

PROPOSED REGULATION OF THE NEVADA TRANSPORTATION AUTHORITY

LCB File No. R012-12

February 10, 2012

AUTHORITY: §§1 and 3-8, NRS 706.171; §2, NRS 706.171, NRS 353.1467; §9, NRS 706.171, NRS 706.173, and NRS 706.475.

EXPLANATION—Matter in *italics* is new; matter in brackets ~~[omitted material]~~ is material to be omitted.

A REGULATION relating to motor carriers; eliminating the provision defining business districts; amending provisions concerning the payment of fees, remittances and administrative fines; eliminating provisions concerning leases by private motor carriers; eliminating the provision concerning certain signage requirements of buses; eliminating the provision concerning time schedules of certain operators; eliminating the provision concerning the changing of schedules by certain operators; eliminating the provision requiring a certificate holder who is authorized to provide airport transfer service to hold up or display a sign; revising certain provisions concerning medical certificates for drivers of a traditional or livery limousines; revising certain provisions concerning medical certificates for drivers of taxicabs; and providing other matters properly relating thereto.

Section 1. NAC 706.025 is hereby amended to read as follows:

~~[706.025 “Business district” means the territory contiguous to and including a highway when, within any 600 feet along the highway, there are buildings in use for business or industrial purposes, including, but not limited to, hotels, banks or office buildings, railroad stations and public buildings which occupy at least 300 feet of frontage on one side or 300 feet collectively on both sides of the highway.]~~

Sec. 2. NAC 706.132 is hereby amended to read as follows:

706.408 1. A fee or remittance by money order, bank draft, ~~or~~ check, *or the electronic transfer of money for the amounts specified by NRS 353.1467* to the Authority must be made payable to the “Nevada Transportation Authority.” A remittance in currency or coin is acceptable but is sent wholly at the risk of the remitter, and the Authority assumes no responsibility for the

loss of such a remittance. An application fee or other charge required by law must be paid to the Authority at the time of filing with the Authority.

2. An administrative fine imposed pursuant to NRS 706.476 for the impoundment of a vehicle must be paid by cash, cashier's check, ~~[or]~~ money order, *or the electronic transfer of money for the amounts specified by NRS 353.1467*.

Sec. 3. NAC 706.215 is hereby amended to read as follows:

~~706.215 1. Every lease of motorized equipment by a private motor carrier must be in writing, dated and signed by the parties thereto, or their regular employees or agents authorized to act for them in the execution of contracts, leases or other arrangements.~~

- ~~— 2. If a shipper leases a motor vehicle for use in the transportation of its products or goods, the leased vehicle must be placed in the complete possession and control and operated by the lessee's own driver under the lessee's sole and complete direction, control and responsibility.~~
- ~~— 3. The driver must be the lessee's employee and subject to the complete control and direction of the lessee. There may be no connection between the lessor of the vehicle and the employment of the driver. The lessee must in actual practice be free to:~~
- ~~(a) Place any driver of its choice on the equipment;~~
- ~~(b) Terminate the employment of any driver without affecting the lease;~~
- ~~(c) Exercise its own discretion in assigning work to drivers;~~
- ~~(d) Improve and enforce rules on working and driving;~~
- ~~(e) Adjust salaries without regard to payments for the lease; and~~
- ~~(f) Deal with the driver as it does with its regular employees.~~
- ~~Merely placing a driver on the payroll of the lessee or stating in the lease that the driver is an employee of the lessee is not sufficient.~~

- ~~— 4. The lessee must be responsible to the public for accidents arising out of the negligent operation of the equipment and for the cost of insurance, taxes for the highways and taxes on fuel, fuel and operating expenses.~~
- ~~— 5. The compensation paid for any leased vehicle:~~
 - ~~(a) Must be fixed at the inception of the lease;~~
 - ~~(b) Must include a specific sum for the duration of the lease; and~~
 - ~~(c) May not be based on a division or percentage of the applicable rate for the transportation of a commodity in the vehicle during the period of the lease.~~
- ~~— 6. If:~~
 - ~~(a) A driver is furnished, selected or specified by the lessor;~~
 - ~~(b) The lessor reserves the right to furnish, select or specify a driver; or~~
 - ~~(c) The continuation of the lease is contingent upon the use of the lessor or a person he designates as a driver,~~

~~it will be presumed that the driver is the lessor's driver, that the lessor is operating as a common motor carrier and that the lease is improper.~~
- ~~— 7. A private motor carrier shall not enter into any lease for equipment for less than 30 days or for one trip only, either one way or for a round trip.~~
- ~~— 8. The driver of a vehicle leased by a private motor carrier shall not have a financial interest in the vehicle.~~
- ~~— 9. A copy of the lease must be carried in the vehicle at all times and the vehicle must be identified pursuant to NAC 706.170 as operated by the lessee. No work may be performed pursuant to an expired lease.]~~

