

State of South Dakota

EIGHTY-FIRST SESSION
LEGISLATIVE ASSEMBLY, 2006

400M0349

SENATE TRANSPORTATION COMMITTEE

ENGROSSED NO. **SB 25** - 01/17/2006

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

1 FOR AN ACT ENTITLED, An Act to revise certain provisions concerning motor carrier
2 regulation and to transfer the authority to regulate motor carriers from the Public Utilities
3 Commission to the Department of Revenue and Regulation.

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

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

6 49-28-1. Terms used in this chapter mean:

- 7 (1) ~~"Commission," the Public Utilities Commission~~ "Department," the Department of
8 Revenue and Regulation;
- 9 (2) "Corporation," a corporation, company, association, or joint stock association;
- 10 (3) "For hire," for remuneration of any kind, paid or promised for the transportation of
11 persons or property. An occasional accommodative or reciprocal transportation
12 service by a person not in the transportation business while on an errand for such
13 person's benefit, is not a service for hire, even though the person transported shares
14 in the cost or pays for the service;
- 15 (4) ~~"FHWA," Federal Highway Administration~~ "FMCSA," Federal Motor Carrier Safety



1 Administration;

2 (5) "Exempt motor carrier," an interstate motor carrier who is exempt from the ~~HHWA's~~
3 FMCSA's jurisdiction over interstate transportation;

4 (6) "Regulated motor carrier," an interstate motor carrier who is subject to the ~~HHWA's~~
5 FMCSA's jurisdiction over interstate transportation;

6 (7) "Motor carrier," any person, corporation, lessee, trustee, or receiver operating any
7 motor vehicle, trailer, or semitrailer on any public highway in this state for the
8 transportation of persons or property, for hire;

9 (8) "Motor vehicle," all vehicles or machines propelled by any power other than
10 muscular used upon the public highways for the transportation of persons or property;

11 (9) "Permit," the permit authorized to be issued under this chapter;

12 (10) "Person," a natural person, firm, corporation, limited liability company,
13 copartnership, company, association, joint stock company, or, the lessee, trustee, or
14 receiver appointed by any court for any one of the foregoing;

15 (11) "Public highway," every street, alley, public road, public thoroughfare, or highway
16 in this state;

17 (12) "Registration state," the state in which a regulated motor carrier selects to register its
18 interstate motor carrier operations pursuant to 49 USC § 14504 and 49 CFR PART
19 367 as of January 1, ~~1999~~ 2005;

20 (13) "Semitrailer," any vehicle of the trailer type, equipped with a kingpin assembly,
21 designed and used in conjunction with a fifth wheel connecting device on a motor
22 vehicle and constructed so that some part of its weight and that of its load rests upon
23 or is carried by another vehicle;

24 (14) "Trailer," every vehicle without motive power designed to carry property or persons

1 wholly on its own structure and to be drawn by a motor vehicle;

2 (15) "Board," the Surface Transportation Board as defined in 49 USC § 13102(1) as of
3 January 1, ~~1999~~ 2005;

4 (16) "Secretary," the secretary of the United States Department of Transportation as that
5 term is defined in 49 USC § 13102(17) as of January 1, ~~1999~~ 2005.

6 Section 2. That § 49-28-3 be amended to read as follows:

7 49-28-3. Whether or not a motor vehicle, trailer, or semitrailer is operated by a motor carrier
8 within the meaning of subdivisions 49-28-1(7) and (8) is a question of fact to be determined by
9 the ~~Public Utilities Commission~~ department.

10 Section 3. That § 49-28-33 be amended to read as follows:

11 49-28-33. The ~~commission~~ department may pursuant to chapter 1-26 adopt rules to establish
12 uniform procedures for the administration of the provisions of this chapter. Rules may be
13 adopted by the ~~commission~~ department governing motor carriers in the following areas:

14 (1) Filing information and reports; and

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

16 The ~~director of the division of highway patrol~~ Director of the Division of Highway Patrol
17 may promulgate reasonable rules pursuant to chapter 1-26 to promote safety of operations,
18 standards, and safety of equipment. The rules shall conform as nearly as possible with the rules
19 and regulations for safety of operations and equipment adopted by the U.S. Department of
20 Transportation, pursuant to 49 U.S.C. Chapter 311 as amended through January 1, ~~1999~~ 2005.

