



LAWS OF ALASKA

1970

Source

Chapter No.

HCS CSSE 271 am H

107

AN ACT

Relating to the regulation of motor freight carriers.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:

* Section 1. AS 42.10.020 is amended by adding a new paragraph to read:

(4) vehicles operated by a construction contractor while performing such a business as defined in sec. 420(12) of this chapter except that weight fees in an amount as provided by sec. 240 of this chapter shall be paid for each vehicle designed to be operated on a public highway.

* Sec. 2. AS 42.10.090 is amended to read:

Sec. 42.10.090. REGULATION OF PRIVATE AND EXEMPT CARRIERS. The commission shall

(1) supervise and regulate every private carrier and exempt carrier as to its safety of operation;

(2) require every private carrier and every exempt carrier except as provided in sec. 20(4) of this chapter to file information required by the commission to carry out this chapter, and supervise and regulate each private carrier in all other matters affecting its relationship with shipping and the general public.

* Sec. 3. AS 42.10.130(c) is repealed and re-enacted to read:

(c) Except as provided in (a) and (b) of this section a permit shall be issued to any qualified applicant, authorizing the whole or a part of the operations covered by the application, if the proposed service is or will be required by the present or future public convenience or

necessity; otherwise the application shall be denied.

* Sec. 4. AS 42.10.160 is repealed and re-enacted to read:

Sec. 42.10.160. FEES. A filing fee of \$50 shall be paid with each application for a permit, temporary permit, or for extension or transfer of a permit.

* Sec. 5. AS 42.10.220 is repealed and re-enacted to read:

Sec. 42.10.220. TRANSFER OF PERMITS. (a) Transfer of a permit will be permitted upon compliance with the rules of the commission. Commission approval, if in the public interest, is required in any of the following instances:

(1) transfer from one business entity to another business entity, be it a sole proprietorship, partnership, corporation or joint venture;

(2) merger;

(3) consolidation;

(4) acquisition by one or more persons of a controlling interest in a carriers firm, by purchase, by acquisition of stock, or by any other means.

(b) Only those rights which are shown to have been in active and regular use may be transferred. The transferor shall certify to the commission that the authority contained in the permit has been in reasonably continuous and active use as to the territory or routes authorized to be served and as to the various services authorized to be rendered by the carrier. The commission may require documentary evidence in support of the transfer of the permit. Dormant operating rights of the transferor may not be transferred unless the commission finds that the service is needed for the public convenience and necessity, and that the transferee will provide such service.

(c) No transfer may be granted until

(1) all unpaid claims for loss or damage arising out of the carrier's operations have been paid or until such claims have been secured by the transferor's insurance carrier, or by satisfactory bond, or after settlement approved by the commission as satisfactory for the protection of all claimants; and

(2) all money due shippers or other parties entitled to receive the same for shipments performed on a C.O.D. basis have been paid.

* Sec. 6. AS 42.10 is amended by adding a new section to read:

Sec. 42.10.225. DISCONTINUANCE OR ABANDONMENT OF PERMITTED OPERATIONS AND TEMPORARY SUSPENSION. (a) No common carrier may discontinue or abandon an operation or part of an operation for which a permit has been issued by the commission unless, upon application of the carrier and after notice and opportunity for hearing, the commission

finds that discontinuance or abandonment will not materially harm the public interest. Any interested person may file with the commission a protest or memorandum of opposition to or in support of discontinuance or abandonment. The commission may authorize temporary suspension of an operation or part of an operation.

(b) The commission may, at the request of a common carrier suspend its permit for a definite period of time, not to exceed 180 days.

(c) Upon suspension of a permit it is unlawful for the carrier to conduct any operation for which a permit is required.

(d) The unauthorized failure for a period of 90 calendar days to conduct operations, to file a tariff, or to pay a required regulatory fee, shall create a presumption that the permit is abandoned and the commission shall institute proceedings to revoke the permit.

(e) Upon complaint or upon its own motion, the commission may re-investigate a previously authorized discontinuance, abandonment or suspension of an operation of a common carrier. If, after providing notice and an opportunity for a hearing, the commission finds that the public convenience and necessity require the service to be resumed, it may order the carrier to reinstate the operation.

