

ACT 121

A Bill for an Act Relating to Commercial Motor Vehicles, their Economic Regulation, Safety, Equipping, and Inspection Therefor.

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

SECTION 1. Title of Act. This Act shall be known as "The Hawaii Motor Carrier Act".

SECTION 2. Title 13 of the Revised Laws of Hawaii 1955, is hereby amended by adding a new chapter thereto entitled "Motor Carrier Law" to be appropriately numbered and to read as follows :

**"CHAPTER
MOTOR CARRIER LAW**

Sec. -1. Declaration of Policy. The Legislature of this State hereby recognizes and declares that the transportation of persons and of property, for commercial purposes, over the public highways of this State constitutes a business affected with the public interest. It is intended by this chapter to provide for fair and impartial regulation of such transportation in the interest of preserving for the public the full benefit and use of such highways consistent with the public safety and the needs of commerce; to promote safe, adequate, economical and efficient service and foster sound economic conditions in transportation and among the several carriers, to

encourage the establishment and maintenance of reasonable rates and charges for transportation and related accessorial service, without unjust discrimination, undue preference or advantage, or unfair or destructive competitive practices. All of the provisions of this chapter shall be administered and enforced with a view to carrying out the above declaration of policy.

Sec. -2. Administration: Governing provisions of other acts. This chapter shall be administered by the public utilities commission of the State of Hawaii, and the provisions of this chapter and of chapter 104, Revised Laws of Hawaii 1955, as amended, not inconsistent with the provisions of this chapter shall govern its administration; provided, however, that section 104-3.5, section 104-8, section 104-10, section 104-15, section 104-16 through 104-25, and section 104-27, shall not, in any respect, apply to the regulation of motor carriers.

Sec. -3. Application of chapter, interstate or foreign commerce. Neither this chapter nor any provision hereof shall apply to commerce with foreign nations or to interstate commerce, except in so far as such application is permitted under the constitution and laws of the United States.

Sec. -4. Definitions. As used in this chapter.

(a) 'Chapter' means Motor Carrier Law.

(b) 'Commission' means the public utilities commission of the State of Hawaii.

(c) 'Person' or 'persons' means any individual, firm, copartnership, corporation, company, association or joint stock association; and includes any trustee, receiver, assignee or personal representative thereof.

(d) 'Certificate' means a certificate of public convenience and necessity issued under this chapter to common carriers by motor vehicle.

(e) 'Permit' means a permit issued under this chapter to contract carriers by motor vehicle.

(f) 'Transportation of persons' includes every service in connection with or incidental to the safety, comfort or convenience of persons transported and the receipt, carriage and delivery of such persons and their baggage.

(g) 'Transportation of property' includes every service in connection with or incidental to the transportation of property, including in particular its receipt, delivery, elevation, transfer, carriage, ventilation, refrigeration, icing, dunnage, storage in transit and handling.

(h) 'Motor vehicle' means any vehicle, machine, tractor, trailer, or semi-trailer propelled or drawn by mechanical power and used upon the highways in the transportation of passengers or property, or any combination thereof determined by the commission, but does not include any vehicle, locomotive or car operated exclusively on a rail or rails or a trolley bus operated by electric power derived from a fixed overhead wire, furnishing local passenger transportation similar to street-railway service.

(i) 'Highway' means the roads, highways, streets and ways in this State.

(j) 'Rates' includes rates, fares, tolls, rentals and charges of whatever kind and nature unless the context indicates otherwise.

(k) 'Common carrier by motor vehicle' means any person which holds itself out to the general public to engage in the transportation by motor vehicle of passengers or property or any class or classes thereof for compensation.

(l) 'Contract carrier by motor vehicle' means any person which engages in transportation by motor vehicle of passengers or property for compensa-

tion (*other than transportation referred to in subsection (k) under continuing contracts with one person or a limited number of persons either (a) for the furnishing of transportation services through the assignment of motor vehicles for a continuing period of time to the exclusive use of each person served, or (b) for the furnishing of transportation services designed to meet the distinct need of each individual customer.

(m) 'Motor carrier' includes both a common carrier by motor vehicle and a contract carrier by motor vehicle.

(n) 'Private carrier of property by motor vehicle' means any person not included in the terms 'common carrier by motor vehicle' or 'contract carrier by motor vehicle', who or which transports by motor vehicle property of which such person is the owner, lessee or bailee, when such transportation is for the purpose of sale, lease, rent, or bailment, or in the furtherance of any commercial enterprise.

Sec. -5. Exemptions. Notwithstanding any other provisions of this chapter, its contents, save and except for the power of the commission to regulate safety of operations as provided for in sections.....-7(a) (1), (2), (3) and (6) of this chapter, shall not apply to:

(a) Persons transporting their own property where such transportation is in furtherance of a primary business purpose or enterprise of such person, except where such transportation is undertaken by a motor carrier to evade the regulatory purposes of this chapter.

(b) Persons operating motor vehicles under contract with the State or any political subdivision thereof in the transportation of school children and teachers to and from school or to and from school functions.

(c) Persons operating taxicabs or other motor vehicles utilized in performing a bona fide metered taxicab service. "Taxicab" means and 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; and (b) any motor vehicle having seating accommodations for eight or less passengers used in the movement of passengers on the public highways between a terminal, i. e., a fixed stand, in the city of Honolulu, as defined in section 149-2, and a terminal in a geographical district outside the limits of the city of Honolulu, and vice versa, without picking up passengers other than at the terminals or fixed stands; provided that passengers may be picked up by telephone call from their homes in the rural area or may be unloaded at any point between such fixed stands or may be delivered to their homes in the rural area.

