

CHAPTER 39. BROKERS

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Authority

The provisions of this Chapter 39 issued under the Public Utility Code, 66 Pa.C.S. § 501, unless otherwise noted.

Source

The provisions of this Chapter 39 adopted January 28, 1977, effective February 14, 1977, 7 Pa.B. 251, unless otherwise noted.

§ 39.1. Applicability.

This chapter is promulgated under 66 Pa.C.S. §§ 2501—2509 (relating to contract by motor vehicle and broker), in respect to the regulation of brokers.

§ 39.2. Definitions.

The terms “broker,” “Commission,” “common carrier by motor vehicle,” “contract carrier by motor vehicle,” and “person” is defined in 66 Pa.C.S. §§ 102 and 2501 (relating to definitions; and declaration of policy and definitions).

§ 39.3. Records to be kept by property brokers.

A property broker shall keep and maintain for a period of 3 years a record of a transaction in which he participates, which record shall include for a transaction the following information:

- (1) Name and address of consignor.
- (2) Name, address and the lead or principal docket number of the originating motor carrier.
- (3) Bill of lading or freight bill number or both.

- (4) Description of commodity or commodities, weight, rate and tariff reference.
- (5) Date of shipment.
- (6) Origin and destination of shipment.
- (7) Information on claims filed.

§ 39.4. Records to be kept by passenger brokers.

A passenger broker shall keep and maintain for a period of 3 years a record of transactions participated in as a broker, which records shall include the following information:

- (1) The points of origin and destination for a ticket sold.
- (2) The name, address and the lead or principal docket number of the carrier for which the ticket is sold.
- (3) The amount received from the passenger, including an amount, stated separately, for the transportation of baggage or another service accessorial to the transportation of the passenger.
- (4) The payment made to a carrier by motor vehicle served by the broker, referring to date and check number.
- (5) The amount of the commissions earned by the broker for sale of transportation, for a carrier and division of payment.

§ 39.5. Carrier's operating authority.

In the execution of a contract, agreement or arrangement to sell, provide, procure, furnish or arrange for a transportation of passengers or property by a carrier, no broker may employ or engage a carrier who or which is unable to lawfully provide the transportation under his contracts, agreements or arrangements therefor.

§ 39.6. Charge for services by property brokers.

- (a) A property broker shall maintain and keep open for public inspection, at a place of business which he maintains, a schedule stating his maximum charge for a brokerage service which he holds out to perform.
- (b) No broker may charge or collect more for a brokerage service than his maximum charge therefor as contained in his schedules maintained under subsection (a).

§ 39.7. Charges for nonbrokerage services by property brokers.

- (a) A property broker shall maintain and keep open for public inspection, at a place of business which he maintains, schedules:
 - (1) Stating his minimum charge for a nonbrokerage service which he holds himself out to perform for shippers, consignors or consignees.
 - (2) Stating his maximum charge for a nonbrokerage service which he holds himself out to perform for carriers.

(b) No broker may furnish a nonbrokerage service other than those for which the minimum or maximum charge is contained in his schedule, nor may a broker charge or collect from a shipper, consignor or consignee any less or from a carrier any more, for a nonbrokerage service performed, than his minimum or maximum charge for the service as contained in his maintained schedules.

§ 39.8. Misrepresentation.

(a) No broker may perform a brokerage service or hold himself out to perform the service, by advertisement or otherwise, in a name other than that in which his license is issued.

(b) No broker may directly or by implication represent himself to be a carrier in respect to a service which he does not hold authority as a carrier to perform.

(c) No broker may advertise an offer of service as a broker without showing in the advertisement his status as a broker in type which is clear and bold and equally as large as the other type in the same advertisement.

Notes of Decisions

Advertisement

Evidence supported the administrative law judge's determination that common carrier acted as an unlicensed broker where the carrier's activities included advertising tours and arranging transportation, meals, admission tickets and lodging for points originating outside the scope of the carrier's certificate going to points in Pennsylvania and returning to points outside the certificated areas. Moreover, all of the carrier's advertisements promoted common carrier's company and therefore if the carrier was in fact an agent for another, then the carrier's advertisements should have promoted that principal. *Waddington v. Pennsylvania Public Utility Commission*, 670 A.2d 199 (Pa. Cmwlth. 1995); appeal denied 678 A.2d 368 (Pa. 1996).