* Sec. 7. AS 42.10.230 is repealed and re-enacted to read:

Sec. 42.10.230. MODIFICATION, SUSPENSION OR REVOCATION OF PERMITS. Upon complaint or upon its own initiative the commission, after notice and opportunity for hearing and for good cause shown, may amend, modify, suspend, or revoke a permit, in whole or in part. Good cause for amendment, modification, suspension or revocation of a permit includes but is not limited to any of the following:

(1) as the public convenience and necessity may require;

(2) misrepresentation of a material fact in obtaining the permit;

(3) unauthorized discontinuance or abandonment of all or part of the carrier's operation;

(4) failure to comply with the provisions of this chapter, the rules, regulations or orders of the commission, the motor vehicle laws of the state or the laws or regulations of the United States;

(5) failure to comply with a term, condition, or limitation of the permit.

* Sec. 8. AS 42.10.240 is repealed and re-enacted to read:

Sec. 42.10.240. WEIGHT FEES. (a) Every common carrier, contract carrier, private carrier and exempt carrier as described in sec. 20(4) of this chapter including those operating motor vehicles not otherwise registered or licensed in the state, and every person who rents or

leases motor vehicles to common, contract or private carriers, shall pay the following weight fees each year for each motor vehicle owned or operated by it on the public highways of the state:

(1) motor vehicles of private carriers and exempt carriers as described in sec. 20(4) of this chapter, except those of persons who rent, lease or otherwise provide a motor vehicle for use of motor carriers, weighing over 4,000 pounds.....\$25

(2) motor vehicles of common carriers, contract carriers and of private carriers excepted in (a)(1) of this section weighing:

(A) 12,000 pounds or less.....\$35

(B) 12,001 - 18,000 pounds..... 55

(C) over 18,000 pounds..... 75

(b) Weight fees for each motor vehicle shall be based upon the maximum gross unladen weight of the vehicle as set by the carrier in its application to the state for vehicle license plates, or in the case of motor vehicles not otherwise licensed, the unladen weight established by the manufacturer.

(c) Weight fees on motor vehicles regularly licensed and registered in the state shall be paid to the commissioner of revenue at the same time that the regular annual license fee is paid. Weight fees on motor vehicles not otherwise licensed in the state shall be paid to the commission.

(d) The commission shall publish regulations providing for the exemption of all vehicles under 5,000 pounds maximum gross unladen weight which are not used in the transportation of goods as a common, contract or private carrier.

* Sec. 9. AS 42.10.250 is amended to read:

Sec. 42.10.250. CLASSIFICATION OF CARRIERS. The commission may from time to time establish just and reasonable classifications of the groups of carriers included in the terms common carrier and contract carrier as the special nature of the services performed by them requires, and just and reasonable classifications of the property to be transported and services to be performed by carriers included within such groups, and just and reasonable rules, regulations, and requirements to be observed by the carriers classified or grouped, as the commission considers necessary or advisable in the public interest.

* Sec. 10. AS 42.10.280(a) is amended to read:

(a) A contract carrier authorized to transport commodities in bulk in dump-type equipment shall file with the commission, and print and keep open to public inspection, schedules showing the minimum rates and classifications for the transportation of property within the state.

* Sec. 11. AS 42.10.285 is repealed and re-enacted to read:

Sec. 42.10.285. SUSPENSION OF TARIFF FILING OR CONTRACT. (a) Whenever a common or contract carrier files a contract or tariff containing a new or revised rate, classification, rule, regulation, or practice, the commission may, upon complaint or upon its own motion, upon reasonable notice, order an investigation and a hearing concerning the lawfulness of the proposed change.

(b) Pending completion of the investigation and hearing and a decision thereon, the commission, by order stating the reasons for its action, may from time to time suspend the operation of the contract or tariff change and defer its effective date but not for a longer aggregate period than 180 calendar days.

(c) After hearing, whether completed before or after the rate, classification, rule, regulation, or practice goes into effect, the commission may issue orders granting, denying or modifying the tariff change in whole or in part.

(d) At a hearing involving a proposed contract or tariff change, whether the change is suspended or not suspended, the burden of proof to show that the change is lawful shall be upon the carrier. The commission shall give to the hearing and decision of these questions priority over other questions pending before it and render its decision as speedily as possible.

* Sec. 12. AS 42.10.290 is repealed and re-enacted to read:

Sec. 42.10.290. TARIFF CHANGES. (a) Unless the commission otherwise orders, no change may be made by a common carrier in its rates, classifications, rules, regulations, or practices or in a contract or agreement relating to a rate, classification, rule, regulation, or practice except after 30 days notice to the commission and to the public. Notice shall be given by filing with the commission and keeping open for public inspection the revised tariff provisions which shall plainly indicate the changes to be made in the schedules then in force and the time when the changes will go into effect. The commission may prescribe additional means of giving notice. The commission, for good cause shown, may allow changes to take effect on less than 30 days notice under such conditions as the commission may prescribe.