21 Section 4. That § 49-28-36 be amended to read as follows:

22 49-28-36. No exempt motor carrier may perform interstate operations, to, from, within, or
23 traversing this state unless it files an application for the registration of such operation with the
24 ~~commission~~ department and the ~~commission~~ department approves the application by the

1 issuance of a registration permit.

2 In lieu of a registration permit, all regulated motor carriers shall comply with 49 U.S.C.
3 § 13901 and 49 CFR PART 365 as of January 1, ~~1999~~ 2005, before performing any interstate
4 operations to, from, within, or traversing this state.

5 Section 5. That § 49-28-36.1 be amended to read as follows:

6 49-28-36.1. The fee to accompany the filing of an application for registration as an exempt
7 motor carrier is twenty-five dollars. However, no registration fee is required if the applicant has
8 previously paid a registration fee for other interstate operations and is registered with the
9 ~~commission~~ department at the time the application is received by the ~~commission~~ department.

10 Section 6. That § 49-28-36.2 be amended to read as follows:

11 49-28-36.2. An interstate motor carrier registered pursuant to § 49-28-36 is subject to
12 regulation and control of the ~~Public Utilities Commission~~ department only to the extent
13 permitted by the Constitution of the United States and acts of Congress relating to interstate
14 commerce.

15 Section 7. That § 49-28-36.4 be amended to read as follows:

16 49-28-36.4. Any nonresident exempt motor carrier shall, before a registration permit is
17 issued under this chapter, designate and maintain in this state an agent upon whom may be
18 served all summonses or other lawful processes in any action or proceeding against such motor
19 carrier arising from its carrier operations. Service of process upon or acceptance or
20 acknowledgment of ~~such~~ the service by the agent has the same legal force and validity as if duly
21 served upon the nonresident carrier personally. The designation of agent shall be in writing,
22 shall give the name and address of the agent, and shall be filed in the office of the ~~commission~~
23 department. Any nonresident regulated motor carrier shall file with its registration state the
24 name of an agent to receive service of process from South Dakota pursuant to 49 USC

1 § 13303(b) and 49 USC § 13304 as of January 1, ~~1999~~ 2005. Upon failure of any nonresident
2 motor carrier to file a designation of agent as provided by this section, the nonresident motor
3 carrier shall be conclusively considered to have designated the secretary of state as such agent.
4 Service of process upon or acceptance or acknowledgment of ~~such~~ the service by the secretary
5 of state has the same legal force and validity as if duly served upon such nonresident carrier
6 personally if notice of ~~such~~ the service and a copy of the process are immediately sent by
7 registered mail by the secretary of state, to the nonresident carrier, if the carrier's address be
8 known. Service of ~~such~~ the process upon the secretary of state shall be made by delivering to
9 the secretary of state's office two copies of the process with a fee of three dollars to cover the
10 costs of handling and mailing the process.

11 Section 8. That § 49-28-36.5 be amended to read as follows:

12 49-28-36.5. Registration permits issued by the ~~commission~~ department to exempt motor
13 carriers shall continue in effect without payment of annual renewal fees if each exempt motor
14 carrier pays an annual identification fee of five dollars for each motor vehicle operated in
15 interstate movement within the borders of this state with not less than one identification fee to
16 be paid annually on or before the thirty-first day of December of each year. However, in no
17 instance may any exempt motor carrier be required to purchase or display more than one
18 identification stamp for any one motor vehicle. Failure of an exempt motor carrier to pay a
19 minimum of one identification fee or a regulated motor carrier to register with a registration
20 state on or before the thirty-first day of December of any year, shall result in the cancellation of
21 registration and no further interstate movement may be permitted until the motor carrier has
22 re-registered in accordance with the rules of the ~~commission~~ department.

