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April 29, 2019

The Honorable Lawrence J. Hogan, Jr.
Governor of Maryland
State House
100 State Circle
Annapolis, Maryland 21401

***RE: House Bill 671 and Senate Bill 712 - Household Goods Movers
Registration***

Dear Governor Hogan:

We have reviewed and approve House Bill 671 and Senate Bill 712, "Household Goods Movers Registration" for constitutionality and legal sufficiency. We write to discuss the scope of the bill.

The legislation contains the following prohibition:

A person may not provide or offer to provide household goods moving services in the State using a commercial motor vehicle, as defined in 49 C.F.R. 390.5 of the Federal Motor Carrier Safety Regulations, unless the person is registered as a household goods mover under this title.

The federal regulation referred to defines "commercial motor vehicle" as

any self-propelled or towed motor vehicle used on a highway in interstate commerce to transport passengers or property when the vehicle—

- (1) Has a gross vehicle weight rating or gross combination weight rating, or gross vehicle weight or gross combination weight, of 4,536 kg (10,001 pounds) or more, whichever is greater; or
- (2) Is designed or used to transport more than 8 passengers (including the driver) for compensation; or

- (3) Is designed or used to transport more than 15 passengers, including the driver, and is not used to transport passengers for compensation; or
- (4) Is used in transporting material found by the Secretary of Transportation to be hazardous under 49 U.S.C. 5103 and transported in a quantity requiring placarding under regulations prescribed by the Secretary under 49 CFR, subtitle B, chapter I, subchapter C.

Because the definition includes the phrase “motor vehicle used on a highway in interstate commerce to transport passengers or property,” a question has been raised as to the scope of the registration requirement. One possible interpretation is that because the relevant federal regulation is limited to vehicles used in “interstate commerce,” the legislation is invalid under the Commerce Clause and also preempted because the federal government regulates interstate household goods movers. Another interpretation is that the scope of the legislation is for vehicles falling within the size and type outlined in (1)-(4) above when used to provide household goods moving services within the State. An examination of the context and purpose of the legislation, together with the legislative history, shows that the latter interpretation is the correct one.

The State already regulates persons providing household goods moving services. The Household Goods Moving Services Act defines those services as “the loading, packing, moving, transporting, storing while in transit, unloading, or otherwise taking possession or control from a consumer of household goods for the purpose of moving them to another location at the direction of the consumer for a fee.” Commercial Law Article (“CL”), § 14-3101(f)(1). Under the Act, “[a] household goods mover may not enforce or threaten to enforce a carrier’s lien against, or refuse to deliver, a consumer’s household goods when providing household goods moving services for an intrastate move.” CL § 14-3102. Further, the Act requires a written estimate of charges and limits the amount over the written estimate that a consumer is obligated to pay. CL § 14-3103. A violation of the Act is an unfair and deceptive trade practice. CL § 14-3105.

The sponsors of the bills, as well as those testifying on the sponsor panels in support of the bill spoke of the problem of “rogue” movers who engage in bad practices such as overcharging consumers and refusing to deliver goods until extra fees are paid. In addition, the supporters of the legislation indicated that many of the rogue movers are difficult to track down in many cases. The sponsors and supporters went on to indicate that the purpose of the legislation was to assist consumers in two ways. The first was to enable consumers to hire movers who are validly registered with the State. The second was to better enable the Consumer Protection Division (“CPD”) to enforce the Household Goods Moving Services Act by providing information about those who perform these services.

Under federal law, persons using commercial motor vehicles in interstate commerce are regulated by the Federal Motor Carrier Safety Administration. According to the legislative record for House Bill 671 and Senate Bill 712, 560 moving companies in Maryland are registered with the Federal Motor Carrier Safety Administration. Thus, if one of these companies performs intrastate services, the CPD is able to use information from the federal registration to enforce the State law. According to testimony at the hearing, however, there are many movers performing services in the State who are not registered with the Federal Motor Carrier Safety Administration because they do not engage in interstate activities. Thus, requiring registration with the State will fill in that gap.

Regarding statutory construction, the Court of Appeals has explained,

Our ultimate objective is to ascertain “the real intention of the Legislature.” We start by looking at the statute’s plain language, “reading the statute as a whole to ensure that no word ... is rendered [meaningless].” “If the plain language of the statute is ... unambiguous, the process ends,” and we “apply the statute as written.” If, however, the statute’s words are ambiguous, then we utilize additional sources to aid our analysis, including “legislative history, prior case law, statutory purpose and statutory structure.” “Throughout this process, we avoid constructions that are illogical[,] nonsensical[,]” or overly stringent.

Baltimore City Detention Center v. Foy, 461 Md. 625, 637-38 (2018) (citations omitted). Here, as mentioned previously, the plain language of the legislation does not limit the scope to vehicles used in interstate commerce. Rather, the federal regulation that is incorporated by reference uses that term. At most, the reference creates an ambiguity as to whether the registration is limited to vehicles used in interstate commerce. Nevertheless, the purpose of the legislation and the legislative history are clear that type and size of commercial vehicle definitions were incorporated from the federal regulation, not a requirement that the vehicle be used in interstate commerce.

It makes no sense to read the legislation as requiring registration only for vehicles used in interstate commerce. First, the purpose of the legislation was to require registration of persons engaging in household goods moving services, which as regulated under current law involve intrastate moves. Second, such a limitation would have no additional benefit for Maryland consumers as those movers are already registered with the Federal Motor Carrier Safety Administration and that information is currently available. Moreover, testimony during the Senate committee hearing indicated that the federal regulation was used to limit the reach to “large type commercial vehicles, not pick-up trucks.” As a result,

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the more reasonable reading in the context of the purpose of the legislation and the existing regulatory scheme is that the scope of House Bill 671 and Senate Bill 712 is for those commercial vehicles providing household goods moving services within the State who would have had to register if they performed those services in interstate commerce. *See Kaczorowski v. Mayor and City Council of Baltimore*, 309 Md. 505, 516 (1987) (“The purpose, in short, determined in light of the statute’s context, is the key. And that purpose becomes the context within which we apply the plain-meaning rule. Thus ““results that are unreasonable, illogical or inconsistent with common sense should be avoided ... with the real legislative intention prevailing over the intention indicated by the literal meaning.””) (citations omitted).

Finally, we note that the Maryland Department of Transportation uses the federal definition of “commercial vehicle” in other contexts. The agency’s website states in response to a question about the definition of commercial vehicle that “[t]he Federal Motor Carrier Safety Regulations have defined a commercial motor vehicle (CMV) Maryland has adopted this definition for commercial vehicles that operate only within state boundaries (intrastate).” The answer goes on to set out the definition in 49 C.F.R. 390.5. *See also* COMAR 11.21.01.02, incorporating by reference Federal Motor Carrier Safety Regulations.

In summary, it is our view that the scope of House Bill 671 and Senate Bill 712 is for vehicles falling within the size and type set out in the relevant federal regulation but used to provide household goods moving services within the State.

Sincerely,



Brian E. Frosh
Attorney General

BEF/SBB/kd

cc: The Honorable John C. Wobensmith
Chris Shank
Victoria L. Gruber