

GENERAL ASSEMBLY OF NORTH CAROLINA
1995 SESSION

CHAPTER 523
HOUSE BILL 941

AN ACT TO CONFORM THE PROVISIONS OF THE PUBLIC UTILITIES CHAPTER OF THE GENERAL STATUTES TO THE FEDERAL PREEMPTION OF STATE REGULATION OF INTRASTATE TRANSPORTATION OF PROPERTY EXCEPT HOUSEHOLD GOODS AND TO THE FEDERAL PREEMPTION OF STATE REGULATION OF WIRELESS TELECOMMUNICATIONS CARRIERS, TO INCREASE THE APPLICATION FEE AND TO MODIFY THE MOTOR FUEL TAX REFUND PROCEDURES FOR UNDYED DIESEL FUEL USED IN BOATS.

The General Assembly of North Carolina enacts:

Section 1. G.S. 62-3 reads as rewritten:

"§ 62-3. Definitions.

As used in this Chapter, unless the context otherwise requires, the term:

- (1) 'Broker,' with regard to motor carriers of passengers, means any person not included in the term 'motor carrier' and not a bona fide employee or agent of any such carrier, who or which as principal or agent engages in the business of selling or offering for sale any transportation of passengers by motor carrier, or negotiates for or holds himself, or itself, out by solicitation, advertisements, or otherwise, as one who sells, provides, furnishes, contracts, or arranges for such transportation for compensation, either directly or indirectly.
- (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) '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) 'Certified mail' means such mail only when a return receipt is requested.
- (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.

- (5) 'Commission' means the North Carolina Utilities Commission.
- (6) 'Common carrier' means any person which holds itself out to the general public to engage in transportation of persons or property household goods for compensation, including transportation by train, bus, truck, boat or other conveyance, except as exempted in G.S. 62-260.
- (7) 'Common carrier by motor vehicle' means any person which holds itself out to the general public to engage in the transportation by motor vehicle in intrastate commerce of persons or property household goods or any class or classes thereof for compensation, whether over regular or irregular routes, or in charter operations, except as exempted in G.S. 62-260.
- (8) ~~'Contract carrier by motor vehicle' means any person which, under an individual contract or agreement with another person and with such additional persons as may be approved by the Utilities Commission, engages in the transportation other than the transportation referred to in subdivision (7) of this section, by motor vehicle of persons or property in intrastate commerce for compensation, except as exempted in G.S. 62-260.~~
- (9) ~~'Contract carrier' means any person which under an individual contract or agreement with another person and with such additional persons as may be approved by the Utilities Commission, engages in the transportation of persons or property for compensation, except as exempted in G.S. 62-260.~~
- (9a) 'Fixed route' means the specific highway or highways over which a bus company is authorized to operate between fixed termini.
- (10) 'Foreign commerce' means commerce between any place in the United States and any place in a foreign country, or between places in the United States through any foreign country.
- (11) 'Franchise' means the grant of authority by the Commission to any person to engage in business as a public ~~utility or contract carrier,~~ utility, whether or not exclusive or shared with others or restricted as to terms and conditions and whether described by area or territory or not, and includes ~~certificates and permits,~~ certificates, and all other forms of licenses or orders and decisions granting such authority.
- (12) 'Highway' means any road or street in this State used by the public or dedicated or appropriated to public use.
- (13) 'Industrial plant' means any plant, mill, or factory engaged in the business of manufacturing.

- (14) 'Interstate commerce' means commerce between any place in a state and any place in another state or between places in the same state through another state.
- (15) 'Intrastate commerce' means commerce between points and over a route or within a territory wholly within this State, which commerce is not a part of a prior or subsequent movement to or from points outside of this State in interstate or foreign commerce, and includes all transportation within this State for compensation in interstate or foreign commerce which has been exempted by Congress from federal regulation.
- (16) 'Intrastate operations' means the transportation of persons or property household goods for compensation in intrastate commerce.
- (17) 'Motor carrier' means ~~both a common carrier by motor vehicle and a contract carrier by motor vehicle.~~
- (18) 'Motor vehicle' means any vehicle, machine, tractor, semi-trailer, or any combination thereof, which is propelled or drawn by mechanical power and used upon the highways within the State.
- (19) 'Municipality' means any incorporated community, whether designated in its charter as a city, town, or village.
- (20) ~~'Permit' means a permit issued by the Commission pursuant to the provisions of this Chapter to a contract carrier by motor vehicle.~~
- (21) 'Person' means a corporation, individual, copartnership, company, association, or any combination of individuals or organizations doing business as a unit, and includes any trustee, receiver, assignee, lessee, or personal representative thereof.
- (22) 'Private carrier' means any person not included in the definitions of common ~~carrier or contract~~ carrier, which transports in intrastate commerce in its own vehicle or vehicles property of which such person is the owner, lessee, or bailee, when such transportation is for the purpose of sale, lease, rent, or bailment, or when such transportation is purely an incidental adjunct to some other established private business owned and operated by such person other than the transportation of property household goods for compensation.
- (23) a. 'Public utility' means a person, whether organized under the laws of this State or under the laws of any other state or country, now or hereafter owning or operating in this State equipment or facilities for:
 - 1. Producing, generating, transmitting, delivering or furnishing electricity, piped gas, steam or any other like agency for the production of light, heat or power to or for the public for compensation; provided, however, that the term 'public utility' shall not include persons who construct or operate an electric generating facility, the primary purpose of which facility is for such person's

- own use and not for the primary purpose of producing electricity, heat, or steam for sale to or for the public for compensation.
2. Diverting, developing, pumping, impounding, distributing or furnishing water to or for the public for compensation, or operating a public sewerage system for compensation; provided, however, that the term 'public utility' shall not include any person or company whose sole operation consists of selling water to less than 10 residential customers, except that any person or company which constructs a water system in a subdivision with plans for 10 or more lots and which holds itself out by contracts or other means at the time of said construction to serve an area containing more than 10 residential building lots shall be a public utility at the time of such planning or holding out to serve such 10 or more building lots, without regard to the number of actual customers connected;
 3. Transporting persons or ~~property-household goods~~ by street, suburban or interurban bus or railways for the public for compensation;
 4. Transporting persons or ~~property-household goods~~ by railways or motor vehicles, or any other form of transportation ~~or express service~~ for the public for compensation, except motor carriers exempted in G.S. 62-260, and except carriers by air;
 5. Transporting or conveying gas, crude oil or other fluid substance by pipeline for the public for compensation;
 6. Conveying or transmitting messages or communications by telephone or telegraph, or any other means of transmission, where such service is offered to the public for compensation.
- b. The term 'public utility' shall for rate-making purposes include any person producing, generating or furnishing any of the foregoing services to another person for distribution to or for the public for compensation.
 - c. The term 'public utility' shall include all persons affiliated through stock ownership with a public utility doing business in this State as parent corporation or subsidiary corporation as defined in G.S. 55-2 to such an extent that the Commission shall find that such affiliation has an effect on the rates or service of such public utility.
 - d. The term 'public utility,' except as otherwise expressly provided in this Chapter, shall not include a municipality, an authority

organized under the North Carolina Water and Sewer Authorities Act, electric or telephone membership corporation or nonprofit water membership or consumer-owned corporations financed by the Farmers Home Administration, the United States Department of Housing and Urban Development, or any similar or successor federal financing agency, provided, that (i) any such financing administration, department or agency exercise substantial control over and regulation of any such corporation's rates and terms and conditions of service, and (ii) the members or consumer-owners of any such corporation, pursuant to the corporation's articles of incorporation and bylaws, shall elect the governing board of the corporation; or any person not otherwise a public utility who furnishes such service or commodity only to himself, his employees or tenants when such service or commodity is not resold to or used by others; provided, however, that any person other than a nonprofit organization serving only its members, who distributes or provides utility service to his employees or tenants by individual meters or by other coin-operated devices with a charge for metered or coin-operated utility service shall be a public utility within the definition and meaning of this Chapter with respect to the regulation of rates and provisions of service rendered through such meter or coin-operated device imposing such separate metered utility charge. If any person conducting a public utility shall also conduct any enterprise not a public utility, such enterprise is not subject to the provisions of this Chapter. A water or sewer system owned by a homeowners' association that provides water or sewer service only to members or leaseholds of members is not subject to the provisions of this Chapter.

- e. The term 'public utility' shall include the University of North Carolina insofar as said University supplies telephone service, electricity or water to the public for compensation from the University Enterprises defined in G.S. 116-41.1(9).
- f. The term 'public utility' shall include the Town of Pineville insofar as said town supplies telephone services to the public for compensation. The territory to be served by the Town of Pineville in furnishing telephone services, subject to the Public Utilities Act, shall include the town limits as they exist on May 8, 1973, and shall also include the area proposed to be annexed under the town's ordinance adopted May 3, 1971, until January 1, 1975.
- g. The term 'public utility' shall not include a hotel, motel, time share or condominium complex operated primarily to serve

transient occupants, which imposes charges to occupants for local, long-distance, or wide area telecommunication services when such calls are completed through the use of facilities provided by a public utility, and provided further that the local services received are rated in accordance with the provisions of G.S. 62-110(d) and the applicable charges for telephone calls are prominently displayed in each area where occupant rooms are located.

