

ACT 57

S.B. NO. 1242

A Bill for an Act Relating to the Public Utilities Commission.

*Be It Enacted by the Legislature of the State of Hawaii:*

SECTION 1. Section 269-1, Hawaii Revised Statutes, is amended by adding a new definition to be appropriately inserted and to read as follows:

“Enforcement officer” means any person employed and authorized by the commission to investigate any matter on behalf of the commission.”

SECTION 2. Section 271-4, Hawaii Revised Statutes, is amended by adding a new definition to be appropriately inserted and to read as follows:

“Enforcement officer” means any person employed and authorized by the commission to investigate any matter on behalf of the commission.”

SECTION 3. Section 271G-5, Hawaii Revised Statutes, is amended by adding a new definition to be appropriately inserted and to read as follows:

“Enforcement officer” means any person employed and authorized by the commission to investigate any matter on behalf of the commission.”

SECTION 4. Section 269-3, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(a) The chairman of the public utilities commission may appoint and employ such clerks, stenographers, agents, engineers, accountants, and other assistants for the public utilities commission as the chairman finds necessary for the performance of the commission’s functions and define their powers and duties. The chairman may appoint and at pleasure dismiss a chief administrator, research assistants, economists, legal secretaries, enforcement officers, and such hearings officers as may be necessary. Notwithstanding section 103-3, the chairman shall appoint one or more attorneys independent of the attorney general who shall act as attorneys for the commission and define their powers and duties and fix their compensation. The chief administrator, research assistants, economists, legal secretaries, enforcement officers, hearings officers, and attorneys shall be exempt from chapters 76 and 77. Other employees shall be appointed as may be needed by the chairman in accordance with chapters 76 and 77.”

SECTION 5. Section 269-7, Hawaii Revised Statutes, is amended to read as follows:

**“§269-7 Investigative powers. (a)** The public utilities commission and

each commissioner shall have power to examine into the condition of each public utility, the manner in which it is operated with reference to the safety or accommodation of the public, the safety, working hours, and wages of its employees, the fares and rates charged by it, the value of its physical property, the issuance by it of stocks and bonds, and the disposition of the proceeds thereof, the amount and disposition of its income, and all its financial transactions, its business relations with other persons, companies, or corporations, its compliance with all applicable state and federal laws and with the provisions of its franchise, charter, and articles of association, if any, its classifications, rules, regulations, practices, and service, and all matters of every nature affecting the relations and transactions between it and the public or persons or corporations.

(b) The commission may investigate any person acting in the capacity of or engaging in the business of a public utility within the State, without having a certificate of public convenience and necessity or other authority previously obtained under and in compliance with this chapter or the rules promulgated under this chapter.

(c) Any investigation may be made by the commission on its own motion, and shall be made when requested by the public utility to be investigated, or by any person upon a sworn written complaint to the commission, setting forth any prima facie cause of complaint. A majority of the commission shall constitute a quorum.”

SECTION 6. Section 269-8, Hawaii Revised Statutes, is amended to read as follows:

**“§269-8 Public utilities to furnish information.** Every public utility or other person subject to investigation by the commission, shall at all times, upon request, furnish to the public utilities commission all information that it may require respecting any of the matters concerning which it is given power to investigate, and shall permit the examination of its books, records, contracts, maps, and other documents by the commission, or any of its members, or any person authorized by it in writing to make such examination, and shall furnish the commission with a complete inventory of its property in such form as the commission may direct.”

SECTION 7. Section 269-10, Hawaii Revised Statutes, is amended to read as follows:

**“§269-10 Commission may compel attendance of witnesses, etc.** In all investigations made by the public utilities commission, and in all proceedings before it, the commission and each commissioner shall have the same powers respecting administering oaths, compelling the attendance of witnesses and the production of documentary evidence, examining witnesses, and punishing for contempt, as are possessed by circuit courts. In case of disobedience by any person to any order of the commission or of any commissioner, or any subpoena issued by it or the commissioner, or of the refusal of any witness to testify to any matter regarding which the witness may be questioned lawfully, any circuit court, on application by the commission or a commissioner, shall compel obedience as in case of disobedience of the requirements of a subpoena issued from a circuit court or a refusal to testify therein. No person shall be excused from testifying or from producing any book, waybill, document, paper, or account in any investigation or inquiry by a hearing before the commission or any commissioner, when ordered to do so, upon the ground that the testimony or evidence, book, waybill,