23 Section 9. That § 49-28-36.7 be amended to read as follows:

24 49-28-36.7. A motor carrier shall make an application for a single trip permit as provided

1 by § 49-28-36.6 and the permit secured at a port of entry or by such other means designated by
2 the ~~commission~~ department prior to beginning movement over the state's highways. The
3 application shall include the applicant's name and business address, a description of the vehicle,
4 and the route of travel suggested for the trip.

5 Section 10. That § 49-28-41 be amended to read as follows:

6 49-28-41. The ~~commission~~ department shall cooperate with the ~~FHWA~~ FMCSA, in the
7 administration of motor carrier laws, ~~and the commission.~~ The department may appear before
8 the ~~FHWA~~ FMCSA, the secretary, or the board as a party litigant in all proceedings involving
9 the regulation and control of motor carriers in interstate commerce if, in its opinion, the public
10 interest of the state justifies such participation.

11 Section 11. That § 49-28-41.1 be amended to read as follows:

12 49-28-41.1. If the ~~commission~~ department determines upon its own motion or upon the
13 petition of a resident of this state that it is in the best interests of the state, it may appear before
14 the ~~FHWA~~ FMCSA, the secretary, or the board as a party in all proceedings involving the
15 regulation and control of motor carriers in interstate commerce. If any matter is pending before
16 the ~~FHWA~~ FMCSA, the secretary, or the board between a resident of this state as petitioner and
17 a motor carrier doing business in this state and engaged in interstate transportation of freights,
18 charging ~~such~~ the carrier with any violation of the Interstate Commerce Act, upon application
19 of the petitioner, the ~~commission~~ department may appear therein and be substituted as a party
20 in place of such petitioners and thereafter the matter shall be prosecuted by the ~~commission~~
21 department at the expense of the state in the same manner as though originally begun by it.

22 Section 12. That § 49-28-45 be amended to read as follows:

23 49-28-45. All fees or money received by the ~~Public Utilities Commission~~ department under
24 this chapter shall be reported monthly to and deposited with the state treasurer, and ~~by him~~

1 credited to the general fund of the state. Those fees and money so deposited shall be used to
2 reimburse the state for the added expense which the state incurs in the administration and
3 enforcement of this chapter and chapter 32-9, and for policing the highways over which such
4 motor vehicles travel.

5 Section 13. That § 49-28-50 be amended to read as follows:

6 49-28-50. Each motor carrier shall prepare and file with the ~~Public Utilities Commission~~
7 department, at such time, and in the form to be prescribed by the ~~commission~~ department,
8 reports and statements giving to the ~~commission~~ department such information as it requires in
9 order to perform its duties under this chapter.

10 Section 14. That § 49-28-51 be amended to read as follows:

11 49-28-51. Except as otherwise provided in this chapter or the rules adopted pursuant to this
12 chapter, chapter 1-26 shall govern in all proceedings and investigations before the ~~Public~~
13 ~~Utilities Commission~~ department in cases arising in connection with the performance by the
14 ~~commission~~ department of its duties or the exercise of its jurisdiction under this chapter.

15 Section 15. That § 49-28-52 be amended to read as follows:

16 49-28-52. Orders and final determinations of the ~~Public Utilities Commission~~ department
17 in all proceedings pursuant to this chapter shall be enforced in the manner provided by law for
18 enforcement of orders of the ~~commission~~ department.

19 The ~~commission~~ department may apply to the circuit court in any circuit in which any person
20 or motor carrier operates or maintains a principal headquarters for the enforcement of this
21 chapter and the rules adopted pursuant thereto. ~~Such~~ The court shall have jurisdiction by writ
22 of injunction, or by other proceedings, mandatory or otherwise, to restrict and enjoin any such
23 person or motor carrier, its officers, agents, employees, or representatives, from further
24 violations of the provisions of law or any lawful order, term, or condition prescribed by the

1 ~~commission department~~ and enjoining obedience thereto.