- h. The term 'public utility' shall not include the resale of electricity by (i) a campground operated primarily to serve transient occupants, or (ii) a marina; provided that (i) the campground or marina charges no more than the actual cost of the electricity supplied to it, (ii) the amount of electricity used by each campsite or marina slip occupant is measured by an individual metering device, (iii) the applicable rates are prominently displayed at or near each campsite or marina slip, and (iv) the campground or marina only resells electricity to campsite or marina slip occupants.
 - i. The term 'public utility' shall not include the State, the Office of the State Controller, or the Microelectronics Center of North Carolina in the provision or sharing of switched broadband telecommunications services with non-State entities or organizations of the kind or type set forth in G.S. 143B-426.39.
 - j. The term 'public utility' shall not include any person, not otherwise a public utility, conveying or transmitting messages or communications by mobile radio communications service. Mobile radio communications service includes one-way or two-way radio service provided to mobile or fixed stations or receivers using mobile radio service frequencies.
- (24) 'Rate' means every compensation, charge, fare, tariff, schedule, toll, rental and classification, or any of them, demanded, observed, charged or collected by any public utility, for any service product or commodity offered by it to the public, and any rules, regulations, practices or contracts affecting any such compensation, charge, fare, tariff, schedule, toll, rental or classification.
 - (25) 'Route' means the course or way which is traveled; the road or highway over which motor vehicles operate.
 - (26) 'Securities' means stock, stock certificates, bonds, notes, debentures, or other evidences of ownership or of indebtedness, and any assumption or guaranty thereof.
 - (27) 'Service' means any service furnished by a public utility, including any commodity furnished as a part of such service and any ancillary service or facility used in connection with such service.

- (27a) 'Small power producer' means a person or corporation owning or operating an electrical power production facility with a power production capacity which, together with any other facilities located at the same site, does not exceed 80 megawatts of electricity and which depends upon renewable resources for its primary source of energy. For the purposes of this section, renewable resources shall mean: hydroelectric power. A small power producer shall not include persons primarily engaged in the generation or sale of electricity from other than small power production facilities.
- (28) The word 'State' means the State of North Carolina; 'state' means any state.
- (29) 'Town' means any unincorporated community or collection of people having a geographical name by which it may be generally known and is so generally designated.
- (30) 'Panel' means a panel of three commissioners, a division of the Utilities Commission authorized for the purpose of carrying out certain functions of the Commission."

Sec. 2. G.S. 62-111 reads as rewritten:

"§ 62-111. Transfers of franchises; mergers, consolidations and combinations of public utilities.

(a) No franchise now existing or hereafter issued under the provisions of this Chapter other than a franchise for motor carriers of passengers shall be sold, assigned, pledged or transferred, nor shall control thereof be changed through stock transfer or otherwise, or any rights thereunder leased, nor shall any merger or combination affecting any public utility be made through acquisition or control by stock purchase or otherwise, except after application to and written approval by the Commission, which approval shall be given if justified by the public convenience and necessity. Provided, that the above provisions shall not apply to regular trading in listed securities on recognized markets.

(b) No certificates ~~or permits~~ issued under the provisions of this Chapter for motor carriers of passengers shall be sold, assigned, pledged, transferred, or control changed through stock transfer or otherwise, or any rights thereunder leased, nor shall any merger or combination affecting any motor carrier of passengers be made through acquisition of control by stock purchases or otherwise, except after application to and written approval by the Commission as in this section provided, provided that the above provisions shall not apply to regular trading in listing securities on recognized markets. The applicant shall give not less than 10 days' written notice of such application by registered mail or by certified mail to all connecting and competing carriers. When the Commission is of the opinion that the transaction is consistent with the purposes of this Chapter the Commission may, in the exercise of its discretion, grant its approval, provided, however, that when such transaction will result in a substantial change in the service and operations of any motor carrier of passengers party to the transaction, or will substantially affect the operations and services of any other motor carrier, the Commission shall not grant its approval except upon notice and hearing as required in

~~G.S. 62-262 for contract carriers of passengers and G.S. 62-262.1 for bus companies~~ upon an application for an original ~~certificate or permit~~ certificate. In all cases arising under the subsection it shall be the duty of the Commission to require the successor carrier to satisfy the Commission that the operating debts and obligations of the seller, assignor, pledgor, lessor or transferor, including taxes due the State of North Carolina or any political subdivision thereof are paid or the payment thereof is adequately secured. The Commission may attach to its approval of any transaction arising under the section such other conditions as the Commission may determine are necessary to effectuate the purposes of this Article.

(c) No sale of a franchise for a motor carrier of ~~property-household goods~~ shall be approved by the Commission until the seller shall have filed with the Commission a statement under oath of all debts and claims against the seller, of which such seller has any knowledge or notice, (i) for gross receipts, use or privilege taxes due or to become due the State, as provided in the Revenue Act, (ii) for wages due employees of the seller, other than salaries of officers and in the case of motor carriers, (iii) for unremitted C.O.D. collections due shippers, (iv) for loss of or damage to goods transported, or received for transportation, (v) for overcharges on property transported, and, (vi) for interline accounts due other carriers, together with a bond, if required by the Commission, payable to the State, executed by a surety company authorized to do business in the State, in an amount double the aggregate of all such debts and claims conditioned upon the payment of the same within the amount of such bond as the amounts and validity of such debts and claims are established by agreement of the parties, or by judgment. This subsection shall not be applicable to sales by personal representatives of deceased or incompetent persons, receivers or trustees in bankruptcy under court order.

(d) No person shall obtain a franchise for the purpose of transferring the same to another, and an offer of such transfer within one year after the same was obtained shall be prima facie evidence that such ~~certificate or permit~~ was obtained for the purpose of sale.

(e) The Commission shall approve applications for transfer of motor carrier franchises made under this section upon finding that said sale, assignment, pledge, transfer, change of control, lease, merger, or combination is in the public interest, will not adversely affect the service to the public under said franchise, will not unlawfully affect the service to the public by other public utilities, that the person acquiring said franchise or control thereof is fit, willing and able to perform such service to the public under said franchise, and that service under said franchise has been continuously offered to the public up to the time of filing said application or in lieu thereof that any suspension of service exceeding 30 days has been approved by the Commission as provided in G.S. 62-112(b)(5). 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. 3. G.S. 62-112(c) reads as rewritten:

"(c) The failure of a common carrier ~~or contract carrier~~ of passengers or ~~property household goods~~ by motor vehicles to perform any transportation for compensation under the authority of its certificate ~~or permit~~ for a period of 30 consecutive days shall be prima facie evidence that said franchise is dormant and the public convenience and necessity is no longer served by such common carrier ~~certificate or that the needs of a contract shipper are no longer served by such a contract carrier.~~ certificate. Upon finding after notice and hearing that no such service has been performed for a period of 30 days the Commission is authorized to find that the franchise is dormant and to cancel the certificate ~~or permit~~ of such common ~~or contract~~ carrier. The Commission in its discretion may give consideration in such finding to other factors affecting the performance of such service, including seasonal requirements of the passengers or commodities authorized to be transported, the efforts of the carrier to make its services known to the ~~public or to its contract shipper,~~ public, the equipment and other facilities maintained by the carrier for performance of such service, and the means by which such carrier holds itself out to perform such service. A proceeding may be brought under this section by the Commission on its own motion or upon the complaint of any shipper or any other carrier. The franchise of a motor carrier may be canceled under the provisions of this section in any proceeding to sell or transfer or otherwise change control of said franchise brought under the provisions of G.S. 62-111, upon finding of dormancy as provided in this section. Any motor carrier who has obtained authority to suspend operations under the provisions of G.S. 62-112(b)(5) and the rules of the Utilities Commission issued thereunder shall not be subject to cancellation of its franchise under this section during the time such suspension of operations is authorized. In determining whether such carrier has made reasonable efforts to perform service under said franchise the Commission may in its discretion give consideration to disabilities of the carrier including death of the owner and physical disabilities."

Sec. 4. G.S. 62-113(a) reads as rewritten:

"(a) Each franchise shall specify the service to be rendered and the routes over which, the fixed termini, if any, between which, and the intermediate and off-route points, if any, at which, and in case of operations not over specified routes or between fixed termini, the territory within which, a motor carrier or other public utility is authorized to operate: and there shall, at the time of issuance and from time to time thereafter, be attached to the privileges granted by the franchise such reasonable terms, conditions, and limitations as the public convenience and necessity may from time to time require, including terms, conditions, and limitations as to the extension of the route or routes of a carrier, and such terms and conditions as are necessary to carry out, with respect to the operations of a carrier or other public utility, the requirements established by the Commission under this Chapter; provided, however, that no terms, conditions, or limitations shall restrict the right of a motor carrier of ~~property household goods~~ only to add to its equipment and facilities over the routes, between the termini, or within the territory specified in the franchises, as the development of the business and the demands of the public shall require. This subsection shall not be applicable to bus companies or their franchises."