(d) Persons operating motor vehicles in the transportation of persons pursuant to a franchise from the legislature of this State and whose operations are presently regulated under the provisions of chapter 104, Revised Laws of Hawaii 1955, as amended.

(e) Nonprofit agricultural cooperative associations to the extent that they engage in the transportation of their own property or the property of their members.

(f) 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.

* So in original. Closing parenthesis missing.

(g) Persons operating motor vehicles in the transportation of mail, newspapers, periodicals or magazines.

(h) Persons operating funeral cars or ambulances.

(i) Farmers who infrequently transport from the place of production to a warehouse, regular market, place of storage, or place of shipment, the farm products of neighboring farmers in exchange for like or reciprocal services, for farm products, or for a cash consideration not exceeding \$1,500 per year, and provided that such transportation shall constitute the sole transportation of property for hire or compensation of such farmers.

(j) Persons operating motor vehicles in the transportation of garbage or refuse.

(k) Persons operating the type of passenger carrying motor vehicles known as 'sampan buses' in and around the city of Hilo, Hawaii.

(l) Persons transporting unprocessed pineapple to a cannery and returning any containers used in such transportation to the fields.

(m) Sugar plantations transporting sugar cane, raw sugar, molasses, sugar by-products and farming supplies for neighboring farmers pursuant to contracts administered by the U. S. Department of Agriculture.

Sec. -6. Certificate or permit required. Except as provided in section-5, no person shall engage in the transportation of persons or property, for compensation or hire, by motor vehicle, over any public highway of this State unless there is in force with respect to such person a certificate or permit issued by the commission authorizing such transportation.

Sec. -7. General duties and powers of the commission. (a) (1) To regulate common carriers by motor vehicle, and to that end the commission shall establish reasonable requirements with respect to continuous and adequate service, leasing of motor vehicles, uniform system of accounts, records, and reports, preservation of records, qualifications and maximum hours of service of employees and (after public hearing shall promulgate within four months from the effective date of this chapter) rules and regulations as to safety of operations and equipment (which regulations shall be not less than those prescribed under the Motor Carrier Safety Regulations of the Interstate Commerce Commission where determined by the commission to be applicable to conditions existing in the State; provided, however, that the requirements for hours of service shall be in strict accordance with those prescribed by said Motor Carrier Safety Regulations.

(2) To regulate contract carriers by motor vehicle, and to that end the commission shall establish reasonable requirements with respect to leasing of motor vehicles, uniform system of accounts, records, and reports, preservation of records, qualifications and maximum hours of service of employees, and rules and regulations as to safety of operations and equipment which regulations shall be not less than those prescribed under the Motor Carrier Safety Regulations of the Interstate Commerce Commission where determined by the commission to be applicable to conditions existing in the State; provided, however, that the requirements for hours of service shall be in strict accordance with those prescribed by said Motor Carrier Safety Regulations.

(3) To establish for private carriers of property by motor vehicle and other persons and operations exempted under section-5 of this chapter reasonable requirements to promote safety of operations and equipment as provided in subsections (1) and (2) hereof. The term 'motor carrier' shall be

construed to include private carriers of property by motor vehicle and other persons and operations exempted under section-5 of this chapter, in the administration of sections-7(c),-23(e),-25,-29 and-34.

(4) To administer, execute, and enforce all provisions of this chapter, to make all necessary orders in connection therewith, and to prescribe rules, regulations, and procedures for such administration.

(5) For purposes of the administration of the provisions of this chapter, to inquire into the management of the business of motor carriers, and into the management of the business of persons controlling, controlled by, or under common control with, motor carriers to the extent that the business of such persons is related to the management of the business of one or more motor carriers, and the commission shall keep itself informed as to the manner and method in which the same are conducted, and may obtain from such carriers and persons such information as the commission deems necessary to carry out the provisions of this chapter.

(6) To review and approve all plans and specifications for the construction in the State or modification of motor vehicles which will at any time be operated upon the highway by common carriers, contract carriers or private carriers of property.

(b) The commission may from time to time establish such just and reasonable classifications of groups of carriers included in the terms 'common carrier by motor vehicle' or 'contract carrier by motor vehicle', as the special nature of the services performed by such carriers shall require; and such just and reasonable rules, regulations, and requirements, consistent with the provisions of this chapter, to be observed by the carriers so classified or grouped, as the commission deems necessary or desirable in the public interest.

(c) Upon complaint in writing to the commission by any person or body politic, or upon its own initiative without complaint, the commission may investigate whether any motor carrier has failed to comply with any provision of this chapter, or with any regulation, requirements, or order established or issued pursuant thereto. If the commission, after notice and hearing as prescribed in section-29, finds upon any such investigation that the motor carrier has failed to comply with any such provision, regulation, requirements, or order, the commission shall issue an appropriate order to compel the carrier to comply therewith. Whenever the commission is of opinion that any complaint does not state reasonable grounds for investigation and action on its part, it may dismiss such complaint.

Sec. -8. Reports and decisions of commission. (a) Whenever the commission shall inquire into the operations, operating rights, rates, safety of operations, or directs inquiry and investigation into motor carrier activities regulated under this chapter, and shall hold public hearing thereon, it shall be its duty to make a report in writing in respect thereto, which shall state its findings of fact and conclusions of law, together with its decision, order, or requirement in the premises.

(b) All reports issued under subsection (a) shall be entered of record, and a copy thereof shall be furnished to parties of record in any such proceeding.

