

LAW ENFORCEMENT MANAGEMENT INSTITUTE

Deregulation or Reregulation of the Texas Motor  
Carrier Act, Vernon's Revised Civil Statutes  
Article 911B

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DEFINITION OF TERMS

1. "Deregulation": the act or process of removing restrictions and regulations. (Websters 9th Collegiate Dictionary)
2. "Re-regulation": go back and update regulations by adding and/or taking away restrictions. For the purpose of this research paper.
3. "D.P.S.": means the Texas Department of Public Safety.
4. "R.R.C.": means the Texas Railroad Commission.
5. "I.C.C.": means the Interstate Commerce Commission.
6. "Person": means and includes an individual, a firm, copartnership, corporation, company, an association or a joint stock association.
7. "Motor Carrier": Any person, firm, corporation, etc., owning, controlling, managing, operating, or causing to be operated any motor-propelled vehicle used in transporting property for sompensation or hire over any public highway in this state, where in the course of such transportation a public highway between two or more incorporated cities or towns traversed.
8. "Common Carrier": Usually transports general commodities for the general public over fixed routes and on fixed schedules.



9. "Contract Carrier": Transports specified commodities for specified persons or firms.
10. "Specialized Carrier": Transports over irregular schedules. Uses specialized equipment to load, unload.
11. "Exempt": to free from an obligation or duty required of others. (exempt operations)
12. "Exempt Commodity": for the purpose of this report is a term that applies to the Interstate Commerce regulations and does not accurately describe any intrastate exemption.



# I

## INTRODUCTION

To assess the problem of deregulation vs reregulation of the Texas Motor Carrier Act, the Federal Motor Carrier Act and its effects on deregulation in the commercial trucking industry must first be assessed.

When the United States Congress passed the 1980 Motor Carrier Act, it's passage pressured state governments to deregulate for-hire motor carriers. The proponents of deregulation maintain that if the trucking industry operated in a free market, there would be an increase in competition and productivity. However, a completely different case is presented by those who advocate the continuation of intrastate regulation. These regulators maintain that increased competition will give way to significantly higher concentrated markets and inadequate service.<sup>1</sup>

Deregulators urge free and open price competition and free entry into the industry. They believe that deregulation brings lower rates, eliminates wasteful back hauls, increases industry efficiency and productivity and excludes inefficient motor carriers who have been protected by unnecessary government regulation.<sup>2</sup>

On the other hand, regulators predicted poor service and higher rates for small shipments, large shippers and lower rates for larger companies, and smaller



companies forced out of business.

Dr. Nicholas A. Glaskowsky Jr. assesses both points of view: "Thus, much of the disagreement between deregulators and proregulators were perhaps not so much over what was expected to happen, but rather whether it was desirable for it to happen."<sup>3</sup>

Deregulation may come by legislative mandate, by administrative decision, or by order of the Railroad Commission. As a result, this report will determine the outcome if the State of Texas were to substantially deregulate its for-hire trucking industry.

Sufficient time has elapsed since passage of the 1980 Motor Carrier Act to determine if deregulation of interstate trucking has produced the kinds of desirable results predicted by the free market advocates. Fortunately, enough time has also passed to appraise fairly the changes in Texas regulation that have occurred since 1987.<sup>4</sup>

Also, professional interest guides this study since the Legislature transferred on-the-road enforcement as well as investigation to the Texas Department of Public Safety in 1951. Few authors ever mention D. P. S. and their duties in the regulation of Commercial Truck Traffic. The role of D. P. S. in enforcement of both the Federal and State Motor Carrier Laws is included in the summary.



## II

REVIEW OF RELATED MATERIALBackgroundFederal Regulation of trucking

National regulation of the trucking industry evolved from earlier regulation of the railroads. In the 1800's abuse by the railroad companies became so widespread and inherent that this abuse aroused Congressional interest.

The Interstate Commerce Commission (ICC) was created in 1887 as the nations first independent regulatory commission. Finally, in 1935 the United States Congress added motor carriers to federal economic and safety regulation through the ICC. By placing the interstate trucking industry under regulation through the ICC, the federal government had sought to insure the protection of public interest values which were being ignored in a free market. Federal regulation succeeded in ensuring an adequate level of service at reasonable rates across the nation. It also prevented price and service discrimination between communities or shippers regardless of their size. During its existence, federal regulation provided economic and service stability for the industry and the public. Smaller competitors were reasonably protected and carrier concentration was avoided. Rates between large and small



shippers were non-discriminatory and non-preferential.<sup>5</sup>

Congress had come to realize that transportation costs affect nearly all prices. Finally, The United States Congress passed the Federal Motor Carrier Act of 1935 which added motor carriers to the federal economic and safety regulation through Interstate Commerce Commission.

By enacting the Motor Carrier Act of 1935, Congress did not ignore the state's authority over intrastate commerce and in many other areas affecting interstate motor carriers. States exercise certain taxing and regulatory functions including the sizes and weights of loaded motor vehicles. States completely control regulation of intrastate truck movements within their boundaries. States may also exact registration fees and fuel taxes apportioned on miles operated within the state and taxes on gross weights. States may continue to regulate only at sufferances of Congress, but the states are sovereign and need not alter their laws governing intrastate commerce simply because federal policy changed in 1980. State trucking regulation long preceded federal regulation and only a few states have acted to lessen truck regulation following 1980.<sup>6</sup>

Deregulation has been argued since the inception of the 1935 regulation. It was not until 1977 that substantial changes of ICC regulations occurred which eventually led to some deregulation. In 1980, Congress enacted the



Motor Carrier Act of 1980 which ratified many of the ICC's in house deregulation experiments. However, states have continued to regulate intrastate carriers.<sup>7</sup>

#### Texas Regulation of Trucking

Texas led the attack on railroads by establishing the Texas Railroad Commission. The for-hire motor truck industry came under the jurisdiction of the Railroad Commission of Texas in 1929 by the first passing of the Texas Motor Carrier Act. In 1931 Texas substantially broadened and strengthened its regulation of for-hire trucking for the following public policies and purposes which were re-enacted and re-declared in 1983 by the 68th Texas Legislature.