Sec. 5. G.S. 62-114 is repealed.

Sec. 6. G.S. 62-138 reads as rewritten:

"§ 62-138. Utilities to file rates, service regulations and service contracts with Commission; publication; certain telephone service prohibited.

(a) Under such rules as the Commission may prescribe, every public utility, except as permitted under G.S. 62-134(h) and (j):

- (1) Shall file with the Commission all schedules of rates, service regulations and forms of service contracts, used or to be used within the jurisdiction of the Commission; and
- (2) Shall keep copies of such schedules, service regulations and contracts open to public inspection. Except, if there is a sufficient likelihood that a public utility defined in G.S. 62-3(23)a.6. may suffer a competitive disadvantage if the rates for a specific competitive service are disclosed, the Commission may waive the public disclosure of the rates. The Commission may revoke the disclosure waiver upon a showing that the competitive disadvantage no longer exists.

(b) Every ~~regular route common carrier of general commodities and every~~ common carrier of passengers shall file with the Commission, print, and keep open for public inspection schedules showing all rates for the transportation of ~~property or~~ passengers in intrastate commerce and all services in connection therewith between points on its own routes and between points on its own routes and points on the routes of other such common carriers, and if it establishes joint rates with other common carriers, it shall include in its schedules so filed such joint rates.

(c) Every irregular route common carrier of household goods shall file with the Commission, print, and keep open for public inspection schedules showing all rates for the transportation of ~~property~~ household goods in intrastate commerce between points within the area of its authorized operation, and if it establishes joint rates with other common carriers, it shall include in its schedules so filed such joint rates between points within the area of its own authorized operation and points on the line or route of such other common carriers.

(c1) Any person who, though exempt from Commission regulation under Public Law 103-305, agrees to joint line rates or routes as authorized by Public Law 103-305 may file with the Commission, print, and keep open for public inspection schedules showing all such joint rates for the transportation of property in intrastate commerce, and all connected services, between all points the person serves.

(d) The schedules required by this section shall be published, filed, and posted in such form and manner and shall contain such information as the Commission may prescribe; and the Commission is authorized to reject any schedule filed with it which is not in compliance with this section. Any schedule so rejected by the Commission shall be void and its use shall be unlawful.

(e) No public utility, unless otherwise provided by this Chapter, shall engage in service to the public unless its rates for such service have been filed and published in accordance with the provisions of this section.

(f) Under such rules as the Commission may prescribe, every electric membership corporation operating within this State shall file with the Commission, for

information purposes, all rates, schedules of rates, charges, service regulations, and forms of service contracts, used or to be used within the State, and shall keep copies of such schedules, rates, charges, service regulations, and contracts open to public inspection.

(g) No public utility may offer or maintain telephone service to any subscriber to such service who has in use or proposes to place in use equipment which will enable said subscriber to observe or monitor telephone calls directed to or placed by said subscriber unless said subscriber shall agree that such equipment shall be used in conformity with the standards for the use of such equipment adopted by the Commission."

Sec. 7. G.S. 62-141 reads as rewritten:

"§ 62-141. Long and short hauls.

(a) Except when expressly permitted by the Commission, it shall be unlawful for any common carrier to charge or receive any greater compensation in the aggregate for the transportation of like kind of ~~property-household goods~~ under substantially similar circumstances and conditions for a shorter than for a longer distance over the same line or route in the same direction, the shorter being included within the longer distance; but this shall not be construed as authorizing any common carrier within the terms of this Chapter to charge and receive as great compensation for a shorter as for a longer distance.

(b) Upon application to the Commission, common carriers may in special cases be authorized to charge less for longer than for shorter distances for the transportation ~~property; of household goods;~~ and the Commission may from time to time prescribe the extent to which such designated common carrier may be relieved from the operation of this section.

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

Sec. 8. G.S. 62-144(d) reads as rewritten:

"(d) Nothing in this section shall prohibit the carriage, storage or handling of ~~property-household goods~~ free or at reduced rates for the United States, State or municipal governments, or for charitable or educational purposes, or the use of passes for journeys wholly within this State which have been or may be issued for interstate journeys under the authority of the United States Interstate Commerce Commission."

Sec. 9. G.S. 62-146 reads as rewritten:

"§ 62-146. Rates and service of motor common carriers of property.

(a) It shall be the duty of every common carrier of ~~property-household goods~~ by motor vehicle to provide safe and adequate service, equipment, and facilities for transportation in intrastate commerce and to establish, observe and enforce just and reasonable regulations and practices relating thereto, and, in the case of ~~property household goods~~ carriers, relating to the manner and method of presenting, marking, packing and delivering property for transportation in intrastate commerce.

(b) Except under special conditions and for good cause shown, a common carrier by motor vehicle authorized to transport general commodities over regular routes shall establish reasonable through routes and joint rates, charges, and classifications with

other such common carriers by motor vehicle; and such common carrier may establish, with the prior approval of the Commission, such routes, joint rates, charges and classifications with any irregular route common carrier by motor vehicle, or any common carrier by rail, express, or water.

(c) Repealed by Session Laws 1985, c. 676, s. 15, effective July 10, 1985.

(d) In case of joint rates between common carriers of property, it shall be the duty of the carriers parties thereto to establish just and reasonable regulations and practices in connection therewith, and just, reasonable, and equitable divisions thereof as between the carriers participating therein, which shall not unduly prefer or prejudice any of such participating carriers. Upon investigation and for good cause, the Commission may, in its discretion, prohibit the establishment of joint rates or service.

(e) Any person may make complaint in writing to the Commission that any rate, classification, rule, regulations, or practice in effect or proposed to be put into effect, is or will be in violation of this Article. Whenever, after hearing, upon complaint or in an investigation or its own initiative, the Commission shall be of the opinion that any individual or joint rate demanded, charged, or collected by any common carrier or carriers by motor vehicle, or by any such common carrier or carriers in conjunction with any other common carrier or carriers, for transportation of ~~property~~ household goods in intrastate commerce, or any classification, rule, regulation, or practice whatsoever of such carrier or carriers affecting such rate or the value of the service thereunder, is or will be unjust or unreasonable or unjustly discriminatory or unduly preferential or unduly prejudicial, it shall determine and prescribe the lawful rate or the minimum or maximum, or the minimum and maximum rate thereafter to be observed, or the lawful classification, rule, regulation, or practice thereafter to be made effective.

(f) Whenever, after hearing upon complaint or upon its own initiative, the Commission is of the opinion that the divisions of joint rates applicable to the transportation of ~~property~~ household goods in intrastate commerce between a common carrier by motor vehicle and another carrier are or will be unjust, unreasonable, inequitable, or unduly preferential or prejudicial as between the carriers parties thereto (whether agreed upon by such carriers or otherwise established), the Commission shall by order prescribe the just, reasonable, and equitable division thereof to be received by the several carriers; and in cases where the joint rate or charge was established pursuant to a finding or order of the Commission and the divisions thereof are found by it to have been unjust, unreasonable, or inequitable or unduly preferential or prejudicial, the Commission may also by order determine what would have been the just, reasonable, and equitable divisions thereof to be received by the several carriers and require adjustment to be made in accordance therewith. The order of the Commission may require the adjustment of divisions between the carriers in accordance with the order from the date of filing the complaint or entry of order of investigation or such other dates subsequent thereto as the Commission finds justified, and in the case of joint rates prescribed by the Commission, the order as to divisions may be made effective as a part of the original order.

(g) In any proceeding to determine the justness or reasonableness of any rate of any common carrier of ~~property~~ household goods by motor vehicle, there shall not be

taken into consideration or allowed as evidence any elements of value of the property of such carrier, good will, earning power, or the certificate under which such carrier is operating, and such rates shall be fixed and approved, subject to the provisions of subsection (h) hereof, on the basis of the operating ratios of such carriers, being the ratio of their operating expenses to their operating revenues, at a ratio to be determined by the Commission; and in applying for and receiving a certificate under this Chapter any such carrier shall be deemed to have agreed to the provisions of this paragraph, on its own behalf and on behalf of every transferee of such certificate or of any part thereof.

(h) In the exercise of its power to prescribe just and reasonable rates and charges for the transportation of ~~property-household goods~~ in intrastate commerce by common carriers by motor vehicle, and classifications, regulations, and practices relating thereto, the Commission shall give due consideration, among other factors, to the inherent advantages of transportation by such carriers; to the effect of rates upon movement of traffic by the carrier or carriers for which rates are prescribed; 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 under honest, economical, and efficient management to provide such service.

(i) Nothing in this section shall be held to extinguish any remedy or right of action not inconsistent herewith. This section shall be in addition to other provisions of this Chapter which relate to public utilities generally, except that in cases of conflict between such other provisions and this section, this section shall prevail for motor carriers."

