

GENERAL ASSEMBLY OF NORTH CAROLINA
1985 SESSION

CHAPTER 676
HOUSE BILL 977

AN ACT TO REFORM THE LAWS REGULATING COMMON CARRIERS OF
PASSENGERS BY MOTOR VEHICLE.

The General Assembly of North Carolina enacts:

Section 1. This act shall be known as and may be cited as the "Bus Regulatory Reform Act of 1985".

Sec. 2. The General Assembly finds and declares that a safe, competitive and fuel efficient passenger bus industry contributes to a strong economy and is vital to the transportation needs of the elderly, handicapped and poor; that Congress has enacted the Bus Regulatory Reform Act of 1982, the stated purpose of which is to reduce unnecessary and burdensome government regulation of motor carriers of passengers; that it is in the interest of this State to amend and modify the laws regulating motor carriers of passengers to make them more compatible with the provisions of the Bus Regulatory Reform Act of 1982 and consistent with the public needs of the citizens of this State.

Sec. 3. G.S. 62-2 is amended by adding a new sentence at the end to read:

"The policy and authority stated in this section shall be applicable to common carriers of passengers by motor vehicle and their regulation by the North Carolina Utilities Commission only to the extent that they are consistent with the provisions of the Bus Regulatory Reform Act of 1985."

Sec. 4. G.S. 62-3 is amended in the following respects:

(1) There is added a new definition to read:

"(1a) 'Bus company' means any common carrier by motor vehicle which holds itself out to the general public to engage in the transportation by motor vehicle in intrastate commerce of passengers over fixed routes or in charter operations, or both, except as exempted in G.S. 62-260."

(2) The definition of "(2) Certificate" is rewritten to read:

"(2) 'Certificate' means a certificate of public convenience and necessity issued by the Commission to a public utility or a certificate of authority issued by the Commission to a bus company."

(3) The definition of "(4) Charter party" is deleted and the following definition is substituted:

"(4) 'Charter operations' with regard to bus companies means the transportation of a group of persons for sightseeing purposes, pleasure tours, and other types of special operations, or the transportation of a group of persons who, pursuant to a common purpose and under a single contract, and for a fixed charge for the vehicle, have

acquired the exclusive use of a passenger-carrying motor vehicle to travel together as a group to a specified destination or for a particular itinerary, either agreed upon in advance or modified by the chartered group after having left the place of origin."

(4) The definition of "(7) Common carrier by motor vehicle" is amended by inserting immediately before the word "except" the words "or in charter operations,".

(5) There is added a new definition to read:

"(9a) 'Fixed route' means the specific highway or highways over which a bus company is authorized to operate between fixed termini."

Sec. 5. G.S. 62-32(b) is amended by deleting the first word "The" and substituting:

"Except as provided in this Chapter for bus companies, the".

Sec. 6. G.S. 62-36 is amended by inserting after the word "necessity" the words "or any certificate of authority."

Sec. 7. G.S. 62-42(a) is amended by deleting the first word "Whenever" and substituting:

"Except as otherwise limited in this Chapter, whenever".

Sec. 8. G.S. 62-75 is amended by deleting the first word "In" and substituting:

"Except as otherwise limited in this Chapter, in".

Sec. 9. G.S. 62-110 is amended by deleting the first word "No" and substituting "Except as provided for bus companies in Article 12 of this Chapter, no".

Sec. 10. G.S. 62-111(b) is amended by inserting after "G.S. 62-262" the words "for contract carriers of passengers and G.S. 62-262.1 for bus companies".

Sec. 11. G.S. 62-111(e) is amended by adding a new sentence at the end to read:

"Provided, however, the Commission shall approve, without imposing conditions or limitations, applications for the transfer of a bus company franchise made under this section upon finding that the person acquiring the franchise or control of the franchise is fit, willing and able to perform services to the public under that franchise."

Sec. 12. G.S. 62-112 is amended by adding a new subsection (d) to read:

"(d) This section shall be applicable to bus companies."

Sec. 13. G.S. 62-113 is amended as follows:

(1) The present section shall be designated subsection (a) and a new sentence shall be added at the end to read: "This subsection shall not be applicable to bus companies or their franchises."

(2) Add a new subsection (b) to read:

"(b) Each bus company franchise shall specify the fixed routes over which, and the fixed termini, if any, between which the bus company may operate. A franchise for bus companies engaged in charter operations may provide for fixed routes or statewide operating authority."

