

Act No. 33  
Public Acts of 2007  
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July 10, 2007  
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**STATE OF MICHIGAN  
94TH LEGISLATURE  
REGULAR SESSION OF 2007**

Introduced by Senators Garcia, Kuipers, Hardiman, Jelinek, Gilbert and Pappageorge

**ENROLLED SENATE BILL No. 266**

AN ACT to amend 1933 PA 254, entitled "An act to promote safety upon and conserve the use of public highways of the state; to provide for the supervision, regulation, and control of the use of such highways by all motor vehicles operated by carriers of property for hire upon or over such highways; to preserve, foster, and regulate transportation and permit the coordination of motor vehicle transportation facilities; to provide for the supervision, regulation, and control of the use of such highways by all motor vehicles for hire for such purposes; to classify and regulate carriers of property by motor vehicles for hire upon such public highways for such purposes; to give the Michigan Public Service Commission jurisdiction and authority to prevent evasion of this act through any device or arrangement; to insure adequate transportation service; to give the commission jurisdiction and authority to fix, alter, regulate, and determine rates, fares, charges, classifications, and practices of common motor carriers for such purposes; to require filing with the commission of rates, fares, and charges of contract carriers and to authorize the commission to prescribe minimum rates, fares, and charges, and to require the observance thereof; to prevent unjust discrimination; to prescribe the powers and duties of said commission with reference thereto; to provide for appeals from the orders of such commission; to confer jurisdiction upon the circuit court for the county of Ingham for such appeals; to provide for the levy and collection of certain privilege fees and taxes for such carriers for such purposes and the disposition of such fees and taxes; and to provide for the enforcement of this act; and to prescribe penalties for its violations," by amending section 1 of article I, sections 5, 6, 7, and 10 of article II, section 6 of article III, and section 2 of article V (MCL 475.1, 476.5, 476.6, 476.7, 476.10, 477.6, and 479.2), section 1 of article I, sections 5 and 7 of article II, and section 6 of article III as amended by 1993 PA 352, sections 6 and 10 of article II as amended by 1982 PA 399, and section 2 of article V as amended by 1996 PA 76, and by adding section 7 to article V.

*The People of the State of Michigan enact:*

ARTICLE I

Sec. 1. The words and phrases used in this act shall be construed as follows, unless the context shall otherwise require:

(a) "Motor vehicle" means any automobile, truck, trailer, semitrailer, truck tractor, road tractor, or any self-propelled or motor or mechanically driven vehicle, or any vehicle in anywise attached to, connected with, or drawn by any

self-propelled or motor or mechanically driven vehicle, used upon any public highway of this state for the purpose of transporting property.

(b) "Public highway" means any public highway, road, street, avenue, alley, or thoroughfare of any kind, or any bridge, tunnel, or subway used by the public.

(c) "Commission" means the Michigan public service commission.

(d) "Person" means any individual, partnership, association, or corporation, and their lessees, trustees, or receivers appointed by any court.

(e) "For hire" means for remuneration or reward of any kind, paid or promised, either directly or indirectly.

(f) "Motor common carrier of property" means any person who holds himself or herself out to the public as being engaged in the business of a for hire common carrier as at the common law, either directly or through any device or arrangement, including but not limited to those who operate over fixed routes or within 1 mile of a fixed route or between fixed termini, in the transportation by motor vehicle from place to place upon or over the highways of this state, the property, or any property, or any class of property of others who may choose to employ the person.

(g) "The public" means that part or portion of the general public which the motor carrier is ready, able, willing, and equipped to serve.

(h) "Motor contract carrier of property" means any person providing motor vehicle transportation upon the highways of this state for a series of shipments under continuing agreement of not less than 1 year with a person which agreement provides for the assignment of motor vehicles exclusively for each such person while the vehicle is in the service of such person and which agreement is designed to meet the distinct needs of each such person. Lower rates, in and of themselves, shall not constitute a distinct need. A motor contract carrier that possesses a motor common carrier certificate of authority of that class set forth at section 5(6)(a) of article II may commingle authorized contract carrier shipments while providing common carrier service over fixed routes, without assigning any vehicle exclusively for the person or persons for whom contract service is provided. A motor contract carrier authorized to transport packages or articles weighing 70 pounds or less for 1 or more contract shippers may commingle such authorized packages or articles weighing 70 pounds or less in the same vehicle with commodities transported as a common or contract carrier, without assigning any vehicle exclusively for the person or persons for whom contract service is provided. A motor contract carrier authorized to transport coin, currency, or food stamps for 1 or more contract shippers, may commingle such authorized coin, currency, or food stamps in the same vehicle with commodities transported as a common or a contract carrier, without assigning any vehicle exclusively for the person for whom contract service is provided.

