

Original sponsor: Rules Committee by request
of the Governor

Offered: 4/3/69
Referred: Finance

1 IN THE SENATE

BY THE COMMERCE COMMITTEE

2 CS FOR 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 AS 42.10.130(c) is repealed and re-enacted to read:

10 (c) Except as provided in (a) and (b) of this section a permit
11 shall be issued to any qualified applicant, authorizing the whole or
12 a part of the operations covered by the application, if the proposed
13 service is or will be required by the present or future public conveni-
14 ence or necessity; otherwise the application shall be denied.

15 * Sec. 2. AS 42.10.160 is repealed and re-enacted to read:

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

19 * Sec. 3. AS 42.10.220 is repealed and re-enacted to read:

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

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

26 (2) merger;

27 (3) consolidation;

28 (4) acquisition by one or more persons of a controlling
29 interest in a carrier firm, by purchase, by acquisition of stock, or

1 by any other means.

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

12 (c) No transfer may be granted until

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

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

21 • Sec. 4. AS 42.10 is amended by adding a new section to read:

22 Sec. 42.10.225. DISCONTINUANCE OR ABANDONMENT OF PERMITTED OPERA-
23 TIONS; TEMPORARY SUSPENSION. (a) No common carrier may discontinue
24 or abandon an operation or part of an operation for which a permit has
25 been issued by the commission unless, upon application of the carrier
26 and after notice and opportunity for hearing, the commission finds that
27 discontinuance or abandonment will not materially harm the public
28 interest. Any interested person may file with the commission a
29 protest or memorandum of opposition to or in support of discontinuance

1 or abandonment. The commission may authorize temporary suspension of
2 an operation or part of an operation.

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

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

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

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

17 * Sec. 5. AS 42.10.230 is repealed and re-enacted to read:

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

- 24 (1) as the public convenience and necessity may require;
25 (2) misrepresentation of a material fact in obtaining the
26 permit;
27 (3) unauthorized discontinuance or abandonment of all or
28 part of the carrier's operation;
29 (4) failure to comply with the provisions of this charter,

1 the rules, regulations or orders of the commission, the motor vehicle
2 laws of the state or the laws or regulations of the United States;

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

5 * Sec. 6. AS 42.10.240 is repealed and re-enacted to read:

6 Sec. 42.10.240. WEIGHT FEES. (a) Every common carrier, contract
7 carrier and private carrier including those operating motor vehicles
8 not otherwise registered or licensed in the state, and every person
9 that rents or leases motor vehicles to common, contract or private
10 carriers, shall pay the following weight fees each year for each
11 motor vehicle owned or operated by it on the public highways of the
12 state:

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

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

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

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

20 (C) over 18,000 pounds. \$75

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

26 (c) Weight fees on motor vehicles regularly licensed and regis-
27 tered in the state shall be paid to the commissioner of revenue at the
28 same time that the regular annual license fee is paid. Weight fees on
29 motor vehicles not otherwise licensed in the state shall be paid to the

1 commission.

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

6 * Sec. 7. AS 42.10.280(a) is amended to read:

7 (a) A contract carrier authorized to transport commodities in
8 bulk in dump-type equipment shall file with the commission, and print
9 and keep open to public inspection, schedules showing the minimum
10 [OR MAXIMUM] rates [, CHARGES] and classifications for the transporta-
11 tion of property within the state.

12 * Sec. 8. AS 42.10.285 is repealed and re-enacted to read:

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

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

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

28 (d) At a hearing involving a proposed contract or tariff change,
29 whether the change is suspended or not suspended, the burden of proof

1 to show that the change is lawful shall be upon the carrier. The
2 commission shall give to the hearing and decision of these questions
3 priority over other questions pending before it and render its
4 decision as speedily as possible.

5 * Sec. 9. AS 42.10.290 is repealed and re-enacted to read:

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

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

20 (c) Upon the filing of a contract or tariff change, the commis-
21 sion, upon complaint or upon its own motion, without notice, may
22 initiate an investigation of the reasonableness and lawfulness of the
23 change.