Sec. 22b (of Art. 911b V.C.S.) Declaration of policy. The business of operating as a motor carrier of property for-hire along the highways of this state is declared to be a business affected with the public interest. The rapid increase of motor carrier traffic and the fact that under existing law many motor trucks are not effectively regulated, have increased the dangers and hazards on public highways and make it imperative that more stringent regulation should be employed, to the end that the highways may be rendered safer for the use of the general public; that the wear of such highways may be reduced; that discrimination in rates charged may be eliminated; that



congestion of traffic on the highways may be minimized; that the use of the highways for the transportation of property for-hire may be restricted to the extent required by the necessity of the general public, and that the various transportation agencies of the State may be adjusted and correlated so that public highways may serve the best interest of the general public.<sup>8</sup>


Also in 1931, Texas passed the Motor Vehicle Act in a further effort to minimize wear and destruction of the public highway system by limiting the weight of trucks and their loads and also to enhance public safety of all users of the Texas highway system.

Right to use highways in general, use of highways to haul freight for-hire is a privilege subject to reasonable state regulations. Box V. Newsom 43 S.W. 2d 981. (Civ. App. 1932) Texas operators have no right to use highways for commercial purposes other than those expressly granted to him in his permit from the Railroad Commission of Texas.<sup>9</sup> (RRC vs Trinity Houston Truck Lines (Civ. app 1935) 865 S.W. 2d 81). The Texas Highways belong to the State, and it may permit vehicles for-hire to use them under such restrictions as it may see fit to impose, or it may prohibit use for such purpose. Thompson Harrison (Civ. App. 1935) 86 S.W. 1093.<sup>10</sup>



Thus, both the Texas Motor Carrier Act and the Texas Motor Vehicle Act were steps taken to protect the public's interest in highway safety and to preserve the Texas Highway structure. These provisions enabled the Texas Railroad Commission to set minimum and maximum rates in the public interest. Also, the RRC limited entry and use to only those truckers who had shown that use to be a public necessity.

Over the years few changes have been made in the Texas Motor Carrier Act. One change, enacted in 1981, reemphasized the Texas Legislature's primary purpose to protect small shippers and small businesses from rate discrimination favoring large shippers by adding the following to section 4(a) concerning Railroad Commission rate regulation:



To ensure nondiscrimotory rates, charges, and classifications for all shippers and users of regulated transportation services for which the commission prescribes rates, charges, and classifications, the Commission shall establish collective rate making procedures for all commodities and services for which it prescribes rates, charges and classifications. Those procedures must assure that respective revenues and costs of carriers engaged in the transportation of the particular commodity or service for which rates are prescribed are ascertained. Failure on



the part of any carrier to comply with this subsection or the rules and regulations adopted under it may result in suspension or cancellation of the carrier's operating authority by the Commission.<sup>11</sup>

The purpose and goals of the Texas Motor Carrier Act Include:

1. Make highways safer for use of the general public.
2. Minimize wear on highways.
3. Eliminate discrimination in rate changes.
  - a. Protect both shipper and carrier.
4. Curtail traffic congestion on highways by restricting the for-hire vehicles to those necessary to provide adequate transportation service to the public.
5. Evaluate and coordinate various transportation agencies of the state so the public highways may serve the best interest of the general public.
6. Assure the shipper that a dependable transportation service is available.
7. Assure the carrier an adequate reimbursement for his service.<sup>12</sup>

Administration of the Texas Motor Carrier Act:

1. Railroad Commission
  - a. Attends hearings for issuance, sale and



transfer, cancellation of certificates and permits.

b. Issues identification cab cards

c. Collects fees imposed

d. Promulgates rules and regulations for motor carriers.

e. Enforces rate provisions, rules, and regulations of the commission.

f. Prescribes commercial zones.

## 2. Department of Public Safety

a. License and Weight Service is charged with enforcing the Motor Carrier Act (penal provisions only).

b. License and Weight Service does not enforce administrative rules and regulations of the Railroad Commission.

## 3. There are two basic types of Motor Carriers

a. Private carriers; by reasons of exemption are not regulated nor are they subject to the provisions of the Motor Carrier Act.

b. For-hire carriers; persons with or without authority from the Railroad Commission transporting property for-hire and not specifically exempt are known as Motor Carriers



and are not subject to regulation by the  
Railroad Commission.<sup>13</sup>



## III

Factual Findings

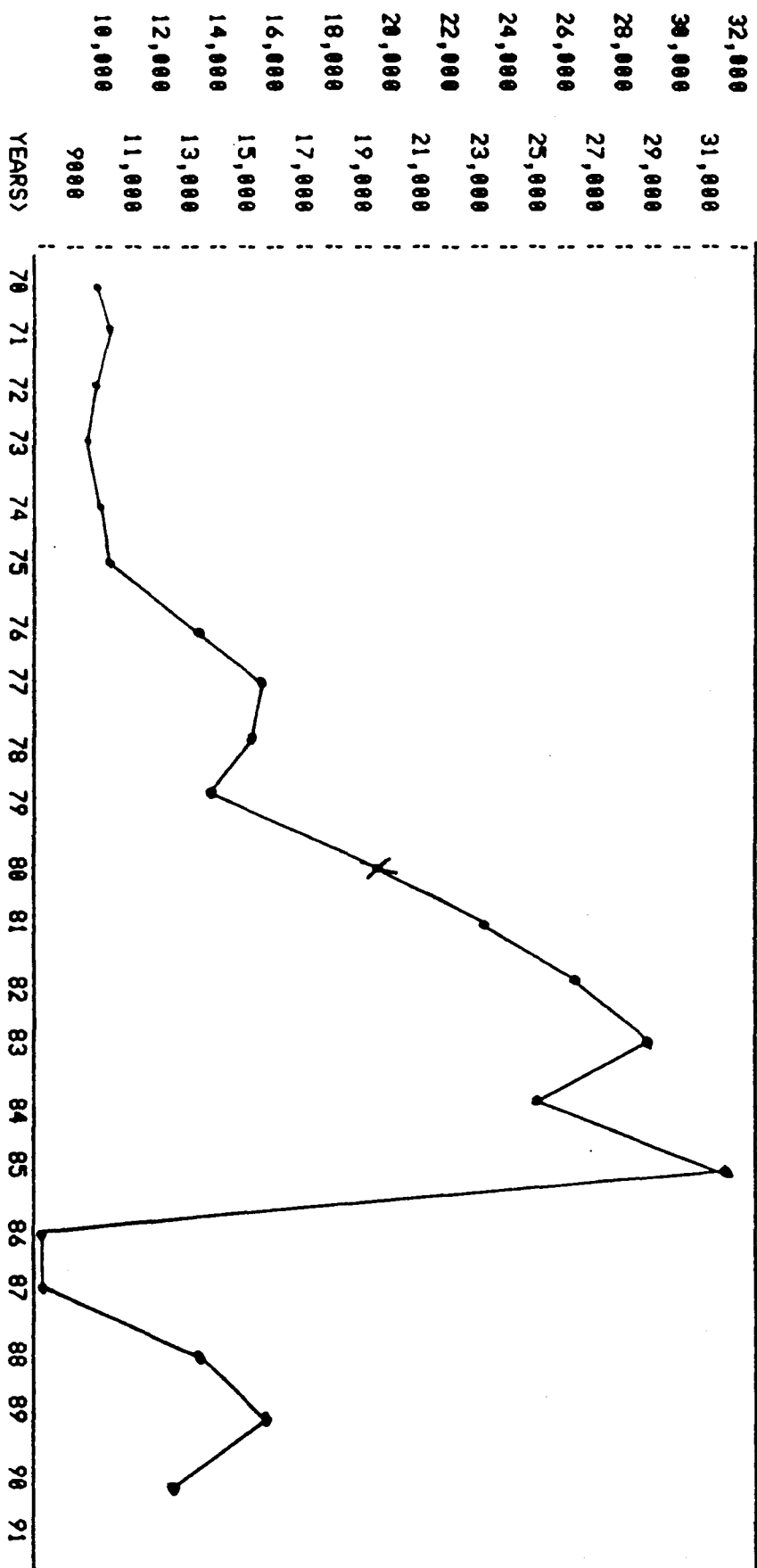
Deregulation of the 1980 Federal Motor Carrier Act thrust motor carriers into the world of competitive in pricing and of antitrust law. Rate discount arrangements never before used in the industry became common. Deregulators rejoiced at this rigorous new competitive environment. They believe this was the purpose and intent of the Motor Carrier Act.<sup>14</sup>