(i) "Motor carrier" means both motor common carriers of property and motor contract carriers of property. Motor carrier does not include a private carrier.

(j) "Certificate of authority" means a certificate issued to a motor common carrier authorizing a transportation service that serves a useful public purpose responsive to a public demand or need, which certificate is issued under the terms of this act.

(k) "Permit" means the permit issued to motor contract carriers under the terms of this act.

(l) "Through any device or arrangement" means any and all methods, means, agreements, circumstances, operations, or subterfuges under which any person undertakes for hire to conduct, direct, control, or otherwise perform the transportation by motor vehicle of property upon the public highways of this state.

(m) "Modified procedure" means that administrative procedure by which the commission may consider evidence and testimony submitted in the form of verified statements in motor carrier matters without the necessity for an oral hearing.

(n) "Occasional accommodative service" means service limited to operations conducted by persons not regularly engaged in the transportation business of a motor common carrier or a motor contract carrier.

(o) "Useful public purpose" means a purpose for which an applicant can provide adequate, economic, safe, effective, competitive, and equitable motor carrier service to satisfy a demonstrated public need.

(p) "Fit", as applied to a proposed motor carrier service, means safe, suitable, and financially responsible as determined by the commission.

(q) "Private carrier" means any person engaged in the transportation of property by motor vehicle upon public highways where the transportation is incidental to, or in furtherance of, any commercial enterprise of the person, other than transportation.

(r) "General rate" means a rate applicable to 2 or more motor carriers which rate is filed pursuant to section 6b of article V.

(s) "Base rate, fare, or charge" means that nondiscounted rate, fare, or charge specified in a carrier's rate schedule on file with the commission.

(t) "Predatory rate" means a rate that is below its fully allocated costs. As used in this subdivision, "fully allocated costs" means total costs, including variable costs, plus an allocation of fixed costs.

(u) "Household goods" means personal effects and property used or to be used in a dwelling when a part of the equipment or supply of that dwelling. Household goods do not include property moving from a factory or store, except such property as the householder has purchased with intent to use in his or her dwelling and that is transported at the request of the householder, the carrier's transportation charges for which are paid by that householder.

(v) "Local move" means a household goods shipment of 40 miles or less, from point of origin to point of destination, as determined by actual miles traveled by the motor carrier and verifiable by odometer reading or mileage guide in general public use.

## ARTICLE II

Sec. 5. (1) Except as provided in this section, the commission shall issue a certificate of authority to an applicant authorizing that it provide transportation subject to the jurisdiction of the commission under this article as a motor common carrier of property if the commission finds all of the following:

(a) The character and condition of the vehicles proposed to be operated by the applicant is such that they may be operated safely upon the public highways.

(b) That the applicant is fit, willing, and able to provide the transportation to be authorized by the certificate and to comply with this act and rules and regulations of the commission.

(c) On the basis of evidence presented, that the service proposed will serve a useful public purpose.

(d) That the service proposed is consistent with the transportation policy set forth in section 2 of article I.

(2) In making a finding under subsection (1), the commission shall consider and, to the extent applicable, make findings on at least all of the following:

(a) The transportation policy set forth in section 2 of article I.

(b) The character of the bond or insurance proposed to be given to insure the protection of the public.

(c) Whether the applicant is fit, willing, and able to provide service commensurate with the extent of the certificate sought.

(3) A motor carrier may not protest an application to provide transportation filed under this section unless all of the following requirements are met:

(a) The protest is filed with the commission not later than 20 days following publication of the notice of the filing of the application in the biweekly bulletin.

(b) The motor carrier possesses a certificate of authority or permit authorizing it to handle, in whole or in part, the traffic for which an application is made.

(c) The motor carrier is willing and able to provide service that meets the reasonable needs of the shippers involved.

(d) The motor carrier has performed service within the scope of the application during the previous 12-month period.

(4) The commission may grant leave to intervene to a person other than a motor carrier or an applicant for a certificate of authority or permit upon a showing of other interests that are consistent with the transportation policy set forth in section 2 of article I. A petition to intervene shall not be granted unless filed with the commission not later than 20 days following publication of the notice of the filing of the application in the biweekly bulletin except for good cause shown.

(5) Any motor carrier having timely filed a protest or any intervenor having timely filed a petition to intervene may participate in person or by counsel, cross-examine witnesses, and offer testimony in support of, or in opposition to, the grant of a certificate of authority.

