation of household goods or used emigrant movables or in connection~~

~~therewith, and to establish and observe reasonable regulations and practices to be applied in connection with said reasonable actual rates and charges. It shall be the duty of every contract carrier of household goods or used emigrant movables by motor vehicle to file with the Commission, publish, and keep open for public inspection, in the form and manner prescribed by the Commission, schedules containing the actual rates or charges of such carrier actually maintained and charged for the transportation of household goods or used emigrant movables in intrastate commerce, and any rule, regulation, or practice affecting such rates or charges and the value of the service thereunder. No such contract carrier, unless otherwise provided by this act, shall engage in the transportation of household goods or used emigrant movables in intrastate commerce unless the actual charges for such transportation by said carrier have been published, filed and posted in accordance with the provisions of this act. No change shall be made in any such charge either directly or by means of any change in any rule, regulation, or practice affecting such charge or the value of service thereunder, except after thirty (30) days' notice of the proposed change filed in the aforementioned form and manner; but the Commission may, in its discretion and for good cause shown, allow such change upon less notice, or modify the requirements of this paragraph with respect to posting and filing of such schedules, either in particular instances, or by general order applicable to~~

~~special or peculiar circumstances, or conditions. Such notice shall plainly state the change proposed to be made and the time when such change will take effect. No such carrier shall demand, charge, or collect a different compensation for such transportation than the charges filed in accordance with this paragraph, as affected by any rule, regulation, or practice so filed, or as may be prescribed by the Commission from time to time, and it shall be unlawful for any such carrier, by the furnishing of special services, facilities, or privileges, or by any other device whatsoever, to charge or accept other than the charges so published and filed.~~

~~H. Whenever, after hearing, upon complaint or upon its own initiative, the Commission finds that any actual rate or charge of any contract carrier of household goods or used emigrant movables by motor vehicle, or any rule, regulation, or practice of any such carrier affecting such actual rate or charge, or the value of the service thereunder, for the transportation of household goods or used emigrant movables or in connection therewith is in violation of any provision of this act, the Commission may prescribe such just and reasonable actual rate or charge, or such rule, regulation or practice as in its judgment may be necessary or desirable in the public interest and will not be in violation of any provision of this act. Such actual rate or charge, or such rule, regulation, or practice so prescribed by the Commission, shall give no advantage or preference to any such carrier in competition with any common~~

~~carrier by motor vehicle subject to this act. The Commission shall give due consideration to the cost of the services rendered by such carrier and to the effect of such actual rate or charge, or such rule, regulation, or practice, upon the movement of traffic by such carriers. All complaints shall state fully the facts complained of and shall be made under oath.~~

~~I.~~ Every motor carrier, subject to this act, receiving household goods ~~or used emigrant movables~~ for transportation in intrastate commerce shall issue a receipt or bill of lading therefor, the form of which shall be prescribed by the Commission.

~~J. No common carrier by motor vehicle shall deliver or relinquish possession at destination of any household goods or used emigrant movables transported by it in intrastate commerce until all tariff rates and charges thereon have been paid, except under such rules and regulations as the Commission may from time to time prescribe to govern the settlement of all such rates and charges.~~

~~K.~~ D. Record-keeping documents, as required by the Commission, shall be maintained by the motor carrier of household goods for a minimum of three (3) years. The Commission is authorized to require certain documents to be retained for a longer period of time pending a claim for any other reason the Commission deems necessary.

E. Any person, motor carrier, or shipper who shall willfully violate any provision of this ~~section by any means shall be deemed guilty of a misdemeanor and upon conviction thereof be fined as~~

~~provided by law~~ act or the Commission's rules pursuant thereto may be found in violation by the Commission. After proper notice and hearing, violators may be assessed penalties in an amount not to exceed One Thousand Dollars ($1,000.00) for the first violation and for the second violation within a year a penalty not to exceed Five Thousand Dollars ($5,000.00).

SECTION 4. AMENDATORY 47 O.S. 2001, Section 165, is amended to read as follows:

Section 165. A. Upon the filing ~~by an intrastate~~ of an application to operate as a motor carrier of household goods ~~or used emigrant movables of an application for a permit or certificate or the transfer of a permit or certificate~~, the applicant shall pay to the Corporation Commission a filing fee ~~in the sum of One Hundred Dollars ($100.00) with an original application for permanent or temporary authority~~ as set by Commission rule.

B. Upon the filing by an interstate motor carrier of an application to register interstate authority, or supplement thereto, the applicant shall pay the Commission a filing fee as established by the Commission and in full compliance with applicable federal laws ~~and regulations~~.

C. The Commission shall, upon the receipt of any such fee, deposit the same in the State Treasury to the credit of the Corporation Commission Revolving Fund.

