

ACT 332

H.B. NO. 173

A Bill for an Act Relating to Transportation.

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

SECTION 1. The legislature finds that air transportation is uniquely important to the people of the State of Hawaii. The construction of surface transportation systems linking the various islands of Hawaii on the comprehensive basis that prevails elsewhere in the United States is impractical. Accordingly, the people of the State of Hawaii must rely extensively on air travel for their basic daily personal transportation needs and for the shipment of goods which are important to their daily lives. Similarly, visitors to the State must often rely on local air travel services provided by Hawaii air carriers for transportation among the various islands. This makes reliable air transportation among the islands of the State vital to the growth of the statewide tourism industry.

The recent downturn in tourism throughout the State, especially on the neighbor islands, has resulted in a dramatic and severe loss of passenger traffic by interisland airlines. The legislature further finds that failure to provide relief to these critical transportation providers is likely to exacerbate the visitor decline on the neighbor islands and have a severe negative impact on businesses statewide.

The loss of air transportation among our islands would result in further reduction in employment and the quality of life for the citizens of Hawaii.

The legislature finds that these concerns can best be addressed by the regulation of air services between points in the State of Hawaii at the state level. The legislature finds that the current policies that are adopted on the national level may be inappropriate to the unique environment of Hawaii interisland and local service, and that policies adopted by the State of Hawaii in the regulation of this service will not impair implementation of national regulatory goals particularly including safety regulation which shall remain exclusively with the Federal Aviation Administration.

The legislature further finds that financial assistance for those hardest hit by this loss of revenues is not available through a loan from a federal or state agency. Such financial assistance can best be provided through a loan guarantee by the State to assist Hawaii interisland air carriers when other government resources are not available and a loan from a private lending institution can only be secured through the use of a guarantee from the State.

The legislature finds and declares that the issuance of loan guarantees under this Act is in the public interest and for the public health, safety, and general welfare of the State. The purpose of this Act is to:

- (1) Establish a statutory scheme for the regulation of interisland air carriers, to the extent permissible under the Constitution and laws of the United States, and
- (2) Assist Hawaii interisland air carriers whose operations and revenues have been adversely affected by the reduced number of visitors now using their transportation services by authorizing the department of business, economic development, and tourism, through its director, to guarantee loans from private lending institutions.

SECTION 2. The Hawaii Revised Statutes is amended by adding a new chapter to be appropriately designated and to read as follows:

“CHAPTER HAWAII AIR CARRIERS

§ -1 **Application of chapter; interstate or foreign commerce.** This chapter shall not apply to commerce with foreign nations, with territories of the United States, or to interstate commerce, except insofar as the application is permitted under the Constitution and laws of the United States.

§ -2 **Definitions.** As used in this chapter:

“Air transportation” means the holding out to the general public of or the undertaking to provide the carriage of persons or property, except for United States mail, by air, for compensation or hire between any pair of points both of which are within the State of Hawaii, unless the carriage is part of the continuous carriage of the persons or property to or from a point outside the State of Hawaii. For the purposes of this chapter the term “continuous carriage” means transportation by air which does not include a stopover of more than twenty-four hours.

“Aircraft” means any craft or other artificial contrivance of whatever description which is used or capable of being used, or intended to be used, as a means of transportation by air.

“Certificate” means a certificate of public convenience and necessity issued under this chapter to a Hawaii air carrier.

“Citizen of the United States” shall have the same meaning as defined in section 101(16) of the Federal Aviation Act of 1958 (49 U.S.C. §1301 et seq.), as amended.

“Commission” means the air carrier commission established pursuant to section -4.

“Control”, in reference to a relationship between any person or persons and another person or persons, includes actual as well as legal control, indirect as well as direct control, and the power to exercise substantial influence whether or not exercised.

“Hawaii air carrier” or “carrier” means any person who has received a certificate issued by the commission and who undertakes or holds itself out to the general public as engaging directly or indirectly in the transportation by air of passengers or property, or both, for compensation or hire within the State or between points within the State.

“Rates” includes rates, fares, and charges of whatever kind and nature unless the context indicates otherwise.

“Related company” means a company or persons that directly, or indirectly through one or more subsidiaries, affiliates, or a holding company, controls or is controlled by, or is under common control with, a Hawaii air carrier.

“Transportation of persons” includes every service in connection with or incidental to the comfort or convenience of persons transported, and the receipt, carriage, and delivery of these persons and their baggage.