(6) Certificates of authority issued to motor common carriers of property under this act shall be of 3 classes:

(a) Certificates issued to motor carriers as may be operating over fixed routes or within 1 mile of a fixed route or between fixed termini.

(b) Certificates issued to motor carriers providing a transportation service within an 8-mile radius of a city having a population of 500,000 or more and including each city or village, a part of which is located within the 8-mile radius.

(c) Certificates issued to all other motor common carriers of property.

(7) The burden of proof shall be on the protestant to meet the requirement of subsection (2)(c).

Sec. 6. (1) Except as otherwise provided in subsection (2), all motor common carriers of property subject to this act, shall before engaging in business, print and file with the commission and keep open to public inspection in its principal place of business and have available upon request, schedules showing all rates, fares and charges for transportation of

property between different points on its route, and also between points on its own route and on the route of any other motor common carrier when a through route and joint rate have been established. When the commission grants a new authority to a motor common carrier, that carrier shall not charge a predatory rate. A predatory rate is a rate found to be below its fully allocated cost by the Michigan public service commission. The commission shall make this determination prior to the issuance of a certificate and commencement of operations. If a joint rate over the through route has not been established the several motor carriers shall file, print, and keep open for public inspection as described in this section, the separately established rates, fares, and charges applied to the through transportation, and shall likewise print, file, and keep open to the public inspection all other charges, privileges, or rules which in anywise change, affect, or determine any part of the rates, fares, charges, or the value of the service, and other information as required by the commission in its rules. In addition, a motor carrier shall keep the facilities of the motor carrier open to public inspection. A motor common carrier shall not receive or accept any person or property for transportation upon the highways until in compliance with the requirements of this section.

(2) This section does not apply to local moves of household goods.

Sec. 7. (1) All rates, fares, and charges made by any motor common carrier shall be just and reasonable, and shall not be unjustly discriminatory, prejudicial, or preferential. Contract motor carrier rates, fares, and charges made by common motor carriers holding both common carrier and contract carrier authority shall not be considered by the commission to be unjustly discriminatory, prejudicial, or preferential in determining compliance with this section. Existing carriers will be permitted to meet competitive rates without further justification to the commission. The commission shall take into account reasonable estimated or foreseeable future costs in determining whether rates, fares, and charges meet the requirements of this subsection.

(2) A motor common carrier shall not charge, demand, collect, or receive a greater or less or different remuneration for the transportation of property, or for any service in connection therewith, than the rates, fares, and charges which have been legally established and filed with the commission.

(3) A motor common carrier shall not refund or remit in any manner or by any device any portion of the rates, fares, and charges required to be collected by the tariffs on file with the commission or ordered by the commission.

(4) Nothing in this act shall prohibit a carrier from operating both as a motor common carrier and a motor contract carrier.

(5) This section does not apply to local moves of household goods.

Sec. 10. (1) The commission shall supervise and regulate all motor common carriers of property and regulate and determine reasonable and sufficient rates, fares, charges, and classifications; regulate the facilities, accounts, service, and safety of operations of each motor common carrier. To insure adequate transportation service to the territory traversed by the motor common carriers, the commission may require the coordination of the service and schedules of competing motor common carriers; require the filing of annual and other reports, tariffs, schedules, and other data by the motor common carriers where that information is considered by the commission to be necessary for the administration or enforcement, or both, of this act; supervise and regulate motor common carriers in all matters affecting the relation between the motor carriers, and the public and between motor carriers; and promulgate rules for the purpose of promoting safety upon the highways and the conservation of their use to the end that the provisions of this act may be fully and completely carried out. The commission, by general order or otherwise, shall promulgate rules in conformity with this act applicable to all motor common carriers, and to do all things necessary to carry out and enforce this act.

(2) In the exercise of its jurisdiction under subsection (1), the commission shall not regulate and determine reasonable and sufficient rates, fares, charges, and classifications, or require the filing of tariffs and schedules, for local moves of household goods.

### ARTICLE III

Sec. 6. (1) The commission shall supervise and regulate all motor contract carriers of property; promulgate rules covering the filing with the commission of the charges, and the operations of motor contract carriers in competition with motor common carriers over the highways of this state; and promulgate rules for the purpose of promoting safety upon the highways and the conservation of their use, to the end that the provisions of this act may be fully and completely carried out. The commission, by general order or otherwise, shall promulgate rules in conformity with this act applicable to all motor contract carriers, and to do all things necessary to carry out and enforce the provisions of this act. The commission may also request the filing of annual reports, and other reports in specific cases, where that information is considered by the commission to be necessary for the administration or enforcement, or both, of this act.

