



GOV. MSG. NO. 897

EXECUTIVE CHAMBERS  
HONOLULU

LINDA LINGLE  
GOVERNOR

July 8, 2008

The Honorable Colleen Hanabusa, President  
and Members of the Senate  
Twenty-Fourth State Legislature  
State Capitol, Room 409  
Honolulu, Hawaii 96813

Dear Madam President and Members of the Senate:

I am transmitting herewith HB2250 HD1, without my approval, and with the statement of objections relating to the measure.

HB2250 HD1

A BILL FOR AN ACT RELATING TO  
TRANSPORTATION.

Sincerely,

A handwritten signature in black ink, appearing to read "Linda Lingle".

LINDA LINGLE

EXECUTIVE CHAMBERS

HONOLULU

July 8, 2008

STATEMENT OF OBJECTIONS TO HOUSE BILL NO. 2250

Honorable Members  
Twenty-Fourth Legislature  
State of Hawaii

Pursuant to Section 16 of Article III of the Constitution of the State of Hawaii, I am returning herewith, without my approval, House Bill No. 2250, entitled "A Bill for an Act Relating to Transportation."

The purpose of this bill is to establish a statutory scheme for the regulation of persons who provide air transportation service between any pair of points within the State of Hawaii, to the extent permissible under the Constitution and laws of the United States.

This bill is objectionable because there is a serious potential that the bill, if it becomes effective, will harm consumers and the market.

The bill will substitute regulation for competition, shield air carriers from competitive forces, and thereby likely lead to higher costs, higher prices, and reduced quality of service. The bill will make it more difficult for carriers to enter, serve new routes, alter their fares, or introduce new services or pricing models, and will thereby reduce the carriers' incentives to operate efficiently and compete. The underlying premise for the bill that regulation is necessary to ensure the maintenance of inter-island air transportation services is not substantiated by the fact that the four largest interisland routes are among the top domestic city pairs, based on passenger traffic within the United States.

STATEMENT OF OBJECTIONS  
HOUSE BILL NO. 2250  
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I am fully cognizant of the need for reliable inter-island air service in the State of Hawaii. I am, however, not convinced that a government-mandated regulatory scheme is warranted in light of the potential harm that the scheme could cause on consumers and the market.

For the foregoing reasons, I am returning House Bill No. 2250 without my approval.

Respectfully,

A handwritten signature in black ink, appearing to read "Linda Lingie", written in a cursive style.

LINDA LINGIE  
Governor of Hawaii

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## A BILL FOR AN ACT

RELATING TO TRANSPORTATION.

**BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:**

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

15           The legislature finds that these concerns can best be  
16 addressed by the regulation of air services between points in  
17 the State of Hawaii at the state level. The legislature finds  
18 that the current policies adopted at the national level may be



1 inappropriate to the unique environment of Hawaii interisland  
2 and local service and, further, that policies adopted by the  
3 State of Hawaii in the regulation of this service will not  
4 impair implementation of national regulatory goals, including  
5 safety regulation, which shall remain exclusively within the  
6 jurisdiction of the Federal Aviation Administration.

7 Accordingly, the purpose of this Act is to establish a  
8 statutory scheme for state regulation of interisland air  
9 carriers, to the extent permissible under the Constitution and  
10 laws of the United States.

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

14 "CHAPTER

15 HAWAII AIR CARRIERS

16 § -1 Application of chapter; interstate or foreign  
17 commerce. This chapter shall not apply to commerce with foreign  
18 nations, with territories of the United States, or to interstate  
19 commerce, except insofar as the application is permitted under  
20 the Constitution and laws of the United States.

21 § -2 Definitions. As used in this chapter:



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

11 "Aircraft" means any craft or other artificial contrivance  
12 of whatever description that is used or capable of being used,  
13 or intended to be used, as a means of transportation by air.

14 "Certificate" means a certificate of public convenience and  
15 necessity issued under this chapter to a Hawaii air carrier.