Sec. 14. G.S. 62-118(a) is amended by deleting "G.S. 62-262(k)" and substituting "G.S. 62-262(h) and G.S. 62-262.2."

Sec. 15. Article 7 of Chapter 62 is amended as follows:

- (1) G.S. 62-130 is amended by deleting subsection (b).
- (2) G.S. 62-133(a) is amended by inserting immediately after "other than" the words "bus companies,".
- (3) G.S. 62-134 is amended by adding a new subsection (g) to read:

"(g) The provisions of this section shall not be applicable to bus companies or to their rates, fares or tariffs."

- (4) G.S. 62-141 is amended as follows:

- (a) Subsection (a) is amended by deleting the words "of passengers or".

- (b) Subsection (b) is amended by deleting the words "of passengers or".

- (c) Add a new subsection (c) to read:

"(c) The provisions of this section shall not be applicable to bus companies or to their rates, charges or tariffs."

- (5) G.S. 62-146 is amended as follows:

- (a) The caption of the section is amended to read: "Rates and service of motor common carriers of property."

- (b) Subsection (a) is amended by inserting after the words "every common carrier" the words "of property".

- (c) Subsection (d) is amended by inserting after the words "common carriers" the words "of property".

- (d) Subsection (e) is amended by changing the comma after the words "thereafter to be made effective" to a period and deleting the remainder of this subsection beginning with the words "and in the case of passenger carriers" through the end of the subsection.

- (e) Subsection (g) is amended by inserting after the words "any common carrier" the words "of property".

- (f) Subsection (c) is deleted.

- (6) A new section is added to Article 7 of Chapter 62 to read:

"§ 62-146.1. Rates and service of bus companies. – (a) It shall be the duty of every bus company to provide safe and adequate service, equipment and facilities for transportation of passengers in intrastate commerce and to establish, observe and enforce just and reasonable regulations and practices.

(b) The Commission by its rules and regulations may require the interlining of passengers by bus companies operating in intrastate commerce in this State where the point of destination of the passenger is not served by the originating carrier. In these cases it shall be the duty of every bus company to establish reasonable through rates with other bus companies; to establish, observe and enforce just and reasonable individual and joint rates, fares and charges and just and reasonable regulations and practices relating to the charges and to the issuance, form and substance of tickets and the carrying of personal and excess baggage.

(c) In case of joint rates between bus companies, it shall be the duty of the bus companies to establish just and reasonable regulations and practices in connection with the joint rates and just, reasonable and equitable divisions between the participating companies, which shall not unduly prefer or prejudice any of the participating companies.

(d) A bus company providing fixed route service may file with the Commission a petition for new or revised rates, fares or charges. Unless the Commission orders otherwise, no bus company shall make any changes in its rates, fares or charges, which have been established under this Chapter, except after 30 days' notice to the Commission. The notice shall plainly state the changes proposed to be made in the rates then in force, and the time when the changed rates will go into effect. The bus company shall also give notice, which may include notice by publication, of the proposed changes to other interested persons that the Commission may direct. All proposed changes shall be shown by filing new schedules, or shall be plainly indicated upon schedules filed with the Commission and in force at the time and kept open to public inspection by the bus company. The Commission, for good cause shown in writing, may allow changes in rates without requiring the 30 days' notice, under any conditions as it prescribes. All changes shall be immediately indicated by the bus company on its schedules.

(e) Whenever there is filed with the Commission by any bus company any schedule stating a new or revised rate, fare or charge, the Commission may, either upon complaint or upon its own initiative, after reasonable notice, hold a hearing to determine if the proposed new or revised rates, fares or charges are just and reasonable. Pending the hearing and a decision, the Commission, upon filing with the proposed schedule and delivering to the affected bus company a statement in writing of its reasons, may, at any time before they become effective, suspend the operation of the rate or rates, for a period not to exceed 120 days from the filing of the petition. If the proceeding has not been concluded and a final order made within the period of suspension, the proposed change of rate shall go into effect at the end of the 120-day period.