(2) Each motor contract carrier, in a form as the commission prescribes and in accordance with the rules as the commission promulgates, shall establish and file with the commission actual rates and practices and rules of the contract carrier related to those rates. A motor contract carrier shall not be required with rate filings to submit evidence of the

revenues and expenses to be realized in the performance of its authorized functions. A motor contract carrier shall make available to the commission its complete contract or contracts, but shall not be required to file such contract or contracts with the commission. A member of the commission, or a clerk, officer, or employee of the state shall not divulge or make known, in any manner whatsoever not provided by this section, to any person the rate filings of a contract carrier, unless a complaint has been brought by order of the commission against a contract carrier alleging that a rate of a contract carrier or practice or rule of the contract carrier related to the rate or value of service under that rate is predatory and in violation of this act. Rate filings of a contract carrier are exempt from disclosure under the freedom of information act, 1976 PA 442, MCL 15.231 to 15.246, unless a complaint has been brought by order of the commission against a contract carrier pursuant to this section. The commission shall review all rate filings to determine that such rate filings are not predatory. When the commission finds that a rate of a contract carrier or practice or rule of the contract carrier related to the rate or the value of service under that rate is predatory and in violation of this act, the commission shall prescribe the minimum rate or practice or rule. In making a predatory rate determination and when prescribing a minimum rate or practice or rule related to a rate for a motor contract carrier, the commission shall consider all of the following:

- (a) All revenues and costs associated with 1 specific contract or appendix to that contract.
  - (b) The effect of a prescribed minimum rate or practice or rule on the movement of traffic by that carrier.
  - (c) Other matters as the commission considers necessary.
- (3) A motor contract carrier shall not receive or accept property for transportation upon the highways until the statement of charges has been filed with the commission.

## ARTICLE V

Sec. 2. (1) This act shall not apply to any of the following:

(a) A vehicle, other than a vehicle transporting household goods, operated entirely within a city or village of this state; or to a motor carrier of property, other than a motor carrier of household goods, whose operations may extend a distance of not more than 8 miles beyond the boundary of a city or village having a population of less than 500,000, if the origin and destination of the property being transported is within an 8-mile radius of the city or village. The territory within the external corporate limits of a city, even though it includes and embraces the area of 1 or more separately organized and existing cities, shall be considered a single city. Notwithstanding any other provision of this subdivision, a certificate or permit issued under this act is required for the operation of a vehicle of a motor carrier, including a vehicle transporting household goods, other than a vehicle exempted under subdivisions (b) to (q), in the transportation of property between a city having a population of 500,000 or more and a city or village located within the commercial zone of a city having a population of 500,000 or more, or between cities or villages within that commercial zone. As used in this subdivision, "commercial zone" means the area within an 8-mile radius of a city having a population of 500,000 or more and includes all cities and villages, any part of which are located within that 8-mile radius.

(b) A vehicle owned or operated by the state or the United States, or by a state or federal corporation, agency, or instrumentality.

(c) A vehicle owned or operated by an incorporated city, village, or school district, or by a county or township in the state or by a corporation, agency, or instrumentality of the state, for governmental purposes.

(d) A vehicle used exclusively for carrying United States mail.

(e) A vehicle used for the transportation of farm products, including livestock, when transported by other than the owner, from the farm to the market in the raw state, or used for the transportation of milk from the farm to milk stations, or trucks owned by a farmer bearing a farm truck license issued under section 801(1)(c) of the Michigan vehicle code, 1949 PA 300, MCL 257.801, when being used by the farmer in hauling farm produce, livestock, or farm equipment, and supplies for other farmers for remuneration in kind or in labor, but not for money.

(f) A vehicle used for the transportation of fruits, eggs, poultry, fish and seafood, grain, vegetables, seeds, nursery stock, horticultural products, and sugar beets. This subdivision shall not exempt a vehicle transporting the commodities described in this subdivision in other than the raw state.

(g) A vehicle used for occasional accommodative service including seasonal transportation of perishable commodities even though the cost of the accommodative service and seasonal transportation of perishable commodities may be paid by the person accommodated.

(h) A dump truck having not more than 4 axles or any dump vehicle moving directly to and from a public highway, airport, or railroad or bridge construction site, when used for the transportation of sand, gravel, slag, stone, limestone, crushed stone, marl, pebbles, cinders, bituminous aggregates, asphalt, blacktop, dirt, or fill material, or any dump vehicle transporting commodities generally transported in the dump vehicle operating within an 8-mile radius of a city having a population of 500,000 or more and including all other cities or villages, any part of which is located within the 8-mile radius.