(c) The commission may provide for the publication of its reports and decisions in such form and manner as may be best adapted for public in-

formation and use, and such authorized publications shall be competent evidence of the reports and decisions of the commission therein contained in all courts of this State without any further proof or authentication thereof. The commission may also cause to be printed for early distribution its annual reports.

Sec. -9. Copies of schedules, tariffs, contracts, etc., kept as public records; evidence. The copies of schedules and classifications and tariffs of rates, fares, and charges, and all contracts, agreements and arrangements between motor carriers filed with the commission as herein provided, and the statistics, tables, and figures contained in the annual or other reports of carriers made to the commission as required under the provisions of this chapter shall be preserved as public records in the custody of the commission (except any contract, agreement, or arrangement between a contract carrier by motor vehicle and a shipper shall only be made public as provided in section-23), and shall be received as prima facie evidence of what they purport to be for the purpose of investigations by the commission and in all judicial proceedings; and copies of and extracts from any of said schedules, classifications, tariffs, contracts, agreements, arrangements, or reports, made public records as aforesaid, certified by the commission under the commission's seal, shall be received in evidence with like effect as the originals.

Sec. -10. Applications for certificates of public convenience and necessity. (a) Except as otherwise provided in this section and in section-14, no common carrier by motor vehicle shall engage in operations on any public highway in this State, unless there is in force with respect to such carrier a certificate of public convenience and necessity issued by the commission authorizing such operation; provided, however, that, subject to section.....-13 if any such carrier or predecessor in interest was in bona fide operation as a common carrier by motor vehicle on June 27, 1959, over the route or routes or within the territory for which application is made and has so operated since that time, or if engaged in furnishing seasonal service only, was in bona fide operation on June 27, 1959, during the season ordinarily covered by its operation and has so operated since that time except, in either instance, as to interruptions of service over which the applicant or its predecessor in interest had no control, the commission shall issue such certificate without requiring further proof that public convenience and necessity will be served by such operation, and without further proceedings, if application for such certificate is made to the commission as provided in subsection (b) of this section and within 90 days after this section shall take effect. Otherwise, the application for such certificate shall be decided in accordance with the procedure provided for in subsection (c) of this section and such certificate shall be issued or denied accordingly. Pending the determination of any such application, the continuance of such operation shall be lawful.

(b) Applications for certificates shall be made in writing to the commission, be verified under oath, and shall be in such form and contain such information and be accompanied by proof of service upon interested parties as the commission shall, by regulation, require.

(c) Subject to section.....-13, a certificate shall be issued to any qualified applicant therefor, authorizing the whole or any part of the operations covered by the application if it is found that the applicant is fit, willing, and able properly to perform the service proposed and to conform to the provisions of this chapter and the requirements, rules, and regulations of the

commission thereunder, and that the proposed service, to the extent to be authorized by the certificate, is or will be required by the present or future public convenience and necessity; otherwise such application shall be denied.

(d) Any certificate issued under this section covering the transportation of property shall be issued as an irregular route certificate and shall specify the island or islands or portion or portions thereof within which service may be rendered. Any certificate covering the transportation of passengers shall specify the service to be rendered and the routes over which, the fixed termini, if any, between which, and the intermediate and off-route points, if any, at which the motor carrier is authorized to operate and such certificate may include authority to transport in the same vehicle with the passengers, baggage of passengers, express, and also to transport baggage of passengers in a separate vehicle. There shall, at the time of issuance and from time to time thereafter, be attached to the exercise of the privileges granted by the certificate such reasonable terms, conditions and limitations as the public convenience and necessity may from time to time require, including terms, conditions, and limitations as to the extensions of the service territory or route or routes of the carriers, and such terms and conditions as are necessary to carry out, with respect to the operations of the carrier, the requirements established by the commission under sections.....7(a) (1) and7(a)(4), provided, however, that the terms, conditions, or limitations shall not restrict the right of the carrier to add to his or its equipment and facilities in the service territory or over the routes or between the termini as the development of business and the demands of the public shall require.

(e) Any common carrier by motor vehicle transporting passengers under any such certificate may occasionally deviate from the route over which and the fixed termini between which it is authorized to operate under the certificate under such rules and regulations as the commission may prescribe.

Sec. -11. Permits for contract carriers by motor vehicle. (a) Except as otherwise provided in this section and in section.....-14, no person shall engage in the business of a contract carrier by motor vehicle over any public highway in this State unless there is in force with respect to such carrier a permit issued by the commission authorizing such person to engage in such business; provided, that, subject to section.....-13, if any such carrier or predecessor in interest was in bona fide operation as a contract carrier by motor vehicle on June 27, 1959, over the route or routes or within the territory for which application is made and has so operated since that time, or if engaged in furnishing seasonal service only, was in bona fide operation on June 27, 1959, during the season ordinarily covered by its operations, except in either instance as to interruptions of service over which the applicant or its predecessor in interest had no control, the commission shall issue such permit without further proceedings, if application for such permit is made to the commission as provided in subsection (b) of this section and within 90 days after this section shall take effect. Otherwise, the application for such permit shall be decided in accordance with the procedure provided for in subsection (c) of this section and such permit shall be issued or denied accordingly. Pending the determination of any such application the continuance of such operation shall be lawful.

(b) Applications for permits shall be made in writing to the commission, be verified under oath, and shall be in such form and contain such informa-

tion and be accompanied by proof of service upon interested parties, as the commission shall, by regulation, require.