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document, paper, or account required of the person may tend to incriminate the person or subject the person to penalty or forfeiture; but no person shall be prosecuted[,] for any crime, punished[,] for any crime, or subjected to any criminal penalty or criminal forfeiture for or on account of any act, transaction, matter, or thing concerning which the person shall under oath have testified or produced documentary evidence. Nothing herein shall be construed as in any manner giving to any public utility or any person immunity of any kind. The fees and traveling expenses of witnesses shall be the same as allowed witnesses in the circuit courts and shall be paid by the State out of any appropriation available for the expenses of the commission. All meetings and hearings of the commission shall be public.”

SECTION 8. Section 269-12, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(a) Whenever an investigation is undertaken by the public utilities commission, reasonable notice in writing of such fact and of the subject or subjects to be investigated shall be given to the public utility or the person concerned, and when based upon complaints made to it as prescribed in section 269-7, a copy of the complaint, and a notice in writing of the date and place fixed by the commission for beginning the investigation, shall be served upon the public utility or the person concerned, or other respondent and the complainant not less than two weeks before the date designated for the hearing.”

SECTION 9. Section 269-13, Hawaii Revised Statutes, is amended to read as follows:

“**§269-13 Right to be represented by counsel.** At any investigation by or proceeding before the public utilities commission the public utility or the person concerned, or other respondent or party and any complainant or permitted intervenor shall have the right to be present and represented by counsel, to present any evidence desired, and to cross-examine any witness who may be called.”

SECTION 10. Section 269-15, Hawaii Revised Statutes, is amended to read as follows:

“**§269-15 Commission may institute proceedings to enforce chapter.** (a) If the public utilities commission is of the opinion that any public utility or any person is violating or neglecting to comply with any provision of this chapter or of any rule, regulation, order, or other requirement of the commission, or of any provisions of its franchise, charter, or articles of association, if any, or that changes, additions, extensions, or repairs are desirable in its plant or service to meet the reasonable convenience or necessity of the public, or to insure greater safety or security, or that any rates, fares, classifications, charges, or rules are unreasonable or unreasonably discriminatory, or that in any way it is doing what it ought not to do, or not doing what it ought to do, it shall in writing inform the public utility or the person and may institute such proceedings before it as may be necessary to require the public utility or the person to correct any such deficiency. In such event, the commission may by order direct the director of commerce and [consumers] consumer affairs to appear in such proceeding, to carry out the purposes of this section. The commission may examine into any of the matters referred to in section 269-7, notwithstanding that the same may be within the jurisdiction of any court or other body; provided that this section shall not be con-

strued as in any manner limiting or otherwise affecting the jurisdiction of any such court or other body.

(b) In addition to any other remedy available, the commission or its enforcement officer may issue citations to any person acting in the capacity of or engaging in the business of a public utility within the State, without having a certificate of public convenience and necessity or other authority previously obtained under and in compliance with this chapter or the rules promulgated thereunder.

- (1) The citation may contain an order of abatement and an assessment of civil penalties as provided in section 269-28(c). All penalties collected under this subsection shall be deposited in the treasury of the State. Service of a citation issued under this subsection shall be made by personal service whenever possible, or by certified mail, restricted delivery, sent to the last known business or residence address of the person cited.
- (2) Any person served with a citation under this subsection may submit a written request to the commission for a hearing, within twenty days from the receipt of the citation, with respect to the violations alleged, the scope of the order of abatement and the amount of civil penalties assessed. If the person cited under this subsection timely notifies the commission of the request for a hearing, the commission shall afford an opportunity for a hearing under chapter 91. The hearing shall be conducted by the commission or the commission may designate a hearings officer to hold the hearing.
- (3) If the person cited under this subsection does not submit a written request to the commission for a hearing within twenty days from the receipt of the citation, the citation shall be deemed a final order of the commission. The commission may apply to the appropriate court for a judgment to enforce the provisions of any final order, issued by the commission or designated hearings officer pursuant to this subsection, including the provisions for abatement and civil penalties imposed. In any proceeding to enforce the provisions of the final order of the commission or designated hearings officer, the commission need only show that the notice was given, a hearing was held or the time granted for requesting the hearing has run without such a request, and a certified copy of the final order of the commission or designated hearings officer.
- (4) If any party is aggrieved by the decision of the commission or the designated hearings officer, the party may appeal to the supreme court provided that the operation of an abatement order will not be stayed on appeal unless specifically ordered by a court of competent jurisdiction after applying the stay criteria enumerated in section 91-14(c). The sanctions and disposition authorized under this subsection shall be separate and in addition to all other remedies either civil or criminal provided in any other applicable statutory provision. The commission may adopt rules under chapter 91 as may be necessary to fully effectuate this subsection."

