

Original sponsor: Rules Committee by request of the Governor

Offered: 3/12/70
Referred: Rules

1 IN THE SENATE

BY THE FINANCE COMMITTEE

2 CS FOR SENATE BILL NO. 271

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 SIXTH LEGISLATURE - SECOND 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 42.10.020 is amended by adding a new paragraph to read:

10 (4) vehicles operated by a construction contractor while
11 performing such a business as defined in AS 08.18 except that weight
12 fees in an amount as provided by sec. 240 of this chapter shall be
13 paid for each vehicle designed to be operated on a public highway.

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

15 Sec. 42.10.090. REGULATION OF PRIVATE AND EXEMPT CARRIERS.

16 Except as provided in sec. 20(4) of this chapter, the [THE] commission
17 shall

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

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

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 AS 42.10.130(c) is repealed and re-enacted to read:

25 (c) Except as provided in (a) and (b) of this section a permit
26 shall be issued to any qualified applicant, authorizing the whole or a
27 part of the operations covered by the application, if the proposed ser-
28 vice is or will be required by the present or future public convenience
29 or necessity; otherwise the application shall be denied.

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 AS 42.10.160 is repealed and re-enacted to read:

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

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 AS 42.10.220 is repealed and re-enacted to read:

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

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

12 (2) merger;

13 (3) consolidation;

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

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

27 (c) No transfer may be granted until

28 (1) all unpaid claims for loss or damage arising out of the
29 carrier's operations have been paid or until such claims have been

1 secured by the transferor's insurance carrier, or by satisfactory bond,
2 or after settlement approved by the commission as satisfactory for the
3 protection of all claimants, and

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

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

8 Sec. 42.10.225. DISCONTINUANCE OR ABANDONMENT OF PERMITTED
9 OPERATIONS AND TEMPORARY SUSPENSION. (a) No common carrier may dis-
10 continue or abandon an operation or part of an operation for which a
11 permit has been issued by the commission unless, upon application of
12 the carrier and after notice and opportunity for hearing, the commis-
13 sion finds that discontinuance or abandonment will not materially harm
14 the public interest. Any interested person may file with the com-
15 mission a protest or memorandum of opposition to or in support of
16 discontinuance or abandonment. The commission may authorize temporary
17 suspension of an operation or part of an operation.

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

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

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

26 (e) Upon complaint or upon its own motion, the commission may
27 re-investigate a previously authorized discontinuance, abandonment or
28 suspension of an operation of a common carrier. If, after providing
29 notice and an opportunity for a hearing, the commission finds that the

1 public convenience and necessity require the service to be resumed,
2 it may order the carrier to reinstate the operation.

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

4 Sec. 42.10.230. MODIFICATION, SUSPENSION OR REVOCATION OF PERMITS

5 Upon complaint or upon its own initiative the commission, after notice
6 and opportunity for hearing and for good cause shown, may amend,
7 modify, suspend, or revoke a permit, in whole or in part. Good cause
8 for amendment, modification, suspension or revocation of a permit
9 includes but is not limited to any of the following:

- 10 (1) as the public convenience and necessity may require;
- 11 (2) misrepresentation of a material fact in obtaining the
12 permit;
- 13 (3) unauthorized discontinuance or abandonment of all or
14 part of the carrier's operation;
- 15 (4) failure to comply with the provisions of this chapter,
16 the rules, regulations or orders of the commission, the motor vehicle
17 laws of the state or the laws or regulations of the United States;
- 18 (5) failure to comply with a term, condition, or limitation
19 of the permit.

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

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

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

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

- 3 (F) 12,000 pounds or less..... \$35
4 (E) 12,001 - 18,000 pounds..... 55
5 (C) over 18,000 pounds..... 75

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

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

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

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

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

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

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

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

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

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

19 (c) After hearing, whether completed before or after the rate,
20 classification, rule, regulation, or practice goes into effect, the
21 commission may issue orders granting, denying or modifying the tariff
22 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 decision
28 as speedily as possible.

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

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

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

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

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

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

28 (b) No contract carrier of commodities in bulk in dump-type
29 equipment may, directly or indirectly, demand or receive a lesser rate

1 for a service provided or to be provided by it or extend privileges or
2 facilities for transportation affecting the value of the transportation
3 than those specified in its tariffs and files in the manner provided
4 in this chapter. The minimum rates specified in its properly filed
5 tariffs shall be the lawful minimum rates of such carrier until changed
6 in the manner provided in this chapter.

