

ACT 101

H.B. NO. 187

A Bill for an Act Relating to Motor Carriers.

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

SECTION 1. Section 271-27, Hawaii Revised Statutes, is amended as follows:

1. By amending subsection (a) to read as follows:

“(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.”

2. By amending subsections (g), (h), (i), and (j) to read:

“(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] the 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] the 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] adopted 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] adopted 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) 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] a sum [of \$100]:

- (1) Up to \$1,000 for each such offense[.]; and[. in]
- (2) In the case of a continuing violation, [not to exceed \$50] not less than \$50 and not to exceed \$500 for each additional day during which [such] failure or refusal [shall continue.] continues.

(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] adopted 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 2. Statutory material to be repealed is bracketed.¹

SECTION 3. This Act shall take effect upon its approval.

(Approved June 8, 1995.)

Note

1. So in original.