Sec. 10. G.S. 62-147 is repealed.

Sec. 10.1. Chapter 62 of the General Statutes is amended by adding a new section to read:

"§ 62-152.2. Standard transportation practices.

(a) For the purposes of this section, 'standard transportation practices' means:

- (1) Uniform cargo liability rules.
- (2) Uniform bills of lading or receipts for property being transported.
- (3) Uniform cargo credit rules.
- (4) Antitrust immunity for joint line rates or routes, classification, and mileage guides.

(b) A person otherwise exempt from regulation by the Commission under Public Law 103-305 may file an application with the Commission to participate in one or more standard transportation practices under rules set out by the Commission."

Sec. 11. G.S. 62-200 reads as rewritten:

"§ 62-200. Duty to transport ~~freight~~-household goods within a reasonable time.

(a) It shall be unlawful for any common carrier of ~~property-household goods~~ doing business in this State to omit or neglect to transport within a reasonable time any goods, merchandise or other articles of value received by it for shipment and billed to or from any place in this State, unless otherwise agreed upon between the carrier and the shipper, or unless the same be burned, stolen or otherwise destroyed, or unless otherwise provided by the Commission.

(b) Any common carrier violating any of the provisions of this section shall forfeit to the party aggrieved the sum of fifteen dollars (\$15.00) for the first day and two dollars (\$2.00) for each succeeding day of such unlawful detention or neglect where such shipment is made in carload lots, and in less quantities there shall be a forfeiture in like manner of ten dollars (\$10.00) for the first day and one dollar (\$1.00) for each succeeding day, but the forfeiture shall not be collected for a period exceeding 30 days.

(c) In reckoning what is a reasonable time for such transportation, it shall be considered that such common carrier has transported ~~freight~~ household goods within a reasonable time if it has done so in the ordinary time required for transporting such articles ~~of freight~~ by similar carriers between the receiving and shipping stations. The Commission is authorized to establish reasonable times for transportation by the various modes of carriage which shall be held to be prima facie reasonable, and a failure to transport within such times shall be held prima facie unreasonable. This section shall be construed to refer not only to delay in starting the ~~freight~~ household goods from the station where it is received, but to require the delivery at its destination within the time specified: Provided, that if such delay shall be due to causes which could not in the exercise of ordinary care have been foreseen or which were unavoidable, then upon the establishment of these facts to the satisfaction of the court trying the cause, the defendant common carrier shall be relieved from any penalty for delay in the transportation of ~~freight~~ household goods, but it shall not be relieved from the costs of such action. In all actions to recover penalties against a common carrier under this section, the burden of proof shall be upon such carrier to show where the delay, if any, occurred. The penalties provided in this section shall be in addition to the damages recoverable for failure to transport within a reasonable time.

(d) This section shall not apply to motor carriers of passengers."

Sec. 12. G.S. 62-203 reads as rewritten:

"§ 62-203. Claims for loss or damage to goods; filing and adjustment.

(a) Every common carrier receiving ~~property~~ household goods for transportation in intrastate commerce shall issue a bill of lading therefor, and shall be liable to the lawful holder thereof for any loss, damage, or injury to such ~~property~~ household goods caused by it, or by any carrier participating in the haul when transported on a through bill of lading, and any such carrier delivering said ~~property~~ household goods so received and transported shall be liable to the lawful holder of said bill of lading or to any party entitled to recover thereon for such loss, damage, or injury, notwithstanding any contract or agreement to the contrary; provided, however, the Commission may, by regulation or order, authorize or require any such common carrier to establish and maintain rates related to the value of shipments declared in writing by the shipper, or agreed upon as the release value of such shipments, such declaration or agreement to have no effect other than to limit liability and recovery to an amount not exceeding the value so declared or released, in which case, any tariff filed pursuant to such regulation or order shall specifically refer thereto; provided further, that a rate shall be afforded the shipper covering the full value of the goods shipped; provided further, that nothing in this section shall deprive any lawful holder of such bill of lading of any remedy or right of action which such holder has under existing law; provided further, that the carrier

issuing such bill of lading, or delivering such ~~property~~ household goods so received and transported, shall be entitled to recover from the carrier on whose route the loss, damage, or injury shall have been sustained the amount it may be required to pay to the owners of such property.

(b) Every claim for loss of or damage to ~~property~~ household goods while in possession of a common carrier, ~~including every express company or person doing an express business within the State,~~ carrier shall be adjusted and paid within 90 days after the filing of such claim with the agent of such carrier at the point of destination of such shipment, or point of delivery to another common carrier, by the consignee or at the point of origin by the consignor, when it shall appear that the consignee was the owner of the shipment: Provided, that no such claim shall be filed until after the arrival of the shipment, or some part thereof, at the point of destination, or until after the lapse of a reasonable time for the arrival thereof.

(c) In every case such common carrier shall be liable for the amount of such loss or damage, together with interest thereon from the date of the filing of the claim therefor until the payment thereof. Failure to adjust and pay such claim within the periods respectively herein prescribed shall subject each common carrier so failing to a penalty of fifty dollars (\$50.00) for each and every such failure, to be recovered by any consignee aggrieved (or consignor, when it shall appear that the consignor was the owner of the property at the time of shipment and at the time of suit, and is, therefore, the party aggrieved), in any court of competent jurisdiction: Provided, that unless such consignee or consignor recover in such action the full amount claimed, no penalty shall be recovered, but only the actual amount of the loss or damage, with interest as aforesaid; and that no penalty shall be recoverable under the provisions of this section where claims have been filed by both the consignor and consignee, unless the time herein provided has elapsed after the withdrawal of one of the claims.

(d) A check shall be affixed to every parcel of baggage when taken for transportation by the agent or servant of a common carrier, if there is a handle, loop or fixture so that the same can be attached upon the parcel or baggage so offered for transportation, and a duplicate thereof given to the passenger or person delivering the same on his behalf. If such check be refused on demand, the common carrier shall pay to such passenger the sum of ten dollars (\$10.00), to be recovered in a civil action; and further, no fare or toll shall be collected or received from such passenger, and if such passenger shall have paid his fare the same shall be refunded by the carrier.

(e) If a passenger, whose bag has been checked, shall produce the check and his baggage shall not be delivered to him, he may by an action recover the value of such baggage.

(f) Causes of action for the recovery of the possession of the property shipped, for loss or damage thereto, and for the penalties herein provided for, may be united in the same complaint.

(g) This section shall not deprive any consignee or consignor of any other rights or remedies existing against common carriers in regard to freight charges or claims for loss or damage to freight, but shall be deemed and held as creating an additional liability upon such common carriers.

(h) This section shall not apply to motor carriers of passengers and only subsection (a) of this section shall apply to motor carriers of property."

Sec. 13. G.S. 62-206 reads as rewritten:

"§ 62-206. Carrier's right against prior carrier.

Any common carrier shall have all the rights and remedies herein provided for against a common carrier from which it received the ~~freight~~ household goods in question. Provided, however, that this section shall not apply to motor carriers of passengers."

Sec. 14. G.S. 62-209 reads as rewritten:

"§ 62-209. Sale of unclaimed baggage or ~~freight~~; household goods; notice; sale of rejected property; escheat.

(a) Any common carrier which has had in its possession on hand at any destination in this State any article whether baggage or ~~freight~~ household goods, for a period of 60 days from its arrival at destination, which said carrier cannot deliver because unclaimed, may at the expiration of said 60 days sell the same at public auction at any point where in the opinion of the carrier the best price can be obtained: Provided, however, that notice of such sale shall be mailed to the consignor and consignee, by registered or certified mail, if known to such carrier, not less than 15 days before such sale shall be made; or if the name and address of the consignor and consignee cannot with reasonable diligence be ascertained by such carrier, notice of the sale shall be published once a week for two consecutive weeks in some newspaper of general circulation published at the point of sale: Provided, that if there is no such paper published at such point, the publication may be made in any paper having a general circulation in the State: Provided further, however, that if the nondelivery of said article is due to the consignee's and consignor's rejection of it, then such article may be sold by the carrier at public or private sale, and at such time and place as will in the carrier's judgment net the best price, and this without further notice to either consignee or consignor, and without the necessity of publication.

~~(b) Where the article referred to in this section is live freight, or perishable freight, or freight of such low value as would not bring the accrued transportation and other charges if held for 60 days as provided in this section, the common carrier may, with or without advertisement, sell the same in such manner and at such time and place as will in its judgment best protect the interests of the carrier, the consignor and the consignee, and whenever practicable the consignor and consignee shall be notified of the proposed sale of such freight.~~

(c) The common carrier shall keep a record of the articles sold and of the prices obtained therefor, and shall, after deducting all charges and the expenses of the sale, including advertisement, if advertised, pay the balance to the owner of such articles on demand therefor made at any time within five years from the date of the sale. If no person shall claim the surplus within five years, such surplus shall be paid to the Escheat Fund of the Department of State Treasurer.

(d) This section shall not apply to motor carriers of passengers."