“Transportation of property” includes every service in connection with or incidental to the transportation of property, including in particular its receipt, carriage, preservation, and delivery, and all incidental services affecting these activities.

§ -3 **Exemptions, generally.** Notwithstanding any other provisions of this chapter, this chapter shall not apply to:

- (1) Persons transporting their own property where the transportation is in furtherance of a primary business purpose or enterprise of that person, except where the transportation is undertaken by a Hawaii air carrier to evade the regulatory purposes of this chapter; or
- (2) Persons engaged in the business of transporting persons solely for sightseeing and other recreational activities not involving point-to-point travel.

§ -4 **Air carrier commission, establishment.** (a) There is established an air carrier commission to assist in the regulation of interisland air carriers pursuant to the purposes of this chapter. The commission shall be placed with the department of transportation for administrative purposes.

(b) The commission shall consist of five members. The commission shall be appointed in the manner prescribed in section 26-34, Hawaii Revised Statutes, except as otherwise provided in this section. The members shall be appointed for terms of six years each, subject to the advice and consent of the senate. The terms of the members first appointed shall be for two, three, four, five, and six years, respectively, as designated by the governor at the time of appointment. The governor shall designate a member of the commission to be chairperson of the commission. Each member shall hold office until the member’s successor is appointed and qualified.

(c) In appointing members, the governor shall consider persons who have had experience in transportation, accounting, engineering, government, finance, law, or other similar fields. No person owning any stock or bonds of any Hawaii air carrier or of any common carrier by air, or having any interest in, or deriving any

remuneration from, any Hawaii air carrier or any common carrier by air, shall be appointed as a commissioner; provided that any person who has retired from the service of and no longer holds any position with any common carrier or Hawaii air carrier may be eligible for appointment.

(d) The members of the commission shall receive no compensation for their services on the commission, but shall be reimbursed for actual expenses incurred in the performance of their duties.

§ -5 **Staff.** The air carrier commission may appoint and employ, on a contractual or noncontractual basis not subject to chapters 76 and 77, persons the commission finds necessary for the performance of the commission's functions. The commission shall set forth the powers, duties, and compensation of the staff.

§ -6 **General powers and duties.** The air carrier commission shall have general supervision over all Hawaii air carriers providing air transportation and, to the extent determined by the commission to be necessary to effectuate the purposes of this chapter, over any related company, and shall perform the duties and exercise the powers imposed or conferred upon it by this chapter. The general powers of the commission shall include, but not be limited to:

- (1) Regulating Hawaii air carriers by utilizing, in addition to its other powers, the investigative powers set forth in section -7;
- (2) Establishing reasonable classifications of Hawaii air carriers based upon the nature of the services provided by the carriers, and adopting rules pursuant to chapter 91 to regulate those classes of Hawaii air carriers; and
- (3) Exempting from this chapter, in whole or in part, when determined to be in the public interest, any Hawaii air carrier engaging in air transportation solely with aircraft with a maximum seating capacity of not more than seventeen passengers or maximum cargo capacity of not more than three thousand pounds.

§ -7 **Investigative powers.** (a) The air carrier commission shall have the power to examine the condition of each Hawaii air carrier and, to the extent determined by the commission to be necessary to effectuate the purposes of this chapter, any related companies, including but not limited to:

- (1) The manner in which carriers are operated with reference to the accommodation of the public;
- (2) The fares and rates charged by carriers;
- (3) The value of the physical property of carriers;
- (4) The issuance of stocks and bonds, and the disposition of the proceeds thereof, by carriers;
- (5) The amount and disposition of the income, and all financial transactions, of carriers;
- (6) The business relations of carriers with other persons, companies, or corporations;
- (7) The compliance of carriers with all applicable state and federal laws and with the provisions of their franchise, charter, and articles of association, if any;
- (8) The classifications, rules, regulations, practices, and service of carriers; and
- (9) All matters of every nature affecting the relations and transactions between carriers and the public, persons, or corporations.

(b) Any investigation may be made by the commission on its own motion, or a sworn written complaint that the commission determines sets forth any prima facie cause of complaint.

(c) A related company shall be deemed to have consented to examination and investigation pursuant to this section by entering into or maintaining a control relationship with a Hawaii air carrier.

§ -8 Certificates of public convenience and necessity. (a) Except as otherwise provided in this chapter, no person shall engage in air transportation unless the person holds a certificate issued by the air carrier commission authorizing its operation.