24 * Sec. 10. AS 42.10.310 is repealed and re-enacted to read:

25 Sec. 42.10.310. ADHERENCE TO TARIFFS. (a) No common carrier
26 may, directly or indirectly, demand or receive a greater or lesser
27 rate for a service provided or to be provided by it or extend privi-
28 leges or facilities for transportation affecting the value of the
29 transportation than those specified in its tariff and filed in the

1 manner provided in this chapter. The rates specified in its properly
2 filed tariffs shall be the lawful rates of a common carrier until
3 changed in the manner provided in this chapter.

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

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

13 Sec. 42.10.315. APPROVAL OF CONTRACTS; CONTRACT RATES TO BE
14 CHARGED. (a) Each contract carrier shall file with the commission all
15 contracts relating to the transportation of property. A contract shall
16 show the rates to be charged and all practices called for or contem-
17 plated in its performance which would affect the value of, or the rate
18 for the service to be performed. No carrier may commence performance
19 under a contract until the contract has been approved by the commission.

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

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

1 * Sec. 12. AS 42.10 is amended by adding a new section to read:

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

3 (a) Any person may make complaint in writing under oath to the commis-
4 sion that an individual or joint rate, classification, regulation, or
5 practice of a common carrier is or will be in violation of this chapter
6 or a regulation or order of the commission. A complaint shall state
7 fully the facts complained of and the reasons for complaint.

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

17 * Sec. 13. AS 42.10 is amended by adding new sections to read:

18 ARTICLE 7. JUDICIAL REVIEW, PENALTIES AND ENFORCEMENT.

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

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

25 (b) The commission may apply to the superior court for enforce-
26 ment of this chapter, the rules and regulations adopted under it and
27 the orders of the commission. If the court determines that the
28 statute, rules and regulations are valid and that the order was regu-
29 larly and validly made and duly issued, it may enforce the order by

1 injunction or other process.

2 Sec. 42.10.393. VIOLATION A MISDEMEANOR. Any person (whether or
3 not a motor carrier or an officer, agent, or employee of a motor
4 carrier) who shall knowingly fail, omit, neglect or refuse to comply
5 with a provision of this chapter or a rule, regulation, order or
6 decision of **the** commission, or an order of the commission prescribing
7 temporary rates in a rate proceeding, or a final order or decree of
8 a court, or who shall knowingly procure, aid, or abet any such viola-
9 tion, omission, failure, neglect, or refusal, shall be guilty of a
10 misdemeanor, and upon conviction, shall be sentenced to pay the costs
11 of prosecution and a fine of not more than \$500 for each offense.

12 Sec. 42.10.394. CIVIL PENALTIES FOR VIOLATION OR NONCOMPLIANCE.
13 In addition to all other penalties and remedies provided by law a
14 motor carrier and each officer, director, agent, or employee of a
15 motor carrier who violates (including failure to obey or comply with),
16 or who procures, aids, or abets, a violation by a motor carrier of a
17 provision of this chapter, an order, decision, rule, or regulation of
18 the commission is subject to a civil penalty of not more than \$100
19 for each offense.

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

25 Sec. 42.10.396. COMMISSION TO DETERMINE AND LEVY CIVIL PENALTY.
26 When the commission finds, after providing notice and an opportunity
27 to be heard, that a motor carrier, its officers or agents or other
28 person has been in violation or procured, aided and abetted a motor
29 carrier in a violation as defined in secs. 394 and 395 of this chapter,

1 the commission shall determine the extent and duration of the violation,
2 the circumstances under which it occurred and the amount of the civil
3 penalty, if any, to be levied. A levy of penalty shall be made by
4 written order of the commission.

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

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

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

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

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

26 * Sec. 14. AS 42.10.420(6) is amended to read:

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

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the purpose of transporting property, except that in sec. 240(a) of this chapter "motor vehicle" does not include trailers or semi-trailers;

* Sec. 15. AS 42.10.420 is amended by adding a new subsection 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 nonwaste material.

* Sec. 16. AS 42.10.300, 42.10.360, 42.10.370, 42.10.390, and 42.10.410 are repealed.