16 "Commission" means the air carrier commission established  
17 pursuant to section -4.

18 "Control," in reference to a relationship between any  
19 person or persons and another person or persons, includes actual  
20 as well as legal control, indirect as well as direct control,  
21 and the power to exercise substantial influence whether or not  
22 exercised.



1 "Hawaii air carrier" or "carrier" means any person or  
2 entity who has received a certificate issued by the commission  
3 and who undertakes or holds itself out to the general public as  
4 engaging directly or indirectly in the transportation by air of  
5 passengers or property, or both, for compensation or hire within  
6 the State or between points within the state.

7 "Rates" includes rates, fares, and charges of whatever kind  
8 and nature unless the context indicates otherwise.

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

13 "Transportation of persons" includes every service in  
14 connection with or incidental to the comfort or convenience of  
15 persons transported and the receipt, carriage, and delivery of  
16 these persons and their baggage.

17 "Transportation of property" includes every service in  
18 connection with or incidental to the transportation of property,  
19 including in particular its receipt, carriage, preservation, and  
20 delivery, and all incidental services affecting these  
21 activities.



1 § -3 Exemptions; generally. Notwithstanding any other  
2 provisions of this chapter, this chapter shall not apply to:

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

11 § -4 Air carrier commission; establishment. (a) There  
12 is established an air carrier commission to assist in the  
13 regulation of interisland air carriers pursuant to the purposes  
14 of this chapter. The commission shall be placed with the  
15 department of transportation for administrative purposes.

16 (b) The commission shall consist of five members. The  
17 commission shall be appointed in the manner prescribed in  
18 section 26-34, except as otherwise provided in this section.  
19 The members shall be appointed for terms of six years each,  
20 subject to the advice and consent of the senate. The terms of  
21 the members initially appointed shall be for two, three, four,  
22 five, and six years, respectively, as designated by the governor





1 at the time of appointment. The governor shall designate a  
2 member of the commission to be chairperson of the commission.  
3 Each member shall hold office until the member's successor is  
4 appointed and qualified.

5 (c) In appointing members, the governor shall consider  
6 persons who have experience in transportation, accounting,  
7 engineering, government, finance, law, or other similar fields.  
8 No person owning any stock or bonds of any Hawaii air carrier or  
9 of any common carrier by air, or having any interest in, or  
10 deriving any remuneration from, any Hawaii air carrier or any  
11 common carrier by air shall be appointed as a commissioner;  
12 provided that any person who has retired from the service of,  
13 and no longer holds any position with, any common carrier or  
14 Hawaii air carrier may be eligible for appointment.

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

19 § -5 Staff. The air carrier commission may appoint and  
20 employ, on a contractual or noncontractual basis not subject to  
21 chapter 76, persons the commission determines necessary for the



1 performance of the commission's functions. The commission shall  
2 determine the powers, duties, and compensation of the staff.

3       § -6 General powers and duties. The air carrier  
4 commission shall have general supervision over all Hawaii air  
5 carriers providing air transportation and, to the extent  
6 determined by the commission to be necessary to effectuate the  
7 purposes of this chapter, over any related company, and shall  
8 perform the duties and exercise the powers imposed or conferred  
9 upon it by this chapter. The general powers of the commission  
10 shall include:

11       (1) Regulating Hawaii air carriers by using, in addition  
12           to its other powers, the investigative powers set  
13           forth in section -7;

14       (2) Establishing reasonable classifications of Hawaii air  
15           carriers based upon the nature of the services  
16           provided by the carriers and adopting rules pursuant  
17           to chapter 91 to regulate those classes of Hawaii air  
18           carriers; and

19       (3) Exempting from this chapter, in whole or in part, when  
20           determined to be in the public interest, any Hawaii  
21           air carrier engaging in air transportation solely with  
22           aircraft with a maximum seating capacity of not more



1 than seventeen passengers or maximum cargo capacity of  
2 not more than three thousand pounds.