Soon after 1980, several carriers who suffered acute adverse effects from deregulation, sought protection from the Commission. They bitterly complained to the ICC that the industry was experiencing serious antitrust violations.

Figure I shows carriers who suffered from de-regulation of the 1980 Motor Carrier Act. Many companies took deregulation literally and operated without any authority which returned in some surprising results.

The 1980 Motor Carrier Act deregulated entry and, therefore, opened the door for almost all carriers who had a truck, insurance, and registration. They registered for a cab card, filed rates, and transported goods. Many companies mistook the meaning of the 1980 Motor Carrier Act and thought they needed only a truck, insurance and registration.





TEXAS DEPARTMENT OF PUBLIC SAFETY /  
 TEXAS RAILROAD COMMISSION STATISTICS  
 OF ON THE ROAD ENFORCEMENT AND INVESTIGATIONS  
 \*\*STATISTIC FIGURES CHANGED IN 1986 BECAUSE  
 OF A CHANGE IN REPORTING

FIGURE 1 AUGUST, 1991



Figure II shows the number of commercial vehicles registered before, during, and after deregulation. The increase of registered commercial vehicles fails to show economic impact of deregulation. Neither does it measure why the increase in Motor Carrier violation.

One of the main concerns of regulation has always been truck safety. Figure III shows the number of accidents involving trucks and other vehicles in fatalities and non-fatalities. Even though there are almost three times as many cars registered as trucks, trucks account for more than their share of accidents and deaths.

Deregulation of the Federal Motor Carrier Act of 1980 has been summarized by several authors as having completely removed entry restrictions for common and contract carriage. Most of the legal distinctions among common, contract, private and exempt motor carriage were essentially expunged.

The operating realities of the motor carrier industry cannot be changed or repealed by legislative fiat. The shippers needs require different types of motor carrier services. Carriage of bulk liquids, household goods, electronic equipment, explosives, automobiles, commercial steel, heavy equipment, refrigeration items, etc require dedicated specialized equipment and the management of motor carrier operations tailored to such commodity movements.<sup>15</sup>



FIGURE II

**MOTOR VEHICLE REGISTRATION IN TEXAS**  
(Texas State Department of Highways and Public Transportation Records)

YEAR	EXEMPT	PASSENGER	COMMERCIAL	FARM TRUCK	TRACTOR	BUS	MOTORCYCLE	TOTAL	LICENSED DRIVERS (DPS RECORDS)
1961	63,951	3,639,208	962,098	198,380	49,788	3,187	48,124	4,882,732	4,854,187
1962	68,569	3,832,445	703,597	200,808	50,882	3,067	48,492	4,905,848	4,884,898
1963	70,871	4,016,816	752,279	204,271	51,905	2,954	47,268	5,146,252	5,024,001
1964	75,008	4,197,483	808,875	205,482	52,887	2,440	50,510	5,382,675	5,255,516
1965	80,427	4,291,048	857,548	203,168	53,593	2,348	58,715	5,546,847	5,454,476
1966	82,648	4,440,214	913,488	202,256	55,387	2,288	73,588	5,788,834	5,587,709
1967	85,571	4,586,821	971,758	200,380	56,777	2,022	87,830	5,989,829	5,772,882
1968	90,138	4,799,870	1,062,828	199,491	58,323	2,001	94,153	6,306,804	5,849,128
1969	97,417	4,974,844	1,147,728	198,570	60,743	2,138	111,987	6,591,408	6,037,353
1970	102,001	5,093,251	1,213,979	192,955	61,562	2,208	145,786	6,811,723	6,436,035
1971	110,566	5,329,325	1,304,783	190,508	66,721	2,001	185,216	7,186,099	6,748,527
1972	121,889	5,570,578	1,408,424	187,403	73,028	1,884	215,333	7,578,325	7,038,307
1973	134,989	5,803,580	1,542,084	192,938	80,980	*7,716	247,852	8,009,857	7,257,031
1974	148,937	5,954,868	1,638,083	194,940	86,580	*9,674	287,855	8,301,587	7,487,588
1975	159,774	6,223,718	1,786,256	198,513	117,231	*10,448	272,803	8,748,741	7,743,779
1976	176,288	6,534,582	1,943,388	192,010	130,502	*11,513	287,419	9,255,698	8,071,824
1977	191,000	6,900,000	2,052,000	203,000	127,000	*12,000	283,000	9,788,000	8,411,588
1978	247,004	7,163,488	2,311,880	167,798	138,701	*11,123	212,980	10,250,984	8,783,888
1979	284,404	7,187,780	2,340,430	178,950	133,525	*12,258	290,228	10,385,574	9,137,812
1980	284,230	7,401,827	2,521,824	180,463	150,578	*11,838	313,545	10,844,205	9,486,220
1981	303,209	7,770,848	2,784,297	188,854	184,021	*13,056	335,285	11,517,149	9,878,538
1982	324,925	7,894,718	2,891,732	155,808	170,302	*14,888	334,681	11,788,854	10,383,285
1983	345,174	8,051,573	3,062,887	152,127	125,881	*12,731	322,989	12,073,142	10,889,981
1984	364,080	8,301,831	3,258,782	163,935	138,723	*12,983	309,008	12,538,142	10,981,232
1985	388,185	8,441,548	3,378,464	154,536	138,882	*12,856	277,561	12,788,030	11,141,583
1986	402,242	8,373,038	3,398,375	155,829	131,844	*12,221	248,715	12,722,086	11,354,340
1987	412,315	8,268,909	3,381,849	160,917	127,810	*11,656	226,038	12,589,293	11,468,453
1988	424,693	8,322,901	3,410,947	187,824	132,757	*11,548	207,976	12,678,444	11,519,345
1989	427,482	8,425,322	3,483,624	171,544	129,242	*11,181	187,887	12,816,082	11,545,858
**1990									11,832,547