(b) Applications for certificates shall be made in writing to the commission. Applications shall be in the proper form and contain the required information, with the proof of service upon the interested parties, as the commission shall require by rule.

(c) A certificate shall be issued to any qualified applicant, authorizing the whole or any part of the operations covered by the application if it is found that the applicant is a citizen of the United States and fit, willing, and able to properly perform the service proposed and to conform to this chapter and the requirements and rules of the commission, and that the proposed service, to the extent to be authorized by the certificate, is required by the public convenience and necessity; otherwise the application shall be denied. The applicant shall have the burden of proof to establish that any proposed service is required by the public convenience and necessity. The commission shall institute an oral evidentiary hearing to consider any application for a certificate that would authorize the holder to use aircraft capable of carrying more than seventeen persons.

(d) Any applicant receiving a certificate under this chapter shall pay upon receipt of the certificate a registration fee and subsequent annual fee that shall be determined by the commission and deposited into the state general fund.

(e) Any Hawaii air carrier engaging in air transportation under a certificate issued by the commission may occasionally deviate from the route over which it is authorized to operate under the certificate under rules adopted by the commission.

§ -9 Temporary authority. To enable the provision of service for which there is an immediate and urgent need to a point or points having no Hawaii air carrier service capable of and willing to meet the need, the air carrier commission, in its discretion and without hearings or other proceedings, may grant temporary authority for the service by a Hawaii air carrier. The temporary authority, unless suspended or revoked for good cause, shall be valid for the time the commission shall specify, but for not more than a period of one hundred twenty days for any one immediate and urgent need.

§ -10 Transfer of certificates of public convenience and necessity, carrier property, and control of carriers. (a) No Hawaii air carrier shall sell, lease, assign, mortgage, or otherwise dispose of, or encumber any certificate, in whole or in part, or any of its property necessary or useful in the performance of transportation services for the public; nor shall any Hawaii air carrier, by any means, directly or indirectly, merge or consolidate its property, certificates, or any part thereof, with any other carrier, without in each case first having secured from the air carrier commission an order authorizing it to do so, and every such sale, lease, assignment, mortgage, disposition, encumbrance, merger, or consolidation, made other than in accordance with an order of the commission authorizing the same, is void and of no effect.

(b) No Hawaii air carrier shall purchase or acquire, take, or hold, any part of the capital stock of any other common carrier without having been first authorized to do so by the commission. Every assignment or transfer of any stock by or through any person to any person, or otherwise, in violation of this section is void and of no effect, and no such transfer shall be made on the books of any air carrier. Nothing herein shall prevent the holding of stock lawfully acquired prior to the effective date of this chapter.

(c) No person shall acquire control of any Hawaii air carrier without first receiving the approval of the commission.

(d) Whenever a transaction is proposed under subsection (a), (b), or (c), the Hawaii air carrier or carriers, or person or persons, seeking approval thereof shall present an application to the commission in the form that the commission shall require. The commission may act upon the application with or without first holding a public hearing; provided that, if requested, the commission shall afford reasonable opportunity for interested parties to be heard. If the commission finds that, subject to the terms and conditions that it shall find to be just and reasonable, the proposed transaction will be consistent with the public interest, the commission shall enter an order approving and authorizing the transaction, upon the terms and conditions, and with the modifications found to be just and reasonable. The proponent of the transaction within the scope of subsection (a), (b), or (c) shall have the burden of proof to establish that the transaction is consistent with the public interest.

(e) Pending the determination of an application filed with the commission for approval of a consolidation or merger of the properties of two or more Hawaii air carriers, or of a purchase, lease, charter, or contract to operate the properties of one or more Hawaii air carriers, or of an acquisition of control of a Hawaii air carrier, the commission, in its discretion and without hearings or other proceedings, may grant temporary approval, for a period not exceeding one hundred twenty days or for an additional period as the determination of an application may require, of the operation of the Hawaii air carrier properties sought to be acquired by the persons proposing in the pending application to acquire the properties, if it shall appear that failure to grant this temporary approval may result in destruction of or injury to the Hawaii air carrier properties sought to be acquired, or substantial interference with their future usefulness in the performance of adequate and continuous service to the public.

(f) This section shall apply to any transaction entered into or proposed to be entered into by a related company which is determined by the commission to have potential impact upon the related Hawaii air carrier or its operations. A related company shall notify the commission of any such transaction at least sixty days prior to its consummation.

§ -11 Suspension, change, and revocation of certificates. (a) Certificates shall be effective from the date specified therein, and shall remain in effect until suspended or terminated as provided in this section.