SECTION 11. Section 269-28, Hawaii Revised Statutes, is amended to read as follows:

**“§269-28 Penalty.** (a) Any public utility violating or neglecting or failing in any particular to conform to or comply with this chapter or any lawful order of the public utilities commission shall be subject to a civil penalty not to exceed \$25,000 for each day such violation, neglect, or failure continues, to be assessed by the commission after a hearing in accordance with chapter 91. The commission may order the public utility to cease carrying on its business while the violation, neglect, or failure continues.

(b) Notwithstanding the provisions of subsection (a), any public utility violating or neglecting or failing in any particular to conform to or comply with any rule or order of the commission setting forth safety requirements applicable to the transmission of gas shall be subject to a civil penalty not to exceed \$25,000 for each day that the violation, neglect or failure continues; provided that the maximum penalty for related violations arising out of the same act, omission, or occurrence shall not exceed \$500,000.

(c) Upon written application filed within fifteen days after service of an order imposing a civil penalty pursuant to this section, the commission may remit or mitigate such penalty upon such terms as it deems proper.]

(c) Notwithstanding the provisions of subsection (a), any person acting in the capacity of or engaging in the business of a public utility in the State without having a certificate of public convenience and necessity or other authority previously obtained under and in compliance with this chapter and the rules promulgated thereunder may be subject to a civil penalty not to exceed \$5,000 for each such offense, and, in the case of a continuing violation, \$5,000 for each day that uncertified activity continues.

(d) If any civil penalty imposed pursuant to this section is not paid within such period as the commission may direct, the attorney general shall institute a civil action for recovery of same in circuit court.]

(d) Upon written application filed within fifteen days after service of an order imposing a civil penalty pursuant to this section, the commission may remit or mitigate such penalty upon such terms as it deems proper.

(e) If any civil penalty imposed pursuant to this section is not paid within such period as the commission may direct, the attorney general shall institute a civil action for recovery of same in circuit court.”

SECTION 12. Section 271-9, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(a) The general duties and powers of the public utilities commission shall be:

- (1) To regulate common carriers by motor vehicle, and to that end the commission shall establish reasonable requirements with respect to continuous and adequate service, leasing of motor vehicles, uniform system of accounts, records, and reports, and preservation of records.
- (2) To regulate contract carriers[,] by motor vehicle, and to that end the commission shall establish reasonable requirements with respect to leasing of motor vehicles, uniform system of accounts, records, and reports, and preservation of records.
- (3) To administer, execute, and enforce this chapter, to make all necessary orders in connection therewith, and to prescribe rules, regulations, and procedures for the administration.
- (4) For purposes of the administration of this chapter, to inquire into the management of the business of motor carriers, and into the manage-

ment of the business of persons controlling, controlled by, or under [the] common control with, motor carriers to the extent that the business of these persons is related to the management of the business of one or more motor carriers, and the commission shall keep itself informed as to the manner and method in which the same are conducted, and may obtain from the carriers and persons such information as the commission deems necessary to carry out the provisions of this chapter.

- (5) To investigate any person acting in the capacity of or engaging in the business of a motor carrier within the State, without having a certificate of public convenience and necessity or other authority previously obtained under and in compliance with this chapter or the rules promulgated thereunder.”

SECTION 13. Section 271-12, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(a) Except as otherwise provided in this section and in section 271-16, no person shall engage in the business of a common carrier by motor vehicle [shall engage in operations] on any public highway in this State, unless there is in force with respect to such carrier a certificate of public convenience and necessity issued by the public utilities commission authorizing such operation.”