\* Includes Private Buses which were previously carried under passenger classification.

\*\* Motor Vehicle Registration figures are not available from the Texas State Department of Highways and Public Transportation.



# VEHICLES IN MOTOR VEHICLE TRAFFIC ACCIDENTS BY TYPE OF VEHICLE

FIGURE III

NUMBER OF VEHICLES IN FATAL ACCIDENTS				
VEHICLE	1989		1990	
	RURAL	STATEWIDE	RURAL	STATEWIDE
Passenger Car	1034	2134	1007	2156
Passenger Car and Trailer	2	3	1	1
Passenger Car and House Trailer	0	0	0	0
Truck	885	1516	842	1463
Truck and Trailer	34	45	36	45
Truck Tractor and Semi-Trailer	182	268	159	236
Truck and House Trailer	1	1	2	3
Other Truck Combination	8	8	2	4
Farm Tractor	7	7	9	9
Road Machine	0	0	1	1
Bus	4	11	1	8
School Bus	6	7	3	9
Motorcycle	86	239	84	201
Motor Scooter or Bike	3	3	0	0
Moped	3	3	0	0
Vehicle Type Unknown	25	77	19	58
Total	2280	4322	2186	4194

NUMBER OF VEHICLES IN NON-FATAL ACCIDENTS				
VEHICLE	1989		1990	
	RURAL	STATEWIDE	RURAL	STATEWIDE
Passenger Car	74268	453422	72434	441517
Passenger Car and Trailer	215	529	217	483
Passenger Car and House Trailer	2	6	2	7
Truck	46922	203289	47901	205590
Truck and Trailer	1916	4379	1985	4377
Truck Tractor and Semi-Trailer	4716	13820	4396	12565
Truck and House Trailer	48	112	48	89
Other Truck Combination	339	891	306	815
Farm Tractor	173	222	175	217
Road Machine	34	95	19	69
Bus	97	1610	87	1610
School Bus	338	1277	352	1268
Motorcycle	1539	6519	1281	5430
Motor Scooter or Bike	78	161	61	134
Moped	33	288	28	187
Vehicle Type Unknown	967	11353	943	11708
Total	131663	697954	130233	686098



Common Carriage (Less-than-truckload)

Less-than-truckload is a very complex business requiring substantial capital investment, an extensive computer and telecommunications capability, and a highly skilled work force. Also, less-than-truckload operations of any magnitude require a terminal network. Even regional and intrastate less-than-truckload carriers must have adequate terminal networks. Small quantities of freight must be collected, combined, loaded, moved, unloaded, sorted, loaded again, moved again, unloaded again, sorted again etc, in the process of moving a shipment from its origin to its ultimate destination through one, two, three or more trucking terminals. Offering a nationwide service would take 300 or 400 or more terminals to fulfill the needs of shippers. The managing and scheduling of inbound and outbound line-haul movements must also establish pickup and delivery operations that require a different type of equipment than does line-haul over-the-road service.

Truckload Sector (Common, contract and private carriage)

Truckload shipments do not go through terminals; they move directly from the shipper's dock to the consignee's dock. Generally shippers use common, contract or even private carriage for truckload shipments depending on their



geographic pattern of shipments, their frequency, and the total tonnage moving. A shipper with only occasional truckload shipments to different locations would ordinarily use a common carrier for such movements. A shipper whose pattern of truckload movements could be fitted into the operations pattern of a particular contract carrier could almost always get a lower rate from such a contract carrier than from a common carrier. Finally, a shipper who had a bi-directional traffic balance of truckload shipments was a prime candidate for using private carriage, as were shippers who believed they needed to maintain very tight control over their shipments even if empty back hauls were involved.<sup>16</sup>

#### Private Carriage Sector

One of the primary objectives in deregulation was to help eliminate needless backhauls by private carriers who had been prevented from engaging in for-hire transportation since empty or almost empty trailers could not be filled. The experience of private fleets taking on for-hire carriage operations appears mixed. For example, whose needs come first? Is it the other shipper(s) whose goods are being transported for-hire, or is it the shipper's customers? Private carriers have encountered problems with "gravy revenue" by trying to serve two shippers.



The major gain for private carriage since deregulation has occurred in the area of intercorporate hauling, enabling private fleets to achieve greater utilization , thus lowering the total cost of such operations. This result was a major objection many companies who supported deregulation has realized.<sup>17</sup>

#### Exempt Carriage Sector

By reducing restriction on entry getting authority for exempt commodities is much easier and the exempt certificate will allow full interstate operation in and out of Texas.

#### Shippers

Deregulation has unquestionably benefited shippers in increased service availability and service options, including the very valuable opportunity to negotiate cost tradeoffs with carriers. Most of the benefits have been with larger shippers for the obvious reason, that they have the most equipment and service to offer.

#### The structure of the Texas Motor Carrier Act

The nature of the service provided, the types of items carried, and even the carrier and shipper financial arrangements are distinctions that are made. Motor carriers are classified as:

- a. Private Carrier: By reasons of exemptions are not regulated nor are they subject to the provisions of the Motor Carrier Act.



1. Operate wholly within one incorporated city or town and the unincorporated areas adjacent thereto.

2. Operated wholly within an incorporated city or town and all areas incorporated or unincorporated completely surrounded by such city or town, except oilfield equipment in unincorporated areas.

3. Operated wholly within an incorporated base city and the immediate contiguous incorporated cities or towns adjacent thereto.