Sec. 15. G.S. 62-211 is repealed.

Sec. 16. G.S. 62-260 reads as rewritten:

"§ 62-260. Exemptions from regulations.

(a) Nothing in this Chapter shall be construed to include persons and vehicles engaged in one or more of the following services by motor vehicle if not engaged at the time in the transportation of other passengers or other property by motor vehicle for compensation:

- (1) Transportation of passengers or ~~property-household goods~~ for or under the control of the State of North Carolina, or any political subdivision thereof, or any board, department or commission of the State, or any institution owned and supported by the State;
- (2) Transportation of passengers by taxicabs when not carrying more than fifteen passengers or transportation by other motor vehicles performing bona fide taxicab service and not carrying more than fifteen passengers in a single vehicle at the same time when such taxicab or other vehicle performing bona fide taxicab service is not operated on a regular route or between termini; provided, no taxicab while operating over the regular route of a common carrier outside of a municipality and a residential and commercial zone adjacent thereto, as such zone may be determined by the Commission as provided in subdivision (8) of this subsection, shall solicit passengers along such route, but nothing herein shall be construed to prohibit a taxicab operator from picking up passengers along such route upon call, sign or signal from prospective passengers;
- (3) Transportation by motor vehicles owned or operated by or on behalf of hotels while used exclusively for the transportation of hotel patronage between hotels and local railroad or other common carrier stations;
- (4) Transportation of passengers to and from airports and passenger airline terminals when such transportation is incidental to transportation by aircraft;
- (5) Transportation of passengers by trolley buses operated by electric power derived from a fixed overhead wire, furnishing local passenger transportation similar to street railway service;
- (6) Transportation by motor vehicles used exclusively for the transportation of passengers to or from religious services or transportation of pupils and employees to and from private or parochial schools or transportation to and from functions for students and employees of private or parochial schools;
- (7) Transportation of any bona fide employees to and from their place(s) of regular employment;
- (8) Transportation of passengers when the movement is within a municipality exclusively, or within contiguous municipalities and within a residential and commercial zone adjacent to and a part of such municipality or contiguous municipalities; provided, the Commission shall have power in its discretion, in any particular case, to fix the limits of any such zone;

- ~~(9) Transportation in bulk of sand, gravel, dirt, debris, and other aggregates, or ready mixed paving materials for use in street or highway construction or repair;~~
- ~~(10) Transportation of newspapers;~~
- ~~(11) Transportation of insecticides, fungicides and the ingredients thereof; transportation of farm, dairy or orchard products from farm, dairy or orchard to warehouse, creamery, or other original storage or market;~~
- ~~(12) Transportation for and under the control of cooperative associations organized and operating under the Federal Agricultural Marketing Act, U.S.C.A. Title 12, § 1141(j), or under the State Cooperative Marketing Act, Chapter 54, Subchapter V, General Statutes of North Carolina, as amended, or for any federation of such cooperative associations; provided, such federation possesses no greater powers or purposes than such cooperative associations;~~
- ~~(13) Transportation of livestock, or fish, including shellfish and shrimp, but not including manufactured products thereof;~~
- ~~(14) Transportation of raw products of the forest, including firewood, logs, crossties, stave bolts, pulpwood, and rough lumber, but not including manufactured products therefrom;~~
- ~~(15) Pickup, delivery, and transfer service for railroads, express companies, water carriers and motor carriers in connection with their respective line haul services within the commercial zone of any municipality, as defined by the Commission between their terminals and places of collection or delivery of freight;~~
- ~~(16) Transportation by a bona fide private carrier, as defined in G.S. 62-3(22);~~
- ~~(17) Transportation of any commodity anywhere of a character not hauled in the ordinary course of business by a common carrier by motor vehicle;~~
- (18) Charter parties, as defined by this subdivision when such charter party is sponsored or organized by, and used by, any organized senior citizen group whose members are sixty (60) years of age or older. Such charter party shall be subject to subsections (f) and (g) of this section. 'Charter party', for the purpose of this subdivision, means a group of persons who, pursuant to a common purpose and under a single contract, and at a fixed charge for the vehicle, have acquired the exclusive use of a passenger-carrying motor vehicle to travel together as a group from a point of origin to a specified destination or for a particular itinerary, either agreed upon in advance or modified by the chartering group after having left the place of origin.

(b) The Commission shall have jurisdiction to fix rates of carriers of passengers operating as described in (5) and (8) of subsection (a) of this section in the manner provided in this Chapter, and shall have jurisdiction to hear and determine controversies with respect to extensions and services, and the Commission's rules of practice shall

include appropriate provisions for bringing such controversies before the Commission and for the hearing and determination of the same; provided nothing in this paragraph shall include taxicabs.

(c) The Commission may conduct investigations to determine whether any person purporting to operate under the exemption provisions of this section is, in fact, so operating, and make such orders as it deems necessary to enforce compliance with this section.

(d) The venue for any action commenced to enforce compliance with the terms of this Article against any person purporting to operate under any of the exemptions provided in this section shall be in one of the counties of the superior court district or set of districts as defined in G.S. 7A-41.1 wherein the violation is alleged to have taken place and such person shall be entitled to trial by jury.

(e) None of the provisions of this section nor any of the provisions of this Chapter shall be construed so as to prohibit or regulate the transportation of property by any motor carrier when the movement is within a municipality or within contiguous municipalities and within a zone adjacent to and commercially a part of such municipality or contiguous municipalities, as defined by the Commission. The Commission shall have the power in its discretion, in any particular case, to fix the limits of any such zone. Nothing herein shall be construed as an abridgment of the police powers of any municipality over such operation wholly within any such municipality. Nothing in this Chapter shall be construed to prohibit or regulate the transportation of household effects of families from one residence to another by persons who do not hold themselves out as being, and are not generally engaged in the business of transporting such property for compensation.

(f) Notwithstanding the exemption for transportation of passengers and ~~property~~ household goods provided under subsections (a) through (e) of this section, all motor carriers transporting passengers for compensation under said exemptions or under any special exemptions granted by the Utilities Commission under G.S. 62-261 shall be subject to the same requirements for security for protection of the public as are established for regulated motor common carriers by the rules of the Utilities Commission pursuant to G.S. 62-268, and all such motor carriers transporting for hire under said exemption provisions shall further be subject to the same requirements for safety of operation of said motor vehicles as are required of regulated motor common carriers under the provisions of Chapter 20 and the regulations of the Division adopted pursuant thereto. The Division is authorized to promulgate rules and regulations for the enforcement of said requirements in the case of all such exempt operations, and the officers and agents of the Division shall have full authority to inspect said exempt vehicles and to apply all enforcement regulations and penalties for violation of said security regulations and safety regulations as in the case of regulated motor carriers.

(g) The owners of all motor vehicles used in any transportation for compensation which is declared to be exempt under this section shall register such operation with the Division of Motor Vehicles and shall secure from the Division of Motor Vehicles a certificate of exemption."

Sec. 17. G.S. 62-261 reads as rewritten:

"§ 62-261. Additional powers and duties of Commission applicable to motor vehicles.

The Commission is hereby vested with the following powers and duties:

- (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.
- (3) Repealed by Session Laws 1985, c. 454, s. 12, effective June 24, 1985.
- (4) For the purpose of carrying out the provisions of this Article, the Utilities Commission may avail itself of the special information of the Board of Transportation in promulgating safety requirements and in considering applications for certificates or permits with particular reference to conditions of the public highway or highways involved, and the ability of the said public highway or highways to carry added traffic; and the Board of Transportation, upon request of the Utilities Commission, shall furnish such information.
- (5) The Commission may, without prior notice and hearing, make and enter any order, rule, regulation, or requirement, not affecting rates, upon unanimous finding by the Commission of the existence of an emergency and make such order, rule, regulation or requirement effective upon notice given to each affected motor carrier by registered mail, or by certified mail pending a hearing thereon as provided in this subdivision. It shall not be necessary for the Commission to give notice to the carriers affected or to hold a hearing prior to a revision in the rules regarding procedures to be followed in filing rates. Any such emergency order, rule, regulation or requirement shall be subject to continuation, modification, change, or revocation after notice and hearing and all such emergency orders, rules, regulations and requirements shall be supplanted and superseded by any final order, rule, regulation or requirement entered by the Commission.
- (6) The Commission shall regulate brokers and make and enforce reasonable requirements respecting their licenses, financial responsibility, accounts, records, reports, operations and practices.
- (7) Repealed by Session Laws 1985, c. 454, s. 12, effective June 24, 1985.
- (8) To determine, upon its own motion, or upon motion by a motor carrier, or any other party in interest, whether the transportation of ~~property~~ household goods in intrastate commerce performed by any motor carrier or class of motor carriers lawfully engaged in operation in this State is in fact of such nature, character, or quantity as not substantially to affect or impair uniform regulation by the Commission

of transportation by motor carriers engaged in intrastate commerce. Upon so finding, the Commission shall issue a certificate of exemption to such motor carrier or class of motor carriers which, during the period such certificate shall remain effective and unrevoked, shall exempt such carrier or class of motor carriers from compliance with the provisions of this Article, and shall attach to such certificate such reasonable terms and conditions as the public interest may require. At any time after the issuance of any such certificate of exemption, the Commission may by order revoke all or any part thereof, if it shall find that the transportation in intrastate commerce performed by the carrier or class of carriers designated in such certificate will be, or shall have become, or is reasonably likely to become, of such nature, character, or quantity as in fact substantially to affect or impair uniform regulation by the Commission of intrastate transportation by motor carriers in effectuating the policy declared in this Chapter. Upon revocation of any such certificate, the Commission shall restore to the carrier or carriers affected thereby, without further proceedings, the authority, if any, to operate in intrastate commerce held by such carrier or carriers at the time the certificate of exemption pertaining to such carrier or carriers became effective. No certificate of exemption shall be denied, and no order of revocation shall be issued, under this paragraph, except after reasonable opportunity for hearing to interested parties.

