

Original sponsor: Commerce Committee

Offered: 6/17/78

Referred: Rules

1 IN THE SENATE

BY THE COMMERCE COMMITTEE

2

HOUSE CS FOR CS FOR SENATE BILL NO. 362

3

IN THE LEGISLATURE OF THE STATE OF ALASKA

4

TENTH LEGISLATURE - SECOND SESSION

5

A BILL

6

For an Act entitled: "An Act relating to the enforcement authority of regulatory commissions."

7

8

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

9

* Section 1. AS 42.06.160(b) is amended to read:

10

(b) The commission shall adopt regulations governing practice and procedure, consistent with due process of law, including the conduct of formal and informal investigations, discovery, prehearing conferences, hearings and proceedings, and the handling of procedural motions by a single commissioner. Technical rules of evidence need not apply to investigations, prehearing conferences, hearings and proceedings before the commission. The commission shall provide for representation by out-of-state attorneys substantially in accordance with Civil Rule 81.

11

12

13

14

15

16

17

18

* Sec. 2. AS 42.06.160 is amended by adding a new subsection to read:

19

(d) A hearing may be held by or before one or more commissioners or a hearing officer designated for the purpose by the commission. In determining the place of a hearing the commission shall give preference to holding the hearing at a place most convenient for those interested in the subject of the hearing.

20

21

22

23

24

* Sec. 3. AS 42.07.031 is amended to read:

25

Sec. 42.07.031. QUORUM. Two members of the commission constitute a quorum for the transaction of business, for the performance of a duty, or for the exercise of a power of the commission, except as provided in sec. 181(b) of this chapter.

26

27

28

29

* Sec. 4. AS 42.07.101(a) is amended to read:

1 (a) The commission may employ engineers, hearing officers, ex-
2 perts, clerks, accountants, and other agents and assistants it considers
3 necessary. The executive director, hearing officers and legal counsel
4 are in the partially exempt service under AS 39.25. All other employees
5 of the commission [EMPLOYEES AND AGENTS OF THE COMMISSION, OTHER THAN
6 LEGAL COUNSEL,] are in the classified service under AS 39.25.

7 * Sec. 5. AS 42.07.141 is amended by adding a new subsection to read:

8 (e) The commission may adopt regulations or issue orders governing
9 the protection, assemblage, exchange, and distribution of information
10 including the allocation of any costs incurred by a person in performing
11 those activities.

12 * Sec. 6. AS 42.07 is amended by adding new sections to read:

13 Sec. 42.07.171. ENFORCEMENT AUTHORITY. An enforcement officer
14 authorized and designated by the commission has the enforcement autho-
15 rity set out in this section in order to enforce regulations and orders
16 of the commission and to enforce the statutes that the commission has
17 the responsibility to administer. The commission may authorize that
18 person to

19 (1) require the operator of any surface or air vehicle which
20 may be subject to or reasonably believed to be subject to the authority
21 of the commission to present documents of vehicle registration, owner-
22 ship, or other documents required by regulation to be in the possession
23 of the operator;

24 (2) stop any surface or air vehicle which may be subject to
25 or reasonably believed to be subject to the authority of the commission
26 and request the right to inspect cargo within the vehicle for the pur-
27 pose of determining whether the operation of the vehicle violates any
28 regulation or order of the commission or violates any statute the commis-
29 sion has the responsibility to administer; if a party refuses an enforce-

1 ment officer the right to inspect the vehicle or its cargo, the officer
2 may, by placing a seal on or around the cargo, prohibit the discharge of
3 cargo except at the point or points of destination and in the presence
4 of an authorized enforcement officer;

5 (3) detain or put a surface or air vehicle which may be
6 subject to or reasonably believed to be subject to the authority of the
7 commission out of service where it reasonably appears that the continued
8 operation of such a vehicle would jeopardize the public safety; the
9 enforcement officer may, if he discovers a safety violation which in his
10 opinion will not cause an accident or breakdown, order the vehicle to
11 proceed to a designated repair area where the violation shall be
12 corrected before the vehicle proceeds further;

13 (4) issue citations for the violation of commission regula-
14 tions, orders, or the statutes which the commission has authority to
15 administer; and

16 (5) apply to a court for an appropriate order.

17 Sec. 42.07.181. STOP ORDERS. (a) After providing a hearing in
18 accordance with its regulations, the commission may issue a stop order
19 directed to any person violating, aiding or abetting the violation of
20 any statute or regulation that the commission has authority to admin-
21 ister.

22 (b) The commission may issue, ex parte, a stop order before hear-
23 ing when it finds the interest of the public health, welfare or safety
24 is likely to be jeopardized and the person who is operating

25 (1) has failed to file required insurance or surety bonds;
26 (2) is no longer fit, willing and able to operate properly;
27 (3) does so without an appropriate certificate or permit
28 allowing him to conduct the transportation in question; or

29 (4) does so in a manner to establish a likelihood that the

1 public safety will be jeopardized if such an order is not issued.

2 (c) Any stop order issued ex parte and without a hearing is effec-
3 tive for 10 days, and the order shall provide the person a hearing
4 within 10 days. If requested by the carrier charged, the hearing shall
5 be held in the judicial district in which the principal place of busi-
6 ness of the carrier is located. If a hearing has been provided within
7 10 days, the commission may extend the stop order an additional 30 days
8 in order that the commission may decide the matter.

9 (d) A stop order must be issued by a quorum of the commission ex-
10 cept a single commissioner may issue a stop order under (b)(4) of this
11 section.

12 (e) The commission shall rescind the stop order when a satisfac-
13 tory showing is made that the person is in compliance. The commission
14 shall amend its rules of practice and procedure within 90 days of the
15 effective date of this Act to insure that any person subject to a stop
16 order has the opportunity to have the stop order rescinded if the person
17 is in compliance and to have a speedy and fair hearing in conformance
18 with this section.

19 (f) If, after a hearing, the commission finds that a person to
20 whom a stop order is directed knew that such an order had been issued
21 before violating the order, the commission may fine that person either
22 an amount not to exceed \$1,000 for each day the violation of the order
23 continues, or an amount equal to any revenue that person earned as a
24 result of violating the order.

25 (g) A person who refuses to allow an enforcement officer to ex-
26 amine his cargo upon request under sec. 171(a)(2) of this chapter and
27 who is subsequently determined to be in violation of a commission regu-
28 lation shall be fined either an amount not to exceed \$1,000 per day for
29 each day of the violation or the gross revenues earned in that parti-

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29

cular operation.

* Sec. 7. AS 39.25.120 is amended by adding a new paragraph to read:

(10) the executive director, hearing officers, and legal
counsel of the Alaska Transportation Commission.

* Sec. 8. AS 42.06.180 is repealed.

#