~~Indicates Matter Stricken~~

Indicates New Matter

COMMITTEE AMENDMENT ADOPTED

April 5, 2022

**S. 1045**

Introduced by Senators Alexander and M. Johnson

S. Printed 4/5/22--S.

Read the first time February 3, 2022.

**A** **BILL**

TO AMEND SECTION 58-23-20 OF THE 1976 CODE, RELATING TO REGULATIONS FOR TRANSPORTATION BY MOTOR VEHICLE, TO PROVIDE REGULATIONS FOR THE OPERATION OF TRANSPORTATION VEHICLES; TO AMEND SECTION 58-23-25 OF THE 1976 CODE, RELATING TO THE PUBLIC SERVICE COMMISSION’S MOTOR CARRIER REGULATORY AUTHORITY, TO PROVIDE FOR THE STATUTORY CONSTRUCTION OF THE CHAPTER RELATED TO THE LIMITATION OF CERTAIN AUTHORITY VESTED WITH PUBLIC SERVICE COMMISSION’S MOTOR CARRIER REGULATORY AUTHORITY; TO AMEND SECTION 58-23-30 OF THE 1976 CODE, RELATING TO THE DEFINITION OF COMPENSATION, TO DEFINE TRANSPORTATION VEHICLES ACCORDINGLY; TO AMEND SECTION 58-23-60(5) OF THE 1976 CODE, RELATING TO AREAS IN WHICH THIS CHAPTER IS NOT APPLICABLE TO BUSINESSES, TO INCLUDE VEHICLES OPERATED BY A MUNICIPALITY; TO AMEND SECTION 58-23-210 OF THE 1976 CODE, RELATING TO CLASSES OF CERTIFICATES, TO PROVIDE A TIMELINE FOR THE APPLICATION OF A COMMISSION’S DIRECTIVES; TO AMEND SECTION 58-23-220 OF THE 1976 CODE, RELATING TO CLASS A CERTIFICATES, TO PROVIDE THAT THE COMMISSION SHALL ISSUE DIRECTIVES TO ISSUE CLASS A CERTIFICATES; TO AMEND SECTION 58-23-230 OF THE 1976 CODE, RELATING TO CLASS B CERTIFICATES, TO REGULATE THE POWERS OF THE OFFICE OF REGULATORY STAFF; TO AMEND SECTION 58-23-240 THROUGH SECTION 58-23-290 OF THE 1976 CODE, RELATING TO CERTIFICATES, TO ALTER LANGUAGE; TO AMEND SECTION 58-23-330 OF THE 1976 CODE, RELATING TO GROUNDS FOR ISSUANCE OR DENIAL OF CERTIFICATE, TO PROVIDE REGULATIONS FOR ISSUING OR DENYING A CERTIFICATE UPON RECEIPT OF AN APPLICATION; TO AMEND SECTION 58‑23‑560 OF THE 1976 CODE, RELATING TO LICENSE FEES FOR CERTIFICATE HOLDERS, TO PROVIDE ELIGIBILITY REGULATIONS FOR CERTIFICATE HOLDERS; TO AMEND SECTION 58‑23‑590 OF THE 1976 CODE, RELATING TO CARRIERS OF HOUSEHOLD GOODS AND HAZARDOUS WASTE FOR DISPOSAL, TO PROVIDE THE POWERS OF THE COMMISSION; TO AMEND SECTION 58-23-600 OF THE 1976 CODE, RELATING TO TIME FOR PAYMENT OF FEES, TO PROVIDE REGULATIONS FOR FEES REQUIRED OF CERTIFICATE HOLDERS; TO AMEND SECTION 58‑23‑910 AND SECTION 58‑23‑930 OF THE 1976 CODE, RELATING TO INSURANCE OR BOND, TO PROVIDE INSURANCE, BOND, OR CERTIFICATE OF SELF-INSURANCE REQUIREMENTS FOR CERTIFICATE HOLDERS; TO AMEND SECTIONS 58‑23‑1010, 58‑23‑1020, 58‑23‑1080, AND 58‑23‑1090 OF THE 1976 CODE, RELATING TO RIGHTS AND DUTIES GENERALLY, TO PROVIDE REGULATIONS FOR FEES, LICENSES, AND OTHER MARKERS; TO AMEND SECTION 58‑4‑60(B)(1) OF THE 1976 CODE, RELATING TO EXPENSES BORNE BY REGULATED UTILITIES, TO REFERENCE THE PROVISIONS IN THE CODE GENERATING FEES THAT ARE TO BE USED TO PAY FOR THE EXPENSES OF THE TRANSPORTATION DEPARTMENT OF THE OFFICE OF REGULATORY STAFF; AND TO AMEND CHAPTER 23, TITLE 58 OF THE 1976, RELATING TO MOTOR VEHICLE CARRIERS, TO REPEAL SECTIONS 58‑23‑300, 58‑23‑530, 58‑23‑540, 58‑23‑550, AND 58‑23‑1060.

