

AMENDED IN ASSEMBLY APRIL 16, 1996
AMENDED IN ASSEMBLY MARCH 28, 1996
AMENDED IN ASSEMBLY FEBRUARY 22, 1996
AMENDED IN SENATE JANUARY 17, 1996
AMENDED IN SENATE APRIL 18, 1995

SENATE BILL

No. 415

Introduced by Senator Thompson

February 15, 1995

An act to repeal Sections 737.4, 737.5, 737.6, and 737.7 of, and to repeal and add Section 737.3 to, the Public Utilities Code, relating to public utilities, and declaring the urgency thereof, to take effect immediately.

LEGISLATIVE COUNSEL'S DIGEST

SB 415, as amended, M. Thompson. Public utilities: carriers.

Existing law provides for a procedure for claims made by highway carriers and freight forwarders, and provides for an alternative procedure when the claims are made to collect charges in excess of those originally billed by a highway carrier or freight forwarder under specified conditions.

This bill would eliminate the alternative procedure ~~and provide that there would be no liability for the claims for excess charges if specified conditions are met.~~

This bill would, instead, prohibit a highway carrier, a freight forwarder, a party representing either of these entities, or an

assignee of either of these entities, based on a filed tariff or filed contract, from collecting or attempting to collect any additional charge in excess of the charge originally billed by the carrier or freight forwarder for transportation service previously provided, except where there are mistakes acknowledged by both parties or that are the result of intentional misrepresentation by the shipper. It would also limit liability on claims made under the circumstances described in the bill.

Since existing law makes any public utility, as defined, and any corporation other than a public utility, which violates the Public Utilities Act guilty of a misdemeanor, and the provisions of the bill would be within the act, this bill would impose a state-mandated local program by creating a new crime.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

This bill would declare that it is to take effect immediately as an urgency statute.

Vote: ²/₃. Appropriation: no. Fiscal committee: yes. State-mandated local program: yes.

The people of the State of California do enact as follows:

- 1 SECTION 1. The Legislature finds and declares as
- 2 follows:
- 3 (a) Public Law 103-305, effective January 1, 1995,
- 4 generally preempted the state, among other things, from
- 5 enacting or enforcing any law or regulation related to the
- 6 price of intrastate transportation of property (other than
- 7 household goods) by motor carrier.
- 8 (b) Among the ~~provision~~ provisions of state law
- 9 preempted by that federal law was the state's filed rate
- 10 doctrine.
- 11 (c) The filed rate doctrine required a motor common
- 12 carrier of property to charge the rate set by the tariffs it



1 had filed with the Public Utilities Commission, regardless
2 of any contrary agreement the carrier may have made
3 with a shipper.

4 (d) Enforcement of the filed rate doctrine was
5 intended to maintain the integrity of the tariff-based
6 system used to regulate the rates of motor common
7 carriers of property prior to January 1, 1995.

8 (e) With certain limited exceptions not relevant to
9 enforcement of the filed rate doctrine, motor common
10 carriers of property have not filed *their* tariffs with the
11 Public Utilities Commission since January 1, 1995, and the
12 tariffs previously on file with the commission have been
13 cancelled.

14 (f) Litigation is currently pending before the federal
15 courts concerning whether or not Public Law 103-305
16 preempts enforcement of California's filed rate doctrine
17 with regard to transportation services performed before
18 January 1, 1995.

19 (g) Whether or not the federal law has preempted
20 enforcement of California's filed rate doctrine with
21 regard to transportation performed before January 1,
22 1995, the state's filed rate doctrine has outlived its
23 usefulness, and its continued enforcement serves no
24 public purpose.

25 (h) State law should be amended to provide that
26 motor carriers of property (excluding household goods
27 carriers) and their representatives and assignees can no
28 longer enforce California's filed rate doctrine.

29 (i) Prior to January 1, 1995, the Public Utilities
30 Commission required highway contract carriers of
31 property to file contracts with the commission. It might
32 be argued that, under that prior regulatory scheme, a
33 contract carrier was required to charge the rate
34 contained in its filed contract even if the carrier and
35 shipper had agreed to a lower rate. Requiring a shipper
36 to pay the higher rate contained in the filed contract
37 would serve no public purpose.

38 SEC. 2. Section 737.3 of the Public Utilities Code is
39 repealed.



1 SEC. 3. Section 737.3 is added to the Public Utilities
2 Code, to read:

3 737.3. (a) ~~When a claim is made by a~~ (1) A highway
4 carrier, as defined by subdivision (c), ~~by~~ a freight
5 forwarder, ~~by~~ a party representing a carrier or freight
6 forwarder, or ~~by~~ an assignee of a carrier or freight
7 forwarder ~~for the collection of rates or charges in addition~~
8 ~~to those originally billed by the carrier or freight~~
9 ~~forwarder for transportation subject to the jurisdiction of~~
10 ~~the commission, the person, or entity, against whom the~~
11 ~~claim is made shall not be liable for additional amounts~~
12 *shall not*, based on a filed tariff or a filed contract, *collect*
13 *or attempt to collect any additional charge in excess of the*
14 *charge originally billed by the carrier or freight*
15 *forwarder for transportation service previously provided*
16 *subject to the jurisdiction of the commission, except*
17 where there are mistakes in billing that are
18 acknowledged by both parties *or that are the result of*
19 *intentional misrepresentation by the shipper.*