(c) Subject to section.....-13, a permit shall be issued to any qualified applicant therefor authorizing in whole or in part the operations covered by the application, if it is found that the applicant is fit, willing, and able properly to perform the service of a contract carrier by motor vehicle, and to conform to the provisions of this chapter and the lawful requirements, rules, and regulations of the commission thereunder, and that the proposed operation to the extent authorized by the permit will be consistent with the public interest and the transportation policy declared in this chapter; otherwise, such application shall be denied. In determining whether issuance of a permit will be consistent with the public interest and said transportation policy, the commission shall consider the number of shippers to be served by the applicant, the nature of the service proposed, whether the proposed service can be or is being properly performed by existing common carriers, the effect which granting the permit would have upon the services of the protesting carriers, the effect which denying the permit would have upon the applicant and its shipper or shippers, and the changing character of shipper requirements. The commission shall specify in the permit the business of the contract carrier covered thereby and the scope thereof, and it shall attach to it at the time of issuance, and from time to time thereafter, such reasonable terms, conditions and limitations consistent with the character of the holder of the permit as a contract carrier, including terms, conditions, and limitations respecting the person or persons, their names, the number or class thereof for which the contract carrier may perform transportation service, as may be necessary to assure that the business is that of a contract carrier and within the scope of the permit, and to carry out with respect to the operation of such carrier the requirements established by the commission under section.....-7(a) (2) and-7(a) (4). Any permit covering the transportation of passengers may include authority to transport in the same vehicle with the passengers, baggage of passengers, and also authority to transport baggage of passengers in a separate vehicle; provided, that within the scope of the permit and any terms, conditions, or limitations attached thereto, the carrier shall have the right to substitute or add to its equipment and facilities as the development of its business may require; and provided further that no motor carrier shall commence operations under any contract carrier authority granted under the provisions of this section until it has filed with the commission a certified copy of a written contract or contracts executed with the shipper or shippers for whom the service is authorized in the permit to be provided, said contract or contracts to be bilateral and impose specific obligations upon both carrier and shipper or shippers and to set forth all terms and conditions of any transportation agreement obtaining between the motor carrier and the shipper or shippers.

Sec. -12. No proprietary right in highway. No certificate or permit issued under this chapter shall confer any proprietary or property right in the use of the public highways.

Sec. -13. Dual operation. Unless, for good cause shown, the commission shall find or shall have found that both a certificate and a permit may be so held consistently with the public interest and with the declaration of policy declared in this chapter.

(a) No person, or any person controlling, controlled by, or under common control with such person, shall hold a certificate as a common carrier authorizing operation for the transportation of property by motor vehicle within a territory if such person or any such controlling person, controlled person, or person under common control, holds a permit as a contract carrier authorizing operation for the transportation of property by motor vehicle within the same territory; and

(b) No person or any person controlling, controlled by, or under common control with such person, shall hold a permit as a contract carrier authorizing operation for the transportation of property by motor vehicle within a territory, if such person or any such controlling person, controlled person, or person under common control, holds a certificate as a common carrier authorizing operation for the transportation of property by motor vehicle within the same territory.

(c) Notwithstanding any other provisions of this section, any common carrier by motor vehicle may continue to provide transportation services in compliance with the terms of any contract in effect on July 1, 1961, and continuously in effect since that time, without being in violation of this section for a period of 12 months after the date this section becomes effective, provided a copy of such contract is filed with the commission within 30 days of the effective date of this chapter.

Sec. -14. Temporary authority. To enable the provision of service for which there is an immediate and urgent need to a point or points or within a territory having no carrier service capable of meeting such need, the commission may, in its discretion and without hearings or other proceedings, grant temporary authority for such service by a common carrier or a contract carrier by motor vehicle, as the case may be. Such temporary authority, unless suspended or revoked for good cause, shall be valid for such time as the commission shall specify, but for no more than a period of 120 days for any one immediate and urgent need; provided, however, that if an application for a certificate of public convenience and necessity or a permit seeking corresponding permanent authority is filed in accordance with applicable laws, regulations and instructions not later than 30 days after the issuance of temporary authority, then in such event the commission may determine upon its own motion, or upon motion or upon request by any interested party, whether any temporary operating authority granted under the provisions of this section shall be continued in force beyond the expiration date specified therein, and until the determination of the application filed by the holder of such temporary operating authority for a certificate of public convenience and necessity or a permit to engage in operations authorized by such temporary operating authority.

Sec. -15. Security for protection of public. No certificate or permit shall be issued to a motor carrier or remain in force unless such carrier complies with such reasonable rules and regulations as the commission shall prescribe governing the filing and approval of surety bonds, policies of insurance, qualifications as a self-insurer, or other securities or agreements, in such reasonable amounts as the commission may require, conditioned to pay within the amount of such surety agreements moneys finally recovered against such motor carrier for bodily injuries to or the death of any person resulting from the negligent operation, maintenance, or use of motor vehicles under such certificate, or permit or for loss or damage to property of

others. The commission may, in its discretion and under such rules and regulations as it shall prescribe, require any such carrier to file a surety bond, policies of insurance, qualifications as a self-insurer, or other securities or agreements in a sum to be determined by the commission to be conditioned upon such carrier making compensation to shippers or consignees for all property belonging to shippers or consignees, and coming into the possession of such carrier in connection with its transportation service. Any common carrier which may be required by law to compensate a shipper or consignee for any loss, damage, or default for which a connecting motor common carrier is legally responsible shall be subrogated to the rights of such shipper or consignee under any such bond, policies of insurance, or other securities or agreements, to the extent of the sum so paid.

