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Referred: Commerce and  
Finance

OS

BY THE RULES COMMITTEE BY  
REQUEST OF THE GOVERNOR

1 IN THE SENATE

2 SENATE BILL NO. 271

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 SIXTH LEGISLATURE - FIRST SESSION

5 A BILL

6 For an Act entitled: "An Act relating to the regulation of motor freight  
7 carriers."

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

9 \* Section 1. AS 42.10.160 is repealed and re-enacted to read:

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

13 \* Sec. 2. AS 42.10.220 is repealed and re-enacted to read:

14 Sec. 42.10.220. TRANSFER OF PERMITS. (a) Transfer of a permit  
15 may be granted at the discretion of the commission. Commission  
16 approval is required in any of the following instances:

17 (1) transfer from one business entity to another business  
18 entity, be it a sole proprietorship, partnership, corporation, joint  
19 venture, or any other authorized form of doing business;

20 (2) merger;

21 (3) consolidation;

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

25 (b) Only those rights which are shown to have been in active  
26 and regular use may be transferred. The transferor shall certify to  
27 the commission that the authority contained in the permit has been  
28 in reasonably continuous and active use as to the territory or routes  
29 authorized to be served and as to the various services authorized to

1 be rendered by the carrier. The commission may require documentary  
2 evidence in support of the permit. Dormant operating rights of the  
3 transferor may not be transferred unless the commission finds that  
4 the service is needed for the public convenience and necessity, and  
5 that the transferee will provide such service.

6 (c) Applications for transfer shall not be granted until

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

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

15 \* Sec. 3. AS 42.10 is amended by adding a new section to read:

16 Sec. 42.10.225. DISCONTINUANCE OR ABANDONMENT OF CERTIFICATED  
17 OPERATIONS, TEMPORARY SUSPENSION. (a) No common carrier may dis-  
18 continue or abandon an operation or part of an operation for which  
19 a permit has been issued by the commission unless, upon application  
20 of the carrier and after notice and opportunity for hearing, the  
21 commission finds that discontinuance or abandonment will not materi-  
22 ally harm the public interest. Any interested person may file with  
23 the commission a protest or memorandum of opposition to or in support  
24 of discontinuance or abandonment. The commission may authorize  
25 temporary suspension of an operation or part of an operation.

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

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

1 (d) The unauthorized failure for a period of six months to  
2 conduct operations, to file a tariff, or to pay a required regulatory  
3 fee, shall create a presumption that the permit is abandoned and the  
4 commission may institute proceedings to revoke the permit.

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

11 \* Sec. 4. AS 42.10.230 is repealed and re-enacted to read:

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

- 18 (1) as the public convenience and necessity may require;
- 19 (2) misrepresentation of a material fact in obtaining  
20 the permit;
- 21 (3) unauthorized discontinuance or abandonment of all or  
22 part of the carrier's operation;
- 23 (4) failure to comply with the provisions of this chapter,  
24 the rules, regulations or orders of the commission, the motor vehicle  
25 laws of the state or the laws or regulations of the United States;
- 26 (5) failure to comply with a term, condition, or limitation  
27 of the permit.

28 \* Sec. 5. AS 42.10.240 is repealed and re-enacted to read:

29 Sec. 42.10.240. WEIGHT FEES. (a) Every common carrier, contract

1 carrier and private carrier including those operating motor vehicles  
2 not otherwise registered or licensed in the state, and every person  
3 that rents or leases motor vehicles to common, contract or private  
4 carriers, shall pay the following weight fees each year for each  
5 motor vehicle owned or operated by it on the public highways of the  
6 state:

7 (1) motor vehicles of private carriers, except those of  
8 persons who rent, lease or otherwise provide a motor vehicle for use  
9 of motor carriers, weighing over 4,000 pounds . . . . . \$25

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

12 weighing 12,000 pounds or less	\$35
13 12,001 - 18,000 pounds	\$55
14 Over 18,000 pounds	\$75

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

20 (c) Weight fees on motor vehicles regularly licensed and re-  
21 gistered in the state shall be paid to the commissioner of revenue at  
22 the same time that the regular annual license fee is paid. Weight  
23 fees on motor vehicles not otherwise licensed in the state shall be  
24 paid to the commission.