- (9) To inquire into the management of the business of motor carriers and into the management of business of persons controlling, controlled by or under common control with, motor carriers to the extent that such persons have a pecuniary interest in the business of one or more motor carriers, and the Commission shall keep itself informed as to the manner and method in which the same are conducted, and may obtain from such carriers and persons such information as the Commission deems necessary to carry out the provisions of this Article.
- (10) Repealed by Session Laws 1985, c. 454, s. 12, effective June 24, 1985.
- (11) The Commission may from time to time establish such just and reasonable classifications of groups of carriers included in the term 'common carrier by motor vehicle' ~~or contract carrier by motor vehicle~~ as the special nature of the service performed by such carriers shall require; and such just and reasonable rules, regulations, and requirements, consistent with the provisions of this Article, to be observed by such carriers so classified or grouped, as the Commission deems necessary or desirable in the public interest."

Sec. 18. G.S. 62-262 reads as rewritten:

"§ 62-262. Applications and hearings other than for bus companies.

(a) Except as otherwise provided in G.S. 62-260[,] G.S. 62-262.1 and 62-265, no person shall engage in the transportation of passengers or ~~property~~ household goods in intrastate commerce unless such person shall have applied to and obtained from the

Commission a certificate ~~or permit~~ authorizing such operations, and it shall be unlawful for any person knowingly or wilfully to operate in intrastate commerce in any manner contrary to the provisions of this Article, or of the rules and regulations of the Commission. No certificate ~~or permit~~ shall be amended so as to enlarge or in any manner extend the scope of operations of a motor carrier without complying with the provisions of this section.

(b) Upon the filing of an application for a ~~certificate or a permit~~, certificate, the Commission shall, within a reasonable time, fix a time and place for hearing such application. ~~For applications by contract carriers of passengers, the Commission shall cause notice of the time and place of hearing to be given by mail to the applicant, to other motor carriers holding certificates or permits to operate in the territory proposed to be served by the application, and to other motor carriers who have pending applications to so operate.~~ The Commission shall from time to time prepare a truck calendar containing notice of such hearings, a copy of which shall be mailed to the applicant and to any other persons desiring it, upon payment of charges to be fixed by the Commission. The notice or calendar herein required shall be mailed at least 20 days prior to the date fixed for the hearing, but the failure of any person, other than applicant, to receive such notice or calendar shall not, for that reason, invalidate the action of the Commission in granting or denying the application.

(c) The Commission may, in its discretion, except where a regular calendar providing notice is issued, require the applicant to give notice of the time and place of such hearing together with a brief description of the purpose of said hearing and the exact route or routes and authority applied for, to be published not less than once each week for two successive weeks in one or more newspapers of general circulation in the territory proposed to be served. The Commission may in its discretion require the applicant to give such other and further notice in the form and manner prescribed by the Commission to the end that all interested parties and the general public may have full knowledge of such hearing and its purpose. If the Commission requires the applicant to give notice by publication, then a copy of such notice shall be immediately mailed by the applicant to the Commission, and upon receipt of same the chief clerk shall cause the copy of notice to be entered in the Commission's docket of pending proceedings. The applicant shall, prior to any hearing upon his application, be required to satisfy the Commission that such notice by publication has been duly made, and in addition to any other fees or costs required to be paid by the applicant, the applicant shall pay into the office of the Commission the cost of the notices herein required to be mailed by the Commission.

(d) Any motor carrier desiring to protest the granting of an application for a ~~certificate or permit~~, certificate, in whole, or in part, may become a party to such proceedings by filing with the Commission, not less than 10 days prior to the date fixed for the hearing, unless the time be extended by order of the Commission, its protest in writing under oath, containing a general statement of the grounds for such protest and the manner in which the protestant will be adversely affected by the granting of the application in whole or in part. Such protestant may also set forth in his protest its proposal, if any, to render either alone or in conjunction with other motor carriers, the

service proposed by the applicant, either in whole or in part. Upon the filing of such protest it shall be the duty of the protestant to file three copies with the Commission, and the protestant shall certify that a copy of said protest has been delivered or mailed to the applicant or applicant's attorney. When no protest is filed with the Commission within the time herein limited, or as extended by order of the Commission, the Commission may proceed to decide the application on the basis of testimony taken at a hearing, or on the basis of information contained in the application and sworn affidavits, and make the necessary findings of fact and issue or decline to issue the certificate or permit applied for without further notice. Persons other than motor carriers shall have the right to appear before the Commission and give evidence in favor of or against the granting of any application and with permission of the Commission may be accorded the right to examine and cross-examine witnesses.

(e) ~~If the application is for a certificate, the~~ The burden of proof shall be upon the applicant for a certificate to show to the satisfaction of the Commission:

- (1) That public convenience and necessity require the proposed service in addition to existing authorized transportation service, and
- (2) That the applicant is fit, willing and able to properly perform the proposed service, and
- (3) That the applicant is solvent and financially able to furnish adequate service on a continuing basis.

(f) to (h) Repealed by Session Laws 1985, c. 676, s. 19, effective July 10, 1985.

(i) ~~If the application is for a permit, the Commission shall give due consideration to:~~

- (1) ~~Whether the proposed operations conform with the definition in this Chapter of a contract carrier,~~
- (2) ~~Whether the proposed operations will unreasonably impair the efficient public service of carriers operating under certificates, or rail carriers,~~
- (3) ~~Whether the proposed service will unreasonably impair the use of the highways by the general public,~~
- (4) ~~Whether the applicant is fit, willing and able to properly perform the service proposed as a contract carrier,~~
- (5) ~~Whether the proposed operations will be consistent with the public interest and the policy declared in this Chapter, and~~
- (6) ~~Other matters tending to qualify or disqualify the applicant for a permit.~~

(j) ~~After the issuance of a permit for the transportation of passengers, as provided in this section, such permit may thereafter be amended, changed or modified, by requiring the holder to furnish more or less transportation service, or by changing the routes over which service has been authorized, or by imposing other reasonable terms, conditions, restrictions, and limitations as public convenience and necessity or reasonable regulation of traffic upon the highways may require; provided, that the procedure in all such cases as to notice and hearing shall be the same as provided in this section for the issuance of a permit.~~

(k) The Commission shall by general order, or rule, having regard for the public convenience and necessity, provide for the abandonment or permanent or temporary discontinuance of transportation service previously authorized in a certificate.

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

Sec. 19. G.S. 62-264 is repealed.

Sec. 20. G.S. 62-265 reads as rewritten:

"§ 62-265. Emergency operating authority.

To meet unforeseen emergencies, the Commission may, upon its own initiative, or upon written request by any person, department or agency of the State, or of any county, city or town, with or without a hearing, grant appropriate authority to any owner of a duly licensed vehicle or vehicles, whether such owner holds a certificate ~~or permit~~ or not, to transport passengers or ~~property, baggage, mail, newspapers and light express household goods~~ between such points, or within such area during the period of the emergency and to the extent necessary to relieve the same, as the Commission may fix in its order granting such authority; provided, that unless the emergency is declared by the General Assembly or under its authority, the Commission shall find from such request, or from its own knowledge or conditions, that a real emergency exists and that relief to the extent authorized in its order is immediate, pressing and necessary in the public interest, and that the carrier so authorized has the necessary equipment and is willing to perform the emergency service as prescribed by the order. In all cases, under this section, the Commission shall first afford the holders of certificates ~~or permits~~ operating in the territory affected an opportunity to render the emergency service. Upon the termination of the emergency, the operating privileges so granted shall automatically expire and the Commission shall forthwith withdraw all operating privileges granted to any person under this section."

Sec. 21. G.S. 62-267(b) is repealed.

Sec. 22. G.S. 62-268 reads as rewritten:

"§ 62-268. Security for protection of public; liability insurance.