Amend Title To Conform

SECTION 1. Section 58‑23‑20 of the 1976 Code is amended to read:

“Section 58-23-20. No corporation or person, his lessees, trustees, or receivers may operate a motor vehicle for the transportation of persons, hazardous waste for disposal, or household goods ~~or property~~ for compensation on an improved public highway in this State except in accordance with the provisions of this chapter, except where the use of a motor vehicle is incidental only to the operation, and any such operation is subject to control, supervision, and regulation by the commission in the manner provided by this chapter. The commission may not fix or approve the rates, fares, or charges for ~~buses~~ Class A, B, C, D, E, or F certificates. ~~Provided, however, nothing herein shall affect the commission’s jurisdiction to regulate street railway service or any successor to street railway service under Chapter 5 of Title 58.~~”

SECTION 2. Section 58‑23‑25 of the 1976 Code is amended to read:

“Section 58-23-25. Nothing in this chapter, unless specifically provided, ~~must~~ may be construed as granting authority to the Public Service Commission to regulate, approve, fix, or charge a fee on a matter of rates, prices, changes, routes, or services of a motor vehicle carrier of property, including private carriers, except certificate carriers of household goods or hazardous wastes for disposal.”

SECTION 3. Section 58‑23‑30 of the 1976 Code is amended to read:

“Section 58-23-30. ‘For compensation’ as used in Section 58‑23‑20 means a ~~return~~ payment in money or property for transportation of persons, hazardous waste for disposal, or household goods ~~or property~~ by motor vehicle over public highways within the State of South Carolina.~~, whether paid, received or realized, and shall specifically include any profit realized on the delivered price of cargo where title or ownership is temporarily vested during transit in the carrier as a subterfuge for the purpose of avoiding regulation under this chapter. Where the profit is equal to or less than the regularly established rate applicable to the transportation of property by common carriers authorized by law to transport property for compensation, such scheme or device shall be presumed to be a subterfuge for the purpose of avoiding regulation under this chapter for those other than certificated carriers within their operating authority; provided, however, nothing herein shall prohibit the vendor from delivering any purchased property to the vendee.~~”

SECTION 4. Section 58‑23‑40 of the 1976 Code is amended to read:

“Section 58-23-40. A motor vehicle carrier shall obtain a certificate from the Office of Regulatory Staff, pursuant to the provisions of Article 3 of this chapter and pay the license fee required pursuant to Article 5 of this chapter before the motor vehicle carrier may: (1) transport persons, hazardous waste for disposal or household goods ~~or property~~ for compensation on any improved public highway in this State; or (2) advertise as an operator for the transportation of persons, hazardous waste for disposal or household goods ~~or property~~ for compensation on any improved public highway in this State.”

SECTION 5. Section 58‑23‑60(5) of the 1976 Code is amended to read:

“(5) used by a county or municipality to transport passengers or property.”

SECTION 6. Section 58-23-210 of the 1976 Code is amended to read:

“Section 58-23-210. ~~The Office of Regulatory Staff, upon order of the commission, may issue six classes of certificates as are mentioned in Section 58‑23‑40 after application therefor has been made in writing by the owner of the vehicles upon blanks provided by the commission and after such hearing as the commission may consider proper. The commission must hear any objections by any person or corporation who may be affected by the issuance of a certificate by the Office of Regulatory Staff. The six classes of certificates shall be respectively designated certificate A, certificate B, certificate C, certificate D, certificate E, and certificate F.~~

(A) An applicant applying for a certificate or applying to amend a certificate to operate as a motor vehicle common carrier must submit a written application to the commission on a form provided by the commission. The commission must post information regarding an application to apply for a certificate or amend a certificate for fifteen days immediately following receipt of the application. Any person who may be affected by the issuance or amendment of the requested certificate or amendment may file a written objection with the commission within fourteen days after the commission posts the notice regarding the application.

(B)(1) If no objection to an application is filed pursuant to subsection (A), the commission may meet to determine if the applicant is fit, willing and able to perform the proposed service, upon a showing based upon criteria established by the commission. If the commission issues a directive approving the application, the Office of Regulatory Staff may then issue the certificate. The directive of the commission shall serve as the commission’s order thirty days after issuance.