SECTION 5. AMENDATORY 47 O.S. 2001, Section 166, is amended to read as follows:

Section 166. A. It is hereby declared unlawful for any ~~common carrier of~~ person to transport household goods ~~or used emigrant movables by motor vehicle to operate or furnish service within this state~~ in intrastate commerce without ~~having obtained from the~~ a valid certificate issued by the Corporation Commission ~~a certificate declaring that public convenience and necessity require such operation, or for any contract carrier of household goods or used emigrant movables by motor vehicle to operate or furnish service within the state without having obtained a permit from the Commission declaring the operation shall be consistent with the public interest. The Commission shall have power, and it shall be its duty after public hearing, to issue said certificate or permit as prayed for, or to refuse to issue the same, or to issue it for the partial exercise only of said privilege sought within sixty (60) days of final hearing, and may attach to the exercise of the rights granted by such certificate or permit such terms and conditions as in its judgment the public convenience and necessity or public interest may require; provided that in all such cases it will be presumed, in the absence of competent evidence to the contrary, that intrastate common carriers operating under existing certificates are rendering adequate service between the points or within the areas authorized to be served by them, and the applicant has the burden of~~

~~proof to show otherwise; and provided further, that the mere filing of an application does not authorize any person to operate as a motor carrier~~.

B. ~~In granting applications for certification or permits the Commission shall take into consideration the reliability and financial condition of the applicant and his sense of responsibility toward the public; the transportation service being maintained by presently existing motor carriers; and any other matters tending to show the need or lack of necessity for granting said application. No permit for any contract carrier by motor vehicle shall be issued without the applicant proving by competent evidence that the transport service proposed under the contract is not such that it could be reasonably furnished by existing carriers, and further, that such permit would not jeopardize the existing common carrier service. Provided, however, that in no instance shall a contract carrier of household goods or used emigrant movables by motor vehicle be authorized to serve more than six contracting shippers at any one time; provided further that such contracts are to be filed and approved by the Commission before the operation thereunder~~ Motor carriers engaged in intercorporate hauling must obtain a certificate in the motor carrier's name.

C. ~~No common motor carrier shall transport property as a contract carrier in the same truck, at the same time that he is transporting property as a common motor carrier. No common motor~~

~~carrier shall transport any property as a contract carrier which property the carrier is authorized to so transport as a common carrier. No contract motor carrier shall transport property as a common carrier in the same truck at the same time that the contract carrier is transporting property as a contract carrier~~ Applicants for intrastate authority to transport household goods shall file an application as required by this act and as prescribed by the Commission. A household goods certificate shall be issued to the applicant upon completion of all requirements.

D. ~~In the event a person who has once been issued a certificate or permit files an application for additional authority with the Commission, each application shall be identified by consecutive subnumbers and if the application is granted, the additional authority shall be incorporated under the original certificate or permit of the person and identified by the applicable subnumbers. The Commission may at any time after a public hearing and for good cause, suspend, alter, amend or revoke any such certificate or permit. Provided that the record owner of the certificate or permit shall be entitled to have ten (10) days' written notice by certified mail from the Commission of any hearing affecting the certificate or permit, except as hereinafter provided in Section 169 of this title. The right of appeal from the order or orders shall be given as in other cases appealed from orders of the Commission~~ The Commission may consider any written protests or written complaints filed prior

to granting or renewing a household goods certificate. If the Commission elects not to grant or renew a household goods certificate, the application shall be set for public hearing in accordance with Commission rules.

E. ~~No intrastate carrier shall discontinue any service authorized by permit or certificate under the provisions of this act, without written authority from the Commission. Any carrier to whom a permit or certificate has been issued under the provisions of this act, desiring to discontinue such service, shall apply to the Commission in writing for privilege to so discontinue such service, and give notice in writing in such manner as directed by the Commission, for a period of not less than thirty (30) days prior to the hearing thereof, to the public and all parties interested. Upon the filing of such application for discontinuance, the Commission shall direct the type of service or notice to be given for a period of not less than thirty (30) days, and fix the date of hearing thereof, at which hearing the Commission shall hear evidence and issue its order granting or refusing such application, as the facts developed may justify~~ Household goods certificates may not be assigned or transferred.

F. ~~Permits or certificates shall not be assigned or transferred, in any manner, without authority of the Commission and on written application and public hearing; the transfer of the permits or certificates shall not be authorized when the Commission~~

~~finds such action will be inconsistent with the public interest, or will have the effect of destroying competition or creating a monopoly, nor where it appears that reasonable continuous service under the authority which is sought to be transferred has not been rendered for one hundred eighty (180) days prior to the application for transfer or assignment. All applications for transfer must be made on proper forms prescribed by the Commission.~~

~~G. Motor carriers must operate and furnish service in strict conformity with the current existing terms and provisions of their respective certificates or permits. Provided, that it shall not be necessary for any interstate carrier, in order to obtain a permit, as herein provided, to make any showing of public need, except as to the transportation of passengers or freight between points within the state, the power to regulate such operation being specifically reserved herein; and provided further, the~~ The Commission shall exercise any additional power that may from time to time be conferred upon the state by any Act of Congress.