(i) A vehicle used to transport a vehicle that is temporarily disabled from a point within an 8-mile radius of a city having a population of 500,000 or more and including all other cities or villages, any part of which is located within the 8-mile radius to another point within that radius.

(j) A vehicle used for the transportation of pulpwood, logs, wood chips, bark, and sawdust when the vehicle is being used to move the commodities from a forest, woodlot, cutting site, sawmill, or chipping site to a market or railroad siding of not more than a 140-mile radius from the place where the vehicle is loaded.

(k) A vehicle having a manufacturer's rating of not more than 1-1/2 tons capacity or the equivalent gross vehicle weight rating used for the transportation of newspapers.

(l) A vehicle towing a disabled motor vehicle from the location at which it was disabled to another location or a vehicle towing a motor vehicle involved in an accident from the location of the accident to another location.

(m) A vehicle used in the transportation of livestock, poultry feed, chemicals, pesticides, and fertilizers on movements directly to a farm for use in agricultural production.

(n) A vehicle used for the transportation of property for compensation provided by a person who is a member of a corporate family for other members of the corporate family, if all of the following conditions are met:

(i) The parent corporation notifies the commission annually of its intent or the intent of 1 of its subsidiaries to provide the transportation.

(ii) The notice described in subparagraph (i) contains a list of participating subsidiaries and an affidavit that the parent corporation owns directly or indirectly a 100% interest in each of the subsidiaries.

(iii) The notice described in subparagraph (i) is accompanied by a fee of \$100.00.

(iv) The commission publishes the notice described in subparagraph (i) in the biweekly bulletin.

(v) A copy of the notice described in subparagraph (i) is carried in the cab of all vehicles conducting the transportation.

(o) A vehicle transporting animal and poultry feed or feed ingredients to sites of agricultural production or to a business enterprise engaged in the sale to agricultural producers of goods used in agricultural production.

(p) A vehicle transporting recyclable materials to or from a resource recovery facility. The terms "recyclable materials" and "resource recovery facility" have the meanings attributed to these terms in part 115 of the natural resources and environmental protection act, 1994 PA 451, MCL 324.11501 to 324.11550, except that the term recyclable materials does not include industrial scrap metal. This subdivision shall not be construed to exempt from this act a vehicle transporting new products.

(q) A vehicle transporting property for, or on behalf of, a nonprofit charitable institution or for a house of public worship.

(2) As used in subsection (1)(n), "corporate family" means a group of corporations consisting of a parent corporation and all subsidiaries in which the parent corporation owns directly or indirectly a 100% interest.

(3) None of the exemptions in this section, where applicable, apply to a vehicle entering this state from another state, foreign country, or subdivision of a state or foreign country that does not extend similar exemptions to vehicles from this state entering the state, foreign country, or subdivision.

Sec. 7. (1) A carrier providing transportation of household goods subject to jurisdiction of this act shall issue a receipt or bill of lading for property it receives for transportation under this article. That carrier, as well as any other carrier that delivers the property and provides transportation of household goods subject to jurisdiction of this act, is liable to the person entitled to recover under the receipt or bill of lading. The liability imposed under this subsection is for the actual loss or injury to the property caused by the carrier over whose line or route the property is transported in Michigan and applies to property reconsigned or diverted by a tariff under this act. Failure to issue a receipt or bill of lading does not affect the liability of the carrier.

(2) A carrier may not provide, by rule, contract, or otherwise, a period of less than 3 months for filing a claim against it under this section and a period of less than 2 years for bringing a civil action against it under this section. The period for bringing a civil action is computed from the date the carrier gives a claimant written notice that the carrier has disallowed any part of the claim specified in the notice.

(3) For purposes of this subsection, the following apply:

(a) An offer of compromise shall not constitute a disallowance of any part of the claim unless the carrier, in writing, informs the claimant that such part of the claim is disallowed and provides reasons for such disallowance.

(b) Communications received from a carrier's insurer shall not constitute a disallowance of any part of the claim unless the insurer, in writing, informs the claimant that the part of the claim is disallowed, provides reason for the disallowance, and informs the claimant that the insurer is acting on behalf of the carrier.

This act is ordered to take immediate effect.

*Carol Morey-Viventi*

Secretary of the Senate

*Richard J. Beeman*

Clerk of the House of Representatives

Approved .....

.....  
Governor