

State of South Dakota

SEVENTY-FOURTH SESSION
LEGISLATIVE ASSEMBLY, 1999

400C0385

HOUSE BILL NO. 1037

Introduced by: The Committee on Transportation at the request of the Public Utilities
Commission

1 FOR AN ACT ENTITLED, An Act to revise certain motor carrier regulations and to increase
2 motor carrier eligibility for single trip permits.

3 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF SOUTH DAKOTA:

4 Section 1. That § 49-28-1 be amended to read as follows:

5 49-28-1. Terms used in this chapter mean:

6 (1) "Commission," the Public Utilities Commission;

7 (2) "Corporation," a corporation, company, association, or joint stock association;

8 (3) "For hire," for remuneration of any kind, paid or promised for the transportation of
9 persons or property. An occasional accommodative or reciprocal transportation
10 service by a person not in the transportation business while on an errand for such
11 person's benefit, is not a service for hire, even though the person transported shares
12 in the cost or pays for the service;

13 (4) ~~"ICC," the Interstate Commerce Commission~~ "FHWA," Federal Highway
14 Administration;

15 (5) ~~"ICC exempt~~ Exempt motor carrier," an interstate motor carrier who is exempt from
16 the ~~ICC's~~ FHWA's jurisdiction over interstate transportation;

- 1 (6) "~~ICC regulated~~ Regulated motor carrier," an interstate motor carrier who is subject
2 to the ~~ICC's~~ FHWA's jurisdiction over interstate transportation;
- 3 (7) "Motor carrier," any person, corporation, lessee, trustee, or receiver operating any
4 motor vehicle, trailer, or semitrailer on any public highway in this state for the
5 transportation of persons or property, for hire;
- 6 (8) "Motor vehicle," all vehicles or machines propelled by any power other than muscular
7 used upon the public highways for the transportation of persons or property;
- 8 (9) "Permit," the permit authorized to be issued under this chapter;
- 9 (10) "Person," a natural person, firm, corporation, limited liability company, copartnership,
10 company, association, joint stock company, or, the lessee, trustee, or receiver
11 appointed by any court for any one of the foregoing;
- 12 (11) "Public highway," every street, alley, public road, public thoroughfare, or highway in
13 this state;
- 14 (12) "Registration state," the state in which ~~an ICC~~ a regulated motor carrier selects to
15 register its interstate motor carrier operations pursuant to 49 USC ~~1506(e)(1)(A)~~
16 § 14504 and 49 CFR PART ~~1023.3~~ 367 as of January 1, ~~1994~~ 1999;
- 17 (13) "Semitrailer," any vehicle of the trailer type, equipped with a kingpin assembly,
18 designed and used in conjunction with a fifth wheel connecting device on a motor
19 vehicle and constructed so that some part of its weight and that of its load rests upon
20 or is carried by another vehicle;
- 21 (14) "Trailer," every vehicle without motive power designed to carry property or persons
22 wholly on its own structure and to be drawn by a motor vehicle;
- 23 (15) "Board," the Surface Transportation Board as defined in 49 USC § 13102(1) as of
24 January 1, 1999;
- 25 (16) "Secretary," the secretary of the United States Department of Transportation as that

1 term is defined in 49 USC § 13102(17) as of January 1, 1999.

2 Section 2. That § 49-28-33 be amended to read as follows:

3 49-28-33. The commission may pursuant to chapter 1-26 adopt rules to establish uniform
4 procedures for the administration of the provisions of this chapter. Rules may be adopted by the
5 commission governing motor carriers in the following areas:

6 (1) Filing information and reports; and

7 (2) Registration and identification when performing interstate operations within the state.

8 The director of the division of highway patrol may promulgate reasonable rules pursuant to
9 chapter 1-26 to promote safety of operations, standards, and safety of equipment. The rules shall
10 conform as nearly as possible with the rules and regulations for safety of operations and
11 equipment adopted by the U.S. Department of Transportation, pursuant to ~~40~~ 49 U.S.C.
12 ~~§ 1655(e) Chapter 311~~ as amended through January 1, ~~1995~~ 1999.

13 Section 3. That § 49-28-36 be amended to read as follows:

14 49-28-36. No ~~ICC~~ exempt motor carrier may perform interstate operations, to, from, within,
15 or traversing this state unless it files an application for the registration of such operation with the
16 commission and the commission approves the application by the issuance of a registration permit.

17 In lieu of a registration permit, all ICC regulated motor carriers shall comply with 49 U.S.C.
18 § 11506 13901 and 49 CFR PART ~~4023~~ 365 as of January 1, ~~1994~~ 1999, before performing any
19 interstate operations to, from, within, or traversing this state.

20 Section 4. That § 49-28-36.1 be amended to read as follows:

21 49-28-36.1. The fee to accompany the filing of an application for registration as an ~~ICC~~
22 exempt motor carrier is twenty-five dollars. However, no registration fee is required if the
23 applicant has previously paid a registration fee for other interstate operations and is registered
24 with the commission at the time the application is received by the commission.