(f) In any proceeding to determine the justness or reasonableness of any rates, fares or charges of a bus company, the Commission shall authorize revenue levels that are adequate under honest, economical, and efficient management to cover total operating expenses, including the operation of leased equipment and depreciation, plus a reasonable profit. The standards and procedures adopted by the Commission under this subsection shall allow the bus company to achieve revenue levels that will provide a flow of net income, plus depreciation, adequate to support prudent capital outlays, assure the repayment of a reasonable level of debt, permit the raising of needed equity capital, attract and retain capital and amounts adequate to provide a sound passenger bus transportation system in this State, and take into account reasonable estimated or foreseeable future costs.

(g) Notwithstanding any provision of this section, the Commission may not investigate, suspend, review or revoke the operation of proposed new or revised rates, fares or charges if the proposed new or revised rates, fares or charges do not exceed the standard rates, fares or charges then in effect by the petitioning bus company for comparable interstate transportation of passengers.

(h) Any person may make complaint in writing to the Commission that any rate, fare, charge, classification, rule, regulation, or practice in effect, or proposed to be put in effect, is or will be in violation of this Chapter. Whenever, after holding a hearing, upon complaint, in an investigation, or upon its own initiative, the Commission finds that any individual or joint rate demanded, charged, or collected by any bus company for

transportation of passengers in intrastate commerce, or any classification, rule, regulation or practice of the bus company affecting the rate or the value of the service provided, is or will be unjust or unreasonable or unjustly discriminatory or unduly preferential or unduly prejudicial or constitute an unfair or destructive competitive practice, or otherwise contravenes the policies declared in this Chapter, or is in contravention of any provision of this Chapter, the Commission shall determine and prescribe the lawful rate, or the lawful classification, rule, regulation or practice to be put into effect.

(i) For purposes of this Chapter, rates, fares and charges established pursuant to this section shall be deemed fair, just and reasonable.

(j) Notwithstanding any other provision of this Chapter, the rates, fares and charges established for charter service by a bus company authorized and engaged in charter operations in this State shall be exempt from regulation by the Commission. A bus company authorized and engaged in charter operations shall file with the Commission a current statement of its rates, fares and charges as required by the Commission."

Sec. 16. G.S. 62-259 is amended by adding a sentence at the end to read:

"The provisions of this section and these policies are applicable to bus companies and their rates and services only to the extent with which they are consistent with the provisions of G.S. 62-259.1 and of the Bus Regulatory Reform Act of 1985."

Sec. 17. Article 12 of Chapter 62 is amended by adding a new section thereto reading as follows:

"§ 62-259.1. Specific declaration of policy for bus companies. – The transportation of passengers, their baggage and express, by bus companies has become increasingly subject to competition from other forms of transportation which are unregulated or only partially regulated as to rates and services. It is in the public interest and it is the policy of this State that bus companies be partially deregulated so that they may rely upon competitive market forces to determine the best quality, variety and price of bus services, thereby promoting the public health, safety and welfare by strengthening and increasing the viability of this necessary form of transportation."

Sec. 18. Rewrite subdivisions (1) and (2) of G.S. 62- 261 as follows:

"(1) To supervise and regulate bus companies and to that end, the Commission may establish reasonable requirements with respect to continuous and adequate service, transportation of baggage, newspapers, mail and light express, uniform system of accounts, records and reports and preservation of records.

(2) To supervise the operation and safety of passenger bus stations in any manner necessary to promote harmony among the carriers using such stations and efficiency of service to the traveling public."

Sec. 19. G.S. 62-262 is amended by:

(1) Amending the caption to read: "Applications and hearings other than for bus companies."

(2) Amending subsection (a) by inserting immediately after the words "G.S. 62-260", the words "G.S. 62-262.1".

- (3) Amending subsection (b) by deleting the words "bus applications" and substituting the words "applications by contract carriers of passengers".
- (4) Deleting subsections (f), (g) and (h).
- (5) Deleting the words "certificate or" each time they appear in subsection (j).
- (6) Adding a new subsection (l) to read as follows:

"(l) The provisions of this section shall not be applicable to applications for certificates of authority by bus companies or related hearings."

Sec. 20. Article 12 of Chapter 62 is amended by adding a new section to read:

"§ 62-262.1. Certificates of authority for passenger operations by bus companies. –

(a) Except as provided in G.S. 62- 260, 62-262 and 62-265, no person shall engage in the transportation of passengers in intrastate commerce by motor vehicle without having applied for and obtained a certificate authorizing those operations from the Commission. It shall be unlawful for any person to knowingly or willfully operate in intrastate commerce in a manner contrary to the provisions of this Article or to the rules and regulations of the Commission. No certificate shall be amended to enlarge, or in any manner extend, the scope of operations of a bus company without complying with the provisions of this section.