Sec. -16. Transfer of certificates of public convenience and necessity, contract carrier permits, and carrier property. (a) For a period of 12 calendar months following the month in which this chapter becomes effective, no motor carrier may, directly or indirectly, sell, lease, assign, or otherwise dispose of, any certificate of public convenience and necessity or permit issued under this chapter, or of any property necessary or useful in the performance of its duties to the public, to any carrier or person employed by, affiliated with, or owning or controlling, directly or indirectly, an interest in any such carrier; nor during such period may any motor carrier or person employed by, affiliated with, or owning or controlling, directly or indirectly, an interest in any such motor carrier, directly or indirectly, transfer or cause to be transferred any interest in any motor carrier to any carrier or person employed by, affiliated with, or owning or controlling, directly or indirectly, an interest in any such carrier.

(b) Subsection (a) is enacted in the interest of stabilizing transportation conditions in this State and of preserving sound economic conditions within the transportation industry. For the purpose of the prohibition provided in subsection (a) and of the administration and application of subsections (b) and (c), the term 'carrier' shall be deemed to include any motor carrier subject to this chapter, or any carrier subject to the act of any other state or any act of the Congress of the United States under which interstate or foreign commerce by land, sea, or air, is regulated. Any person who has been employed by any such carrier within a period of six months preceding the date of any transaction otherwise falling within the provisions of this prohibition or who within such period shall have had an interest in any such carrier, by any means whatsoever, shall be deemed to be a person employed by, affiliated with, or owning or controlling, directly or indirectly, an interest in such carrier.

(c) No motor carrier shall sell, lease, assign, mortgage, or otherwise dispose of, or encumber the whole or any part of its property necessary or useful in the performance of transportation services for the public or any certificate of public convenience and necessity or permit; nor, shall any motor carrier, by any means whatsoever, directly or indirectly, merge or consolidate its property, certificates of public convenience and necessity or permits, or any part thereof, with any other carrier, without first having secured from the commission an order authorizing it so to do. Every such sale, lease, assignment, mortgage, disposition, encumbrance, merger, or consolidation, made other than in accordance with the order of the commission authorizing the same is void.

(d) No carrier or person in control of a carrier shall, either directly or indirectly, purchase or acquire, take or hold, any part of the capital stock of any motor carrier organized or existing under or by virtue of the laws of this State without having been first authorized to do so by the commission. Every assignment, transfer of any stock by or through any person to any person, or otherwise, in violation of any of the provisions of this section is void and of no effect, and no such transfer shall be made on the books of any motor carrier. Nothing herein contained shall prevent the holding of stock heretofore lawfully acquired.

(e) Whenever a transaction is proposed under subsections (c) or (d) of this section, the motor carrier or motor carriers, or person or persons, seeking approval thereof shall present an application to the commission in such form as the commission may require and the commission may thereupon act upon such application with or without first holding a public hearing; provided, however, that if requested, it shall afford reasonable opportunity for interested parties to be heard. If the commission finds that subject to such terms and conditions as it shall find to be just and reasonable the proposed transaction will be consistent with the public interests, the commission shall enter an order approving and authorizing such transaction, upon the terms and conditions, and with such modifications, so found to be just and reasonable. In passing upon any transaction under the provisions of subsections (c) or (d), the commission shall give weight, among other considerations, to the effect of the proposed transaction upon (1) adequate transportation service to the public, (2) other motor carriers, and (3) the employees of any transferring motor carrier.

(f) Nothing in this section shall be construed to require a motor carrier to secure from the commission authority to lease motor vehicle equipment from another motor carrier for the purpose of meeting the requirements of transportation, to execute any conditional sales contract for the purchase of motor vehicle equipment or any note and chattel mortgage on motor vehicle equipment securing the payment of all or any part of the purchase price of motor vehicle equipment; nor shall the provisions of this section prevent the sale, lease, encumbrance or other disposition by any motor carrier of property which is not necessary or useful in the performance of its duties to the public, and any disposition of property by a motor carrier shall be conclusively presumed to be property which is not necessary or useful in the performance of its duties to the public as to any purchaser, lessee, or encumbrancer dealing with such property in good faith and for value.

(g) Pending the determination of an application filed with the commission for approval of a consolidation or merger of the properties of two or more motor carriers, or of a purchase, lease, or contract to operate the properties of one or more motor carriers, the commission may, in its discretion and without hearings or other proceedings, grant temporary approval, for a period not exceeding 120 days or for such additional period as the determination of an application may require, of the operation of the motor carrier properties sought to be acquired by the persons proposing in such pending application to acquire such properties, if it shall appear that failure to grant such temporary approval may result in destruction of or injury to such motor carrier properties sought to be acquired, or to interfere substantially with their future usefulness in the performance of adequate and continuous service to the public.

Sec. -17. Suspension, change and revocation of certificates and permits. Certificates and permits shall be effective from the date specified therein, and shall remain in effect until suspended or terminated as herein provided. Any such certificate or permit may, upon application of the holder thereof, in the discretion of the commission, be amended or revoked, in whole or in part, or may upon complaint, or on the commission's own initiative, after notice and hearing, be suspended, changed or revoked, in whole or in part, for willful failure to comply with any provision of this chapter, or with any lawful order, rule, or regulation of the commission promulgated thereunder, or with any term, condition or limitation of such certificate or permit; provided, however, that no such certificate or permit shall be revoked (except upon application of the holder) unless the holder thereof willfully fails to comply within a reasonable time, not less than 30 days, to be fixed by the commission, with a lawful order of the commission, made as provided in section.....-7(c), commanding obedience to the provision of this chapter, or to the rule or regulation of the commission thereunder, or to the term, condition, or limitation of such certificate or permit, found by the commission to have been violated by such holder; and provided further that the right to engage in transportation by virtue of any certificate or permit, or any application filed pursuant to the provisions of sections-10 or-11, or by virtue of temporary authority under section-14, may be suspended by the commission, upon reasonable notice of not less than 15 days to the carrier, but without hearing or other proceedings, for failure to comply, and until compliance, with the provisions of section-19(a) or-20(a), or with any lawful order, rule, or regulation of the commission promulgated thereunder.