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

29 \* Sec. 6. AS 42.10.280(a) is amended to read:

1 (a) A contract carrier authorized to transport commodities in  
2 bulk in dump-type equipment shall file with the commission, and print  
3 and keep open to public inspection, schedules showing the minimum  
4 [OR MAXIMUM] rate: [, CHARGES] and classifications for the trans-  
5 portation of property within the state.

6 \* Sec. 7. AS 42.10.285 is repealed and re-enacted to read:

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

13 (b) Pending completion of the investigation and hearing and a  
14 decision thereon, the commission, by order stating the reasons for  
15 its action, may from time to time suspend the operation of the contract  
16 or tariff change and defer its effective date but not for a longer,  
17 aggregate period than seven months beyond the time when the change  
18 would otherwise go into effect.

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

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

29 \* Sec. 8. AS 42.10.290 is repealed and re-enacted to read:

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

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

16           (c) Upon the filing of a contract or tariff change, the commis-  
17 sion, upon complaint or upon its own motion, without notice, may  
18 initiate an investigation of the reasonableness and lawfulness of the  
19 change.

20 \* Sec. 9. AS 42.10.310 is repealed and re-enacted to read:

21           Sec. 42.10.310. ADHERENCE TO TARIFFS. (a) No common carrier  
22 may, directly or indirectly, demand or receive a greater or lesser  
23 rate for a service provided or to be provided by it or extend pri-  
24 vileges or facilities for transportation affecting the value of the  
25 transportation than those specified in its tariff and filed in the  
26 manner provided in this chapter. The rates specified in its properly  
27 filed tariffs shall be the lawful rates of a common carrier until  
28 changed in the manner provided in this chapter.

29           (b) No contract carrier of commodities in bulk in dump-type

1 equipment may, directly or indirectly, demand or receive a lesser  
2 rate for a service provided or to be provided by it or extend pri-  
3 vileges or facilities for transportation affecting the value of the  
4 transportation than those specified in its tariffs and filed in the  
5 manner provided in this chapter. The minimum rates specified in  
6 its properly filed tariffs shall be the lawful minimum rates of such  
7 carrier until changed in the manner provided in this chapter.

8 \* Sec. 10. AS 42.10 is amended by adding a new section to read:

9       Sec. 42.10.325. APPROVAL OF CONTRACTS; CONTRACT RATES TO BE  
10 CHARGED. (a) Each contract carrier shall file with the commission  
11 all contracts relating to the transportation of property. A contract  
12 shall show the rates to be charged and all practices called for or  
13 contemplated in its performance which would affect the value of, or  
14 the rate for the service to be performed. No carrier may commence  
15 performance under a contract until the contract has been approved by  
16 the commission.

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

22       (c) The commission may examine the records of carriers operating  
23 under this chapter and of persons employing the services of a carrier  
24 for the purpose of discovering discrimination, undercharges, or over-  
25 charges and rebates. The commission may suspend or revoke a permit  
26 for a violation of this section.

27 \* Sec. 11. AS 42.10 is amended by adding a new section to read:

28       Sec. 42.10.355. COMPLAINTS; POWER OF COMMISSION TO FIX RATES.

29       (a) Any person may make complaint in writing under oath to the

1 commission that an individual or joint rate, classifica-  
2 tion, or practice of a common carrier is or will be in violation of  
3 this chapter or a regulation or order of the commission. A complaint  
4 shall state fully the facts complained of and the reasons for complaint.