~~H.~~ G. The Commission shall adopt rules prescribing the manner and form in which motor carriers shall apply for ~~certificates or permits required by this section. Among other rules adopted, the application shall be in writing and shall contain:~~

~~1. The name and address of the applicant and the names and addresses of its officers, if any;~~

~~2. Full information concerning the financial conditions and physical properties of the applicant;~~

~~3. The complete route, or routes, over which, or the area within which the applicant desires to operate; and~~

~~4. A schedule or tariff showing the freight rates to be charged between the several points or localities to be served.~~

~~I. Upon filing of the application, the Commission shall, in its discretion, fix the time and place for the hearing of the same, which shall not be more than forty-five (45) days after the filing of said application.~~

~~J. In order for the public and all interested parties to receive proper notice, in addition to any notice the Commission may prescribe, the Commission shall circulate, on its own docket form, notice of all applications for, or transfers of, certificates or permits to operate as a motor carrier which have been filed and are pending. The notice shall be published at least fifteen (15) days prior to the date of hearing and shall show:~~

~~1. The time and place of the hearing;~~

~~2. The name and address of the applicant;~~

~~3. The route or territory involved; and~~

~~4. Such other information as the Commission may consider pertinent to the notice.~~

~~K. Upon written annual request and payment of an annual fee to the Commission, the publication shall immediately be furnished by~~

~~mail to any person by the Commission. The fee shall be set by the Commission at reasonable cost and shall not exceed the actual expense of publication. The Commission shall upon receipt of any fee deposit the same in the State Treasury to the credit of the General Revenue Fund~~ a household goods certificate.

SECTION 6. AMENDATORY 47 O.S. 2001, Section 166a, is amended to read as follows:

Section 166a. A. As used in this section:

1. "Authorized carrier" means a ~~person or persons authorized to engage in the transportation~~ motor carrier of household goods ~~or used emigrant movables as a common or contract carrier~~;

2. "Equipment" means a motor vehicle, straight truck, tractor, semitrailer, full trailer, any combination of these and any other type of equipment used by authorized carriers in the transportation of household goods ~~or used emigrant movables for hire~~;

3. "Owner" means a person to whom title to equipment has been issued, or who, without title, has the right to exclusive use of equipment for a period longer than thirty (30) days;

4. "Lease" means a contract or arrangement in which the owner grants the use of equipment, with or without driver, for a specified period to an authorized carrier for use in the regulated transportation of household goods ~~or used emigrant movables,~~ in exchange for compensation;

5. "Lessor", in a lease, means the party granting the use of equipment~~,~~ with or without driver~~,~~ to another;

6. "Lessee", in a lease, means the party acquiring the use of equipment with or without driver~~,~~ from another;

7. "Addendum" means a supplement to an existing lease which is not effective until signed by the lessor and lessee; and

8. "Shipper" means a person who sends or receives household goods ~~or used emigrant movables~~ which ~~is~~ are transported in intrastate commerce in this state.

B. An authorized carrier may perform authorized transportation in equipment it does not own only under the following conditions:

1. There shall be a written lease granting the use of the equipment and meeting the requirements as set forth in subsection C of this section;

2. The authorized carrier acquiring the use of equipment under this section shall identify the equipment in accordance with the Commission's requirements; and

3. Upon termination of the lease, the authorized carrier shall remove all identification showing it as the operating carrier before giving up possession of the equipment.

C. The written lease required pursuant to subsection B of this section shall contain the following provisions. The required lease provisions shall be adhered to and performed by the authorized carrier as follows:

1. The lease shall be made between the authorized carrier and the owner of the equipment. The lease shall be signed by these parties or by their authorized representatives;

2. The lease shall specify the time and date or the circumstances on which the lease begins and ends and include a description of the equipment which shall be identified by vehicle serial number, make, year, model and current license plate number;

3. The period for which the lease applies shall be for thirty (30) days or more when the equipment is to be operated for the authorized carrier by the owner or an employee of the owner;

4. The lease shall provide that the authorized carrier lessee shall have exclusive possession, control and use of the equipment for the duration of the lease. The lease shall further provide that the authorized carrier lessee shall assume complete responsibility for the operation of the equipment for the duration of the lease;