Sec. 2. NAC 706.221 is hereby amended to read as follows:

~~[706.221 Each bus operated over a regular route or between fixed destinations must have attached to the front of the bus a sign with letters or figures not less than 3 inches in height designating the destination of the vehicle or service provided by the vehicle, unless otherwise ordered by the Authority. The sign may not be attached to the windshield of the bus.]~~

Sec. 5. NAC 706.224 is hereby amended to read as follows:

~~[706.224 No vehicle to which the provisions of this section are applicable may be operated on any time schedule other than that approved by the Authority. Nothing contained in this section may be construed to prohibit the operation, in addition to the service described in the schedule in effect at the time, of special or extra trips over the route, or any part thereof, during rush hours or other extraordinary circumstances to care for additional business occasioned by an unusual condition.]~~

Sec. 6. NAC 706.227 is hereby amended to read as follows:

~~[706.227 The Authority reserves the right after investigation and hearing to arrange or rearrange schedules so as to prevent congestion and competition which is injurious to public welfare or to make connections with other transportation agencies. The schedule changes will be made by first giving 10 days' notice to the carrier affected.]~~

Sec. 7. NAC 706.228 is hereby amended to read as follows:

706.228 1. A certificate holder who is a fully regulated carrier or his employee shall not solicit passengers.

2. A certificate holder or his employee may:

- (a) Answer questions posed by a potential passenger if the conversation is initiated by the potential passenger;
- (b) Advertise on the side of a vehicle or on permanently located signs;

- (c) Provide brochures in permanently mounted racks or stands;
- (d) Establish booths in airports, hotels or other locations;
- (e) Advertise in the media or through direct mailing;
- (f) Conduct any other marketing activity which has been determined not to be solicitation by the Nevada Transportation Authority; or
- (g) When engaged in the business of transferring persons from an airport, greet potential passengers using one of the following phrases:
 - (1) "May I help you?"
 - (2) "Good morning."
 - (3) "Good afternoon."
 - (4) "Good evening."

3. While on duty at any passenger curb loading zone, a certificate holder who is authorized to provide ~~airport transport service,~~ charter service by limousine or special services, or his employee, shall hold up or display a sign which is visible to the public that:

- (a) Must be not more than 18 by 24 inches in size;
- (b) Contains the company name, the "CPCN" number and the words "For Hire"; and
- (c) Contains the approved rates for the vehicle in letters not less than 2 inches in height in sharply contrasting colors which are legible from a distance of at least 50 feet,
→ unless the certificate holder or his employee is waiting for a passenger who has arranged for the transportation by reservation or is seeking a specific passenger who has requested that the vehicle be dispatched to the location.

4. While on duty, a certificate holder who is a fully regulated carrier or his employee shall not stand a vehicle or park a vehicle within 50 feet of a designated taxicab stand unless:

- (a) The taxicab stand is located at an airport owned by a governmental entity; or
- (b) The Chairman or his designee has authorized the certificate holder to stop or park the vehicle within 50 feet of the designated taxicab stand.

5. While on duty, a certificate holder who is a fully regulated carrier or his employee shall not stand within 50 feet of a designated taxicab stand unless:

- (a) The taxicab stand is located at an airport owned by a governmental entity; or
- (b) The Chairman or his designee has authorized the certificate holder to stop or park within 50 feet of the designated taxicab stand.

6. As used in this section:

- (a) "Passenger curb loading zone" has the meaning ascribed to it in NRS 484.109.
- (b) "Solicit" includes, without limitation, inducing or attempting to induce persons by communication or other action to be transported. The term includes, without limitation:
 - (1) Except as otherwise provided in subsection 2, initiating conversation with potential passengers;
 - (2) Shouting information;
 - (3) Waving signs;
 - (4) Waving arms or hands;
 - (5) Flashing lights;
 - (6) Ringing bells;
 - (7) Blowing horns;
 - (8) Blocking access to other motor carriers; or
 - (9) Except as otherwise provided in subsections 2 and 3, any other activity designed to attract passengers,

→ unless the passenger has arranged for the transportation by reservation or the driver is seeking a specific passenger who has requested that the driver's vehicle be dispatched to the location.