No ~~certificate, permit~~ certificate or broker's license shall be issued or remain in force until the applicant shall have procured and filed with the Division of Motor Vehicles such security bond, insurance or self-insurance for the protection of the public as the Commission shall by regulation require. The Commission shall require that every motor carrier for which a ~~certificate, permit, certificate~~ or license is required by the provision of this Chapter, shall maintain liability insurance or satisfactory surety of at least fifty thousand dollars (\$50,000) because of bodily injury to or death of one person in any one accident and, subject to said limit for one person, one hundred thousand dollars (\$100,000) because of bodily injury to or death of two or more persons in any one accident, and fifty thousand dollars (\$50,000) because of injury to or destruction of property of others in any one accident; and the Commission may require any greater amount of insurance as may be necessary for the protection of the public. Notwithstanding any rule or regulation to the contrary, the Commission shall not require that any insurance procured and filed be provided in any single policy of insurance or through a single insurer, if the insurers involved are otherwise qualified. A motor carrier

may satisfy the requirements of the Commission by procuring insurance with coverage and limits of liability required by the Commission in one or more policies of insurance issued by one or more insurers.

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). Provided, further, that no bus company operating solely within the State of North Carolina and which is exempt from regulation under the provisions of G.S. 62-260(a)(7) shall be required to file with the Commission proof of the financial responsibility in excess of one million five hundred thousand dollars (\$1,500,000)."

Sec. 23. G.S. 62-270 reads as rewritten:

"§ 62-270. Orders, notices, and service of process.

It shall be the duty of every motor carrier operating under a certificate ~~or permit~~ issued under the provisions of this Article to file with the Division of Motor Vehicles a designation in writing of the name and post-office address of a person upon whom service of notices or orders may be made under this Article. Such designation may from time to time be changed by like writing similarly filed. Service of notice or orders in proceedings under this Article may be made upon a motor carrier by personal service upon it or upon the person so designated by it, or by registered mail, return receipt requested, or by certified mail with return receipt requested, addressed to it or to such person at the address filed. In proceedings before the Commission involving the lawfulness of rates, charges, classifications, or practices, service of notice upon the person or agent who has filed a tariff or schedule in behalf of such carrier shall be deemed to be due and sufficient service upon the carrier."

Sec. 24. G.S. 62-271 reads as rewritten:

"§ 62-271. Collection of rates and charges of motor carriers of ~~property-~~household goods.

No common carriers of ~~property-~~household goods by motor vehicle shall deliver or relinquish possession at destination of any freight 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, including rules and regulations for weekly or monthly settlement, and to prevent unjust discrimination or undue preference or prejudice; provided, that the provisions of this section shall not be construed to prohibit any such carrier from extending credit in connection with rates and charges on freight transported for the United States, for any department, bureau, or agency thereof, or for the State, or political subdivision thereof. Where any common carrier by motor vehicle is instructed by a shipper or consignor to deliver ~~property-~~household goods transported by such carrier to a consignee other than the shipper or consignor, such consignee shall not be legally liable for transportation charges in respect of the transportation of such ~~property-~~household goods (beyond those billed against him at the time of delivery for which he is otherwise liable) which may be found to be due after the ~~property-~~has

household goods have been delivered to him, if the consignee (i) is an agent only and had no beneficial title in the ~~property, household goods,~~ and (ii) prior to delivery of the ~~property household goods~~ has notified the delivering carrier in writing of the fact of such agency and absence of beneficial title, and, in the case of shipment reconsigned or diverted to a point other than that specified in the original bill of lading, has also notified the delivering carrier in writing of the name and address of the beneficial owner of the ~~property household goods.~~ In such cases the shipper and consignor, or, in the case of a shipment so reconsigned or diverted, the beneficial owner shall be liable for such additional charges, irrespective of any provisions to the contrary in the bill of lading or in the contract under which the shipment was made. If the consignee has given to the carrier erroneous information as to who is the beneficial owner, such consignee shall himself be liable for such additional charges, notwithstanding the foregoing provisions of this section. On shipments reconsigned or diverted by an agent who has furnished the carrier with a notice of agency and the proper name and address of the beneficial owner, and where such shipments are refused or abandoned at ultimate destination, the said beneficial owner shall be liable for all legally applicable charges in connection therewith."

Sec. 25. G.S. 62-272 reads as rewritten:

"§ 62-272. Allowance to shippers for transportation services.

If the owner of property household goods transported under the provisions of this Article directly or indirectly renders any service connected with such transportation, or furnishes any instrumentality used therein, the charge and allowance therefor shall be published in the tariffs or schedules filed in the manner provided in this Article and shall be no more than is just and reasonable; and the Commission may, after hearing on a complaint or on its own initiative, determine what is a reasonable charge as the maximum to be paid by the carrier or carriers for the services so rendered or for the use of the instrumentality so furnished, and fix the same by appropriate order."

Sec. 26. G.S. 62-273 reads as rewritten:

"§ 62-273. Embezzlement of C.O.D. shipments.

Property Household goods received by any motor carrier to be transported in intrastate commerce and delivered upon collection on such delivery and remittance to the shipper of the sum of money stated in the shipping instructions to be collected and remitted to the shipper, and the money collected upon delivery of such party, ~~is~~are hereby declared to be held in trust by any carrier having possession thereof or the carrier making the delivery or collection, and upon failure of any such carrier to account for the property household goods so received, either to the shipper to whom the collection is payable or the carrier making delivery to any carrier handling the property household goods or making the collection, within 15 days after demand in writing by the shipper, or carrier, or upon failure of the delivering carrier to remit the sum so directed to be collected and remitted to the shipper, within 15 days after collection is made, shall be prima facie evidence that the property household goods so received, or the funds so received, ~~has~~have been wilfully converted by such carrier to its own use, and the carrier so offending shall be guilty of a Class H felony and such carrier may be indicted, tried,

and punished in the county in which such shipment was delivered to the carrier or in any other county into or through which such shipment was transported by such carrier."

Sec. 27. G.S. 62-278(a) reads as rewritten:

"(a) The license plates of any carrier of persons or ~~property-household goods~~ by motor vehicle for compensation may be revoked and removed from the vehicles of any such carrier for wilful violation of any provision of this Chapter, or for the wilful violation of any lawful rule or regulation made and promulgated by the Utilities Commission. To that end the Commission shall have power upon complaint or upon its own motion, after notice and hearing, to order the license plates of any such offending carrier revoked and removed from the vehicles of such carrier for a period not exceeding 30 days, and it shall be the duty of the Department of Motor Vehicles to execute such orders made by the Utilities Commission upon receipt of a certified copy of the same."

Sec. 28. G.S. 62-279 reads as rewritten:

"§ 62-279. Injunction for unlawful operations.

If any motor carrier, or any other person or corporation, shall operate a motor vehicle in violation of any provision of this Chapter applicable to motor carriers or motor vehicles generally, except as to the reasonableness of rates or charges and the discriminatory character thereof, or shall operate in violation of any rule, regulation, requirement or order of the Commission, or of any term or condition of any ~~certificate or permit~~, certificate, the Commission or any holder of a certificate ~~or permit~~ duly issued by the Commission may apply to a superior court judge who has jurisdiction pursuant to G.S. 7A-47.1 or 7A-48 in the district or set of districts as defined in G.S. 7A-41.1 in which the motor carrier or other person or corporation so operates, for the enforcement of any provisions of this Article, or of any rule, regulation, requirement, order, term or condition of the Commission. Such court shall have jurisdiction to enforce obedience to this Article or to any rule, order, or decision of the Commission by a writ of injunction or other process, mandatory or otherwise, restraining such carrier, person or corporation, or its officers, agents, employees and representatives from further violation of this Article or of any rule, order, regulation, or decision of the Commission."

Sec. 29. G.S. 62-300(a) reads as rewritten:

"(a) The Commission shall receive and collect the following fees and charges in accordance with the classification of utilities as provided in rules and regulations of the Commission, and no others:

- (1) Twenty-five dollars (\$25.00) with each notice of appeal to the Court of Appeals or the Supreme Court, and with each notice of application for a writ of certiorari.
- (2) With each application for a new certificate ~~or new permit~~ for motor and rail carrier rights, the fee shall be two hundred fifty dollars (\$250.00) when filed by Class 1 motor and rail carriers, one hundred dollars (\$100.00) when filed by Class 2 motor and rail carriers, and twenty-five dollars (\$25.00) when filed by Class 3 motor and rail carriers, and twenty-five dollars (\$25.00) as filing fee for any

amendment thereto so as to extend or enlarge the scope of operations thereunder, and twenty-five dollars (\$25.00) for each broker who applies for a brokerage license under the provisions of this Chapter.