3 § -7 Investigative powers. (a) The air carrier  
4 commission shall have the power to examine the condition of each  
5 Hawaii air carrier and, to the extent determined by the  
6 commission to be necessary to effectuate the purposes of this  
7 chapter, any related companies, including:

- 8 (1) The manner in which carriers are operated with  
9 reference to the accommodation of the public;
- 10 (2) The fares and rates charged by carriers;
- 11 (3) The value of the physical property of carriers;
- 12 (4) The issuance of stocks and bonds, and the disposition  
13 of the proceeds thereof, by carriers;
- 14 (5) The amount and disposition of the income and all  
15 financial transactions, of carriers;
- 16 (6) The business relations of carriers with other persons,  
17 companies, or corporations;
- 18 (7) The compliance of carriers with all applicable state  
19 and federal laws and with the provisions of their  
20 franchise, charter, and articles of association, if  
21 any;



1 (8) The classifications, rules, regulations, practices,  
2 and service of carriers; and

3 (9) All matters of every nature affecting the relations  
4 and transactions between carriers and the public,  
5 persons, or corporations.

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

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

13 § -8 Certificates of public convenience and necessity.

14 (a) Except as otherwise provided in this chapter, no person  
15 shall engage in air transportation unless the person holds a  
16 certificate issued by the air carrier commission authorizing its  
17 operation.

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



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

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

21           (e) Any Hawaii air carrier engaging in air transportation  
22 under a certificate issued by the commission may occasionally



1 deviate from the route over which it is authorized to operate  
2 under the certificate under rules adopted by the commission.

3 § -9 Temporary authority. To enable the provision of  
4 service for which there is an immediate and urgent need to a  
5 point or points having no Hawaii air carrier service capable of  
6 and willing to meet the need, the air carrier commission, in its  
7 discretion and without hearings or other proceedings, may grant  
8 temporary authority for the service by a Hawaii air carrier.  
9 The temporary authority, unless suspended or revoked for good  
10 cause, shall be valid for the time the commission shall specify,  
11 but for not more than a period of one hundred twenty days for  
12 any one immediate and urgent need.

13 § -10 Transfer of certificates of public convenience and  
14 necessity; carrier property; control of carriers. (a) No  
15 Hawaii air carrier shall sell, lease, assign, mortgage, or  
16 otherwise dispose of, or encumber any certificate, in whole or  
17 in part, or any of its property necessary or useful in the  
18 performance of transportation services for the public; nor shall  
19 any Hawaii air carrier, by any means, directly or indirectly,  
20 merge or consolidate its property, certificates, or any part  
21 thereof, with any other carrier, without in each case first  
22 having secured from the air carrier commission an order



1 authorizing it to do so, and every such sale, lease, assignment,  
2 mortgage, disposition, encumbrance, merger, or consolidation,  
3 made other than in accordance with an order of the commission  
4 authorizing the same, shall be void and of no effect.

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

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

16 (d) Whenever a transaction is proposed under subsection  
17 (a), (b), or (c), the Hawaii air carrier or carriers, or person  
18 or persons, seeking approval shall present an application to the  
19 commission in the form prescribed by the commission. The  
20 commission may act upon the application with or without first  
21 holding a public hearing; provided that, if requested, the  
22 commission shall afford reasonable opportunity for interested



1 parties to be heard. If the commission finds, subject to the  
2 terms and conditions that it determines to be just and  
3 reasonable, that the proposed transaction will be consistent  
4 with the public interest, the commission shall enter an order  
5 approving and authorizing the transaction, upon the terms and  
6 conditions and with the modifications found to be just and  
7 reasonable. The proponent of the transaction within the scope  
8 of subsection (a), (b), or (c) shall have the burden of proof to  
9 establish that the transaction is consistent with the public  
10 interest.