5. The amount to be paid by the authorized carrier for equipment and driver's services shall be clearly stated on the face of the lease or in an addendum which is attached to the lease. The amount to be paid may be expressed as a percentage of gross revenue, a flat rate per mile, a variable rate depending on the direction traveled or the type of commodity transported, or by any other method of compensation mutually agreed upon by the parties to the lease. The compensation stated on the lease or in the attached

addendum may apply to equipment and driver's services either separately or as a combined amount;

6. The lease shall clearly specify the responsibility of each party with respect to the cost of fuel, fuel taxes, empty mileage, permits of all types, tolls, detention and accessorial services, base plates and licenses, and any unused portions of such items. Except when the violation results from the acts or omissions of the lessor, the authorized carrier lessee shall assume the risks and costs of fines for overweight and oversize trailers when the trailers are preloaded, sealed, or the load is containerized, or when the trailer or lading is otherwise outside of the lessor's control, and for improperly permitted ~~overdimension~~ over-dimension and overweight loads and shall reimburse the lessor for any fines paid by the lessor. If the authorized carrier is authorized to receive a refund or a credit for base plates purchased by the lessor from, and issued in the name of, the authorized carrier, or if the base plates are authorized to be sold by the authorized carrier to another lessor, the authorized carrier shall refund to the initial lessor on whose behalf the base plate was first obtained a prorated share of the amount received;

7. The lease shall specify that payment to the lessor shall be made by the authorized carrier within fifteen (15) days after submission of the necessary delivery documents and other paperwork concerning a trip in the service of the authorized carrier. The

paperwork required before the lessor can receive payment is limited to those documents necessary for the authorized carrier to secure payment from the shipper. The authorized carrier may require the submission of additional documents by the lessor but not as a prerequisite to payment;

8. The lease shall clearly specify the right of those lessors whose revenue is based on a percentage of the gross revenue for a shipment to examine copies of the authorized carrier's freight bill before or at the time of settlement. The lease shall clearly specify the right of the lessor, regardless of method of compensation, to examine copies of the carrier's tariff;

9. The lease shall clearly specify all items that may be initially paid for by the authorized carrier, but ultimately deducted from the lessor's compensation at the time of payment or settlement together with a recitation as to how the amount of each item is to be computed. The lessor shall be afforded copies of those documents which are necessary to determine the validity of the charge;

10. The lease shall specify that the lessor is not required to purchase or rent any products, equipment, or services from the authorized carrier as a condition of entering into the lease arrangement;

11. As it relates to insurance:

a. the lease shall clearly specify the legal obligation of the authorized carrier to maintain insurance coverage for the protection of the public, and

b. the lease shall clearly specify the conditions under which deductions for cargo or property damage may be made from the lessor's settlements. The lease shall further specify that the authorized carrier must provide the lessor with a written explanation and itemization of any deductions for cargo or property damage made from any compensation of money owed to the lessor. The written explanation and itemization must be delivered to the lessor before any deductions are made; and

12. An original and two copies of each lease shall be signed by the parties. The authorized carrier shall keep the original and shall place a copy of the lease in the equipment during the period of the lease. The owner of the equipment shall keep the other copy of the lease.

D. The provisions of this section shall apply to the leasing of equipment with which to perform household goods transportation ~~regulated by the Corporation Commission~~ by motor carriers ~~holding permanent or temporary authority from the Commission to transport household goods or used emigrant movables~~.

SECTION 7. AMENDATORY 47 O.S. 2001, Section 169, is amended to read as follows:

Section 169. A. No certificate ~~or permit~~ shall be issued by the Corporation Commission to any motor carrier of household goods ~~or used emigrant movables~~ until after such motor carrier shall have filed with the Commission a liability insurance policy or bond covering public liability and property damage, issued by some insurance or bonding company or insurance carrier authorized as set forth below, and which has complied with all of the requirements of the Commission, which bond or policy shall be approved by the Commission, and shall be in such sum and amount as fixed by a proper order of the Commission; and such liability and property damage insurance policy or bond shall bind the obligor thereunder to make compensation for injuries to, or death of, persons, and loss or damage to property, resulting from the operation of any such motor carrier for which such carrier is legally liable. ~~A copy of the policy or bond shall be filed with the Commission, and after~~ After judgment against the carrier for any damage, the injured party may maintain an action upon the policy or bond to recover the same, and shall be a proper party to maintain such action.

B. Every motor carrier of household goods ~~or used emigrant movables~~ shall file with the Commission a cargo insurance policy or bond covering any goods or property being transported, issued by some insurance or bonding company or insurance carrier authorized as

set forth below, and which has complied with all of the requirements of the Commission, which bond or policy shall be approved by the Commission, and shall be in a sum and amount as fixed by ~~a proper order of the~~ Commission rule. The cargo insurance must be filed with the Commission prior to a certificate ~~or permit~~ being issued by the Commission.

