

ACT 120

H.B. NO. 2

A Bill for an Act Relating to Motor Carriers.

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

SECTION 1. The purpose of this Act is to amend the state motor carrier law by:

- (1) Extending civil and criminal penalty provisions to include shippers and consignees located in this State, as well as their officers, agents, employees, and representatives;
- (2) Exempting persons transporting seed corn to or from a processing facility from the motor carrier law until June 30, 2002; and
- (3) Repealing the June 8, 1998, sunset date of Act 105, Session Laws of Hawaii 1995, which allows the department of transportation motor vehicle safety officers to enforce motor carrier violations.

SECTION 2. Section 271-5, Hawaii Revised Statutes, is amended to read as follows:

“§271-5 Exemptions, generally. Notwithstanding any other provisions of this chapter, its contents 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 motor carrier to evade the regulatory purposes of this chapter;
- (2) Persons operating motor vehicles when engaged in the transportation of school children and teachers to and from school, and to and from school functions; provided that these persons may engage in providing transportation at special rates for groups of persons belonging to an eleemosynary or benevolent organization or association domiciled in this State where the organization or association sponsors or is conducting a nonregular excursion[.]; provided that whenever the persons engage in the transportation of persons other than those exempted in this paragraph, that portion of their operation shall not be exempt from

this chapter. Nothing in this paragraph shall be construed to authorize any person to engage in the transportation of persons, other than the transportation of persons exempted by the terms of this paragraph, without a permit or certificate issued by the commission authorizing such transportation;

- (3) Persons operating taxicabs or other motor vehicles utilized in performing a bona fide taxicab service. "Taxicab" includes:
 - (A) Any motor vehicle used in the movement of passengers on the public highways under the following circumstances, namely the passenger hires the vehicle on call or at a fixed stand, with or without baggage for transportation, and controls the vehicle to the passenger's destination;
 - (B) Any motor vehicle for hire having seating accommodations for eight or fewer passengers used in the movement of passengers on the public highways that may, as part of a continuous trip, pick up or discharge passengers from various unrelated locations; provided that they shall be regulated by the counties in accordance with section 46-16.5(c); and provided further that this subparagraph shall not apply to any exclusive rights granted by the department of transportation for taxicab services at facilities under the department's control; and
 - (C) Any motor vehicle having seating accommodations for eight or fewer passengers used in the movement of passengers on the public highways between a terminal, i.e. a fixed stand, in the Honolulu district, as defined in section 4-1 and a terminal in a geographical district outside the limits of the Honolulu district, and vice versa, without picking up passengers other than at the terminals or fixed stands; provided that the passengers may be picked up by telephone call from their homes in the rural area or may be unloaded at any point between the fixed stands or may be delivered to their homes in the rural area;
- (4) Persons operating motor vehicles in the transportation of persons pursuant to a franchise from the legislature and whose operations are presently regulated under chapter 269;
- (5) Nonprofit agricultural cooperative associations to the extent that they engage in the transportation of their own property or the property of their members;
- (6) Persons operating motor vehicles specially constructed for the towing of disabled or wrecked vehicles but not otherwise used in the transportation of property for compensation or hire;
- (7) Persons operating motor vehicles in the transportation of mail, newspapers, periodicals, magazines, messages, documents, letters, or blueprints;
- (8) Persons operating funeral cars or ambulances;
- (9) Persons operating motor vehicles in the transportation of garbage or refuse;
- (10) Persons operating the type of passenger carrying motor vehicles known as "sampan buses" within the radius of twenty miles from the city of Hilo, Hawaii;
- (11) Persons transporting unprocessed pineapple to a cannery [and], seed corn to a processing facility, or returning any containers used in such transportation to the fields;