SECTION 14. Section 271-27, Hawaii Revised Statutes is amended to read as follows:

“§271-27 Unlawful operation. (a) Any person knowingly and wilfully violating any provision of this chapter, or any rule, regulation, requirement, or order thereunder, or any term or condition of any certificate or permit for which a penalty is not otherwise herein provided, shall be guilty of a misdemeanor.

(b) Any person, whether carrier, shipper, or consignee, or any officer, employee, agent, or representative thereof, who knowingly offers, grants, or gives, or solicits, accepts, or receives any rebate, concession, or discrimination in violation of any provisions of this chapter, or who by means of any false statement or representation or by the use of any false or fictitious bill, bill of lading, receipt, voucher, roll, account, claim, certificate, affidavit, deposition, lease, or bill of sale, or by any other means or device, knowingly and wilfully assists, suffers, or permits any person or persons, natural or artificial, to obtain transportation of passengers or property subject to this chapter for less than the applicable rate, fare, or charge, or who knowingly and wilfully by any such means or otherwise fraudulently seeks to evade or defeat regulation as in this chapter provided for motor carriers, shall be deemed guilty of a misdemeanor.

(c) Any special agent, accountant, or examiner who knowingly and wilfully divulges any fact or information which may come to the special agent's, accountant's, or examiner's knowledge during the course of any examination or inspection made under authority of sections [271-9(a)(5)]<sup>1</sup> 271-9(a)(4), 271-23, and 271-25, except as the special agent, accountant, or examiner may be directed by the commission or by a court or judge thereof, shall be guilty of a misdemeanor.

(d) It shall be unlawful for any motor carrier or any officer, receiver, trustee, lessee, agent, or employee of the carrier, or for any other person authorized by such carrier or person to receive information, knowingly to disclose to, or permit to be acquired by any person other than the shipper or consignee

without the consent of the shipper or consignee, any information concerning the nature, kind, quantity, destination, consignee, or routing of any property tendered or delivered to the motor carrier for transportation, which information may be used to the detriment or prejudice of the shipper or consignee, or which may improperly disclose the shipper's or consignee's business transactions to a competitor; and it shall also be unlawful for any person to solicit or knowingly receive any such information which may be so used.

(e) Nothing in this chapter shall be construed to prevent the giving of such information in response to any legal process issued under the authority of any court, or to any officer or agent of the government of the United States or of any state or of any political subdivision of any state, in the exercise of the officer's or agent's power or to any officer or other duly authorized person seeking the information for the prosecution of persons charged with or suspected of crimes or to another carrier, or its duly authorized agents, for the purpose of adjusting mutual traffic accounts in the ordinary course of business of the carriers.

(f) Any motor carrier or any officer, agent, employee, or representative thereof, who wilfully fails or refuses to make a report to the commission as required by this chapter, or to make specific and full, true, and correct answer to any question within thirty days from the time it is lawfully required by the commission, or to keep accounts, records, and memoranda in the form and manner prescribed by the commission, or knowingly and wilfully falsifies, destroys, mutilates, or alters any report, account, record, or memorandum or knowingly and wilfully files with the commission any false report, account, record, or memorandum, or knowingly and wilfully neglects or fails to make full, true, and correct entries in the accounts, records, or memoranda of all facts and transactions appertaining to the business of the carrier, or person required under this chapter to keep the same, or knowingly and wilfully keeps accounts, records, or memoranda contrary to the rules, regulations, or orders of the commission with respect thereto, shall be deemed guilty of a misdemeanor. As used in this subsection, the words "keep" and "kept" mean made, prepared, or compiled, as well as retained.

[(g) Any motor carrier or lessor, or any officer, agent, employee, or representative thereof, who shall fail or refuse to comply with any provision of this chapter, or any rule, regulation, requirement or order thereunder, may be assessed a civil penalty payable to the State in the sum of \$100 for each such offense, and, in the case of a continuing violation, not to exceed \$50 for each additional day during which such failure or refusal shall continue.]

(g) Except when required by state law to take immediately before a district judge a person arrested for violation of any provision of this chapter, including any rule or regulation adopted and promulgated pursuant to this chapter, the commission's enforcement officer, upon arresting a person for violation of any provision of this chapter, including any rule or regulation adopted and promulgated pursuant to this chapter shall issue to the alleged violator a summons or citation printed in the form hereinafter described, warning the alleged violator to appear and answer to the charge against the alleged violator at a certain place and at a time within seven days after such arrest.