C. No carrier, whose principal place of business is in Oklahoma, shall conduct any operations in this state unless the operations are covered by a valid primary bond or insurance policy issued by ~~a provider~~ an insurer authorized or approved by the ~~State~~ Oklahoma Insurance ~~Commissioner~~ Department. No carrier whose principal place of business is not in Oklahoma shall conduct any operations in this state unless the operations are covered by a valid bond or insurance policy issued by ~~a provider licensed or approved by the State Insurance Commissioner or the insurance regulatory authority of any other state~~ an insurer licensed or approved by the insurance regulatory authority of the state of their principal place of business or the Oklahoma Insurance Department.

D. Each motor carrier shall maintain on file, in full force, all insurance required by the laws of the State of Oklahoma and the rules of the Commission during such motor carrier's operation and that the failure for any cause to maintain such coverage in full force and effect shall immediately, without any notice from the Commission, suspend such carrier's rights to operate until proper

insurance is provided. Any carrier suspended for failure to maintain proper insurance shall have a reasonable time, not exceeding sixty (60) days, within which to provide proper insurance and to have ~~his~~ the carrier's authority reactivated, upon showing:

1. No operation during the period in which ~~he~~ the carrier did not have insurance; and

2. Furnishing of proper insurance coverage.

E. Any carrier who fails to reactivate ~~his or its permit or~~ the carrier's certificate within sixty (60) days after such suspension, as above provided, shall have ~~said permit or~~ the certificate canceled, by operation of law, without any notice from the Commission. No certificate ~~or permit~~ so canceled shall be reinstated or otherwise made operative except that the Commission may reinstate the authority of a motor carrier upon proper showing that the motor carrier was actually covered by proper insurance during the suspension or cancellation period, and that failure to file with the Commission was not due to the motor carrier's ~~own negligence~~ fault. Any carrier desiring to file for reinstatement of ~~its~~ the carrier's certificate ~~or permit~~ shall do so within ninety (90) days of its cancellation by law.

F. The Commission shall, in its discretion, permit the filing of certificates of insurance coverage on such form as may be prescribed by the Commission, in lieu of copies of insurance policies or bonds, with the proviso that if the certificates are

authorized, the insurance company or carrier so filing it, upon request of the Commission, shall, at any time, furnish an authenticated copy of the policy which the certificate represents, and further provided that thirty (30) days prior to effective cancellation or termination of the policy of insurance for any cause, the insurer shall so notify the Commission in writing of the facts or as deemed necessary by the Commission.

SECTION 8. AMENDATORY 47 O.S. 2001, Section 169.1, is amended to read as follows:

Section 169.1 Every motor carrier of household goods ~~or used emigrant movables~~ shall be liable for all loss, damage or injury to goods or property due to any negligence while the same is ~~being carried by~~ entrusted to it during operations as a household goods carrier.

SECTION 9. AMENDATORY 47 O.S. 2001, Section 169.2, is amended to read as follows:

Section 169.2 Every motor carrier of household goods ~~or used emigrant movables~~, upon receipt of a claim in writing for loss of or damage to cargo during transportation, some portion of which was performed by that carrier, regardless of the form in which the claim is presented, shall:

1. Acknowledge receipt of the claim in writing within thirty (30) days after receipt thereof by the motor carrier;

2. Commence an investigation in good faith to determine whether the carrier acknowledges or denies liability for the loss or damage;

3. Either pay the claim in full, or as agreed to by mutual compromise, or deny liability for loss or damage, in writing, within ninety (90) days after receipt of the original claim by the carrier. Such action shall not be withheld or postponed pending receipt of payment or acknowledgment of liability from connecting carriers; and

4. Acknowledgment of liability shall be accompanied by payment in full for the value of property lost or damaged except where subject to limited liability or released value. When a shipper, without prior approval from the consignee, elects to release a shipment at a value less than the full value of the property shipped, in the event of loss or damage, ~~said~~ the shipper will indemnify to the consignee the difference between the released or limited valuation paid by the carrier and the full value of the property shipped. A carrier's liability is limited to the released value or limited liability as ~~stated in the carrier's governing tariff~~ agreed as stated in the bill of lading covering the shipment.

SECTION 10. AMENDATORY 47 O.S. 2001, Section 169.3, is amended to read as follows:

Section 169.3 Where shipments of household goods ~~or used emigrant movables~~ are received by the carrier from the shipper in apparent good order and with no exceptions noted on the bill of lading, and delivered by the carrier with written exceptions

covering loss or damage thereto, the carrier shall have the burden of proof to establish nonliability for such loss or damage. Terms and conditions of the bill of lading contract referring to excepted causes shall remain applicable.