11 (e) Pending the determination of an application filed with  
12 the commission for approval of a consolidation or merger of the  
13 properties of two or more Hawaii air carriers, or of a purchase,  
14 lease, charter, or contract to operate the properties of one or  
15 more Hawaii air carriers, or of an acquisition of control of a  
16 Hawaii air carrier, the commission, in its discretion and  
17 without hearings or other proceedings, may grant temporary  
18 approval for a period not exceeding one hundred twenty days, or  
19 for an additional period as the determination of an application  
20 may require, of the operation of the Hawaii air carrier  
21 properties sought to be acquired by the persons proposing in the  
22 pending application to acquire the properties, if it appears





1 that failure to grant this temporary approval may result in  
2 destruction of or injury to the Hawaii air carrier properties  
3 sought to be acquired or substantial interference with their  
4 future usefulness in the performance of adequate and continuous  
5 service to the public.

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

12 § -11 Suspension, change, and revocation of  
13 certificates. (a) Certificates shall be effective from the  
14 date specified and shall remain in effect until suspended or  
15 terminated as provided in this section.

16 (b) Any certificate, upon application of the certificate  
17 holder, in the discretion of the air carrier commission, may be  
18 amended or revoked in whole or in part. Upon complaint, or on  
19 the commission's own initiative, a certificate may be suspended,  
20 changed, or revoked in whole or in part for wilful failure by  
21 the holder or any related company to comply with this chapter,  
22 or with any lawful order or rule of the commission, or with any



1 term, condition, or limitation of the certificate. No  
2 certificate shall be revoked except upon application of the  
3 holder unless the certificate holder or any related company  
4 wilfully fails to comply, within a reasonable time that shall  
5 not be fewer than thirty days and that shall be fixed by the  
6 commission, with a lawful order of the commission, rule of the  
7 commission, or to a term, condition, or limitation of the  
8 certificate or permit.

9 (c) The right to engage in transportation by virtue of any  
10 certificate issued pursuant to section -8 or by virtue of  
11 temporary authority or approval granted under section -9 or  
12 -10, may be suspended by the commission upon reasonable  
13 notice of not fewer than fifteen days to the carrier, but  
14 without hearing or other proceedings, for failure to comply by  
15 the carrier or any related company, with the terms of the  
16 certificate or temporary authority or approval or with any  
17 lawful order or rule of the commission regarding the certificate  
18 or temporary authority or approval.

19 § -12 Rates, fares, and other charges of air carriers.

20 (a) In the transportation of passengers, every Hawaii air  
21 carrier shall:



1 (1) Provide safe and adequate service, equipment, and  
2 facilities for the transportation of the passengers;  
3 and

4 (2) Establish, observe, and enforce just and reasonable:

5 (A) Rates, fares, and charges;

6 (B) Regulations and practices relating to rates,  
7 fares, and charges; and

8 (C) Regulations and practices relating to:

9 (i) The issuance, form, and substance of  
10 tickets;

11 (ii) The carrying of personal, sample, and excess  
12 baggage;

13 (iii) The facilities for transportation; and

14 (iv) All other matters relating to or connected  
15 with the transportation of passengers as  
16 determined by the commission.

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

19 (1) Provide safe and adequate service, equipment, and  
20 facilities for the transportation of the property; and

21 (2) Establish, observe, and enforce just and reasonable:

22 (A) Rates, charges, and classifications;



1 (B) Regulations and practices relating to rates,  
2 charges, and classifications; and

3 (C) Regulations and practices relating to:

4 (i) The manner and method of presenting,  
5 marking, packing, and delivering property  
6 for transportation;

7 (ii) The facilities for transportation; and

8 (iii) All other matters relating to or connected  
9 with the transportation of property as  
10 determined by the commission.

11 (c) All charges made for any service rendered by any  
12 Hawaii air carrier in the transportation of passengers or  
13 property or in connection with the service shall be just and  
14 reasonable and every unjust and unreasonable charge for the  
15 service or any part thereof shall be prohibited and declared to  
16 be unlawful.

