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HOUSE BILL 491

54TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2019

INTRODUCED BY

Natalie Figueroa and Christine Trujillo

AN ACT

RELATING TO MOTOR CARRIERS; MAKING IT AN UNFAIR PRACTICE TO TOW FROM OR IMMOBILIZE A MOTOR VEHICLE IN A PARKING FACILITY BASED ON CERTAIN PARKING OR MOTOR VEHICLE REGISTRATION VIOLATIONS; PROVIDING PENALTIES.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

SECTION 1. A new section of the Unfair Practices Act is enacted to read:

"~~[NEW MATERIAL]~~ UNATTENDED VEHICLES ON PARKING FACILITY-- NOTICE--REMOVAL--PROHIBITIONS.--"

A. Except as provided in Subsection B of this section, it is an unfair or deceptive trade practice for a person to have a motor vehicle towed from or immobilized in a parking facility only because a motor vehicle displays an expired validating sticker as defined in Section 66-1-4.19 NMSA

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1 1978 or issued under the motor vehicle registration law of
2 another state or country; is missing a license plate; occupies
3 two parking spaces; is parked on the parking stripe; is parked
4 on grass, landscaping or a curb; is backed into a parking
5 space; has a flat tire; or is mechanically unfit or unsafe to
6 be operated or moved upon the highways.

7 B. A contract to provide towing services shall not
8 provide for having a motor vehicle towed from or immobilized in
9 a parking facility only because the motor vehicle displays an
10 expired validating sticker as defined in Section 66-1-4.19 NMSA
11 1978 or issued under the motor vehicle registration law of
12 another state or country; is missing a license plate; occupies
13 two parking spaces; is parked on the parking stripe; is parked
14 on grass, landscaping or a curb; is backed into a parking
15 space; has a flat tire; or is mechanically unfit or unsafe to
16 be operated or moved upon the highways, unless the contract
17 requires that the owner or operator of the motor vehicle be
18 given at least ten days' written notice that the motor vehicle
19 will be towed from the parking facility at the motor vehicle
20 owner's or operator's expense if it is not removed from the
21 parking facility. The written notice shall:

22 (1) state:

23 (a) the specific reason that the motor
24 vehicle is subject to tow;

25 (b) that the motor vehicle will be towed

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1 at the expense of the owner or operator of the motor vehicle if
2 the issue for which the motor vehicle is subject to tow is not
3 corrected or the motor vehicle is not removed from the parking
4 facility; and

5 (c) a telephone number that is answered
6 twenty-four hours per day to enable the owner or operator of
7 the motor vehicle to locate the vehicle; and

8 (2) be:

9 (a) hand-delivered to the owner or
10 operator of the motor vehicle; or

11 (b) sent by certified mail, return
12 receipt requested, to the owner or operator of the motor
13 vehicle.

14 C. This section shall not be construed to:

15 (1) authorize the owner or operator of a motor
16 vehicle to leave an unattended vehicle on property that is not
17 designed or intended for the parking of vehicles; or

18 (2) have an effect on the disposition of
19 abandoned motor vehicles pursuant to Section 66-3-119 or
20 66-3-121 NMSA 1978.

21 D. A contract entered into or renewed on or after
22 July 1, 2019 that is in conflict or inconsistent with this
23 section is void and unenforceable.

24 E. For purposes of this section, "parking facility"
25 means public or private property used wholly or partly for

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1 restricted or paid vehicle parking that serves multifamily
2 housing, including a duplex, an apartment complex, a
3 condominium, a townhouse or other property governed by a
4 property owners' association."

5 SECTION 2. Section 65-2A-33 NMSA 1978 (being Laws 2003,
6 Chapter 359, Section 33, as amended by Laws 2013, Chapter 73,
7 Section 29 and by Laws 2013, Chapter 77, Section 29) is amended
8 to read:

9 "65-2A-33. CRIMINAL AND CIVIL PENALTIES--UNFAIR TRADE
10 PRACTICES.--

11 A. A person who knowingly makes a false statement
12 of material fact under oath or penalty of perjury in a
13 commission proceeding, whether orally or in writing, shall be
14 guilty of perjury.

15 B. A person who willfully makes a false return of
16 process or report to the commission or a member or employee of
17 the commission, and a person who knowingly aids or abets a
18 person who willfully makes a false return of process or report
19 to the commission or a member or employee of the commission,
20 shall be guilty of a felony, and upon conviction shall be
21 imprisoned for not more than five years.

22 C. A person who willfully makes a false entry in
23 records required by the Motor Carrier Act or the rules of the
24 commission, willfully destroys, mutilates or by other means
25 willfully falsifies the records or willfully neglects or fails

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1 to make full, true and correct entries of all facts, shall be
2 guilty of a felony and upon conviction shall be imprisoned for
3 not more than five years.