SECTION 11. AMENDATORY 47 O.S. 2001, Section 169.4, is amended to read as follows:

Section 169.4 Where shipments of household goods ~~or used emigrant movables~~ are received by the carrier from the shipper in apparent good order and with no exceptions noted on the bill of lading, and delivered by the carrier in the same manner, with no exceptions noted, such concealed loss or damage claims must be submitted to the carrier by the shipper. Inspections covering loss or damage found after delivery must be requested to the delivering carrier in writing within fifteen (15) days after the delivery of the shipment involved. If more than fifteen (15) days have passed, it is incumbent upon the consignee to offer reasonable evidence to the carrier or a representative of the carrier that loss or damage was not incurred by the consignee after delivery by the carrier.

SECTION 12. AMENDATORY 47 O.S. 2001, Section 169.5, is amended to read as follows:

Section 169.5 If the carrier fails to process loss or damage claims as provided in Sections 169.2 through 169.4 of this title, or to express declinations of ~~said~~ the claims in writing with proof of nonliability, ~~said~~ the carrier may be ~~fined~~ found in contempt by the

Corporation Commission ~~an amount not to exceed Five Hundred Dollars ($500.00) upon hearing of a complaint filed with the Commission~~ after proper notice and hearing. Failure to pay ~~the~~ any fine or otherwise resolve the complaint ~~will~~ may result in a hearing by the Corporation Commission to determine if the operating authority of the carrier shall be revoked.

SECTION 13. AMENDATORY 47 O.S. 2001, Section 170, is amended to read as follows:

Section 170. A. Nothing contained in this act shall be construed to authorize the operation of any freight vehicle in excess of the gross weight, width, length or height authorized by law.

B. Any person who willfully advertises to perform transportation services for which ~~he~~ the person does not hold a proper certificate ~~or permit~~ shall be in violation of this act and subject to the penalties prescribed for contempt of the Corporation Commission.

C. ~~All certificates or permits issued by the Commission under any law of the state relating to motor carriers shall contain the provision that the Commission reserves to itself authority to suspend and/or cancel any such certificate or permit for the violation, on the part of the applicant or any operator or operators of any motor vehicle to be operated thereunder, of any law of the State of Oklahoma or any rule adopted by the Commission; and the~~

~~Commission may cancel the certificate of any motor carrier operating as an intrastate carrier, who shall fail to remit to the consignor, within ten (10) days after collection from the consignee, of any or all C.O.D. charges or collections~~ Household goods certificates may be suspended or revoked for any violation of state law or Commission rule.

D. Certificates ~~or permits~~ shall be considered personal to the holder thereof and shall be issued only to some definite legal entity operating motor vehicles as a motor carrier of household goods ~~or used emigrant movables~~, and shall not be subject to lease, nor shall the holder thereof sublet or permit the exercise, by another, in anywise, of the rights or privileges granted thereunder~~; provided, nothing herein contained shall be construed to prohibit the Commission, in case the necessities of public convenience require temporary service over any route, to grant authority to another motor carrier to render such service, upon compliance with the other provisions of law applicable to other motor carriers~~.

SECTION 14. AMENDATORY 47 O.S. 2001, Section 1113, as last amended by Section 3, Chapter 335, O.S.L. 2008 (47 O.S. Supp. 2008, Section 1113), is amended to read as follows:

Section 1113. A. 1. Except for all-terrain vehicles, utility vehicles and motorcycles used exclusively off roads and highways, upon the filing of a registration application and the payment of the fees provided for in the Oklahoma Vehicle License and Registration

Act, the Oklahoma Tax Commission or Corporation Commission, as applicable, shall assign to the vehicle described in the application a distinctive number, and issue to the owner of the vehicle a certificate of registration, one license plate and a yearly decal. The Oklahoma Tax Commission shall assign an all-terrain vehicle, utility vehicle or motorcycle used exclusively off roads and highways a distinctive number and issue to the owner a certificate of registration and a decal but not a license plate. For each subsequent registration year, the Tax Commission shall issue a yearly decal to be affixed to the license plate, except for an all-terrain vehicle, utility vehicle or motorcycle used exclusively off roads and highways. The initial decal for an all-terrain vehicle, utility vehicle or motorcycle shall be attached to the front of the vehicle and shall be in clear view. The decal shall be on the front or on the front fork of the motorcycle used exclusively off roads and highways and the decal shall be in clear view. The yearly decal shall have an identification number and the last two numbers of the registration year for which it shall expire. Except as provided by Section 1113A of this title, the license plate shall be affixed to the exterior of the vehicle until a replacement license plate is applied for. If the owner applies for a replacement license plate, the Tax Commission shall charge the fee provided for in Section 1114 of this title. The yearly decal will validate the license plate for each registration period other than the year the license plate is

issued. The license plate and decal shall be of such size, color, design and numbering as the Tax Commission may direct. However, yearly decals issued to the owner of a vehicle who has filed an affidavit with the appropriate motor license agent in accordance with Section 7-607 of this title shall be a separate and distinct color from all other decals issued under this section.