4. Local transportation where the origin and destination are both within a commercial zone when such commercial zone has been established by order of the Railroad Commission.

a. The exemption in 4 above does not include:

1.) Vehicles transporting commodities in bulk in tank vehicles.

2.) All specialized motor carriers.

5. Persons engaged in the bonafide business buying and selling and transporting goods and wares when they hold good title to such goods and wares and when the transportation thereof is incidental to the sale of such goods and wares.



6. Persons transporting voting machines in the country.

7. Persons transporting fresh iced fish and shell fish from coastal production landing points to initial packing or freezing plants not more than 75 miles inland when such a person has filed a certificate of insurance with the Commission for each vehicle operated.

8. Persons transporting fresh fruits and vegetables and flax straw from place of production to initial packing or processing points within 75 miles of the place of production. Also persons transporting fresh fruits and vegetables and flax straw in the eleven counties of the Winter Garden and the lower Rio Grande Valley when the points of origin and destination are both within the counties named in the statues.

a. A certificate of insurance is required to be filed with the Commission for each truck transporting the above.

9. Persons driving his own leased commercial motor vehicle transporting specif road building materials in bulk to a construction project of a government agency when the material has been



processed by the lessee and the construction is being performed by the lessee on behalf of or for the governmental agency. (This applies to the one truck operator.)

10. Persons transporting livestock, wool, mohair, milk, and cream, fresh fruits and vegetables, and timber in its natural state under a bonafide consignment contract.

11. Consignee of a single marketer or refiner of petroleum products.

12. Wrecker type vehicles used incidental to the business of repairing, storing, etc, of wrecked vehicles.

13. Transportation of certain agricultural commodities in their natural state. A carrier transporting eligible agricultural commodities for compensation or hire for the original producer or grower, an independent ginning service, or producers's or growers's cooperative association, between any point of production, processing, or storage, or from any point of first manufacture, is not required to obtain a certificate of public convenience and necessity from the commission or to comply with tariffs or orders of the commission provided the carrier



holds an agriculture permit issued by the commission. Grain or rice elevator operators may hire persons with agriculture permits to transport eligible agriculture commodities.

a. Eligible agricultural commodities are determined by the Texas Railroad Commission.

1.) Application fee is \$25.00 payable to the Texas Railroad Commission; permit may be issued without a hearing for public convenience and necessity. The fee covers up to five motor vehicles.

2.) Permit is valid for one year from the date of issuance and cannot be transferred or sold.

3.) RRC shall issue a cab card to identify each vehicle covered by the permit and must be displayed to any authorized enforcement officer.

4.) Each shipment shall be accompanied by a properly executed "Agricultural permit consignor's bill of lading" and a properly



executed "Agricultural permit holder's way bill" on forms prescribed by RRC.

5.) Applicant must post liability insurance in the amount of \$500,000 and must file a complete list of all motor vehicles proposed to be used, including the make, unit number, and identification number.

14. Internal transportation of property by corporations is defined as a "Corporate Family" consisting of a group of corporations, including the parent corporation, and all subsidiaries in which the parent corporation owns directly or indirectly a 100 percent interest. The Texas Railroad Commission will be the agency that determines if a corporation is 100 percent owned by a parent corporation. This act allows transportation by a member of a corporate family for other members of the family, provided the following requirements are met.

a. Certificate of insurance is on file with the Texas Railroad Commission on each vehicle.



b. Notice of intent of transportation is on file with the Texas Railroad Commission.

c. Notice of intent is to be carried in cab of each vehicle.

15. A person or company transporting a mobile classroom or simulator driver education service is not a motor carrier provided they furnish the contracting agency with proof of insurance.

16. Any person transporting a permanent building or housing structure that does not have a wheeled undercarriage and was not designed to be transported over a highway.

B. For-hire Carriers. Persons with or without authority from the Railroad Commission transporting property for-hire and not specifically exempt are known as motor carriers and are subject to regulation by the Railroad Commission.

17. For-hire Motor Carriers: Means any person, firm, corporation, company, co-partnership, association or joint stock association, and their lessees, receivers, or trustees appointed by any court whatsoever



owning, controlling, managing, operating, or causing to be operated any motor-propelled vehicle used in transporting property for compensation or hire over any public highway in this state, where in the course of such transportation a highway between two or more incorporated cities, towns and villages is traversed. Property must be transported between or through two or more incorporated cities or towns to come under the provisions of the Motor Carrier Act.

- a. Exception: Property moving as oilfield equipment is regulated at anytime when operating upon a public highway outside the limits of an incorporated city or town. Water, mud, oil in bulk, and pipe for pipelines not classified as oilfield equipment under Section 1c of the act.
- b. The term "motor carrier" as defined in the uniform act does not include well servicing units and selfpowered drilling rigs.

Compensation, as referred to in Article 911b, may include any financial consideration paid to the motor carrier, or any credit or other thing of material value. Property must be transported on or upon a



furnishing driver, are deemed to be hauling for-hire. Driver must be furnished by lessee. Not applicable to operators of leased vehicles when leased to a certified carrier.<sup>18</sup>

### The three basic classes of Motor Carriers

#### 1. Common Carrier:

Usually transports general commodities for the general public over fixed routes and on fixed schedules. They charge rates by the Railroad Commission.

#### 2. Contract Carrier:

Contract carriers are limited to serving a maximum of ten shippers with whom they have formal contracts. Until 1989 they were limited to five shippers. Routes and schedules are not so restricted as with common carriers. The contract carrier in applying for authority must not only demonstrate need for his specialized and distinct type of service, but also must be able to demonstrate that the existing common carrier's ability to serve the public will not be jeopardized by the applicant's operations. The carrier normally specifies which items he will be carrying. Contract carriers are free to set their own rates, but these rates must be no lower than those set by the Railroad Commission for common carriers carrying



like commodities.<sup>19</sup>

### 3. Specialized Motor Carrier:

The specialized motor carrier is usually equipped to handle cargo which in some way requires special equipment to load, unload, for the safe transportation of certain commodities. Haulers of oilfield equipment, used household goods, tank trucks, dump trucks, refrigerated truck, etc make up this fleet of carriers. Specialized Motor Carriers are a special class of common carriers authorized to operate within a described area over irregular rates and on irregular schedules. Certain commodities and classes of commodities are specifically designated as appropriate to the specialized carrier. As the common carrier and contract carrier the Railroad Commission also regulates and publishes rates for specialized motor carriers.