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- (12) Sugar plantations transporting sugarcane, raw sugar, molasses, sugar by-products, and farming supplies for neighboring farmers pursuant to contracts administered by the United States Department of Agriculture;
- (13) Persons engaged in the ranching or meat or feed business who transport cattle to slaughterhouses for hire where such transportation is their sole transportation for hire and where their earnings from the transportation constitute less than fifty per cent of their gross income from their business and the transportation for hire;
- (14) Persons transporting unprocessed raw milk to processing plants and returning any containers used in such transportation to dairy farms for reloading;
- (15) Persons transporting animal feeds to animal husbandry farmers and farming supplies directly to animal husbandry farmers and returning any containers used in such transportation to these sources of such feeds and supplies for reloading;
- (16) Persons engaged in transporting not more than fifteen passengers between their places of abode, or termini near such places, and their places of employment in a single daily round trip where the driver is also on the driver's way to or from the driver's place of employment;
- (17) Persons transporting passengers without charge in motor vehicles owned or operated by such person, where such transportation is provided in conjunction with and in furtherance of a related primary business purpose or enterprise of that person, and such transportation is provided only directly to and from the place of business of such person, except that this exemption shall not apply to persons making any contract, agreement, or arrangement to provide, procure, furnish, or arrange for transportation as a travel agent or broker or a person engaged in tour or sightseeing activities, nor shall this exemption apply where the transportation is undertaken by a person to evade the regulatory purposes of this chapter; and
- (18) Persons conducting the type of county-regulated passenger carrying operation known as "jitney services". For the purposes of this paragraph, "jitney services" means public transportation services utilizing motor vehicles that have seating accommodations for six to twenty-five passengers, operate along specific routes during defined service hours, and levy a flat fare schedule."

SECTION 3. Section 271-27, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

"(a) Any person knowingly and wilfully violating any provision of this chapter, or any rule, 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. In addition, any shipper or consignee located in this State, or any officer, employee, agent, or representative thereof, who knowingly and wilfully engages in the services of any person violating any provision of this chapter, or any rule, requirement, or order, or any term or condition of any certificate or permit for which a penalty is not otherwise provided, shall be guilty of a misdemeanor."

SECTION 4. Section 271-27, Hawaii Revised Statutes, is amended by amending subsection (h) to read as follows:

“(h) Any motor carrier or lessor, or any officer, agent, employee, or representative thereof, who [shall fail or refuse] fails or refuses to comply with any provision of this chapter, or any rule, requirement, or order thereunder, and any shipper or consignee located in this State, or any officer, agent, employee, or representative of any such shipper or consignee, who engages in the services of any motor carrier or lessor, or any officer, agent, employee, or representative thereof, who fails or refuses to comply with any provision of this chapter, or any rule, requirement, or order, may be assessed a civil penalty payable to the State in a sum:

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

SECTION 5. Section 5(2) of Act 105, Session Laws of Hawaii 1995, is amended by amending subsection (j) of section 271-27, Hawaii Revised Statutes, to read as follows:

“(j) In addition to any other remedy available, the commission or its enforcement officer, including a motor vehicle safety officer employed and assigned[,] by the department of transportation pursuant to section 271-38, [by the department of transportation] may issue citations to persons acting in the capacity of or engaging in the business of a motor carrier within [the] this State, without having a certificate of public convenience and necessity or other authority previously obtained under and in compliance with this chapter and rules adopted [thereunder.], or to any shipper or consignee located in this State, or any officer, employee, agent, or representative thereof who engages in the services of those persons.

- (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 notifies the commission of the request for a hearing in time, the commission shall afford the person 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 in time, 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 final order, the commission need only produce a certified copy of the final order and show that the notice was given, and that a hearing was held or the time granted for requesting the hearing has run without such a request.
- (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;

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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 by law. The commission may adopt any rules under chapter 91 that may be necessary to fully effectuate this subsection.”

SECTION 6. Section 7 of Act 105, Session Laws of Hawaii 1995, as amended by Act 102, Session Laws of Hawaii 1996, is amended to read as follows:

“SECTION 7. This Act shall take effect upon its approval [and shall be repealed on June 8, 1998; provided that upon the repeal of this Act:

- (1) The definition of “enforcement officer” in section 269-1, Hawaii Revised Statutes, is reenacted in the form in which it read on June 7, 1995;
- (2) Section 271-4, Hawaii Revised Statutes, is reenacted in the form in which it read on June 7, 1995; and
- (3) Section 271-27(g) and (j), Hawaii Revised Statutes, is reenacted in the form in which it read on June 7, 1995, as amended by section 1 of Act 101, Session Laws of Hawaii 1995].”

SECTION 7. Statutory material to be repealed is bracketed. New statutory material is underscored.

SECTION 8. This Act shall take effect upon its approval; provided that on June 30, 2002, section 2 of this Act shall be repealed and section 271-5, Hawaii Revised Statutes, is reenacted in the form in which it read on the day before the approval of this Act.

(Approved June 16, 1997.)