Sec. -18. Rates, fares and charges of common carriers by motor vehicle. (a) It shall be the duty of every common carrier of passengers by motor carrier to provide safe and adequate service, equipment, and facilities for the transportation of passengers and to establish, observe, and enforce just and reasonable rates, fares, and charges and just and reasonable regulations and practices relating thereto, and 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.

(b) It shall be the duty of every common carrier of property by motor vehicle to provide safe and adequate service, equipment, and facilities for the transportation of property and to establish, observe, and enforce just and reasonable rates, charges, and classifications, and just and reasonable regulations and practices relating thereto, and 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.

(c) All charges made for any service rendered by any common carrier by motor vehicle in the transportation of passengers or property or in connection therewith shall be just and reasonable, and every unjust and unreasonable charge for such service or any part thereof, is prohibited and declared to be unlawful. It shall be unlawful for any common carrier by motor vehicle to make, give, or cause any undue or unreasonable preference or advantage to any particular person, locality, region, district, island or description of traffic, in any respect whatsoever; or to subject any particular per-

son, locality, region, district, island, or description of traffic to any unjust discrimination or undue or unreasonable prejudice or disadvantage in any respect whatsoever; provided, however, that this subsection shall not be construed to apply to discrimination, prejudice, or disadvantage to the traffic of any other carrier of whatever description.

(d) Any person, organization, or body politic may make complaint in writing to the commission that any such rate, fare, charge, classification, rule, regulation, or practice, in effect or proposed to be put into effect, is or will be in violation of this section or of section-19. Whenever, after hearing, upon complaint or in an investigation of its own initiative, the commission shall be of the opinion that any individual rate, fare, or charge, demanded, charged, or collected by any common carrier or carriers by motor vehicle for transportation, or any classification, rule, regulation, or practice whatsoever of such carrier or carriers affecting such rate, fare, or charge or the value of the service thereunder, is or will be unjust or unreasonable, or unjustly discriminatory or unduly preferential or unduly prejudicial, it shall determine and prescribe the lawful rate, fare, or charge or the maximum or minimum or maximum and minimum rate, fare, or charge thereafter to be observed, or the lawful classification, rule, regulation, or practice thereafter to be made effective.

(e) Whenever there shall be filed with the commission any schedule stating a new rate, fare, charge, or classification for the transportation of passengers or property by a common carrier or carriers by motor vehicle, or any rule, regulation, or practice affecting such rate, fare, or charge, or the value of the service thereunder, the commission is hereby authorized and empowered 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, to enter upon a hearing concerning the lawfulness of such rate, fare, or charge, or such rule, regulation, or practice, and pending such hearing and the decision thereon the commission, by filing such schedule and delivering to the carrier or carriers affected thereby a statement in writing of its reasons for such suspension, may from time to time suspend the operation of such schedule and defer the use of such rate, fare, or charge, or such rule, regulation, or practice, but not for a longer period than 5 months beyond the time when it would otherwise go into effect, and after hearing, whether completed before or after the rate, fare, charge, classification, rule, regulation, or practice goes into effect, the commission may make such order with reference thereto as would be proper in a proceeding instituted after it had become effective. If the proceeding has not been concluded and an order made within the period of suspension, the proposed changed rate, fare, or charge, or classification, rule, regulation, or practice, shall go into effect at the end of such period; provided that this subsection shall not apply to any initial schedule or schedules filed by any carrier in bona fide operation when this section takes effect. At any hearing involving a change in a rate, fare, charge, or classification, or in a rule, regulations, or practice, the burden of proof shall be upon the carrier to show that the proposed changed rate, fare, charge, classification, rule, regulation, or practice, is just and reasonable.

(f) In any proceeding to determine the justness of reasonableness of any rate, fare, or charge of any such carrier, there shall not be taken into consideration or allowed as evidence or elements of value of the property of

such carrier, either good will, earning power, or the certificate under which such carrier is operating; and in applying for and receiving a certificate under this part any such carrier shall be deemed to have agreed to the provisions of this subsection on its own behalf and on behalf of all transferees of such certificate.

(g) In the exercise of its power to prescribe just and reasonable rates, fares, and charges for the transportation of passengers or property by common carriers by motor vehicle, and classifications, regulations, and practices relating thereto, the commission shall give due consideration, among other factors, to the effect of rates upon the movement of traffic by the carrier or carriers for which the rates are prescribed; to the need, in the public interest, of adequate and efficient transportation service by such carriers at the lowest cost consistent with the furnishing of such service; and to the need of revenues sufficient to enable such carriers, under honest, economical, and efficient management, to provide such service.

(h) Nothing in this section shall be held to extinguish any remedy or right of action not inconsistent herewith.