25 Section 5. That § 49-28-36.4 be amended to read as follows:

1 49-28-36.4. Any nonresident ~~ICC~~ exempt motor carrier shall, before a registration permit is
2 issued under this chapter, designate and maintain in this state an agent upon whom may be served
3 all summonses or other lawful processes in any action or proceeding against such motor carrier
4 arising from its carrier operations. Service of process upon or acceptance or acknowledgment
5 of such service by the agent has the same legal force and validity as if duly served upon the
6 nonresident carrier personally. The designation of agent shall be in writing, shall give the name
7 and address of the agent, and shall be filed in the office of the commission. Any nonresident ~~ICC~~
8 regulated motor carrier shall file with its registration state the name of an agent to receive service
9 of process from South Dakota pursuant to ~~49 CFR PART 1023.4(3) as of January 1, 1994~~ 49
10 USC § 13303(b) and 49 USC § 13304 as of January 1, 1999. Upon failure of any nonresident
11 motor carrier to file a designation of agent as provided by this section, the nonresident motor
12 carrier shall be conclusively considered to have designated the secretary of state as such agent.
13 Service of process upon or acceptance or acknowledgment of such service by the secretary of
14 state has the same legal force and validity as if duly served upon such nonresident carrier
15 personally if notice of such service and a copy of the process are immediately sent by registered
16 mail by the secretary of state, to the nonresident carrier, if the carrier's address be known.
17 Service of such process upon the secretary of state shall be made by delivering to the secretary
18 of state's office two copies of the process with a fee of three dollars to cover the costs of
19 handling and mailing the process.

20 Section 6. That § 49-28-36.5 be amended to read as follows:

21 49-28-36.5. Registration permits issued by the commission to ~~ICC~~ exempt motor carriers
22 shall continue in effect without payment of annual renewal fees if each ~~ICC~~ exempt motor carrier
23 pays an annual identification fee of five dollars for each motor vehicle operated in interstate
24 movement within the borders of this state with not less than one annual identification fee to be
25 paid annually before the first day of December of each year. However, in no instance may any

1 ~~ICC~~ exempt motor carrier be required to purchase or display more than one identification stamp
2 for any one motor vehicle. Failure of an ~~ICC~~ exempt motor carrier to pay a minimum of one
3 identification fee or an ~~ICC~~ regulated motor carrier to register with a registration state by the
4 first day of December of any year, shall result in the cancellation of registration and no further
5 interstate movement may be permitted until the motor carrier has re-registered in accordance
6 with the rules of the commission.

7 Section 7. That § 49-28-36.6 be amended to read as follows:

8 49-28-36.6. An interstate motor carrier who infrequently makes use of the state highways
9 ~~with a nonscheduled chartered bus~~ may elect to pay for a single trip permit ~~for the bus~~ in lieu of
10 registering ~~the bus~~ pursuant to § 49-28-36. The fee for the single trip permit is forty dollars.

11 Section 8. That § 49-28-36.7 be amended to read as follows:

12 49-28-36.7. A motor carrier shall make an application for a single trip permit as provided by
13 § 49-28-36.6 and the permit secured at a port of entry or by such other means designated by the
14 ~~public utilities~~ commission prior to ~~the bus~~ beginning movement over the state's highways. The
15 application shall include the applicant's name and business address, a description of the vehicle,
16 and the route of travel suggested for the trip.

17 Section 9. That § 49-28-41 be amended to read as follows:

18 49-28-41. The ~~public utilities~~ commission shall cooperate with the ~~interstate commerce~~
19 ~~commission, to the extent authorized by the federal Motor Carrier Act FHWA,~~ in the
20 administration of ~~that federal act~~ motor carrier laws, and the commission may appear before the
21 ~~interstate commerce commission~~ FHWA, the secretary, or the board as a party litigant in all
22 proceedings involving the regulation and control of motor carriers in interstate commerce if, in
23 its opinion, the public interest of the state justifies such participation.

24 Section 10. That § 49-28-41.1 be amended to read as follows:

25 49-28-41.1. If the ~~public utilities~~ commission determines upon its own motion or upon the

1 petition of a resident of this state that it is in the best interests of the state, it may appear before
2 the ~~interstate commerce commission~~ FHWA, the secretary, or the board as a party in all
3 proceedings involving the regulation and control of motor carriers in interstate commerce. ~~When~~
4 If any matter is pending before the ~~interstate commerce commission~~ FHWA, the secretary, or
5 the board between a resident of this state as petitioner and a motor carrier doing business in this
6 state and engaged in interstate transportation of freights, charging such carrier with any violation
7 of the Interstate Commerce Act, upon application of the petitioner, the ~~public utilities~~
8 commission may appear therein and be substituted as a party in place of such petitioners and
9 thereafter the matter shall be prosecuted by the public utilities commission at the expense of the
10 state in the same manner as though originally begun by it.