(2) If an objection is filed with the commission, the commission must hold a hearing to determine if the applicant is fit, willing and able to perform the proposed service. The commission must publish a notice of hearing for an application for a certificate on the commission’s website for not less than thirty days before the date of the hearing.

(C) If an application is denied, another application may not be made until at least six months have elapsed since the date of the denial.”

SECTION 7. Section 58‑23‑220 of the 1976 Code is amended to read:

“Section 58-23-220. The Office of Regulatory Staff, upon ~~order~~ directive of the commission, may issue a certificate A in the following cases:

(1) to an applicant to operate in territory already served by any certificate holder under this chapter or any common carrier when ~~the public convenience and necessity in~~ such territory ~~are~~ is not already being reasonably served by some other certificate holder or common carrier, provided such applicant propose to operate on a fixed schedule and to comply with the other provisions contained in Articles 1 to 11 of this chapter and the rules and regulations which may be made by the commission respecting holders of this class of certificates; and

(2) to an applicant for a certificate to operate upon a regular schedule in a territory not already served by the holder of a certificate A, when ~~public convenience and necessity in~~ such territory ~~are~~ is not being reasonably served by a certificate holder under this chapter or a common carrier; provided, that when a certificate A is issued to an applicant over territory which is being served at the time such certificate is granted by the holder of a certificate B, the right of the applicant to operate under certificate A shall not begin until the expiration of the then license year of the holder of the certificate B and the holder of a certificate B shall be preferred in granting a certificate A over the route unless ~~in the judgment of the commission~~ it would not be in the interest of the public service.

In either case the existence of a railroad or other motor vehicle carrier in the territory sought to be served by the applicant shall not be considered by the commission as good cause for refusing the application.”

SECTION 8. Section 58‑23‑230 of the 1976 Code is amended to read:

“Section 58-23-230. The Office of Regulatory Staff, upon ~~order~~ directive of the commission, may issue a certificate B when the applicant does not propose to operate regularly upon a fixed schedule or route~~, but only desires to operate over a particular route or routes which are not already served by the holder of a certificate A,~~ but will operate in instances when by his solicitation or otherwise he has procured passengers to be transported over the route or routes designated in his application. ~~In ordering the issuance of a certificate B, the commission may consider the public convenience and necessity and whether the territory proposed to be served is already served by a carrier. If the public convenience and necessity require the issuance of more than one certificate B over such route or routes, the commission may order the issuance of an additional certificate B, but the certificate may be revoked by order of the commission at the end of any license year as to any particular route or routes, if prior to the expiration of the year the commission has ordered the issuance of a certificate A over the route.~~”

SECTION 9. Section 58‑23‑240 of the 1976 Code is amended to read:

“Section 58-23-240. The Office of Regulatory Staff, upon ~~order~~ directive of the commission, may issue a certificate C to any applicant who does not propose in any way to solicit the transportation of persons over improved public highways outside of the corporate limits of any city or town or to operate upon a regular schedule, but who is privately employed for a specific trip and who will not solicit or receive patronage along the route. But those operators may solicit passengers (a) for destination within the corporate limits of any city or town wherein such passengers are solicited, (b) within a radius of two miles of the corporate limits of the city or town in which they are licensed to do business, and (c) upon such highways as are not served by a holder of an A or B certificate.”

SECTION 10. Section 58‑23‑250 of the 1976 Code is amended to read:

“Section 58-23-250. The Office of Regulatory Staff, upon ~~order~~ directive of the commission, may issue a certificate D for property‑carrying vehicles which will operate upon regular routes and schedules over such highways.”

SECTION 11. Section 58‑23‑260 of the 1976 Code is amended to read:

“Section 58-23-260. The Office of Regulatory Staff, upon ~~order~~ directive of the commission, may issue a certificate E for the property‑carrying vehicles which will not operate upon any particular route or schedule.”

SECTION 12. Section 58‑23‑270 of the 1976 Code is amended to read:

“Section 58-23-270. The Office of Regulatory Staff, upon ~~order~~ directive of the commission, may issue a certificate F to any person or corporation who proposes to engage in the business commonly known as contract hauling of freight or property when such applicant does not propose to operate upon a regular schedule or over a regular route or to solicit or receive patronage along the route.”

SECTION 13. Section 58‑23‑290 of the 1976 Code is amended to read:

“Section 58-23-290. In ordering the issuance of a certificate A, B, or D the commission may ~~order~~ direct the issuance of a certificate for partial exercise only of the privileges sought, but without alteration of the license charges fixed thereon.”