Sec. -19. Tariffs of common carriers by motor vehicle. (a) Every common carrier by motor vehicle shall file with the commission, and print, and keep open to public inspection, tariffs showing all the rates, fares, and charges for transportation, and all services in connection therewith, of passengers or property. Such 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 such form and manner, and shall contain such information as the commission by regulations shall prescribe; and the commission is authorized to reject any tariff filed with it which is not in consonance with this section and with such regulations. Any tariff so rejected by the commission shall be void and its use shall be unlawful.

(b) No common carrier by motor vehicle shall charge or demand or collect or receive a greater or less or different compensation for transportation or for any service in connection therewith between the points enumerated in such tariff than the rates, fares, and charges specified in the tariffs in effect at the time; and no such carrier shall refund or remit in any manner or by any device, directly or indirectly, or through any agent, or otherwise, any portion of the rates, fares, or charges so specified, or extend to any person any privileges or facilities for transportation except such as are specified in its tariffs.

(c) No change shall be made in any rate, fare, charge, or classification, or any rule, regulation, or practice affecting such rate, fare, charge, or classification, or the value of the service thereunder, specified in any effective tariff of a common carrier by motor vehicle; except after 30 days' notice of the proposed change filed and posted in accordance with subsection (a) of this section. Such notice shall plainly state the change proposed to be made and the time when such change will take effect. The commission may, in its discretion and for good cause shown allow such change upon notice less than that herein 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.

(d) No common carrier by motor vehicle shall engage in the transportation of passengers or property unless the rates, fares, and charges upon which the same are transported by said carrier have been filed and published in accordance with the provisions of this chapter.

Sec. -20. Schedules of contract carriers by motor vehicle. (a) It shall be the duty of every contract carrier by motor vehicle to file and observe reasonable minimum rates and charges for any service rendered or to be rendered in the transportation of passengers or property in connection therewith, and to file and observe reasonable regulations and practices to be applied in connection with said reasonable minimum rates, fares, and charges. It shall be the duty of every contract carrier by motor vehicle to file with the commission, publish, and keep open for public inspection, in the form and manner prescribed by the commission, schedules containing the actual rates or charges of such carrier for the transportation of passengers or property, and any rule, regulation, or practice affecting such rates or charges and the value of the service thereunder; provided that any contract carrier serving but one shipper having rendered continuous service to such shipper for not less than one year may file reasonable minimum rates and charges unless the commission in any individual case, after hearing, finds it in the public interest to require the filing of actual rates and charges. No such contract carrier, unless otherwise provided by this chapter, shall engage in the transportation of passengers or property unless the actual rates or charges for such transportation by said carrier have been published, filed, and posted in accordance with the provisions of this chapter. Nothing herein provided shall be so construed as to require such carriers to maintain the same rates, rules and regulations for the same services for all shippers served. No reduction shall be made in any such charge either directly or by means of any change in any rule, regulation, or practice affecting such charge or the value of the service thereunder, nor shall any new charge be permitted, except after 30 days' notice of the proposed change or new charge is filed in the aforesaid form and manner; but the commission may, in its discretion and for good cause shown, allow such change upon less notice, or modify the requirements of this subsection with respect to posting and filing of such schedules, either in particular instances, or by general order applicable to special or peculiar circumstances or conditions. Such notice shall plainly state the change proposed to be made and the time when such change will take effect. No such carriers shall demand, charge, or collect compensation for such transportation different from the charges filed in accordance with this subsection, as affected by any rule, regulation, or practice so filed, or less than the minimum rate or charge as may be prescribed by the commission from time to time, and it shall be unlawful for any such carrier, by the furnishing of special services, facilities, or privileges, or by any other device whatsoever, to charge, accept, or receive compensation different from the actual rates and charges so filed, or less than the minimum charges so prescribed; provided that any such carrier or carriers, or any class or group thereof, may apply to the commission for relief from the provisions of this subsection, and the commission may, after hearing, grant such relief to such extent and for such time, and in such manner as in its judgment is consistent with the public interest and the transportation policy declared in this chapter.

(b) Whenever, after hearing, upon complaint or upon its own initiative, the commission finds that any minimum rate or charge of any contract carrier by motor vehicle, or any rule, regulation, or practice of any such carrier affecting such minimum rate or charge, or the value of the service thereunder, for the transportation of passengers or property or in connection

therewith, contravenes the transportation policy declared in this chapter, or is in contravention of any provision of this chapter, the commission may prescribe such just and reasonable minimum rate or charge, or such rule, regulations, or practice as in its judgment may be necessary or desirable in the public interest and to promote such policy and will not be in contravention of any provision of this chapter. Such minimum rate or charge, or such rule, regulation, or practice, so prescribed by the commission, shall give no advantage or preference to any such carrier in competition with any common carrier by motor vehicle subject to this chapter, which the commission may find to be undue or inconsistent with the public interest and the transportation policy declared in this chapter and the commission shall give due consideration to the cost of the services rendered by such carriers, and to the effect of such minimum rate or charge, or such rule, regulation, or practice, upon the movement of traffic by such carriers. All complaints shall state fully the facts complained of and the reasons for such complaint and shall be made under oath.