2. The license plate shall be securely attached to the rear of the vehicle, except truck-tractor plates which shall be attached to the front of the vehicle. The Tax Commission may, with the concurrence of the Department of Public Safety, by Joint Rule, change and direct the manner, place and location of display of any vehicle license plate when such action is deemed in the public interest. The license plate, decal and all letters and numbers shall be clearly visible at all times. The operation of a vehicle in this state, regardless of where such vehicle is registered, upon which the license plate is covered, overlaid or otherwise screened with any material, whether such material be clear, translucent, tinted or opaque, shall be a violation of this paragraph.

3. Upon payment of the annual registration fee provided in Section 1133 of this title, the Tax Commission or Corporation Commission, as applicable, or a motor license agent may issue a permanent nonexpiring license plate to an owner of one hundred or more commercial motor vehicles and for vehicles registered under the provisions of Section 1120 of this title. Upon payment of the

annual registration fee, the Tax Commission or Corporation Commission shall issue a certificate of registration that shall be carried at all times in the vehicle for which it is issued. Provided, if the registrant submits its application through electronic means, such qualified owners of one hundred or more commercial motor vehicles, properly registered pursuant to the provisions of Section 1133 of this title, may elect to receive a permanent certificate of registration that shall be carried at all times in the vehicle for which it is issued.

4. Every vehicle owned by an agency of this state shall be exempt from the payment of registration fees required by this title. Provided, such vehicle shall be registered and shall otherwise comply with the provisions of the Oklahoma Vehicle License and Registration Act.

B. The license plates required under the provisions of this title shall conform to the requirements and specifications listed hereinafter:

1. Each license plate shall have a space for the placement of the yearly decals for each succeeding year of registration after the initial issue;

2. The provisions of the Oklahoma Vehicle License and Registration Act regarding the issuance of yearly decals shall not apply to the issuance of apportioned license plates, including license plates for state vehicles, and exempt plates for

governmental entities and fire departments organized pursuant to Section 592 of Title 18 of the Oklahoma Statutes;

3. Within the limits herein prescribed the Tax Commission shall redesign the official vehicle license plates which currently bear the legend "Oklahoma OK" or "Oklahoma is OK!" and substitute therefor the legend "Oklahoma Native America" as further described in this paragraph. Except for personalized license plates and license plates issued for motorcycles and mopeds, the emblem on the state flag of Oklahoma as provided for in Section 91 of Title 25 of the Oklahoma Statutes shall be a part of all license plates issued after December 31, 1988. The Tax Commission may continue to issue license plates with the legend "Oklahoma is OK!" or "Oklahoma OK" until any inventory of such license plates is depleted but the Tax Commission shall not produce or cause to be produced any additional license plates with these legends. Except for personalized license plates, license plates issued for commercial vehicles, and license plates issued for motorcycles and mopeds, the "Oklahoma Native America" emblem shall be a part of all license plates issued after December 31, 1993. The specifications for lettering style and appearance for the legend "Oklahoma Native America" shall be provided to the Tax Commission by the Oklahoma Tourism and Recreation Department. All license plates and decals shall be made with reflectorized material as a background to the letters, numbers and characters displayed thereon. The reflectorized material shall

be of such a nature as to provide effective and dependable brightness during the service period for which the license plate or decal is issued;

4. Except as otherwise provided in this subsection, the Tax Commission shall design appropriate official license plates for all state vehicles. Such license plates shall be permanent in nature and designed in such manner as to remain with the vehicle for the duration of the vehicle's life span or until the title is transferred to a nongovernmental owner;

5. Within the limits prescribed in this section, the Tax Commission shall design appropriate official license plates for vehicles of the Oklahoma Highway Patrol. The license plates shall have the legend "Oklahoma OK" and shall contain the letters "OHP" followed by the state seal and the badge number of the Highway Patrol officer to whom the vehicle is assigned. The words "Oklahoma Highway Patrol" shall also be included on such license plates;

6. Within the limits prescribed in this section, the Tax Commission shall design appropriate official license plates for vehicles of the Oklahoma Military Department. Such license plates shall have the legend "Oklahoma OK" and shall contain the letters "OMD" followed by the state seal and three numbers or letters as designated by the Adjutant General. The words "Oklahoma Military Department" shall also be included on such license plates; and

7. Within the limits prescribed in this section, the Oklahoma Tourism and Recreation Department shall design any license plates required by the initiation of a license plate reissuance by the Oklahoma Tax Commission at the request of the Department of Public Safety pursuant to the provisions of Section 1 of this act. Any such new designs shall be submitted by the Oklahoma Tourism and Recreation Department to the Department of Public Safety for its approval prior to being issued by the Oklahoma Tax Commission.