SECTION 14. Section 58‑23‑560 of the 1976 Code is amended to read:

“~~A holder of a certificate A, B, or C with less than twenty vehicles must semiannually on or before January first and July first of each year pay to the Office of Regulatory Staff the following fees: for vehicles weighing not more than two thousand pounds, seven dollars and fifty cents; and for vehicles weighing in excess of two thousand pounds, seven dollars and fifty cents for the first two thousand pounds and two dollars and fifty cents additional for each additional five hundred pounds or part thereof of weight, except that the total license fee may not exceed fifty dollars per vehicle semiannually.~~ A holder of a certificate A, B, or C must annually before January first of each year pay to the Office of Regulatory Staff a fee of fifty dollars per vehicle.”

SECTION 15. Section 58‑23‑590 of the 1976 Code is amended to read:

“Section 58-23-590. (A) The commission ~~must~~ may promulgate regulations that ~~necessary to control entry and certification standards, set rates and charges, and~~ establish enforcement procedures and powers to govern the operations of carriers of household goods and hazardous waste for disposal.

(B) The Office of Regulatory Staff is authorized to establish ~~an Office of Compliance~~ a Transportation Division to carry out its responsibilities and may assess the carriers of household goods and hazardous waste for disposal fees necessary to fund this office and to carry out its responsibilities.

~~(C) The Office of Regulatory Staff must issue a common carrier certificate or contract carrier permit of public convenience and necessity, upon order of the commission, if the applicant proves to the commission that:~~

~~(1) it is fit, willing, and able to properly perform the proposed service and comply with the provisions of this chapter and the commission’s regulations; and~~

~~(2) the proposed service, to the extent to be authorized by the certificate or permit, is required by the present public convenience and necessity.~~

~~The commission shall adopt regulations that provide criteria for establishing that the applicant is fit, willing, and able, and criteria for establishing that the applicant must meet the requirement of public convenience and necessity. The determination that the proposed service is required by the public, convenience and necessity must be made by the commission on a case‑by‑case basis.~~

~~(D) A carrier of household goods, before operating in an exempt zone provided in Section 58‑23‑60 in this State, must obtain a certificate of fit, willing, and able from the Office of Regulatory Staff upon order of the commission. The Office of Regulatory Staff may establish an annual registration requirement and set a fee for this registration which is comparable to and is calculated by using the same methodology applied to holders of certificates of public convenience and necessity.~~

~~(E)~~(C) The Office of Regulatory Staff is authorized to employ necessary personnel to administer and enforce the provisions of this chapter as they apply to carriers of household goods and hazardous waste for disposal. A carrier operating in violation of a provision of Articles 1 through 12 of this chapter is guilty of a misdemeanor and, upon conviction, must pay penalties provided in Section 58‑23‑80. A fine of one thousand dollars is imposed on the violators of the certification and registration requirements. Seventy‑five percent of this fine must be remitted to the Office of Regulatory Staff to be used for the operation of the ~~Office of Compliance~~ Transportation Division. Magistrates have jurisdiction over contested violations of this section and are prohibited from suspending or reducing the penalties.”

SECTION 16. Section 58‑23‑600 of the 1976 Code is amended to read:

“Section 58-23-600. A holder of a certificate D, E, or F must annually pay to the Office of Regulatory Staff fees pursuant to Section 58‑4‑60. ~~The fees prescribed in this article may be paid semiannually in advance on or before January first and July first of each year~~. ~~Provided, that fees for D, E and F certificates may be paid on an annual basis on or before July first of each year.~~”

SECTION 17. Section 58‑23‑910 of the 1976 Code is amended to read:

“Section 58-23-910. ~~The commission shall, in ordering the issuance of a certificate, require the applicant to~~ Prior to the issuance of the certificate, the motor carrier shall procure and file with the Office of Regulatory Staff either liability and property damage insurance, a surety bond with some casualty or surety company authorized to do business in this State, or a certificate of self‑insurance as provided by Section 56‑9‑60 on all motor vehicles to be used in the service in that amount as the commission may determine, insuring or indemnifying passengers or cargo and the public receiving personal injury by reason of any act of negligence and for damage to property of any person other than the assured. The policy, bond, or certificate of self‑insurance must contain those conditions, provisions, and limitations as the commission may prescribe and must be kept in full force and effect and failure to do so is cause for the revocation of the certificate.”