- (1) The summons or citation shall be printed in a form comparable to the form of other summonses and citations used for arresting offenders and shall be designed to provide for inclusion of all necessary information. The form and content of such summons or citation shall be adopted or prescribed by the district courts.
- (2) The original of a summons or citation shall be given to the alleged violator and the other copy or copies distributed in the manner

- prescribed by the district courts; provided that the district courts may prescribe alternative methods of distribution for the original and any other copy.
- (3) Summonses and citations shall be consecutively numbered and the carbon copy or copies of each shall bear the same number.
  - (4) Any person who fails to appear at the place and within the time specified in the summons or citation issued to the person by the enforcement officer upon the person's arrest for violation of any provision of this chapter, including any rule or regulation promulgated pursuant to this chapter, shall be guilty of a misdemeanor.
  - (5) In the event any person fails to comply with a summons or citation issued to such person, or if any person fails or refuses to deposit bail as required, the enforcement officer shall cause a complaint to be entered against such person and secure the issuance of a warrant for the person's arrest.
  - (6) When a complaint is made to any prosecuting officer of the violation of any provision of this chapter, including any rule or regulation promulgated thereunder, the enforcement officer who issued the summons or citation shall subscribe to it under oath administered by another official whose name has been submitted to the prosecuting officer and who has been designated by the commission to administer the same.

[(h) Notwithstanding subsection (g), a motor carrier who fails to file, within the prescribed time, a financial report with the commission pursuant to its rules and regulations shall be assessed a civil penalty payable to the State in the sum of one-sixteenth of one per cent of the gross revenues from the motor carrier's business during the preceding calendar year, if the failure is for not more than one month, with an additional one-sixteenth of one per cent for each additional month or fraction thereof during which the failure continues, but in no event shall the total civil penalty be less than the sum of \$50.]

(h) Any motor carrier or lessor, or any officer, agent, employee, or representative thereof, who shall fail or refuse to comply with any provision of this chapter, or any rule, regulation, requirement or order thereunder, may be assessed a civil penalty payable to the State in the sum of \$100 for each such offense, and, in the case of a continuing violation, not to exceed \$50 for each additional day during which such failure or refusal shall continue.

[(i) Except when required by state law to take immediately before a district judge a person arrested for violation of any provision of this chapter, including any rule or regulation adopted and promulgated pursuant to this chapter, any person authorized to enforce the provisions of this chapter, hereinafter referred to as enforcement officer, upon arresting a person for violation of any provision of this chapter, including any rule or regulation adopted and promulgated pursuant to this chapter shall issue to the alleged violator a summons or citation printed in the form hereinafter described, warning the alleged violator to appear and answer to the charge against the alleged violator at a certain place and at a time within seven days after such arrest.

The summons or citation shall be printed in a form comparable to the form of other summonses and citations used for arresting offenders and shall be designed to provide for inclusion of all necessary information. The form and content of such summons or citation shall be adopted or prescribed by the district courts.



The original of a summons or citation shall be given to the alleged violator and the other copy or copies distributed in the manner prescribed by the district courts; provided that the district courts may prescribe alternative methods of distribution for the original and any other copy.

Summonses and citations shall be consecutively numbered and the carbon copy or copies of each shall bear the same number.

Any person who fails to appear at the place and within the time specified in the summons or citation issued to the person by the enforcement officer upon the person's arrest for violation of any provision of this chapter, including any rule or regulation promulgated pursuant to this chapter, shall be guilty of a misdemeanor.

In the event any person fails to comply with a summons or citation issued to such person, or if any person fails or refuses to deposit bail as required, the enforcement officer shall cause a complaint to be entered against such person and secure the issuance of a warrant for the person's arrest.

When a complaint is made to any prosecuting officer of the violation of any provision of this chapter, including any rule or regulation promulgated thereunder, the enforcement officer who issued the summons or citation shall subscribe to it under oath administered by another official whose name has been submitted to the prosecuting officer and who has been designated by the director of commerce and consumer affairs to administer the same.]