(b) Any certificate, upon application of the holder thereof, in the discretion of the air carrier commission, may be amended or revoked, in whole or in part. Upon complaint, or on the commission's own initiative, a certificate may be suspended, changed, or revoked, in whole or in part, for wilful failure by the holder or any related company to comply with this chapter, or with any lawful order or rule of the commission, or with any term, condition, or limitation of the certificate. No certificate shall be revoked, except upon application of the holder, unless the holder thereof or any related company wilfully fails to comply, within a reasonable time that shall not be fewer than thirty days and that shall be fixed by the commission,

with a lawful order of the commission, rule of the commission, or to a term, condition, or limitation of the certificate or permit.

(c) The right to engage in transportation by virtue of any certificate issued pursuant to section -8 or by virtue of temporary authority granted under section -9 or -10, may be suspended by the commission upon reasonable notice of not fewer than fifteen days to the carrier, but without hearing or other proceedings, for failure to comply by the carrier or any related company, with the terms of the certificate or temporary authority or with any lawful order or rule of the commission regarding the certificate or temporary authority.

§ -12 Rates, fares, and charges of air carriers. (a) In the transportation of persons every Hawaii air carrier shall:

- (1) Provide safe and adequate service, equipment, and facilities for the transportation of the passengers; and
- (2) Establish, observe, and enforce just and reasonable:
 - (A) Rates, fares, and charges;
 - (B) Regulations and practices relating to rates, fares, and charges; and
 - (C) Regulations and practices relating to the issuance, form, and substance of tickets; the carrying of personal, sample, and excess baggage; the facilities for transportation; and all other matters relating to or connected with the transportation of passengers as determined by the commission.

(b) In the transportation of property every Hawaii air carrier shall:

- (1) Provide safe and adequate service, equipment, and facilities for the transportation of the property; and
- (2) Establish, observe, and enforce just and reasonable:
 - (A) Rates, charges, and classifications;
 - (B) Regulations and practices relating to rates, charges, and classifications; and
 - (C) Regulations and practices relating to the manner and method of presenting, marking, packing, and delivering property for transportation; the facilities for transportation; and all other matters relating to or connected with the transportation of property as determined by the commission.

(c) All charges made for any service rendered by any Hawaii air carrier in the transportation of persons or property or in connection therewith shall be just and reasonable, and every unjust and unreasonable charge for the service or any part thereof, is prohibited and declared to be unlawful.

(d) Any person or body politic may make a complaint in writing to the commission that any rate, fare, charge, rule, or practice, in effect or proposed to be put into effect, is or will be in violation of this section. Whenever, after hearing, upon complaint or in an investigation on its own initiative, the commission shall be of the opinion that any individual rate, fare, or charge, demanded, charged, or collected by any Hawaii air carrier, or any rule or practice whatsoever of the Hawaii air carrier affecting the rate, fare, or charge or the value of the service thereunder, is or will be unjust or unreasonable, it shall determine and prescribe the lawful rate, fare, or charge or the maximum or minimum rate, fare, or charge thereafter to be observed, or the lawful rule or practice thereafter to be made effective.

(e) In the exercise of its power to prescribe just and reasonable rates, fares, and charges for the transportation of persons or property by Hawaii air carriers, and to prescribe classifications, rules, and practices relating thereto, the commission shall give consideration, among other factors, to the following:

- (1) The effect of the rates upon the movement of traffic by the Hawaii air carrier or carriers for which the rates are prescribed;
- (2) The need, in the public interest, of adequate and efficient transportation service by the carriers at the lowest cost consistent with the furnishing of the service; and
- (3) The need of revenues sufficient to enable the carriers, under honest, economical, and efficient management, including the operation of service at reasonable load factors, to provide the service.

(f) The commission shall establish and thereafter periodically adjust the recognized level of the fare, rate, or charge. The commission may adjust the recognized level by increasing or decreasing it, as appropriate, by the percentage change in the aggregate cost per available seat mile of similarly situated carriers for fares and per available ton mile for general commodity rates.

(g) The commission shall have no authority to find that any fare, rate, or other charge for service established by any Hawaii air carrier is unjust, unreasonable, or unjustified or to suspend the fare, rate, or other charge on the basis that the fare, rate or charge is too low or too high if the fare, rate, or charge is not more than five per cent higher or ten per cent lower than the recognized level of the fare, rate, or charge. Separate recognized levels shall be established and thereafter periodically adjusted on a peak and off-peak basis for first class fares, normal economy fares, tour basing fares, group fares, kamaaina fares, and for general commodity rates. The commission shall have no authority to find that a contract freight rate is unjust or unreasonable.