20 (2) *Similarly, the person or entity against whom a*
21 *claim has been made under the circumstances described*
22 *in paragraph (1) shall not be liable for additional amounts*
23 *based on a filed tariff or a filed contract, except where*
24 *there are mistakes in billing acknowledged by both*
25 *parties or that are the result of intentional*
26 *misrepresentation by the shipper.*

27 (b) For the purposes of this section, the term
28 “claimant” shall mean the carrier or freight forwarder, or
29 its assignee or representative making a claim for the
30 collection of rates and charges in addition to those
31 originally billed and collected for the transportation.

32 (c) “Highway carrier” or “carrier” means every
33 corporation or person, their lessees, trustees, receivers or
34 trustees appointed by any court whatsoever, engaged in
35 transportation of property for compensation or hire as a
36 business over any public highway in this state by means
37 of a motor vehicle, except that “highway carrier” does not
38 include:

39 (1) Any farmer resident of this state who occasionally
40 transports from the place of production to a warehouse,



1 regular market, place of storage, or place of shipment the
2 farm products of neighboring farmers in exchange for like
3 services or for a cash consideration or farm products for
4 compensation.

5 (2) Persons or corporations hauling their own
6 property.

7 (3) Any farmer operating a motor vehicle used
8 exclusively in the transportation of his or her livestock
9 and agricultural commodities or in the transportation of
10 supplies to his or her farm.

11 (4) Any nonprofit agricultural cooperative association
12 organized and acting within the scope of its powers under
13 Chapter 1 (commencing with Section 54001) of Division
14 20 of the Agricultural Code to the extent only that it is
15 engaged in transporting its own property or the property
16 of its members.

17 (5) Any person exclusively transporting United States
18 mail pursuant to a contract with the United States
19 government.

20 (6) Any integrated intermodal small package carrier
21 which is registered subject to Chapter 2.7 (commencing
22 with Section 4120).

23 (7) Any household goods carrier, as defined in Section
24 5109.

25 (d) For purposes of this section “mistakes in billing”
26 include, but are not limited to, matters such as clerical
27 errors, billing for transportation of a different commodity
28 than the commodity actually shipped, and billing for
29 transportation of a smaller amount of the commodity
30 than the amount actually shipped.

31 (e) This section shall apply to all claims arising from
32 transportation performed (in whole or in part) before
33 January 1, 1995, including all lawsuits or claims pending
34 on the effective date of this section.

35 (f) If any claim that qualifies under this section was
36 settled by mutual agreement of the parties to the claim,
37 or resolved by a final adjudication of a federal or state
38 court, before the effective date of this section, the
39 settlement or adjudication shall be treated as binding,



1 enforceable, and not contrary to law, unless the
2 settlement was agreed to as a result of fraud or coercion.

3 (g) If the claimant has filed, on or before the effective
4 date of this section, a suit for the collection of additional
5 freight charges, the claimant shall notify the person, or
6 entity, from whom additional freight charges are sought
7 of the provisions of this section within 30 days of the
8 effective date of this section.

9 (h) If, on or before the effective date of this section,
10 the claimant has demanded the payment of additional
11 freight charges and has not filed a suit for the collection
12 of additional freight charges, the claimant shall notify the
13 person, or entity, from whom additional freight charges
14 are sought of the provisions of this section within 30 days
15 of the effective date of this section.

16 SEC. 4. Section 737.4 of the Public Utilities Code is
17 repealed.

18 SEC. 5. Section 737.5 of the Public Utilities Code is
19 repealed.

20 SEC. 6. Section 737.6 of the Public Utilities Code is
21 repealed.

22 SEC. 7. Section 737.7 of the Public Utilities Code is
23 repealed.

24 SEC. 8. No reimbursement is required by this act
25 pursuant to Section 6 of Article XIII B of the California
26 Constitution because the only costs that may be incurred
27 by a local agency or school district will be incurred
28 because this act creates a new crime or infraction,
29 eliminates a crime or infraction, or changes the penalty
30 for a crime or infraction, within the meaning of Section
31 17556 of the Government Code, or changes the definition
32 of a crime within the meaning of Section 6 of Article
33 XIII B of the California Constitution.

34 Notwithstanding Section 17580 of the Government
35 Code, unless otherwise specified, the provisions of this act
36 shall become operative on the same date that the act
37 takes effect pursuant to the California Constitution.

38 SEC. 9. This act is an urgency statute necessary for the
39 immediate preservation of the public peace, health, or
40 safety within the meaning of Article IV of the



1 Constitution and shall go into immediate effect. The facts
2 constituting the necessity are:

3 In order to eliminate payment for charges imposed
4 when claims are made to collect charges in excess of those
5 originally billed by a highway carrier or freight forwarder
6 at the earliest feasible time, it is necessary that this act
7 take effect immediately.

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