(i) Notwithstanding subsection (h), a motor carrier who fails to file, within the prescribed time, a financial report with the commission pursuant to its rules and regulations may be assessed a civil penalty payable to the State up to the sum of one-sixteenth of one per cent of the gross revenues from the motor carrier's business during the preceding calendar year, if the failure is for not more than one month, with an additional one-sixteenth of one per cent for each additional month or fraction thereof during which the failure continues, but in no event shall the total civil penalty be less than the sum of \$50.

(j) In addition to any other remedy available, the commission or its enforcement officer may issue citations to persons acting in the capacity of or engaging in the business of a motor carrier within the State, without having a certificate of public convenience and necessity or other authority previously obtained under and in compliance with this chapter and the rules promulgated thereunder.

- (1) The citation may contain an order of abatement, and an assessment of civil penalties as provided in subsection (h). All penalties collected under this subsection shall be deposited in the treasury of the State. Service of a citation issued under this subsection shall be made by personal service whenever possible, or by certified mail, restricted delivery, sent to the last known business or residence address of the person cited.
- (2) Any person served with a citation under this subsection may submit a written request to the commission for a hearing, within twenty days from the receipt of the citation, with respect to the violations alleged, the scope of the order of abatement and the amount of civil penalties assessed. If the person cited under this subsection timely notifies the commission of the request for a hearing, the commission shall afford an opportunity for a hearing under chapter 91. The hearing shall be conducted by the commission or the commission may designate a hearings officer to hold the hearing.

- (3) If the person cited under this subsection does not submit a written request to the commission for a hearing within twenty days from the receipt of the citation, the citation shall be deemed a final order of the commission. The commission may apply to the appropriate court for a judgment to enforce the provisions of any final order, issued by the commission or designated hearings officer pursuant to this subsection, including the provisions for abatement and civil penalties imposed. In any proceeding to enforce the provisions of the final order of the commission or designated hearings officer, the commission need only show that the notice was given, a hearing was held or the time granted for requesting the hearing has run without such a request, and a certified copy of the final order of the commission or designated hearings officer.
- (4) If any party is aggrieved by the decision of the commission or the designated hearings officer, the party may appeal to the supreme court provided that the operation of an abatement order will not be stayed on appeal unless specifically ordered by a court of competent jurisdiction after applying the stay criteria enumerated in section 91-14(c). The sanctions and disposition authorized under this subsection shall be separate and in addition to all other remedies either civil or criminal provided in any other applicable statutory provision. The commission may adopt rules under chapter 91 as may be necessary to fully effectuate this subsection."

SECTION 15. Section 271G-7, Hawaii Revised Statutes, is amended to read as follows:

**"§271G-7<sup>1</sup> General duties and powers of the commission.** The general duties and powers of the public utilities commission shall be:

- (1) To regulate water carriers, and to that end the commission shall have and utilize the investigative powers set forth in section 269-7 as well as all of the duties and powers specifically enumerated in this chapter, and water carriers shall be subject to the duties set forth in sections 269-8 and 269-9 as well as all of the duties specifically enumerated herein.
- (2) To establish such just and reasonable classifications of water carriers as the special nature of the services performed by the carriers shall require, and such just and reasonable rules, regulations, and requirements, consistent with this chapter, to be observed by the carriers so classified or grouped, as the commission deems necessary or desirable in the public interest. Such classifications, rules, regulations, and requirements shall be adopted and promulgated pursuant to the provisions of chapter 91 and shall have the force and effect of law.
- (3) Upon complaint in writing to the commission by any person or body politic, or upon its own initiative without complaint, the commission may investigate whether any water carrier has failed to comply with any provision of this chapter, or with any rule or order adopted or issued hereunder.
- (4) The commission may investigate any person acting in the capacity of or engaging in the business of a water carrier within the State, without having a certificate of public convenience and necessity or

other authority previously obtained under and in compliance with this chapter or the rules promulgated under this chapter.”

SECTION 16. Section 271G-19, Hawaii Revised Statutes, is amended to read as follows:

“**§271G-19 Unlawful operation.** (a) Any person knowingly and wilfully violating any provision of this chapter, or violating any certificate for which violation a penalty is not otherwise herein provided, shall be fined not less than \$100 nor more than \$500 for the first offense, and not less than \$200 nor more than \$500 for any subsequent offense. Each day of such violation shall constitute a separate offense.