§ 39.9. Billing by brokers.

(a) No broker may, in a name except that of a carrier, issue a bill of lading, freight bill or other document which is appropriate only for use by a carrier transporting or agreeing to provide transportation service.

(b) No broker may issue an order for service or another document appropriate for use by carriers or other brokers which does not clearly show the name and address of the issuing broker and that it is executed by a broker of transportation, in type which is clear and bold and equally as large as the name of the issuing broker.

§ 39.10. Rebating.

(a) No broker may charge or receive compensation from a carrier for brokerage service performed in connection with a shipment which he owns, in which he has a material interest, the routing of which he controls by reason of affiliation with a carrier as defined in the act or nonbrokerage relationship to the traveler, the shipper, consignor or consignee as traffic consultant or otherwise, or

which he controls by reason of his performance for the traveler, shipper, consignor or consignee of nonbrokerage services.

(b) No broker may pay, give or offer to pay or give, directly or indirectly, anything of value, except ordinarily used inexpensive advertising specialties, to a traveler, shipper, consignor, consignee or to an officer or employe of a traveler, shipper, consignor or consignee.

§ 39.11. Duties and obligations of brokers.

(a) A broker shall fairly protect the interest of a shipper/traveler employing his services, by providing or advising the shipper/traveler of the transportation services which, because of rates, schedules, type of motor carrier, or otherwise, will best meet the needs of the shipper/traveler and no broker may misrepresent or make false promises to a shipper/traveler with respect to the service rendered or to be rendered by a carrier.

(b) No broker may knowingly misrepresent to a carrier the transportation to be provided or otherwise give to a carrier incorrect information which may affect the applicable charges for a particular transportation services.

(c) No broker may charge or accept compensation from both a shipper/traveler and a carrier in connection with the same transportation for brokerage service without first advising both parties in writing of the amount and basis for the charge or payment by the other.

(d) A broker shall exercise diligence to carry out an undertaking to arrange for desired transportation, to carry out the terms of its arrangements with a shipper/traveler or carrier and to pay promptly money received by him for the shipper/traveler or carrier.

(e) A charge collected by a broker of property shall be paid in full to the carrier employed by him, without deduction for an amount due to him from the carrier.

Notes of Decisions

Misrepresentation

Evidence supported the administrative law judge's determination that common carrier acted as an unlicensed broker where the carrier's activities included advertising tours and arranging transportation, meals, admission tickets and lodging for points originating outside the scope of the carrier's certificate going to points in Pennsylvania and returning to points outside the certificated areas. Moreover, all of the carrier's advertisements promoted common carrier's company and therefore if the carrier was in fact an agent for another, then the carrier's advertisements should have promoted that principal. *Waddington v. Pennsylvania Public Utility Commission*, 670 A.2d 199 (Pa. Cmwlth. 1995); appeal denied 678 A.2d 368 (Pa. 1996).

§ 39.12. Transfer of brokers' licenses.

A license issued a broker may be transferred, if approved by the Commission, upon application and proof that the transferee is fit, willing and able to perform the duties and that the transfer is not contrary to the public interest.

§ 39.13. [Reserved].**§ 39.14. Accounting.**

A property broker who engages in another business, whether as a carrier, warehouseman or otherwise, shall keep and maintain his records in a manner that the revenues and expenses pertaining to his brokerage operations will be separated from those of his other operations. Expenses that are common to his brokerage and other operation shall be allocated to each on an equitable basis, and the broker shall be prepared to show and to report to the Commission when required the allocation of the common expenses and the basis of the allocations.

§ 39.15. Security for the protection of the public.

No broker may be issued a broker's license unless the broker has furnished a bond or other security approved by the Commission, in an amount of not less than \$10,000 and in a form as will insure the financial responsibility of a broker and the supplying of a financial responsibility of an authorized transportation under the contract agreement or arrangement therefor.

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