17 (d) Any person or body politic may make a complaint in  
18 writing to the commission that any rate, fare, charge, rule, or  
19 practice, in effect or proposed to be put into effect, is or  
20 will be in violation of this section. Whenever, after hearing,  
21 upon complaint or in an investigation on its own initiative, the  
22 commission determines that any individual rate, fare, or charge,



1 demanded, charged, or collected by any Hawaii air carrier, or  
2 any rule or practice whatsoever of the Hawaii air carrier  
3 affecting the rate, fare, or charge or the value of the service  
4 is or will be unjust or unreasonable, the commission shall  
5 determine and prescribe the lawful rate, fare, or charge or the  
6 maximum or minimum rate, fare, or charge thereafter to be  
7 observed, or the lawful rule or practice thereafter to be made  
8 effective.

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

15 (1) The effect of the rates upon the movement of traffic  
16 by the Hawaii air carrier or carriers for which the  
17 rates are prescribed;

18 (2) The need, in the public interest, of adequate and  
19 efficient transportation service by the carriers at  
20 the lowest cost consistent with the furnishing of the  
21 service; and



1           (3) The need for revenues sufficient to enable the  
2           carriers, under honest, economical, and efficient  
3           management, including the operation of service at  
4           reasonable load factors, to provide the service.

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

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



1 commission shall have no authority to find that a contract  
2 freight rate is unjust or unreasonable.

3 § -13 Tariffs. (a) Every Hawaii air carrier shall file  
4 with the air carrier commission, and keep open to public  
5 inspection, tariffs showing all the rates, fares, and charges  
6 for transportation, and all services in connection therewith, of  
7 passengers or property. The rates, fares, and charges shall be  
8 stated in terms of lawful money of the United States. The  
9 tariffs required by this section shall be published, filed, and  
10 posted in the form and manner and shall contain the information  
11 that the commission shall prescribe by rule. The commission may  
12 reject any tariff filed with it that is inconsistent with this  
13 section. Any tariff rejected by the commission shall be void  
14 and its use shall be unlawful.

15 (b) No change shall be made in any rate, fare, charge, or  
16 classification, or any rule, or practice affecting the rate,  
17 fare, charge, or classification, or the value of the service  
18 thereunder, specified in any effective tariff of a Hawaii air  
19 carrier, except after thirty days notice of the proposed change  
20 filed and posted in accordance with subsection (a). The  
21 commission, in its discretion and for good cause shown, may  
22 allow the change upon notice less than that specified or modify



1 the requirements of this section with respect to posting and  
2 filing of tariffs, either in particular instances or by general  
3 order applicable to special or peculiar circumstances or  
4 conditions.

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

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

20 Except as provided in section -12(g), the commission,  
21 upon complaint of any interested person or upon its own  
22 initiative at once and, if it so orders, without answer or other





1 formal pleading by the interested carrier or carriers, but upon  
2 reasonable notice, may enter upon a hearing concerning the  
3 lawfulness of the rate, fare, or charge, or the rule or  
4 practice, and pending the hearing and decision the commission,  
5 may suspend the operation of the schedule and defer the use of  
6 the rate, fare, or charge, or the rule or practice, by  
7 delivering to the affected carrier or carriers not later than  
8 five days prior to the effective date of the schedule, a  
9 statement in writing of its reasons for the suspension. The  
10 commission shall have up to six months from the date of ordering  
11 a hearing to investigate the lawfulness of the rate, fare, or  
12 charge, to complete its investigation. If the commission fails  
13 to issue a final order within the six-month period then the  
14 changes proposed by the carrier shall go into effect. At any  
15 hearing involving a change in a rate, fare, charge, or  
16 classification, or in a rule or practice, the burden of proof  
17 shall be upon the carrier to show that the proposed changed  
18 rate, fare, charge, classification, rule, or practice is just  
19 and reasonable. In exercising its authority under this  
20 subsection and subsection (e), the commission shall consider the  
21 factors regarding reasonableness set forth in section -12(e).