(b) Tariff changes shall be filed in the manner provided in sec. 280(b) of this chapter.

(c) Upon the filing of a contract or tariff change, the commission, upon complaint or upon its own motion, without notice, may initiate an investigation of the reasonableness and lawfulness of the change.

* Sec. 13. AS 42.10.310 is repealed and re-enacted to read:

Sec. 42.10.310. ADHERENCE TO TARIFFS. (a) No common carrier may, directly or indirectly, demand or receive a greater or lesser rate for a service provided or to be provided by it or extend privileges or facilities

for transportation affecting the value of the transportation than those specified in its tariff and filed in the manner provided in this chapter. The rates specified in its properly filed tariffs shall be the lawful rates of a common carrier until changed in the manner provided in this chapter.

(b) No contract carrier of commodities in bulk in dump-type equipment may, directly or indirectly, demand or receive a lesser rate for a service provided or to be provided by it or extend privileges or facilities for transportation affecting the value of the transportation than those specified in its tariffs and filed in the manner provided in this chapter. The minimum rates specified in its properly filed tariffs shall be the lawful minimum rates of such carrier until changed in the manner provided in this chapter.

* Sec. 14. AS 42.10 is amended by adding a new section to read:

Sec. 42.10.315. APPROVAL OF CONTRACTS; CONTRACT RATES TO BE CHARGED. (a) Each contract carrier, other than carriers of bulk commodities in dump-type equipment, shall file with the commission all contracts relating to the transportation of property. A contract shall show the rates to be charged and all practices called for or contemplated in its performance which would affect the value of, or the rate for the service to be performed. No carrier may commence performance under a contract until the contract has been approved by the commission.

(b) No contract carrier may, directly or indirectly, demand or receive a lesser rate for a service provided or to be provided by it under a contract, or extend privileges or facilities for transportation affecting the value of the transportation, than those specified in the contract and filed in the manner provided in this chapter.

(c) The commission may examine the records of carriers operating under this chapter and of persons employing the services of a carrier for the purpose of discovering discrimination, undercharges, or overcharges and rebates. The commission may, after hearing or opportunity for hearing, suspend or revoke a permit for a violation of this section.

* Sec. 15. AS 42.10 is amended by adding a new section to read:

Sec. 42.10.355. COMPLAINTS AND POWER OF COMMISSION TO FIX RATES. (a) Any person may make complaint in writing under oath to the commission that an individual or joint rate, classification, regulation, or practice of a common carrier is or will be in violation of this chapter or a regulation or order of the commission. A complaint shall state fully the facts complained of and the reasons for complaint.

(b) Whenever the commission, after an investigation and hearing upon complaint or upon its own motion, finds that a rate, demanded, observed, charged or collected by a common carrier for a service, subject to the jurisdiction of the commission, or that a classification, rule, regulation, practice, or contract affecting the rate, is unjust,

unreasonable, unduly discriminatory or preferential, the commission shall determine a just and reasonable rate, classification, rule, regulation, practice, or contract to be thereafter observed and in force, and shall fix the same by order.

* Sec. 16. AS 42.10 is amended by adding new sections to art. 7 to read:

ARTICLE 7. JUDICIAL REVIEW, PENALTIES
AND ENFORCEMENT.

Sec. 42.10.391. EFFECT OF RULES, REGULATIONS AND ORDERS. Rules, regulations and orders adopted and issued by the commission in accordance with this chapter have the effect of law.

Sec. 42.10.392. REVIEW AND ENFORCEMENT. (a) All final orders of the commission are subject to judicial review in accordance with AS 44.62.560 - 44.62.570 of the Administrative Procedure Act.

(b) The commission may apply to the superior court for enforcement of this chapter, the rules and regulations adopted under it and the orders of the commission. If the court determines that the statute, rules and regulations are valid and that the order was regularly and validly made and duly issued, it may enforce the order by injunction or other process.