5 (b) Whenever the commission, after an investigation and hearing  
6 upon complaint or upon its own motion, finds that a rate, demanded,  
7 observed, charged or collected by a common carrier for a service,  
8 subject to the jurisdiction of the commission, or that a classifica-  
9 tion, rule, regulation, practice, or contract affecting the rate, is  
10 unjust, unreasonable, unduly discriminatory or preferential, the  
11 commission shall determine a just and reasonable rate, classification,  
12 rule, regulation, practice, or contract to be thereafter observed and  
13 in force, and shall fix the same by order.

14 \* Sec. 12. AS 42.10 is amended by adding new sections to read:

15 ARTICLE 7. JUDICIAL REVIEW, PENALTIES AND ENFORCEMENT.

16 Sec. 42.10.391. EFFECT OF RULES, REGULATIONS AND ORDERS. Rules,  
17 regulations and orders adopted and issued by the commission in accord-  
18 ance with this chapter have the effect of law.

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

22 (b) The commission may apply to the superior court for enforce-  
23 ment of this chapter, the rules and regulations adopted under it and  
24 the orders of the commission. If the court determines that the  
25 statute, rules and regulations are valid and that the order was re-  
26 gularly and validly made and duly issued, it shall enforce the order  
27 by injunction and other process.

28 Sec. 42.10.393. VIOLATION A MISDEMEANOR. Any person (whether or  
29 not a motor carrier or an officer, agent, or employee of a motor

1 carrier) who shall knowingly fail, omit, neglect or refuse to comply  
2 with a provision of this chapter or a rule, regulation, order or  
3 decision of the commission, or an order of the commission prescribing  
4 temporary rates in a rate proceeding, or a final order or decree of  
5 a court, or who shall knowingly procure, aid, or abet any such viola-  
6 tion, omission, failure, neglect, or refusal, shall be guilty of a  
7 misdemeanor, and upon conviction, shall be sentenced to pay the costs  
8 of prosecution and a fine of not more than \$500 for each offense.

9 Sec. 42.10.394. CIVIL PENALTIES FOR VIOLATION OR NONCOMPLIANCE.

10 In addition to all other penalties and remedies provided by law a  
11 motor carrier and each officer, director, agent, or employee of a  
12 motor carrier who violates (including failure to obey or comply with),  
13 or who procures, aids, or abets, a violation by a motor carrier of a  
14 provision of this chapter, an order, decision, rule, or regulation of  
15 the commission is subject to a civil penalty of not more than \$100  
16 for each offense.

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

22 Sec. 42.10.396. COMMISSION TO DETERMINE AND LEVY CIVIL PENALTY.  
23 When the commission finds, after providing notice and an opportunity  
24 to be heard, that a motor carrier, its officers or agents or other  
25 person has been in violation or procured, aided and abetted a motor  
26 carrier in a violation as defined in secs. 394 and 395 of this chapter,  
27 the commission shall determine the extent and duration of the violation,  
28 the circumstances under which it occurred and the amount of the civil  
29 penalty, if any, to be levied. A levy of penalty shall be made by

1 written order of the commission.

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

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

9 Sec. 42.10.398. PENALTIES, CUMULATIVE; NOT EXCLUSIVE. (a) All  
10 penalties occurring under this chapter shall be cumulative and a suit  
11 for the recovery of one penalty shall not be a bar to or affect the  
12 recovery of any other penalty or be a bar to any criminal prosecution  
13 and imposition of a fine against a motor carrier or an officer,  
14 director, agent or employee thereof or any other person.

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

19 Sec. 42.10.399. JOINDER OF ACTIONS. Under the applicable court  
20 rules, appeals from orders of the commission, applications for enforce-  
21 ment of commission orders and actions for recovery of a penalty may  
22 be joined. The court may in the interests of justice separate the  
23 actions.

24 \* Sec. 13. AS 42.10.420(2)(C)(6) is amended to read:

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

29 \* Sec. 14. AS 42.10.420(2)(C) is amended by adding a new subsection to

1 read:

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

5 \* Sec. 15. AS 42.10.300, 42.10.360, 42.10.370, 42.10.390, and 42.10.410  
6 are repealed.

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