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

11 § -14 Investigation of unfair or deceptive practices.

12 The commission, upon its own initiative or upon complaint, if it  
13 considers the action to be in the public interest, may  
14 investigate and determine whether any Hawaii air carrier has  
15 been or is engaged in unfair or deceptive practices or unfair  
16 methods of competition in air transportation or the sale  
17 thereof. If the commission finds, after notice and hearing,  
18 that a carrier is engaged in unfair or deceptive practices or  
19 unfair methods of competition, it shall order the carrier to  
20 cease and desist from those practices or methods of competition.  
21 Notwithstanding section 480-2(d), a complaint may be made by any  
22 person, a government, or competing carrier and may relate to



1 practices involving advertising and marketing, service and  
2 ancillary services, pricing, or any other aspect of the  
3 operations of a Hawaii air carrier.

4 § -15 Issuance of securities; execution of leases. A

5 Hawaii air carrier, with the approval of the air carrier  
6 commission, may issue stocks and stock certificates, bonds,  
7 notes, and other evidences of indebtedness, payable at periods  
8 of more than twelve months after the date thereof, and enter  
9 into long-term leases of more than five years and leverage  
10 leases, for the following purposes:

- 11 (1) For the acquisition or use of property;
- 12 (2) For the construction, completion, extension, or  
13 improvement of or addition to its facilities or  
14 service;
- 15 (3) For the discharge or lawful refunding of its  
16 obligations; and
- 17 (4) For the reimbursement of moneys actually expended from  
18 income or from any other moneys in its treasury not  
19 secured by or obtained from the issue of its stocks or  
20 stock certificates, or bonds, notes, or other  
21 evidences of indebtedness, except maintenance of  
22 service, replacements, and substitutions not



1           constituting capital expenditure in cases where the  
2           air carrier has kept its accounts for the expenditure  
3           in a manner as to enable the commission to ascertain  
4           the amount of moneys expended and the purposes for  
5           which the expenditures were made and the sources of  
6           the funds in its treasury applied to the expenditures.

7           A Hawaii air carrier may not issue securities or enter into  
8           long-term leases of more than three years and leverage leases,  
9           to acquire or use property or to construct, complete, extend,  
10          improve, or add to its facilities or service, if the commission  
11          determines that the proposed transaction will have a material  
12          adverse effect on the carrier's operations. No carrier shall  
13          repurchase or reissue its own common stock without the approval  
14          of the commission.

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

21          § -16 Accounts, records, and reports. The air carrier  
22          commission may require annual, periodic, or special reports from



1 all Hawaii air carriers and related companies. The commission  
2 shall prescribe the manner and form in which the reports shall  
3 be made.

4 § -17 Unlawful actions; penalties. (a) Any person who  
5 knowingly and wilfully violates any provision of this chapter,  
6 or the terms of any certificate, for which violation a penalty  
7 is not otherwise provided in this chapter, shall be fined not  
8 less than \$500 or more than \$2,000 for the first offense and not  
9 less than \$1,000 nor more than \$10,000 for any subsequent  
10 offense. Each day of the violation shall constitute a separate  
11 offense.

12 (b) Any person, whether carrier, shipper, or consignee, or  
13 any officer, employee, agent, or representative thereof, who:

14 (1) Knowingly offers, grants, gives, solicits, accepts, or  
15 receives any rebate, concession, or discrimination in  
16 violation of any provision of this chapter;

17 (2) By means of any false statement or representation or  
18 by the use of any false or fictitious bill, bill of  
19 lading, receipt, voucher, roll, account, claim,  
20 certificate, affidavit, deposition, lease, or bill of  
21 sale, or by any other means or device, knowingly and  
22 wilfully assists, suffers, or permits any person or



1 persons, natural or artificial, to obtain  
2 transportation of passengers or property subject to  
3 this chapter for less than the applicable rate, fare,  
4 or charge; or

5 (3) Knowingly and wilfully by any such means or otherwise  
6 fraudulently seeks to evade or defeat regulations in  
7 this chapter,  
8 shall be fined not less than \$100 nor more than \$5,000 for each  
9 offense.