Sec. 8. NAC 706.229 is hereby amended to read as follows:

706.229 1. In addition to the applicable requirements set forth in 49 C.F.R. §§ 391.1, 391.2, 391.11(a), 391.11(b)(1) to 391.11(b)(4), inclusive, 391.11(b)(6), 391.11(b)(7), 391.11(b)(8), 391.13, 391.15, 392.2, 392.3, 392.4, 392.5 and 392.9 and 49 C.F.R. Parts 40, 382, 390, 393 and 397, a certificate holder shall not allow an employee to drive a traditional limousine or livery limousine unless the employee:

- (a) Is at least 21 years of age and has a valid Nevada driver's license or is a border state employee, as that term is defined in NRS 483.035;
- (b) Provides to the certificate holder, on or before the date on which the employee becomes employed by the certificate holder as the driver of a traditional limousine or livery limousine:
 - (1) A certificate from a licensed physician ~~[which is dated not more than 90 days before the date on which the employee becomes so employed by the certificate holder and]~~ which demonstrates that the employee is physically qualified to operate a commercial motor vehicle in accordance with 49 C.F.R. § 391.43; and
 - (2) A copy of the driving record of the employee which is obtained from the Department and which demonstrates that the employee has not, within the 3 years immediately preceding the date on which the employee becomes so employed by the certificate holder:
 - (I) Been convicted of driving under the influence of an intoxicating liquor or a controlled substance;
 - (II) Been convicted of reckless driving;
 - (III) Been convicted of failing to stop and remain at the scene of an accident; or

- (IV) Failed to keep a written promise to appear in court for any offense; and
- (c) Within the 3 years immediately preceding the date on which the employee submitted to the certificate holder an application to be a driver of a traditional limousine or livery limousine:
- (1) Has not failed to appear for a hearing before the Authority which resulted in the employee being found to have violated a provision of this chapter or chapter 706 of NRS;
 - (2) Has not been found by the Authority to have violated the provisions of this chapter or chapter 706 of NRS more than five times; and
 - (3) Has not failed to pay on or before the due date any fine assessed against the employee by the Authority.

2. Each employee shall update annually the documents required pursuant to paragraph (b) of subsection 1.

3. A certificate holder shall retain a copy of each document submitted by an employee pursuant to this section for at least 3 years after his employment has terminated.

4. The Authority will create and maintain a list of persons who are not qualified to drive a traditional limousine or livery limousine pursuant to paragraph (c) of subsection 1.

706.3751 1. In addition to the applicable requirements set forth in 49 C.F.R. §§ 391.51, 392.2, 392.4, 392.5 and 392.9 and 49 C.F.R. Parts 390, 393 and 397, a certificate holder shall not allow an employee or independent contractor of the certificate holder to drive a taxicab that the certificate holder is authorized to operate unless the employee or independent contractor:

- (a) Is at least 21 years of age and has held for at least 30 days a valid Nevada driver's license or is a border state employee, as that term is defined in NRS 483.035;

(b) Provides to the certificate holder, on or before the date on which the employee becomes employed by the certificate holder as the driver of a taxicab or the independent contractor begins to lease a taxicab from the certificate holder pursuant to NRS 706.473:

(1) A certificate from a licensed physician [which is dated not more than 90 days before the date on which the employee becomes employed by the certificate holder as the driver of a taxicab or the independent contractor begins to lease a taxicab from the certificate holder pursuant to NRS 706.473,] which demonstrates that the employee or independent contractor is physically qualified to operate a commercial motor vehicle in accordance with 49 C.F.R. § 391.43; and

(2) A copy of the driving record of the employee or independent contractor which is obtained from the Department and which demonstrates that the employee or independent contractor has not, within the 3 years immediately preceding the date on which the employee becomes employed by the certificate holder as the driver of a taxicab or the independent contractor begins to lease a taxicab from the certificate holder pursuant to NRS 706.473:

(I) Been convicted of driving under the influence of an intoxicating liquor or a controlled substance;

(II) Been convicted of reckless driving;

(III) Been convicted of failing to stop and remain at the scene of an accident; or

(IV) Failed to keep a written promise to appear in court for any offense; and

(c) Within the 3 years immediately preceding the date on which the employee or independent contractor submitted an application to the certificate holder to drive a taxicab:

(1) Has not failed to appear for a hearing before the Authority which resulted in the employee being found to have violated a provision of this chapter or chapter 706 of NRS;

(2) Has not been found by the Authority to have violated the provisions of this chapter or chapter 706 of NRS more than five times; and

(3) Has not failed to pay on or before the due date any fine assessed against the employee by the Authority.

2. Each employee or independent contractor shall update annually the documents required pursuant to paragraph (b) of subsection 1 and submit the updated documents to the certificate holder.

3. A certificate holder shall retain a copy of each document that the employee or independent contractor submitted to the certificate holder pursuant to this section until 3 years after the employee's employment has terminated or the independent contractor's lease has expired.

4. The Authority will create and maintain a list of persons who are not qualified to drive a taxicab pursuant to paragraph (c) of subsection 1.