Specialized Motor Carriers are limited to using the highways of the State of Texas in the transportation of commodities exempt under the Interstate Commerce Act, when the point of origin or the point of destination is outside the boundaries of the state of Texas when authority has been obtained from the Texas Railroad Commission. They are limited to specific items or commodities named on the certificate.



Territory and radius of pick up and delivery as per certificate is also limited.<sup>20</sup>

4. Limited Common Carrier:

This carrier operates over specified regular routes but, is limited on the commodities, equipment or weight of shipments which they can carry. Limited Common Carriers make up a relatively small proportion of the total carriers. Package express carriers such as Tex-Pac, Mistletoe Express and Purolator Carriers are typical examples of Limited Common Carriers.<sup>21</sup>

5. Motor Bus Carriers:

Motor Bus Carriers are primarily common carriers of passengers who operate on regular routes and schedules as well as charter service on irregular routes and schedules. Motor buses operate both interstate and intrastate also, provide package express service intrastate as as limited carrier.<sup>22</sup>

6. Highly Specialized Carrier:

Armored carrier is in reality a type of contract carrier and must produce contracts at the authority hearing. There are no limit on contracts they can produce at a hearing unlike other carriers which are limited. All other rules and regulations apply. Common carrier and specialized motor carrier rates are set by the Railroad Commission. The contract carrier



must use common carrier rates or specialized motor carrier rates (whichever is most comparable) as a minimum.<sup>23</sup>

The characteristics of the intrastate carriers are listed below.

<u>Characteristics</u>	<u>Common</u>	<u>Specialized</u>	<u>Contract</u>
commodities	general	specified	any named
routes	regular	irregular	irregular
schedules	specified	irregular	irregular
customers	public	public	any named <sup>24</sup>

#### Rates prescribed by Railroad Commission

All regulated carriers in Texas must adhere to the rates prescribed by the Railroad Commission. The Commissions rules, regulations, procedures and Texas statute require substantial factual proof to justify rate adjustments. Enforcement of rates are enforced by Railroad Commissions rate auditors.<sup>25</sup>

#### How to become a legal Motor Carrier:

To become a legal Motor Carrier a person must:

1. Prove that there is a public necessity for his services and that the public convenience would be served at a hearing scheduled by the Railroad Commission.
2. Purchase an existing certificate or permit.



3. Lease or obtain by assignment an existing permit or certificate.

4. Inherit a certificate or permit.<sup>26</sup>

#### Railroad Identification Cab Cards for Intrastate Carriers

1. One card issued to each truck or bus to be operated under a permit or a certificate.

2. Normally valid for one-year period unless prorated annual validity period depends on last digit of permit or certificate.

3. Must be renewed each year.

4. Must be displayed (original certificate) and identify the vehicle for which it was issued upon demand of any officer authorized to enforce the act and have attached a current copy of certificate or permit.

5. The annual fee for each motor vehicle to be operated by a regulated carrier is \$11.00, comprised of a \$10.00 statutory fee and a \$1.00 identification cab card fee. House Bill No 599 includes both Article 911a (Motor Bus Act) and Article 911b (Motor Carrier Act).<sup>27</sup>

#### Identification Markings

1. Regulated Motor Carriers must have in a conspicuous place on each side of the power unit in plainly legible print:



- a. The name of the carrier
- b. Unit number of the vehicle
- c. Number of the Railroad Commission certificate or permit.
- d. Letters and numbers not less than two inches in height and one-fourth in width in sharp color contrast to the background.

2. Interstate carriers covered by this section domiciled outside the state are not required to display upon a vehicle external indentifications other than those required by the Interstate Commerce Commission.<sup>28</sup>

Interstate Registration for Interstate Carriers

1. On or before the 31st day of January an interstate motor carrier must apply to the Texas Railroad Commission for the issuance of an identification stamp for the registration and identification of the vehicle or vehicles which it intends to operate without the borders of Texas. (Texas validating stamp current from February 1 through January 31 of the succeeding year.) A supplemental applicaiton for additional stamp may be made during the year as the need arises.<sup>29</sup>

2. Form B Cab Card application for the issuance of an identification stamp must, be filed with the Texas Railroad Commission. The application must be made on Form B and be duly completed and executed by an official of the Motor



carrier.<sup>30</sup>

3. Stamp fee is \$11.00 for each vehicle registered.

4. Identification of equipment requires each motor carrier to provide a list of vehicles with each form B application that is to be operated in Texas. The carrier must update within 15 days after motor carrier initiates or discontinues operation of a vehicle.

5. Cab Cards (NARUC) sometimes referred to as "Bingo cards" must be purchased from NARUC, Box 684, Washington, D.C. 20044.

#### Insurance

Public liability and property damage insurance will be required for all motor carriers operating as a interstate as well as a intrastate carrier. Evidence of this insurance must be filed on Form E and issued by an insurance company or surety company licensed and authorized to do business in the state of Texas. The company must be signed or countersigned by a local recording agent duly licensed by the State Board of Insurance. The minimum limits are (1) \$25,000 for injury or death of one person, (2) \$100,000 for bodily injuries to or death of all persons injured or killed in any one accident, and \$10,000 for damage to property of others.<sup>31</sup>

Motor carriers holding both interstate and intrastate authority and who have valid Texas cab cards issued for



their equipment showing such authority shall not be required to display a Texas stamp on the NARUC cab card. Carriers holding both interstate and intrastate authority may consolidate the two and operate with a cab card issued by the Texas Railroad Commission and under the provisions stated for an intrastate carriers.<sup>32</sup>

Fees for new authority

1. Common Carrier Certificate - \$25.00
2. Specialized Carrier Certificate - \$25.00
3. Contract Carrier Permit - \$10.00

Fees for renewal

1. Common Carrier Certificate - \$10.00
2. Specialized Motor Carrier Certificate - \$10.00
3. Contract Motor Carrier Permit - \$10.00

Fees collected for issuing identification cab cards for certificates or permits are probated monthly. Fees for issuing identification cab card is \$1.00 per year and is the same for all classes of motor carriers. This fee is not prorated. Fees for the application for the sale, lease, transfer, or assignment is the same as new authority for each class of motor carriers. If the sale, transfer, lease or assignment is approved by the Commission, an additional fee of 10% of the consideration paid for the sale, transfer, lease, or assignment is collected by the Commission.<sup>33</sup>



Cancellation of Certificates or Permits by the Railroad Commission

1. Failure to file certificates of insurance and equipment reports.

2. Failure to comply with any rule or regulation of the Commission.

3. Failure to pay renewal fees for certificates or permits.

4. Failure or refusal to pay fuel or other tax imposed by law on such business.

a. When cancelled by the Commission the owner may appeal the Commissions ruling to the district courts.<sup>34</sup>

Penalties (Article 911b-16 and 911;, VCS)

1. Transporting property for-hire without a certificate or permit is not less than \$100.00 nor more than \$200.00. Each violation shall constitute a seperate offense.