C. Where the applicant has satisfactorily shown that the applicant owns the vehicle sought to be registered but is unable to produce documentary evidence of the ownership, a license plate may be issued upon approval by the Tax Commission or Corporation Commission, as applicable. In such instances the reason for not issuing a certificate of title shall be indicated on the receipt given to the applicant. It shall still be the duty of the applicant to immediately take all necessary steps to obtain the Oklahoma certificate of title and it shall be unlawful for the applicant to sell the vehicle until the certificate has been obtained in the applicant's name.

D. The certificate of registration provided for in this section shall be in convenient form, and the certificate of registration, or a certified copy or photostatic copy thereof, duly authenticated by the Tax Commission or Corporation Commission, as applicable, shall be carried at all times in or upon commercial vehicles so

registered, in such manner as to permit a ready examination thereof upon demand by any peace officer of the state or duly authorized employee of the Department of Public Safety. Any such officer or agent may seize and hold such commercial vehicle when the operator of the same does not have the registration certificate in the operator's possession or when any such officer or agent determines that the registration certificate has been obtained by misrepresentation of any essential or material fact or when any number or identifying information appearing on such certificate has been changed, altered, obliterated or concealed in any way, until the proper registration or identification of such vehicle has been made or produced by the owner thereof.

E. The purchaser of a new or used manufactured home shall, within thirty (30) days of the date of purchase, register the home with the Tax Commission or a motor license agent pursuant to the provisions of Section 1117 of this title. For a new manufactured home, it shall be the responsibility of the dealer selling the home to place a temporary license plate on the home in the same manner as provided in Section 1128 of this title for other new motor vehicles. For the first year that any manufactured home is registered in this state, the Tax Commission shall issue a metal license plate which shall be affixed to the manufactured home. The temporary dealer license plate or the metal license plate shall be displayed on the manufactured home at all times when upon a public roadway; provided,

a repossession affidavit issued pursuant to Sections 1110 and 1126 of this title shall be permissible in lieu of a current license plate and decal for the purposes of removing a repossessed manufactured home to a secure location. Manufactured homes previously registered and subject to ad valorem taxation as provided by law shall have a decal affixed at the time ad valorem taxes are paid for such manufactured home; provided, for a manufactured home permanently affixed to real estate, no decal or license plate shall be required to be affixed and the owner thereof shall be given a receipt upon payment of ad valorem taxes due on the home. The Tax Commission shall make sufficient plates and decals available to the various motor license agents of the state in order for an owner of a manufactured home to acquire the plate or decal. A one-dollar fee shall be charged for issuance of any plate or decal. The fee shall be apportioned each month to the General Revenue Fund of the State Treasury.

F. The ~~manufactured home license plate~~ decal shall be ~~designed so that it is~~ easily visible for purposes of verification by a county assessor that the manufactured home is properly assessed for ad valorem taxation. ~~The plate shall be designed for a yearly decal.~~ In the first year of registration, a decal shall be issued for placement on the license plate indicating payment of applicable registration fees and excise taxes. A duplicate manufactured home registration decal shall be affixed inside the window nearest the

front door of the manufactured home. In the second and all subsequent years for which the manufactured home is subject to ad valorem taxation, an annual decal shall be affixed ~~to the license plate~~ inside the window nearest the front door as evidence of payment of ad valorem taxes. The Tax Commission shall issue decals to the various county treasurers of the state in order for a manufactured home owner to obtain such decal each year. Upon presentation of a valid ad valorem tax receipt, the manufactured home owner shall be issued the annual decal.

G. Upon the registration of a manufactured home in this state for the first time or upon discovery of a manufactured home previously registered within this state for which the information required by this subsection is not known, the Tax Commission shall obtain:

1. The name of the owner of the manufactured home;

2. The serial number or identification number of the manufactured home;

3. A legal description or address of the location for the home;

4. The actual retail selling price of the manufactured home excluding Oklahoma taxes;

5. The certificate of title number for the home; and

6. Any other information which the Tax Commission deems to be necessary.

The application for registration shall also include the school district in which the manufactured home is located or is to be located. The information shall be entered into a computer data system which shall be used by the Tax Commission to provide information to county assessors upon request by the assessor. The assessor may request any information from the system in order to properly assess a manufactured home for ad valorem taxation.

SECTION 15. REPEALER 47 O.S. 2001, Section 161, is hereby repealed.

SECTION 16. REPEALER 47 O.S. 2001, Section 163.1, is hereby repealed.

SECTION 17. This act shall become effective November 1, 2009.

52-1-7733 CJB 04/08/09