§ -13 **Tariffs.** (a) Every Hawaii air carrier shall file with the air carrier commission, and keep open to public inspection, tariffs showing all the rates, fares, and charges for transportation, and all services in connection therewith, of persons or property. The rates, fares, and charges shall be stated in terms of lawful money of the United States. The tariffs required by this section shall be published, filed, and posted in the form and manner, and shall contain the information that the commission shall prescribe by rule. The commission may reject any tariff filed with it which is not consistent with this section. Any tariff rejected by the commission shall be void and its use shall be unlawful.

(b) No change shall be made in any rate, fare, charge, or classification, or any rule, or practice affecting the rate, fare, charge, or classification, or the value of the service thereunder, specified in any effective tariff of a Hawaii air carrier, except after thirty days notice of the proposed change filed and posted in accordance with subsection (a). The commission, in its discretion and for good cause shown, may allow the change upon notice less than that specified, or modify the requirements of this section with respect to posting and filing of tariffs, either in particular instances or by general order applicable to special or peculiar circumstances or conditions.

(c) No Hawaii air carrier shall engage in the transportation of persons or property unless the rates, fares, and charges upon which the same are transported by the carrier have been filed and published in accordance with this chapter.

(d) Whenever any schedule is filed with the commission stating a new rate, fare, or charge, for the transportation of persons or property by a Hawaii air carrier or any rule or practice affecting the rate, fare, or charge, or the value of the service thereunder, the carrier may on its own initiative, or shall by order of the commission served prior to the effective date of the schedule, concurrently file an economic justification which shall be prepared under the same form and in the same manner as prescribed by the commission unless the changed fare or rate is within the zone of fare or rate flexibility established pursuant to section -12(g).

Except as provided in section -12(g), the commission may upon complaint of any interested person or upon its own initiative at once and, if it so orders, without answer or other formal pleading by the interested carrier or carriers, but upon reasonable notice, enter upon a hearing concerning the lawfulness of the rate, fare, or charge, or the rule or practice, and pending the hearing and decision the commission may suspend the operation of the schedule and defer the use of the rate, fare, or charge, or the rule or practice, by delivering to the affected carrier or carriers, not later than five days prior to the effective date of the schedule, a statement in writing of its reasons for the suspension. The commission shall have up to six months from the date of ordering a hearing to investigate the lawfulness of the rate, fare, or charge, to complete its investigation. If the commission fails to issue a final order within the six-month period then the changes proposed by the carrier shall go into effect. At any hearing involving a change in a rate, fare, charge, or classification, or in a rule or practice, the burden of proof shall be upon the carrier to show that the proposed changed rate, fare, charge, classification, rule, or practice, is just and reasonable. In exercising its authority under this subsection and subsection (e), the commission shall consider the factors regarding reasonableness set forth in section -12(e).

(e) When a fare or rate increase application is filed, the commission, in its discretion, may authorize temporary increases in rates, fares, and charges, upon a prima facie showing by a Hawaii air carrier that such fares, rates, or charges are just and reasonable; provided that the commission by order shall require the carrier to keep an accurate account of all amounts received from the increase. The commission, after hearing and decision, shall require a carrier to refund the portion of the increased rates or charges found to be not justified to persons in whose behalf the amounts were paid.

§ -14 Investigation of unfair or deceptive practices. The commission, upon its own initiative or upon complaint, if it considers the action to be in the public interest, may investigate and determine whether any Hawaii air carrier has been or is engaged in unfair or deceptive practices or unfair methods of competition in air transportation or the sale thereof. If the commission finds, after notice and hearing, that a carrier is engaged in unfair or deceptive practices or unfair methods of competition, it shall order the carrier to cease and desist from the practices or methods of competition. Notwithstanding section 480-2(d), such complaint may be made by any person, a government agency, or competing carrier and may relate to practices involving advertising and marketing, service and ancillary services, pricing or any other aspect of the operations of a Hawaii air carrier.