SECTION 18. Section 58‑23‑930 of the 1976 Code is amended to read:

“Section 58-23-930. No owner of a motor vehicle using such vehicle as part of a terminal service in connection with the business of transporting goods by rail shall be required to carry liability or property damage insurance on such motor vehicle if such business of such owner is under the jurisdiction of the ~~Interstate Commerce Commission~~ federal Surface Transportation Board and if the ~~Interstate Commerce Commission~~ Surface Transportation Board has required and does require such owner to set up insurance reserves covering liability resulting from the conduct of such business, including liability arising out of and in connection with the operation of such motor vehicle and if such insurance reserves have been and are actually so set up.

The owner of such a motor vehicle shall attach inside of the cab of such vehicle in a conspicuous place a certificate signed by such owner, or his duly authorized representative, setting forth that the business of such owner is under the jurisdiction of the ~~Interstate Commerce Commission~~ federal Surface Transportation Board and that such ~~Commission~~ board has required and does require such owner to set up insurance reserves.”

SECTION 19. Section 58‑23‑1010 of the 1976 Code is amended to read:

“Section 58-23-1010. (A) The commission shall regulate every motor carrier in this State and fix or approve the ~~rates, fares, charges,~~ classifications, and regulations pertaining to each motor carrier, except as provided in Section 58‑23‑20. ~~The rates once established remain in effect until such time when the commission determines the rates are unreasonable. The commission may approve joint rates, local rates, and rate agreements between two or more motor carriers relating to rates, classifications, allowances, and charges agreed to and published by individuals, firms, corporations, or the South Carolina Tariff Bureau. Any of these agreements when approved by the commission are not in violation of Section 39‑3‑10.~~

(B) As to holders of a certificate ~~C~~E, ~~the commission shall fix a maximum rate only~~ the carrier shall file a maximum rate schedule with the commission. The commission must post the maximum rate schedule filing within one business day of receipt. The new maximum rate schedule shall go into effect one business day following the commission’s posting of the new schedule. Holders of certificate E shall have the flexibility for adjustment of the rates below the maximum rate levels without commission approval. The commission shall publish the maximum rate schedule on its website.”

SECTION 20. Section 58‑23‑1020 of the 1976 Code is amended to read:

“Section 58-23-1020. No motor vehicle carrier holding a certificate A, B, or D shall change the route or schedule of his motor vehicle during any year for which a license has been issued without procuring ~~a permit in writing from~~ an order of the commission before the route is changed.”

SECTION 21. Section 58‑23‑1080 of the 1976 Code is amended to read:

“Section 58‑23‑1080. The Office of Regulatory Staff, upon the presentation of a certificate ~~from the Office of Regulatory Staff~~ authorizing the motor vehicle carrier to operate and upon payment of the proper license, ~~must~~ may furnish the motor vehicle carrier with a distinguishing plate or marker~~, which, in addition to the other matters otherwise provided by law to be placed thereon, shall bear the letter stating the class under which the motor vehicle shall operate, such as A, B, C, D, E, or F~~.”

SECTION 22. Section 58‑23‑1090 of the 1976 Code is amended to read:

“Section 58-23-1090. When any reserve or substitute vehicle maintained by a motor carrier holding a certificate D, or a certificate A or a certificate B for passenger vehicles, to be used only in emergencies, is in use it ~~must~~ may be designated by a special marker to be furnished by the Office of Regulatory Staff.”

SECTION 23. Section 58‑4‑60(B)(1) of the 1976 Code is amended to read:

“(B)(1) The expenses of the Transportation Department of the Office of Regulatory Staff, with the exception of the expenses incurred in its railway jurisdiction, must be borne by the revenues from license fees derived pursuant to ~~Sections 58‑23‑530 through 58‑23‑630,~~ Article 5, Chapter 23, Title 58, assessments to the Transportation Network Companies pursuant to Sections 58‑23‑1690 and 58‑23‑1700, and assessments to the carriers of household goods and hazardous waste for disposal carriers. The expenses of the railway section of the Office of Regulatory Staff must be borne by the railroad companies subject to the commission’s jurisdiction according to their gross income from operations in this State.”

SECTION 24. Chapter 23, Title 58 of the 1976 Code is amended by repealing Sections 58‑23‑300, 58-23-330, 58‑23‑530, 58‑23‑540, 58‑23‑550, and 58‑23‑1060.

SECTION 25. The Public Service Commission must make information readily available so that the general public can easily access information regarding the requirements in Articles 3 and 9 in Chapter 23, Title 58. This includes, but is not limited to, the commission posting on its website information regarding the following: list of certified companies, maximum rates, insurance, and complaint resolution.

SECTION 26. This act becomes effective upon approval by the Governor.

‑‑‑‑XX‑‑‑‑