- (3) With each application for a general increase in rates, fares and charges and for each filing of a tariff which seeks general increases in rates, fares and charges, the fee will be five hundred dollars (\$500.00) for Class A utilities and Class 1 motor and rail carriers, two hundred fifty dollars (\$250.00) for Class B utilities and Class 2 motor and rail carriers, one hundred dollars (\$100.00) for Class C utilities and twenty-five dollars (\$25.00) for Class D utilities and Class 3 motor and rail carriers; provided that in the case of an application or tariff for a general increase in rates filed by a tariff agent for more than one carrier, the applicable fee shall be the highest fee prescribed for any motor carrier included in the application or tariff. This fee shall not apply to applications for adjustments in particular rates, fares, or charges for the purpose of eliminating inequities, preferences or discriminations or to applications to adjust rates and charges based solely on the increased cost of fuel used in the generation or production of electric power.
- (4) One hundred dollars (\$100.00) with each application for discontinuance of train service, or for a change in or discontinuance of station facilities and with each application by motor carrier of passengers for the abandonment or permanent or temporary discontinuance of transportation service previously authorized in a certificate.
- (5) With each application for a certificate of public convenience and necessity or for any amendment thereto so as to extend or enlarge the scope of operations thereunder, the fee shall be two hundred fifty dollars (\$250.00) for Class A utilities, one hundred dollars (\$100.00) for Class B utilities, and twenty-five dollars (\$25.00) for Class C and D utilities and twenty-five dollars (\$25.00) for any other person seeking a certificate of public convenience and necessity.
- (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).
- (6) With each application for approval of the issuance of securities or for the approval of any sale, lease, hypothecation, lien, or other transfer of any ~~property-household goods~~ or operating rights of any carrier or public utility over which the Commission has jurisdiction, the fee shall be two hundred fifty dollars (\$250.00) for Class A utilities and Class 1 motor and rail carriers, one hundred dollars (\$100.00) for Class B utilities and Class 2 motor and rail carriers, and twenty-five dollars

(\$25.00) for Class C and D utilities and Class 3 motor and rail carriers; provided, that in the case of sales, leases and transfers between two or more carriers or utilities, the applicable fee shall be the highest fee prescribed for any party to the transaction.

- (7) Ten dollars (\$10.00) with each application, petition, or complaint not embraced in (2) through (6) of this section, wherein such application, petition, or complaint seeks affirmative relief against a carrier or public utility over which the Commission has jurisdiction. This fee shall not apply to applications for adjustments in particular rates, fares or charges for the purpose of eliminating inequities, preferences or discriminations; nor shall this fee apply to applications, petitions, or complaints made by any county, city or town; nor shall this fee apply to applications or petitions made by individuals seeking service or relief from a public utility.
- (8) Repealed by Session Laws 1985, c. 454, s. 18.
- (9) One dollar (\$1.00) for each page (8 1/2 x 11 inches) of transcript of testimony, but not less than five dollars (\$5.00) for any such transcript.
- (10) Twenty cents (20¢) for each page of copies of papers, orders, certificates or other records, but not less than one dollar (\$1.00) for any such order or record, plus five dollars (\$5.00) for formal certification of any such paper, order or record.
- (11),(12) Repealed by Session Laws 1985, c. 454, s. 18.
- (13) Two hundred fifty dollars (\$250.00) with each application for a certificate of public convenience and necessity to construct a transmission line.
- (14) Twenty-five dollars (\$25.00) with each filing by a person otherwise exempt from Commission regulation under Public Law 103-305 to participate in standard transportation practices as set out by the Commission."

Sec. 30. G.S. 62-320 is repealed.

Sec. 31. Article 6A of Chapter 62 of the General Statutes, G.S. 62-119 through G.S. 62-125, is repealed.

Sec. 32. Effective August 1, 1995, G.S. 62-300(a), as rewritten by Section 29 of this act, reads as rewritten:

"(a) The Commission shall receive and collect the following fees and charges in accordance with the classification of utilities as provided in rules and regulations of the Commission, and no others:

- (1) Twenty-five dollars (\$25.00) with each notice of appeal to the Court of Appeals or the Supreme Court, and with each notice of application for a writ of certiorari.
- (2) With each application for a new certificate for motor and rail carrier rights, the fee shall be two hundred fifty dollars (\$250.00) when filed by Class 1 motor and rail carriers, one hundred dollars (\$100.00) when filed by Class 2 motor and rail carriers, and twenty-five dollars

(\$25.00) when filed by Class 3 motor and rail carriers, and twenty-five dollars (\$25.00) as filing fee for any amendment thereto so as to extend or enlarge the scope of operations thereunder, and twenty-five dollars (\$25.00) for each broker who applies for a brokerage license under the provisions of this Chapter.

- (3) With each application for a general increase in rates, fares and charges and for each filing of a tariff which seeks general increases in rates, fares and charges, the fee will be five hundred dollars (\$500.00) for Class A utilities and Class 1 motor and rail carriers, two hundred fifty dollars (\$250.00) for Class B utilities and Class 2 motor and rail carriers, one hundred dollars (\$100.00) for Class C utilities and twenty-five dollars (\$25.00) for Class D utilities and Class 3 motor and rail carriers; provided that in the case of an application or tariff for a general increase in rates filed by a tariff agent for more than one carrier, the applicable fee shall be the highest fee prescribed for any motor carrier included in the application or tariff. This fee shall not apply to applications for adjustments in particular rates, fares, or charges for the purpose of eliminating inequities, preferences or discriminations or to applications to adjust rates and charges based solely on the increased cost of fuel used in the generation or production of electric power.
- (4) One hundred dollars (\$100.00) ~~with each application for discontinuance of train service, or for a change in or discontinuance of station facilities and~~ with each application by motor carrier of passengers for the abandonment or permanent or temporary discontinuance of transportation service previously authorized in a certificate.
- (4a) Two hundred fifty dollars (\$250.00) with each application for discontinuance of train service, or for a change in or discontinuance of station facilities.
- (5) With each application for a certificate of public convenience and necessity or for any amendment thereto so as to extend or enlarge the scope of operations thereunder, the fee shall be two hundred fifty dollars (\$250.00) for Class A utilities, one hundred dollars (\$100.00) for Class B utilities, and twenty-five dollars (\$25.00) for Class C and D utilities and twenty-five dollars (\$25.00) for any other person seeking a certificate of public convenience and necessity.
- (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).
- (6) With each application for approval of the issuance of securities or for the approval of any sale, lease, hypothecation, lien, or other transfer of

any household goods or operating rights of any carrier or public utility over which the Commission has jurisdiction, the fee shall be two hundred fifty dollars (\$250.00) for Class A utilities and Class 1 motor and rail carriers, one hundred dollars (\$100.00) for Class B utilities and Class 2 motor and rail carriers, and twenty-five dollars (\$25.00) for Class C and D utilities and Class 3 motor and rail carriers; provided, that in the case of sales, leases and transfers between two or more carriers or utilities, the applicable fee shall be the highest fee prescribed for any party to the transaction.

- (7) Ten dollars (\$10.00) with each application, petition, or complaint not embraced in (2) through (6) of this section, wherein such application, petition, or complaint seeks affirmative relief against a carrier or public utility over which the Commission has jurisdiction. This fee shall not apply to applications for adjustments in particular rates, fares or charges for the purpose of eliminating inequities, preferences or discriminations; nor shall this fee apply to applications, petitions, or complaints made by any county, city or town; nor shall this fee apply to applications or petitions made by individuals seeking service or relief from a public utility.
- (8) Repealed by Session Laws 1985, c. 454, s. 18.
- (9) One dollar (\$1.00) for each page (8 1/2 x 11 inches) of transcript of testimony, but not less than five dollars (\$5.00) for any such transcript.
- (10) Twenty cents (20¢) for each page of copies of papers, orders, certificates or other records, but not less than one dollar (\$1.00) for any such order or record, plus five dollars (\$5.00) for formal certification of any such paper, order or record.
- (11),(12) Repealed by Session Laws 1985, c. 454, s. 18.
- (13) Two hundred fifty dollars (\$250.00) with each application for a certificate of public convenience and necessity to construct a transmission line.
- (14) Twenty-five dollars (\$25.00) with each filing by a person otherwise exempt from Commission regulation under Public Law 103-305 to participate in standard transportation practices as set out by the Commission."

Sec. 32.1. The catchline to G.S. 105-449.105, as enacted by Section 3 of Chapter 390 of the 1995 Session Laws, reads as rewritten:

"§ 105-449.105. Refunds upon application for tax paid on exempt fuel, lost fuel, ~~and fuel~~ fuel unsalable for highway use, ~~use, and undyed diesel fuel used~~ in boats."

Sec. 32.2. G.S. 105-449.105, as enacted by Section 3 of Chapter 390 of the 1995 Session Laws, is amended by relettering subsection (d) as subsection (e) and adding a new subsection (d) to read:

"(d) Marina. – A marina may obtain a refund of tax paid by the marina on undyed diesel fuel purchased for use in a boat or another marine vessel. The refund applies

only to undyed diesel fuel delivered at the time of purchase into a storage facility that is marked 'For Boat Use Only' or another phrase that clearly indicates the fuel is not to be used to operate a highway vehicle."

Sec. 33. Sections 32.1 and 32.2 of this act become effective January 1, 1996. The remainder of this act is effective upon ratification.

In the General Assembly read three times and ratified this the 29th day of July, 1995.

Dennis A. Wicker
President of the Senate

Harold J. Brubaker
Speaker of the House of Representatives