2. Failure to display identification cab card shall not be less than \$25.00 nor more than \$200.00.

3. Aiding and abetting a violation of the Motor Carrier Act filed in crimnnal court shall not be less than \$100.00 nor more than \$200.00.

4. Issuing or displaying a false or fictitious bill of lading or manifest shall be any sum not exceeding \$200.00.



5. Any motor carrier or any other person who makes any rebate or charges less than the prescribed rate or who demands or receives any rebate or lesser charge than that prescribed shall be fined any sum not to exceed \$200.00

6. Motor carrier failing to permit examination of records shall be fined any sum not exceeding \$200.00.

7. Motor carrier displaying any permit or certificate that has expired or has been cancelled shall be fined not less than \$25.00 nor more than \$200.00.

8. Any motor carrier or any other person who fails to comply with any rule or regulation, or who procures, aids, or abets any violation of this Act, or who violates any provision of this Act shall in addition to any other fines be subject to penalties not exceeding \$100.00 for each and every violation. In addition to the penalty provided, injunctive relief may be sought. Such penalties shall be recovered in any court of competent jurisdiction in the county in which the violation occurs. This is a civil action. Court costs are in addition to all above listed fines. All fines collected for violations of the Motor Carrier Act shall be paid to the State Treasurer.<sup>35</sup>

#### Our Texas Highways

The latest figures from The Texas Department of Highways and Public Transportation indicate the cost of new highways. This cost does not include repair. It must be



remembered that trucks use and abuse the highways the most, as will be noted later.

Farm to Market - Paved, 2 lanes, 12 ft each.

\$500,000 per mile 8 ft. shoulders, rated for

Average about 80,000 lbs, life expectancy 20 years

U.S. - 2, 2 lane highways as above

\$1,000,000 per life expectancy 20 years

Average

Interstate - 1/2 again as big life

\$1,500,000 per expectancy 20 years

Average

The above highways are being used by intra as well as interstate trucks who in many cases do not buy fuel in Texas and are able to use the highways of this state free of charge.<sup>36</sup>

#### How our highways wear out

A three year 27 million dollar study was performed by experts from universities, industry, federal agencies and state highway agencies, subsequent reports were also made and concluded that heavy loads are the main cause of road deterioration. As noted in these reports the right lanes of all highways have ruts caused by heavy loads. As shown in figure IV for an impact of what one 80,000 pound truck passing over the



highway has the equal effect of 9600 cars.<sup>37</sup>

As seen in figure V trucks have not and still do not pay their "fair share" of the highway use, especially for damage. Also, even though their share was increased, the federal government also increased the weight limit from 72,000 to 80,000, which further increased damage done by trucks.<sup>38</sup>

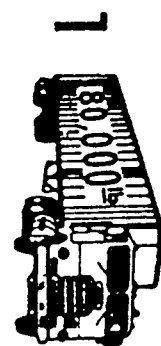
Who pays for upkeep?

Highway user taxes and fees, such as a gasoline and diesel taxes, registration fees at state and federal levels pay road maintenance. The people and their vehicles who actually travel these highways pay for the upkeep. Although 90% of the rehabilitation and reconstruction of interstate highways are paid by federal funds none of this money can be used on state highways. Therefore, all state highway maintenance must be done with state highway user taxes.<sup>39</sup>

Cars and light trucks are paying the extra cost not covered by trucks. Trucks pay the same fuel tax that cars and light trucks pay. Trucks could be charged tax by the state according to the weight they hauled and the mileage they drove could be audited as is already being done by Railroad Commission, Comptrollers office and Department of Public Safety License and Weight.



FIGURE IV



# EQUALS



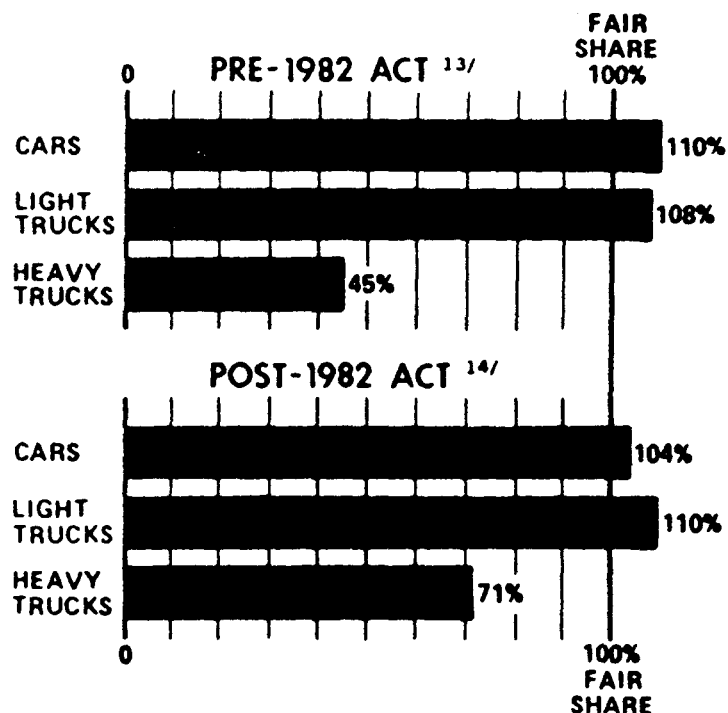
FIGURE V

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ARE THE HIGHWAY USER TAXES IMPOSED BY CONGRESS IN DECEMBER 1982, WHEN THE FEDERAL FUEL TAX INCREASED BY A NICKEL, FAIRLY ALLOCATED AMONG THE DIFFERENT CLASSES OF HIGHWAY USERS?

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**PARTIALLY.** The 1982 law shifted some additional burden toward heavy trucks, but not to the extent that they will pay their "fair share", as determined by the U.S. Department of Transportation's Cost Allocation Study.<sup>12/</sup> Even with the additional taxes added by the 1982 Surface Transportation Act, the heavy combination trucks will pay less than their "fair share" while cars and light trucks will pay more than their "fair share". This is illustrated by the accompanying graphical comparison.