(b) Any bus company desiring a certificate of authority to operate in intrastate commerce in this State over fixed routes, or to enlarge or in any manner extend the scope of its fixed route operations previously granted by the Commission, may do so by filing a verified application with the Commission and by paying the filing fee established by G.S. 62-300.

(c) The Commission shall issue a certificate of authority to an applicant for the transportation of passengers over a fixed route or to enlarge or extend authority previously granted, if the Commission finds that the applicant is fit, willing and able to provide the transportation to be authorized by the certificate and to comply with the provisions of this Chapter, unless the Commission finds, on the basis of evidence presented by any person objecting to the issuance of the certificate, that the transportation to be authorized is not consistent with the public interest.

(d) In making any findings relating to public interest under subsection (c) of this section, the Commission shall consider, to the extent applicable, (i) the transportation policy of this State as it relates to bus companies under G.S. 62-259.1 and this Chapter; (ii) the value of competition to the traveling and shipping public; (iii) the effect of issuance of the certificate on bus company service to small communities; and (iv) whether issuance of the certificate would impair the ability of any other fixed route carrier of passengers to provide a substantial portion of its fixed route passenger service, except that diversion of revenue or traffic from a fixed route carrier of passengers, alone, shall not be sufficient to support a finding that issuance of the certificate would impair the ability of the carrier to provide a substantial portion of its fixed route passenger service.

(e) Within 10 days after the filing of an application, the applicant shall provide notice to be given as required by Commission rule. If no protest, raising material issues of fact to the granting of the application, is filed with the Commission within 30 days after the notice is given, the Commission may, upon review of the record and without a hearing, issue its certificate of authority granting the requested operating authority, if it is satisfied that the applicant meets the requirements set forth in subsection (c) of this section.

(f) If protests are filed raising material issues of fact to the granting of the application, the Commission shall set the application for hearing, as soon as possible, and cause notice to be given as provided by its rules. At the hearing, the only issues for consideration are those set forth in subsections (c) and (d) of this section. The Commission shall issue its final order not later than 180 days after the application is filed.

(g) Any bus company authorized to transport passengers in intrastate commerce over fixed routes in this State and which in fact provides that service may, without filing a new application or paying further fees: (i) transport newspapers, express parcels or United States mail over the fixed routes on which it provides passenger transportation; (ii) provide charter operations to all points in the State; and (iii) transport charter passengers in the same motor vehicles with fixed route passengers.

(h) Any bus company seeking a certificate to engage solely in charter operations within the State, or to enlarge or in any manner extend the scope of its charter operations previously granted by the Commission, may obtain one by (i) filing a verified application for the authority with the Commission; (ii) paying the applicable filing fee as prescribed by G.S. 62-300; and (iii) demonstrating that it is fit, willing and able to perform the proposed charter operations.

(i) Within 10 days after filing of an application for charter operations, the applicant shall provide notice as required by Commission rule or regulation. If no protests to the granting of the application, raising material issues of fact, are received by the Commission within 30 days after the notice is given, the Commission shall issue its certificate granting the requested authority unless it determines that the applicant is unfit, unwilling or unable to perform the proposed operations. In the event of this determination, or if protests to the proposed operation raising material issues of fact are received, the Commission shall set the application for hearing, as soon as possible, and provide notice to be given as provided by its rules and shall issue its final order within 180 days after application is filed. At the hearing, the only issue for consideration shall be whether the applicant is fit, willing and able to perform the proposed charter operations and the issue of need shall not be considered. On the issue of its fitness, willingness and ability to perform the proposed charter operations, the applicant in its application and at any hearing shall present evidence from which the Commission may find that: (i) the applicant has sufficient assets to perform properly the proposed operations; (ii) the operation will be conducted only with properly qualified drivers; (iii) the applicant will maintain safe, clean and attractive buses and equipment; (iv) the applicant will maintain insurance for the protection of the public as provided in this Chapter; (v) the applicant has sufficient equipment to conduct the proposed operation;

and (vi) the applicant will observe all applicable laws, rules and regulations of this State.

(j) Any bus company authorized and engaged solely in charter operations shall not be required to transport passengers over a fixed route in this State as an incidence to its charter operations."