§ -15 Issuance of securities; execution of leases. A Hawaii air carrier, with the approval of the air carrier commission, may issue stocks and stock certificates, bonds, notes, and other evidences of indebtedness, payable at periods of more than twelve months after the date thereof, and enter into long-term leases of more than five years and leverage leases, for the following purposes:

- (1) For the acquisition or use of property;
- (2) For the construction, completion, extension, or improvement of or addition to its facilities or service;
- (3) For the discharge or lawful refunding of its obligations; and
- (4) For the reimbursement of moneys actually expended from income or from any other moneys in its treasury not secured by or obtained from the issue of its stocks or stock certificates, or bonds, notes, or other evidences of indebtedness, except maintenance of service, replacements, and substitutions not constituting capital expenditure in cases where the air carrier has kept its accounts for the expenditure in a

manner as to enable the commission to ascertain the amount of monies expended and the purposes for which the expenditures were made, and the sources of the funds in its treasury applied to the expenditures.

A Hawaii air carrier may not issue securities, nor enter into long-term leases of more than three years and leverage leases, to acquire or use property or to construct, complete, extend, improve, or add to its facilities or service, if the commission determines that the proposed transaction will have a material adverse effect on the carrier's operations. No carrier shall repurchase or reissue its own common stock without the approval of the commission.

This section shall apply to a transaction involving a related company to the extent that the commission determines that the transaction may have a potential impact upon the relevant Hawaii air carrier or its operations. A related company shall notify the commission of any transaction at least sixty days prior to its consummation.

§ -16 Accounts, records, and reports. The air carrier commission may require annual, periodic, or special reports from all Hawaii air carriers and related companies. The commission shall prescribe the manner and form in which the reports shall be made.

§ -17 Unlawful actions; penalties. (a) Any person knowingly and wilfully violating any provision of this chapter, or violating any certificate for which a penalty is not otherwise herein provided, shall be fined not less than \$500 nor more than \$2,000 for the first offense, and not less than \$1,000 nor more than \$10,000 for any subsequent offense. Each day of the 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 provision 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 persons 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 regulations in this chapter provided for Hawaii air carriers, shall be fined not less than \$100 nor more than \$5,000 for each offense.

(c) Any person who knowingly and wilfully divulges any fact or information which may come to the person's knowledge during the course of any examination or inspection made under authority of this chapter, except as the person may be directed by the commission or by a court or judge of competent jurisdiction, shall be guilty of a misdemeanor, and shall be subject to a fine of not more than \$1,000 or imprisonment for not¹ exceeding one year, or both.

(d) Any Hawaii air carrier or related company, or any officer, agent, employee, or representative thereof, who shall knowingly and wilfully 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 continuing violation, a penalty not to exceed \$1,000 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 from the air carrier commission, reasonably describing the violation and advising that the penalty is

due. Penalties assessed against a related company may at the discretion of the air carrier commission be collected from the related Hawaii air carrier.

(e) The commission may compromise any fine or civil penalty taking into consideration, among other factors, the impact on consumers and remedial measures to be taken.

§ -18 **Hearings.** (a) Unless otherwise provided in this chapter, all hearings, investigations, and proceedings shall be governed by chapter 91 and by rules adopted by the air carrier commission, and in the conduct thereof, the rules of evidence need not be applied; provided that in all evidentiary hearings conducted pursuant to chapter 91 in which a person has the burden of:

- (1) Justifying the reasonableness of its rates, fares, charges, or classifications;
- (2) Establishing the need for service in the public convenience and necessity or of demonstrating that a proposed transaction is consistent with the public interest; or
- (3) Proving the reasonableness of expenditures, contracts, leases, or other transactions between the carrier and corporate affiliates of the carrier, the burden shall be satisfied only if the reliable, probative, and substantial evidence is clear and convincing. No informality in any hearing, investigation, or proceeding, or in the manner of taking testimony shall invalidate any order, decision, or rule made, approved, or confirmed by the commission.

(b) Complaints may be made, in writing, by the commission on its own motion or by any person or body politic setting forth any act or thing done, or omitted to be done by any person subject to the commission's jurisdiction, including any rule, rate, or charge, heretofore established or fixed by or for any Hawaii air carrier, in violation or claimed to be in violation, of any law or any order or rule of the commission.

§ -19 **Review and appeals.** (a) Within ten days after the issuance of any final decision or order of the commission under this chapter, any party aggrieved by the action of the commission may submit a petition to the director of transportation requesting the director to review the decision or order. The filing of any petition shall stay the effectiveness of the decision or order until the director has issued a final decision on review. The director may affirm in whole or in part the order or decision of the commission or remand it to the commission for further consideration, in which case the order or decision shall remain stayed until it is again submitted to and approved by the director.