4 D. An employee of the commission who divulges
5 information about an inspection, examination or investigation
6 of a record or of the property and facilities of a motor
7 carrier, except insofar as may be authorized by the commission
8 or a court of competent jurisdiction, shall be guilty of a
9 misdemeanor and upon conviction shall be fined not more than
10 one thousand dollars (\$1,000).

11 E. A person who violates or who procures, aids or
12 abets in the violation of a provision of the Motor Carrier Act
13 or a rule or order of the commission shall be guilty of a
14 misdemeanor and upon conviction shall be fined not more than
15 one thousand dollars (\$1,000), imprisoned for not more than
16 ninety days, or both.

17 F. A motor carrier shall be guilty of a misdemeanor
18 and upon conviction shall be fined not more than five hundred
19 dollars (\$500), imprisoned for not more than six months, or
20 both, if the motor carrier:

- 21 (1) refuses to permit examination of its
22 records;
- 23 (2) conceals, destroys or mutilates its
24 records;
- 25 (3) attempts to conceal, destroy or mutilate

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1 its records; or

2 (4) removes its records beyond the limits of
3 the state for the purpose of preventing examination.

4 G. A person who commits weight-bumping shall be
5 guilty of a felony and upon conviction shall be fined not less
6 than one thousand dollars (\$1,000) nor more than ten thousand
7 dollars (\$10,000), imprisoned for not more than two years, or
8 both.

9 H. A person shall be assessed a civil penalty of
10 not more than two thousand dollars (\$2,000) for each violation
11 and not more than five thousand dollars (\$5,000) for each
12 subsequent violation if the person knowingly engages in or
13 authorizes an agent or other person to:

14 (1) falsify the documents used in the
15 transportation of household goods that evidence the weight of
16 shipment; or

17 (2) charge for accessorial services that are
18 not performed, or for which the carrier is not entitled to be
19 compensated, in a case in which such services are not
20 reasonably necessary for the safe and adequate transportation
21 of the shipment.

22 I. A law enforcement officer of the state shall
23 arrest and the district attorney and attorney general shall
24 prosecute a violation of the Motor Carrier Act.

25 J. It is an unfair and deceptive trade practice

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1 under the Unfair Practices Act for any transportation service
2 carrier to offer or provide transportation services of a type
3 for which, or in any territory in which, it is not authorized
4 to do so by the commission. The attorney general or a person
5 who has been damaged or who is likely to be damaged as the
6 result of such unauthorized service, including a shipper, a
7 passenger or an authorized transportation service carrier, may
8 bring an action pursuant to the Unfair Practices Act against
9 the transportation service carrier regarding such unauthorized
10 service. Any such civil action shall be in addition to, and
11 shall not bar, any investigation or civil or criminal
12 enforcement action regarding the unauthorized service available
13 to the attorney general or a district attorney, or available to
14 the commission under the Motor Carrier Act.

15 K. It is an unfair and deceptive trade practice
16 under the Unfair Practices Act for any transportation service
17 carrier or its agent, employee or contract driver to charge or
18 collect a predatory rate or to undertake a predatory practice
19 in the provision of transportation services. The attorney
20 general or a person who has been damaged or who is likely to be
21 damaged as the result of a predatory rate or practice may bring
22 an action pursuant to the Unfair Practices Act against the
23 transportation service carrier regarding such predatory rate or
24 practice. Any such civil action shall be in addition to, and
25 shall not bar, any investigation or civil or criminal

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1 enforcement action regarding the predatory rate or practice
2 available to the attorney general or a district attorney, or
3 available to the commission under the Motor Carrier Act.

4 L. It is an unfair and deceptive trade practice
5 under the Unfair Practices Act for a towing service to perform
6 a nonconsensual tow or immobilize a motor vehicle only because
7 a motor vehicle displays an expired validating sticker as
8 defined in Section 66-1-4.19 NMSA 1978 or issued under the
9 motor vehicle registration law of another state or country; is
10 missing a license plate; occupies two parking spaces; is parked
11 on the parking stripe; is parked on grass, landscaping or a
12 curb; is backed into a parking space; has a flat tire; or is
13 mechanically unfit or unsafe to be operated or moved upon the
14 highways. The attorney general or a person who has been
15 damaged may bring an action pursuant to the Unfair Practices
16 Act against the towing service. Any civil action shall be in
17 addition to, and shall not bar, any investigation or civil or
18 criminal enforcement action regarding the towing service that
19 is available to the attorney general or a district attorney or
20 that is available to the commission under the Motor Carrier
21 Act."

22 SECTION 3. EFFECTIVE DATE.--The effective date of the
23 provisions of this act is July 1, 2019.