

ACT 91

S.B. NO. 2180

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:

“(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 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.”

2. By amending subsection (h) to read:

“(h) 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 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 offense; and
- (2) In the case of a continuing violation, not less than \$50 and not more than \$500 for each additional day during which the failure or refusal continues.”

3. By amending subsection (j) to read:

“(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, may issue citations to persons acting in the capacity of or engaging in the business of a motor carrier within 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, 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; provided that the operation of an abatement order [will] shall 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 2. Statutory material to be repealed is bracketed. New statutory material is underscored.

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

(Approved May 26, 1998.)