(b) An appeal from an order of the air carrier commission under this chapter, whether or not reviewed by the director, shall be made to the supreme court in the manner and within the time provided by chapter 602 and the rules of court; provided that the order is final. If the order is preliminary, an appeal may be made pursuant to section 91-14(a). The appeal shall not of itself stay the operation of the order appealed from, but the court may stay the order after a hearing upon a motion therefor, and may impose such conditions as it may deem proper as to giving a bond and keeping the necessary accounts or otherwise securing restitution of the excess charges, if any, made during the pendency of the appeal in case the order appealed from should be sustained, revised, or modified, in whole or in part.

(c) Any party injured by a violation of this chapter may file an action to enjoin such violation before any court of general jurisdiction of the State of Hawaii.

§ -20 **Existing service.** (a) As of the effective date of enactment of all required federal legislation, any person providing air transportation with turnaround

service between two points, both of which are within the State of Hawaii pursuant to authority granted by the United States Department of Transportation, shall be deemed qualified and shall be issued a certificate pursuant to this chapter.

(b) For the purposes of this section, "turnaround service" means the operation of an aircraft that only serves points within the State of Hawaii."

SECTION 3. The legislative reference bureau shall conduct a study to assess the need for a consumer advocate to represent, protect, and advance the interests of all consumers before the air carrier commission. The study shall include, but not be limited to, the following:

- (1) Recommendations on the general powers and duties of the consumer advocate;
- (2) An assessment of staffing and funding requirements;
- (3) An assessment of whether this responsibility may be incorporated under the purview of the present consumer advocate or if a separate consumer advocate is recommended, where this position may be placed for administrative purposes; and
- (4) Proposed legislation necessary to implement the recommendations.

The legislative reference bureau shall report its findings and recommendations to the legislature no later than thirty days before the convening of the regular session of 1994.

SECTION 4. Loans guaranteed by the department. (a) The department of business, economic development, and tourism, through its director, may guarantee up to ninety per cent of the principal balance of a loan made by a private lending institution to a Hawaii air carrier providing the carriage of persons or property by air for compensation or hire between any two points, both of which are within the State of Hawaii; provided that at no time shall the aggregate amount of the State's liability, contingent or otherwise, on loans guaranteed by this Act exceed \$12,600,000.

(b) The loan guarantee shall be for a term of not more than seven years.

(c) All loans guaranteed under this Act shall be collateralized on a basis at least equal to the outstanding balance of the loan guaranteed; provided that as part of the collateral, the Hawaii air carrier shall deposit, in cash, an amount equal to twenty per cent of the principal balance of the loan into the Hawaii interisland airline loan guarantee trust fund to be held by the State in an interest bearing account. The balance of the collateral shall be in the form of real property interests or such other marketable assets as may be approved by the director. The collateral shall not be subordinated. All parts and equipment pledged as collateral shall be subject to a buyback or re-stock agreement such that the value of the collateral or method of securing payment from the collateral shall be guaranteed.

(d) A loan guarantee shall be considered only when there is evidence that the loan is not available from other sources. The loan shall be deemed to be available unless the Hawaii air carrier provides proof satisfactorily to the director of refusal of all or a part of the required loan from at least three financial institutions, one of which has a current business relationship with the carrier. Proof of refusal shall contain the date of application, amount, purpose, and the financial institutions' reasons for not granting the desired loan. The financial institutions' refusal to advance credit shall not be considered the full test of the unavailability of credit. Where the director has reason to believe that credit is otherwise available from sources other than such financial institutions, the loan applied for shall not be granted notwithstanding the receipt of a written refusal from such financial institutions.

(e) The department shall conduct a due diligence examination of the Hawaii air carrier applying for a loan guarantee under this Act. The department shall not approve a loan guarantee unless the applicant provides reasonable assurance that the loan can and will be repaid pursuant to its terms. Reasonable assurance of repayment shall be based upon consideration of the applicant's record of past earnings or projections of future earnings.

(f) The loan guarantee may not be granted unless the Hawaii air carrier secures agreements from its principal creditors that the principal creditors shall withhold any collection actions which may result in the Hawaii air carrier ceasing operations for a minimum of two years from the effective date of the guarantee.

(g) Funds provided by the guaranteed loan may be used for working capital except that loan guarantees shall not be granted if the direct or indirect purpose or result of granting the loan would be to:

- (1) Satisfy debts arising prior to the effective date of the guarantee;
- (2) Provide funds, directly or indirectly, for payment, distribution, or as a loan to owners, partners, or shareholders of the borrower;
- (3) Provide funds for wage or salary increases; or
- (4) Replenish funds heretofore used for any of the above purposes in anticipation of applying for a loan guarantee under this Act.