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

8 Sec. 42.10.355. APPROVAL OF CONTRACTS: CONTRACT RATES TO BE
9 CHARGED. (a) Each contract carrier, other than carriers of bulk
10 commodities in dump-type equipment, shall file with the commission all
11 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 transportation
20 affecting the value of the transportation, than those specified in the
21 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, after hearing or opportunity
26 for hearing, suspend or revoke a permit for a violation of this section.

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

28 Sec. 42.10.355. COMPLAINTS AND POWER OF COMMISSION TO FIX RATES.
29 (a) Any person may make complaint in writing under oath to the commis-

1 sion that an individual or joint rate, classification, regulation, or
2 practice of a common carrier is or will be in violation of this chapter
3 or a regulation or order of the commission. A complaint shall state
4 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, sub-
8 ject to the jurisdiction of the commission, or that a classification,
9 rule, regulation, practice, or contract affecting the rate, is unjust,
10 unreasonable, unduly discriminatory or preferential, the commission
11 shall determine a just and reasonable rate, classification, rule, regu-
12 lation, practice, or contract to be thereafter observed and in force,
13 and shall fix the same by order.

14 * Sec. 16. AS 42.10 is amended by adding new sections to Art. 7 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 accordance
18 with this chapter have the effect of law.

19 Sec. 42.10.392. REVIEW AND ENFORCEMENT. (a) All final orders of
20 the commission are subject to judicial review in accordance with AS 44.-
21 62.560 - 44.62.570 of the Administrative Procedure Act.

22 (b) The commission may apply to the superior court for enforcement
23 of this chapter, the rules and regulations adopted under it and the
24 orders of the commission. If the court determines that the statute,
25 rules and regulations are valid and that the order was regularly and
26 validly made and duly issued, it may enforce the order by injunction
27 or 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 deci-
3 sion of the commission, or an order of the commission prescribing tempor-
4 ary rates in a rate proceeding, or a final order or decree of a
5 court, or who shall knowingly procure, aid, or abet any such violation,
6 omission, failure, neglect, or refusal, shall be guilty of a misdemeanor,
7 and upon conviction, shall be sentenced to pay the costs of prosecution
8 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 any other civil penalties and remedies provided by law
11 the commission may levy a civil penalty of not more than \$150 for each
12 offense upon a motor carrier and each officer, director, agent, or
13 employee of a motor carrier who violates (including failure to obey
14 or comply with), or who procures, aids, or abets, a violation by a
15 motor carrier of a provision of this chapter, an order, decision,
16 rule, or regulation of the commission.

17 Sec. 42.10.395. EACH VIOLATION A SEPARATE OFFENSE. Each viola-
18 tion of the provisions of this chapter or of an order, decision, rule,
19 or regulation of the commission by a motor carrier or other person is
20 a separate and distinct offense, and in case of a continuing violation
21 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 per-
25 son has been in violation or procured, aided and abetted a motor carrier
26 in a violation as defined in secs. 394 and 395 of this chapter, the
27 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; DISPOSI-
3 TION. (a) Actions to recover penalties or impose fines under this
4 chapter shall be brought by the attorney general in a court of competent
5 jurisdiction.

6 (b) All fines imposed and all penalties recovered under the
7 provisions of this chapter shall be paid to the commission and deposited
8 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, director,
14 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
18 by 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 be
22 joined. The court may in the interests of justice separate the actions.

23 * Sec. 17. AS 42.10.420(2)(B) is amended to read:
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25 (B) a person who leases, rents, or provides a motor
26 vehicle for the use of another in transporting property, and who
27 provides, procures, or arranges for, directly or indirectly, or
28 by course of dealing, a driver or operator for the motor vehicle
29 or the necessary authority for the use of it on a public highway,
except when the motor vehicle is leased to an authorized common

1 carrier or contract carrier or by a construction contractor as
2 defined in AS 08.18 to another construction contractor as so
3 defined, under rules and regulations to be prescribed by the
4 commission;

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

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

10 * Sec. 19. AS 42.10.420 is amended by adding new subsections to read:

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

14 (11) "property" means all commodities, articles and cargo,
15 of whatever nature or value, including but not limited to refuse,
16 garbage, trash and other waste or nonwaste material.

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