Sec. 42.10.393. VIOLATION A MISDEMEANOR. Any person (whether or not a motor carrier or an officer, agent, or employee of a motor carrier) who knowingly fails, omits, neglects or refuses to comply with a provision of this chapter or a rule, regulation, order or decision of the commission, or an order of the commission prescribing temporary rates in a rate proceeding, or a final order or decree of a court, or who knowingly procures, aids, or abets any such violation, omission, failure, neglect, or refusal, is guilty of a misdemeanor, and upon conviction, shall be sentenced to pay the costs of prosecution and a fine of not more than \$500 for each offense.

Sec. 42.10.394. CIVIL PENALTIES FOR VIOLATION OR NONCOMPLIANCE. In addition to any other civil penalties and remedies provided by law the commission may levy a civil penalty of not more than \$150 for each offense upon a motor carrier and each officer, director, agent, or employee of a motor carrier who violates (including failure to obey or comply with), or who procures, aids, or abets, a violation by a motor carrier of a provision of this chapter, an order, decision, rule, or regulation of the commission.

Sec. 42.10.395. EACH VIOLATION A SEPARATE OFFENSE. Each violation of the provisions of this chapter or of an order, decision, rule, or regulation of the commission by a motor carrier or other person is a separate and distinct offense, and in case of a continuing violation each day's continuance is a separate and distinct offense.

Sec. 42.10.396. COMMISSION TO DETERMINE AND LEVY CIVIL PENALTY. When the commission finds, after providing notice and an opportunity to be heard, that a motor carrier,

its officers or agents or other person has been in violation or procured, aided or abetted a motor carrier in a violation as defined in secs. 394 and 395 of this chapter, the commission shall determine the extent and duration of the violation, the circumstances under which it occurred and the amount of the civil penalty, if any, to be levied. A levy of penalty shall be made by written order of the commission.

Sec. 42.10.397. ACTIONS TO RECOVER PENALTIES AND FINES; DISPOSITION. (a) Actions to recover penalties or impose fines under this chapter shall be brought by the attorney general in a court of competent jurisdiction.

(b) All fines imposed and all penalties recovered under the provisions of this chapter shall be paid to the commission and deposited by it in the general fund of the state.

Sec. 42.10.398. PENALTIES, CUMULATIVE; NOT EXCLUSIVE.

(a) All penalties occurring under this chapter shall be cumulative and a suit for the recovery of one penalty shall not be a bar to or affect the recovery of any other penalty or be a bar to any criminal prosecution and imposition of a fine against a motor carrier or an officer, director, agent or employee of a motor carrier or any other person.

(b) Neither a criminal prosecution nor an action to recover a penalty as provided in this chapter is a bar to an enforcement proceeding to require compliance, nor to any other remedy provided by this chapter.

Sec. 42.10.399. JOINDER OF ACTIONS. Under the applicable court rules, appeals from orders of the commission, applications for enforcement of commission orders and actions for recovery of a penalty may be joined. The court may in the interests of justice separate the actions.

* Sec. 17. AS 42.10.420(2)(B) is amended to read:

(B) a person who leases, rents, or provides a motor vehicle for the use of another in transporting property, and who provides, procures, or arranges for, directly or indirectly, or by course of dealing, a driver or operator for the motor vehicle or the necessary authority for the use of it on a public highway, except when the motor vehicle is leased to an authorized common carrier or contract carrier or by a construction contractor as defined in (12) of this section to another construction contractor as so defined, under rules and regulations to be prescribed by the commission;

* Sec. 18. AS 42.10.420(6) is amended to read:

(6) "motor vehicle" means a truck, trailer, semi-trailer, tractor, wrecker, tow car, hearse, ambulance or other self-propelled or motor-driven vehicle used upon any public highway of this state for the purpose of transporting property;

* Sec. 19. AS 42.10.420 is amended by adding new subsections

to read:

(10) "rate" includes every rate, toll, fare, rental charge, or other form of compensation demanded, observed, charged or collected by a carrier for its services;

(11) "property" means all commodities, articles and cargo, of whatever nature or value, including but not limited to refuse, garbage, trash and other waste or non-waste material;

(12) "construction contractor" means a contractor licensed by the state to engage in and who is actively engaged in the business of constructing, repairing or removing any kind of private or public facility or structure and does not include "contract carriers" authorized to transport commodities in bulk in dump-type equipment unless the "contract carrier" is also actively engaged in the business of constructing, repairing or removing private or public facilities or structures as a licensed contractor.

* Sec. 20. AS 42.10.300, 42.10.360, 42.10.390 and 42.10.410 are repealed.