2 Section 16. That § 49-28-53 be amended to read as follows:

3 49-28-53. All final orders, determinations, or decisions of the ~~commission department~~ in
4 proceedings brought pursuant to this chapter are subject to rehearing in accordance with
5 ~~commission department~~ rules and are subject to review or appeal in accordance with chapter 1-
6 26.

7 Section 17. That § 49-28-54 be amended to read as follows:

8 49-28-54. ~~It is the policy of this state to grant to nonresidents~~ Nonresidents of the state
9 whose motor vehicle, trailer, or semitrailer is properly registered or licensed in a state or
10 territory of the United States, the District of Columbia, or Canada, while engaged in interstate
11 commerce in this state, ~~exemption shall be exempt~~ from the payment, in whole or in part, of
12 ~~commission department~~ fees, if the granting of ~~such the~~ the exemption will, in the opinion of the
13 ~~commission department~~, promote the securing of exemptions and privileges for citizens of this
14 state operating motor vehicles, trailers, or semitrailers in other states, territories of the United
15 States, the District of Columbia, or Canada.

16 Section 18. That § 49-28-55 be amended to read as follows:

17 49-28-55. The ~~Department of Revenue and Regulation~~ department may make with like
18 ~~commissions or~~ authorities of the other states and territories of the United States, the District
19 of Columbia and Canada, whatever reciprocal agreements are necessary to carry out the policy
20 declared and granted in § 49-28-54, notwithstanding the statutes of this state providing for the
21 collection of ~~commission department~~ fees, ~~and the Department of Public Safety.~~ The department
22 may do all things necessary to negotiate and perfect reciprocal agreements between like
23 ~~commissions or~~ authorities in the various states and territories of the United States, the District
24 of Columbia and Canada.

1 Section 19. That § 49-28-63 be amended to read as follows:

2 49-28-63. Any motor carrier which is subject to this chapter or, if any such motor carrier is
3 a corporation, any director or officer thereof or any receiver, trustee, lessee, agent, or person
4 acting for or employed by such corporation, who violates or fails to comply with or who
5 procures, aids, or abets in the violation of any provision of this chapter, or who fails to obey,
6 observe, or comply with any lawful order, decision, rule, regulation, direction, demand, or
7 requirement of the ~~Public Utilities Commission~~ department, or any part or provision thereof, is
8 guilty of a Class 2 misdemeanor.

9 Section 20. That § 49-28-65 be repealed.

10 ~~49-28-65. The inspectors of the Public Utilities Commission may place a person under arrest~~
11 ~~without warrant for a violation of any provision of this chapter which is committed in the~~
12 ~~presence of such inspector. Commission inspectors having been given such limited arrest~~
13 ~~powers are not "law enforcement officers" for the purposes of § 23-3-27.~~

14 Section 21. That § 49-28-66 be amended to read as follows:

15 49-28-66. The inspectors of the Department of Public Safety ~~and the Public Utilities~~
16 ~~Commission~~ or any law enforcement officer may require the driver of a commercial vehicle to
17 stop a vehicle at any time for inspection to determine if the provisions of this chapter are being
18 complied with. Any driver who fails to stop and submit ~~his~~ the driver's vehicle to such
19 inspection is guilty of a Class 2 misdemeanor.

20 Section 22. That § 49-28-67 be repealed.

21 ~~49-28-67. Carriers regulated by this chapter are also subject to chapter 49-13 to the extent~~
22 ~~that such chapter is applicable to complaints.~~

23 Section 23. That chapter 49-28 be amended by adding thereto a NEW SECTION to read as
24 follows:

- 1 Notwithstanding any provisions of this chapter, the department may participate in and
- 2 comply with the Unified Carrier Registration Act of 2005.