(h) The department may set additional terms and conditions on the granting of the loan guarantee. When the application for a guaranteed loan has been approved by the department, the department shall issue to the lender a guarantee for the percentage of the loan guaranteed. The lender shall collect all payments from the borrower and otherwise service the loan.

(i) Loan guarantees shall not be granted unless the carrier raises new equity equal to the amount of the guarantee in a form acceptable to the department.

(j) In return for the department's guarantee, the lender shall remit, out of interest collected, a guarantee fee on the unpaid principal balance of the guaranteed portion of the loan to the State, provided that this fee shall not be added to any amount which the borrower is obligated to pay. The department shall determine the amount of the guarantee fee.

(k) The applicant shall:

- (1) Expend the loan in accordance with the provisions of this Act;
- (2) Keep the department informed of any and all changes in the security and other major changes in the carrier's operation; and
- (3) Promptly provide information and documents to the department upon request.

(l) Upon retirement of the loan or under other conditions satisfactory to the director of business, economic development, and tourism, the deposit made into the Hawaii interisland airline loan guarantee trust fund by the Hawaii air carrier shall be returned to the Hawaii air carrier in accordance with the terms of the agreement with the carrier.

In the event of a default by the Hawaii air carrier, the lender shall notify the department of the default, and shall be entitled to receive all moneys deposited into the Hawaii interisland airline loan guarantee trust fund by the Hawaii air carrier. The lender shall commence all actions necessary to protect or enforce its rights to the properties used as collateral to secure the loan guarantee and shall prosecute such actions to the fullest extent available under law.

(m) During the life of a loan guarantee, the carrier shall submit to the department audited annual financial statements consisting of a balance sheet, income statement, and a statement of cash flows. These reports shall be submitted no later than four months after the close of the carrier's fiscal year. The department may require the carrier to file interim financial statements and reports as deemed necessary by the director.

SECTION 5. Pursuant to Article VII, section 13, clause 8, of the State Constitution that states: "Bonds constituting instruments of indebtedness under which the State or any political subdivision incurs a contingent liability as a guarantor, but only to the extent the principal amount of such bonds does not exceed seven per cent of the principal amount of outstanding general obligation bonds not otherwise excluded under this section; provided that the State or political subdivision shall establish and maintain a reserve in an amount in reasonable proportion to the outstanding loans guaranteed by the State or political subdivision as provided by law," the legislature finds and declares that the moneys deposited into the Hawaii interisland airline loan guarantee trust fund pursuant to section 4(c) of this Act, satisfies the reasonable reserve requirement of the State Constitution.

SECTION 6. There is created a trust fund in the state treasury to be known as the Hawaii interisland airline loan guarantee trust fund which shall serve as the reserve for all loans guaranteed under this Act.

SECTION 7. The Hawaii air carrier shall deposit, in cash, an amount equal to twenty per cent of the principal balance of the loan guaranteed under this Act into the Hawaii Interisland Airline Loan Guarantee trust fund. This sum shall, when and if necessary, be expended by the department of business, economic development, and tourism for the purposes of this Act.

SECTION 8. There is appropriated out of the general revenues of the State of Hawaii the sum of \$100,000, or so much thereof as may be necessary for fiscal year 1993-94, to conduct due diligence examinations of any Hawaii air carrier applying for a loan guarantee from the State of Hawaii, and monitoring and auditing, and the administration of the Hawaii interisland airline loan guarantee trust fund.

SECTION 9. The sum appropriated shall be expended by the department of business, economic development, and tourism for the purposes of this Act.

SECTION 10. The provisions of this Act shall be performed to the extent permissible under the United States Constitution and federal law without causing a violation of the United States Constitution, federal grant agreements, federal law, or federal regulations.

SECTION 11. This Act shall take effect upon its approval; provided that section 2 shall take effect upon the enactment of federal legislation permitting implementation of that section; provided further that section 8 shall take effect on July 1, 1993; provided further that the collateral required by section 4(c) of this Act is deposited into the Hawaii interisland loan guarantee trust fund on such terms and conditions acceptable to the director of the department of business, economic development, and tourism, by June 30, 1993; and provided further that this Act shall be repealed on June 30, 2002.

(Approved June 28, 1993.)

Note

1. So in original.