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BUT WEREN'T HEAVY TRUCK TAXES GREATLY INCREASED BY THE 1982 SURFACE TRANSPORTATION ASSISTANCE ACT?

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**YES.** But even with that increase, as the above graph shows, the heaviest trucks will be paying only 71 cents for each \$1.00 of highway costs for which they are responsible. The truth is that for years the heavy trucks



## IV

Summary, Conclusions and Recommendations

Deregulation of the 1980 Federal Motor Carrier Act has caused continual debate about its effects. As with all regulations, all Motor Carrier Acts will be constantly tested, proved or disapproved or deregulated. The deregulation of the 1980 Motor Carrier Act effected only interstate trucking, but left some concern about what it has done to the state. Dr. Nickolas A. Glaskowsky, Jr. stated that "for all practical purposes the Motor Carrier Act of 1980 completely deregulated entry into common and contract carriage." Requirements for interstate authority is relatively easy to obtain compared to intrastate which has opened the door for interstate carriers to either load or unload inside the boundaries of Texas.<sup>40</sup>

Texas has been a leader in the Motor Carrier Regulation. As is noted in this report (page 26 ) Motor Carriers are separated into types and classes of carriers. Each carrier has different requirements according to the service they provide. Basic requirements of insurance, registration, and equipment as in interstate. The main difference is the acquiring of authority from the Railroad Commission. As noted in this report, several conditions must be met before authority can be issued in common,



contract and specialized motor carriage.

According to figure I, charges being filed by Texas Department of Public Safety in 1980 after deregulation had a surprising increase . Figure II shows the number of trucks registered as being an even trend. In fact, it appears that deregulation may not have had any effect on the economy as far as fleet increases. This author concludes that the word Deregulation was mistaken by truckers who thought that they no longer had to have any authority to operate. They also thought that when an exempt commodity was being carried, it also meant the haul was exempt from regulations.

Figure III shows the number of truck accidents, injury, and deaths. From the data, the conclusion is that the more trucks on the road, the more accidents will occur causing pain, life and economic loss. House bill 908 gave Texas the Department of Transportation Safety Regulations, and the commercial driver' license law for motor carriers. These bills are strictly safety bills geared toward the motor carrier industry to provide for a safer operation.

The Secretary of Transportation made a statement that it supports efforts in deregulation through elimination of all regulation of Interstate Commerce Commission. In this report, the Secretary also presents goals of his department which seem to contradict what elimination of all regulations may produce.<sup>41</sup>



The most interesting ruling was made by Fifth Circuit Judge Higginbotham. This case dealt with the authority of states to regulate above Federal regulation according to the law. In his ruling *Texas v. United States*, Judge Higginbotham stated "The Statutory division of power enacted by Congress permits and even invites the states to govern vigorously."<sup>42</sup>

Almost every book, article, report, etc., seem to start with deregulation in mind but ended by saying that the Texas' public will be the loser. According to Hendrick S. Houthakker is that "Although there is an excessive amount of regulation in a significant number of industries, this should be interpreted as evidence favoring regulatory reform, not necessarily regulatory abolition. Deregulation does not mean the absence of any regulation."<sup>43</sup>

It is the opinion of this author that rates seem to be a point of concern for deregulation, but I believe that only the shipper will benefit in the end. There are many requirements to be met for authority in *Texas v. Federal authority*. The courts have referred to the original intent and goals of the Texas Motor Carrier Act and ruled that Texas has the right to protect the people's interest. I believe that reregulation could bring about a better, fairer system when Motor Carriers pay by the mile and through registration. The requirements for intrastate motor



carriers is much more than interstate, but the damage by a 80,000 lb motor carrier is the same. According to the Department of Highways and Public Transportation, they are only about 10% of needed highways can be able to built and maintained due to lack of funds. I agree that reregulation is needed, not for the motor carriers or shippers but, for the people of Texas. All motor carriers should be required to pay their "fair share" both intra and interstate and when and only when they pay more than their share, will deregulation be in order.<sup>44</sup>



✓  
END NOTES

<sup>1</sup> Huff, David L. 1990. Perspectives on the Regulating of Trucking in Texas. Business Administration; University of Texas. P 1-2

<sup>2</sup> Glaskowsky, Nicholas Jr. 1989. Effects of Deregulation on Motor Carriers. Professor of Management and Logistics in the School of Business Administration; University of Miami (Florida). P 2

<sup>3</sup> Ibid. P 3

<sup>4</sup> Huff, Regulation of Trucking. P 3

<sup>5</sup> Statues at Large, Volume 49, Transportation, Federal Motor Carrier Act of 1935. P 543-563

<sup>6</sup> Huff, Regulation of Trucking. P 16

<sup>7</sup> Statues at Large, Volume 94, Transportation, Federal Motor Carrier Act of 1980. P 793-826

<sup>8</sup> Vernon's Revised Civil Statues of the State of Texas, Article 911b, Motor Carrier Act. Volume 2 P

<sup>9</sup> Ibid. P 321      <sup>10</sup> Ibid. P 321

<sup>11</sup> Ibid. P 325

<sup>12</sup> Texas Department of Public Safety, Training manual, Section 7, Part 3, P 1 .

<sup>13</sup> Texas Department of Public Safety, Traffic Law Enforcement Manual, Part II, Chaper 7, P 7-2



- 14Glaskowsky, Effects of Deregulation, P 69
- 15Ibid. P 5    16Ibid. P 5    17Ibid. P 6
- 18Texas Department of Public Safety Enforcement manuel  
P 7-13
- 19Ibid. P 7-7, 7-13
- 20Huff, Regulation of Trucking. P 20
- 21Ibid. P 50-51    22Ibid. P 51
- 23Ibid. P 53    24Ibid. P 53    25Ibid. P 55
- 26 Texas Department of Public Safety, Traffic Law  
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- 30Ibid. P 30    31Ibid. P 7-8    32Ibid. P 7-8
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- 36Texas Department of Highways and Public Trans-  
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- 41Moving America New Directions, New Opportunities, A  
Statement of National Transportation Policy, Strategies for  
Action, Feb 1990. P 69    .
- 42Sub committee on highway transport P 11



<sup>43</sup>Hendrick S. Honthakker, Deregulating American Industry, Legal and Economic Problems, May 1976. P. 6-7

<sup>44</sup>Texas Department of Highways and Public Transportation. Austin, 1991



Texas Department of Public Safety, Training Manual,

Section 7, Part 3.

Vernon's Revised Civil Statutes of the State of Texas,

Article 911b, Motor Carrier Act. Volume 2