(b) Any person, whether carrier, shipper, or consignee, or any officer, employee, agent, or representative thereof, who knowingly offers, grants, or gives, or solicits, accepts, or receives any rebate, concession, or discrimination in violation of any provisions of this chapter, or who by means of any false statement or representation or by the use of any false or fictitious bill, bill of lading, receipt, voucher, roll, account, claim, certificate, affidavit, deposition, lease, or bill of sale, or by any other means or device, knowingly and wilfully assists, suffers, or permits any person or persons, natural or artificial, to obtain transportation of passengers or property subject to this chapter for less than the applicable rate, fare, or charge, or who knowingly and wilfully by any such means or otherwise fraudulently seeks to evade or defeat regulation as in this chapter provided for water carriers, shall be fined not less than \$200 nor more than \$500 for the first offense and not less than \$250 nor more than \$2,000 for any subsequent offense.

(c) Any special agent, accountant, or examiner who knowingly and wilfully divulges any fact or information which may come to the special agent’s, accountant’s, or examiner’s knowledge during the course of any examination or inspection made under authority of section 271G-18, except as the special agent, accountant, or examiner may be directed by the commission or by a court or judge thereof, shall be guilty of a misdemeanor, and shall be subject to a fine of not more than \$500 or imprisonment for not exceeding one year, or both.

(d) Any water carrier, or any officer, agent, employee, or representative thereof, who shall fail or refuse to comply with any provision of this chapter, or any rule, regulation, filed tariff or requirement or order thereunder, shall pay a civil penalty to the State in the sum of not less than \$100, nor more than \$5,000 for each offense, and, in the case of a continuing violation, not to exceed \$5,000 for each additional day during which the failure or refusal continues. A penalty shall become due and payable when the person incurring it receives a notice in writing reasonably describing the violation and advising that the penalty is due.

(e) In addition to any other remedy available, the commission or its enforcement officer may issue citations to persons acting in the capacity of or engaging in the business of a water carrier within the State, without having a certificate of public convenience and necessity or other authority previously obtained under and in compliance with this chapter and the rules promulgated thereunder.

- (1) The citation may contain an order of abatement, and an assessment of civil penalties of not less than \$100, nor more than \$500 for each such offense, and, in the case of a continuing violation, not less than \$200 nor more than \$500 for each day that uncertified activity continues. All penalties collected under this subsection shall be

deposited in the treasury of the State. Service of a citation issued under this subsection shall be made by personal service whenever possible, or by certified mail, restricted delivery, sent to the last known business or residence address of the person cited.

- (2) Any person served with a citation under this subsection may submit a written request to the commission for a hearing, within twenty days from the receipt of the citation, with respect to the violations alleged, the scope of the order of abatement and the amount of civil penalties assessed. If the person cited under this subsection timely notifies the commission of the request for a hearing, the commission shall afford an opportunity for a hearing under chapter 91. The hearing shall be conducted by the commission or the commission may designate a hearings officer to hold the hearing.
- (3) If the person cited under this subsection does not submit a written request to the commission for a hearing within twenty days from the receipt of the citation, the citation shall be deemed a final order of the commission. The commission may apply to the appropriate court for a judgment to enforce the provisions of any final order, issued by the commission or designated hearings officer pursuant to this subsection, including the provisions for abatement and civil penalties imposed. In any proceeding to enforce the provisions of the final order of the commission or designated hearings officer, the commission need only show that the notice was given, a hearing was held or the time granted for requesting the hearing has run without such a request, and a certified copy of the final order of the commission or designated hearings officer.
- (4) If any party is aggrieved by the decision of the commission or the designated hearings officer, the party may appeal to the supreme court provided that the operation of an abatement order will not be stayed on appeal unless specifically ordered by a court of competent jurisdiction after applying the stay criteria enumerated in section 91-14(c). The sanctions and disposition authorized under this subsection shall be separate and in addition to all other remedies either civil or criminal provided in any other applicable statutory provision. The commission may adopt rules under chapter 91 as may be necessary to fully effectuate this subsection."

SECTION 17. Statutory material to be repealed is bracketed. New statutory material is underscored.

SECTION 18. This Act shall take effect upon its approval.

(Approved April 26, 1991.)

#### Note

1. So in original.