10 (c) Any person who knowingly and wilfully divulges any  
11 fact or information that may come to the person's knowledge  
12 during the course of any examination or inspection made under  
13 authority of this chapter, except as the person may be directed  
14 by the commission or by a court or judge of competent  
15 jurisdiction, shall be guilty of a misdemeanor.

16 (d) Any Hawaii air carrier or related company, or any  
17 officer, agent, employee, or representative thereof, who  
18 knowingly and wilfully fails or refuses to comply with any  
19 provision of this chapter, or any rule, filed tariff, or  
20 requirement or order thereunder, shall pay a civil penalty to  
21 the State in the sum of not less than \$100 nor more than \$5,000  
22 for each offense and, in the case of a continuing violation, a



1 penalty not to exceed \$1,000 for each additional day during  
2 which the failure or refusal continues. A penalty shall become  
3 due and payable when the person incurring it receives a notice  
4 in writing from the air carrier commission, reasonably  
5 describing the violation and advising that the penalty is due.  
6 Penalties against a related company, at the discretion of the  
7 air carrier commission, may be collected from the related Hawaii  
8 air carrier.

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

12 § -18 Hearings. (a) Unless otherwise provided in this  
13 chapter, all hearings, investigations, and proceedings shall be  
14 governed by chapter 91 and by rules adopted by the air carrier  
15 commission, and in the conduct thereof, the rules of evidence  
16 need not be applied; provided that in all evidentiary hearings  
17 conducted pursuant to chapter 91 in which a person has the  
18 burden of:

19 (1) Justifying the reasonableness of its rates, fares,  
20 charges, or classifications;

21 (2) Establishing the need for service in the public  
22 convenience and necessity or of demonstrating that a



1 proposed transaction is consistent with the public  
2 interest; or

3 (3) Proving the reasonableness of expenditures, contracts,  
4 leases, or other transactions between the carrier and  
5 corporate affiliates of the carrier,

6 the burden shall be satisfied only if the reliable, probative,  
7 and substantial evidence is clear and convincing. No  
8 informality in any hearing, investigation, or proceeding, or in  
9 the manner of taking testimony shall invalidate any order,  
10 decision, or rule made, approved, or confirmed by the  
11 commission.

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

19 § -19 Review and appeals. (a) Within ten days after  
20 the issuance of any final decision or order of the commission  
21 under this chapter, any party aggrieved by the action of the  
22 commission may submit a petition to the director of





1 transportation requesting the director to review the decision or  
2 order. The filing of any petition shall stay the effectiveness  
3 of the decision or order until the director has issued a final  
4 decision on review. The director may affirm in whole or in part  
5 the order or decision of the commission or remand it to the  
6 commission for further consideration, in which case the order or  
7 decision shall remain stayed until it is again submitted to and  
8 approved by the director.

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



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

4 § -20 Existing service. (a) As of the effective date  
5 of enactment of all required federal legislation, any person  
6 providing air transportation with turnaround service between two  
7 points, both of which are within the State of Hawaii pursuant to  
8 authority granted by the United States Department of  
9 Transportation, shall be deemed qualified and shall be issued a  
10 certificate pursuant to this chapter.

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

14 SECTION 3. The provisions of this Act shall be performed  
15 to the extent permissible under the United States Constitution  
16 and federal law without causing a violation of the United States  
17 Constitution, federal grant agreements, federal law, or federal  
18 regulations.

19 SECTION 4. This Act shall take effect upon its approval;  
20 provided that section 2 shall take effect upon the enactment of  
21 federal legislation permitting implementation of that section.