Sec. 21. Article 12 of Chapter 62 is amended by adding a new section to read:

"§ 62-262.2. Discontinuance or reduction in service. – (a) When a bus company proposes to discontinue service over any intrastate route or proposes to reduce its level of service to any points on a route to a level which is less than one trip per day (excluding Saturdays and Sundays), it shall petition the Commission for permission to do so. Within 10 days after the filing of a petition, the Commission shall require notice to be given.

(b) Any person or the Public Staff may object, to the Commission, to the granting of permission to any bus company to discontinue or reduce transportation under this section. If neither objects to the granting of permission to discontinue or reduce service under this section, within 30 days after the notice as required by subsection (a) of this section, the Commission may grant the permission based on the record and without hearing.

(c) If, within 30 days after the notice as required by subsection (a) of this section, any person or the Public Staff objects in writing to the Commission to granting of such permission, the Commission shall grant such permission unless the Commission finds as a fact, that the discontinuance or reduction in service is not consistent with the public interest or that continuing the transportation, without the proposed discontinuance or reduction, will not constitute an unreasonable burden on interstate commerce. In making a finding under this subsection, the Commission shall accord great weight to the extent to which the interstate and intrastate revenues from the transportation proposed to be reduced or discontinued are less than the variable costs of providing the transportation, including depreciation for revenue equipment. The Commission may also consider, to the extent applicable, all other factors which are to be considered by the Interstate Commerce Commission in a proceeding commenced under 49 U.S.C. § 10935. For the purposes of this section, the bus company filing a petition for permission to discontinue or reduce service shall have the burden of proving (i) the amount of its interstate and intrastate revenues received for transportation to, from or between, but not through, points on the involved intrastate route; and (ii) the system variable costs of providing the transportation.

(d) The Commission may make its determination with or without a public hearing. The Commission shall take final action upon the petition not later than 120 days after any written objections to the petition are filed.

(e) The provisions of G.S. 62-262(h) shall not be applicable to bus companies."

Sec. 22. G.S. 62-268 is amended by adding the following new paragraph:

"Notwithstanding any other provisions of this section or Chapter, bus companies shall file with the Commission proof of financial responsibility in the form of bonds, policies of insurance, or shall qualify as a self insurer, with minimum levels of financial

responsibility as prescribed for motor carriers of passengers pursuant to the provisions of 49 U.S.C. §10927(a)(1)."

Sec. 23. G.S. 62-275 is repealed.

Sec. 24. G.S. 62-300 is amended by adding a new subdivision to read:

"(5a) With each application by a bus company for an original certificate of authority or for any amendment thereto or to an existing certificate of public convenience and necessity so as to extend or enlarge the scope of operations thereunder the fee shall be two hundred fifty dollars (\$250.00)."

Sec. 25. Issuance of certificates of authority. Within 180 days after the effective date of this act a certificate of authority shall be issued by the North Carolina Utilities Commission to each person authorized as of the effective date of this act to provide intrastate services within North Carolina as a common carrier of passengers by motor vehicle, and the certificate of authority shall authorize the same type and extent of services authorized prior to the effective date of this act. Upon issuance of the certificate of authority, the franchise certificate issued prior to the effective date of this act shall be cancelled. Each person authorized as of the effective date of this act to provide intrastate services within North Carolina as a common carrier of passengers by motor vehicle shall be authorized to continue to provide the same type and extent of services for a period of 180 days following the effective date of this act. No certificate of authority shall be issued to operate as a common carrier of passengers by motor vehicle to a person who, during the two years prior to the effective date of this act, failed to perform any transportation for compensation for a period of 30 days or more, without a determination, after notice and hearing, as to whether the franchise certificate should be declared dormant and cancelled. The Commission, on its own motion, or each person authorized as of the effective date of this act to provide intrastate services within North Carolina as a common carrier of passengers by motor vehicle, shall be entitled to commence within 120 days of the effective date of this act, a complaint proceeding to cancel any certificate of authority issued to a common carrier of passengers by motor vehicle which, during the two years prior to the effective date of this act, failed to perform any transportation for compensation for a period of 30 days or more. The complaint proceeding shall be governed by the provisions of G.S. 62-112.

Sec. 26. This act is effective upon ratification, but shall not apply to pending litigation or to pending proceedings before the North Carolina Utilities Commission.

In the General Assembly read three times and ratified, this the 10th day of July, 1985.