(c) Whenever there shall be filed with the commission by any such contract carrier any schedule stating a charge for a new service or a reduced charge directly, or by means of any rule, regulation, or practice, for the transportation of passengers or property, the commission is hereby authorized and empowered upon complaint of interested persons or upon its own initiative at once and, if it so orders, without answer or other formal pleading by the interested party, but upon reasonable notice, to enter upon a hearing concerning the lawfulness of such charge, or such rule, regulation, or practice, and pending such hearing and the decision thereon the commission, by filing with such schedules and delivering to the carrier affected thereby a statement in writing of its reasons for such suspension, may from time to time suspend the operation of such schedule and defer the use of such charge, or such rule, regulation, or practice, but not for a longer period than 5 months beyond the time when it would otherwise go into effect; and after hearing, whether completed before or after the charge, or rule, regulation, or practice goes into effect, the commission may make such order with reference thereto as would be proper in a proceeding instituted after it had become effective. If the proceeding has not been concluded and an order made within the period of suspension, the proposed change in any charge or rule, regulation, or practice shall go into effect at the end of such period; provided that this subsection shall not apply to any initial schedule or schedules filed by any such carrier in bona fide operation when this section takes effect. The rule as to burden of proof specified in section-18(e) shall apply to this subsection.

Sec. -21. Bills of lading, shipping documents. The commission may prescribe for motor carriers the form and content of all bills of lading, freight bills, receipts, or other shipping documents governing the movement of traffic by motor carriers regulated under this chapter, and may prescribe the length of time the same shall be preserved.

Sec. -22. Recovery of overcharges or undercharges. (a) All actions at law by common carriers by motor vehicle for the recovery of their charges, or any part thereof, shall be begun within 3 years from the time the cause of action accrues, and not after.

(b) For recovery of overcharges, actions at law shall be begun within 3 years from the time the cause of action accrues, and not after, subject

to subsection (c) of this section, except that if claim for the overcharge has been presented in writing to the carrier within the 3 year period of limitation said period shall be extended to include six months from the time notice in writing is given by the carrier to the claimant of disallowance of the claim, or any part or parts thereof, specified in the notice.

(c) If on or before the expiration of the 3 year period of limitation in subsection (b) a common carrier by motor vehicle begins action under subsection (a) for recovery of charges in respect of the same transportation service, or, without beginning action, collects charges in respect of that service, said period shall be extended to include 90 days from the time such action is begun or such charges are collected by the carrier.

(d) The cause of action in respect of a shipment of property shall, for the purpose of this section, be deemed to accrue upon delivery or tender of delivery thereof by the carrier, and not after.

(e) The term 'overcharges' as used in this section shall be deemed to mean charges for transportation services in excess of those applicable thereto under the tariffs lawfully on file with the commission.

(f) The provisions of this section shall apply only to cases in which the cause of action may accrue after the date this chapter becomes effective.

Sec. -23. Accounts, records and reports. (a) The commission is hereby authorized to require annual, periodical, or special reports from all motor carriers; to prescribe the manner and form in which such reports shall be made; and to require from such carriers specific and full, true, and correct answers to all questions upon which the commission may deem information to be necessary. Such annual reports shall give an account of the affairs of the carrier in such form and detail as may be prescribed by the commission. The commission may also require any motor carrier to file with it a true copy of any contract, agreement, or arrangement between such carrier and any other carrier or person in relation to any traffic affected by the provisions of this chapter. The commission shall not, however, make public any contract, agreement, or arrangement between a contract carrier by motor vehicle and a shipper, or any of the terms or conditions thereof, except as a part of the record in a formal proceeding where it considers such action consistent with the public interest; provided that if it appears from an examination of any such contract that it fails to conform to the published schedule of the contract carrier by motor vehicle as required by section-20 (a), the commission may, in its discretion, make public such of the provisions of the contract as the commission considers necessary to disclose such failure and the extent thereof.

(b) Said annual reports shall contain all the required information for the period of 12 months ending on the thirty-first day of December in each year, unless the commission shall specify a different date, and shall be made out under oath and filed with the commission within three months after the close of the year for which the report is made, unless additional time be granted in any case by the commission. Such periodical or special reports as may be required by the commission under subsection (a) hereof shall also be under oath, whenever the commission so requires.

(c) The commission may prescribe for motor carriers the classes of property for which depreciation charges may properly be included under operating expenses, and the rate or rates of depreciation which shall be charged with respect to each of such classes of property, classifying the

carriers as it may deem proper for this purpose. The commission may, when it deems necessary, modify the classes and rates so prescribed. When the commission shall have exercised its authority under the foregoing provisions of this subsection, motor carriers shall not charge to operating expenses any depreciation charges on classes of property other than those prescribed by the commission, or charge with respect to any class of property a rate of depreciation other than that prescribed therefor by the commission, and no such carrier shall include under operating expenses any depreciation charge in any form whatsoever other than as prescribed by the commission.

(d) The commission may, in its discretion, prescribe the forms of any and all accounts, records, and memoranda to be kept by motor carriers, and lessors, including the accounts, records, and memoranda of the movement of traffic, as well as of the receipts and expenditures of moneys. The commission may issue orders specifying such operating, accounting, or financial papers, records, books, blanks, tickets, stubs, correspondence, or documents of motor carriers, or lessors as may after a reasonable time be destroyed, and prescribing the length of time the same shall be preserved. The commission or its duly authorized special agents, accountants, or examiners shall at all times have access to and authority, under its order, to inspect and examine any and all lands, buildings or equipment of motor carriers and lessors and shall have authority to inspect and copy any and all accounts, books, records, memoranda, correspondence, and other documents of such carriers and lessors (as defined in this section), and such accounts, books, records, memoranda, correspondence, and other documents of any person controlling, controlled by, or under common control with any such carriers, as the commission deems relevant to such person's relation to or transaction with such carriers. Motor carriers, lessors and aforesaid persons shall submit their accounts, books, records, memoranda, correspondence and other documents for the inspection and copying authorized by this subsection, and motor carriers and lessors shall submit their lands, buildings and equipment for examination and inspection, to any duly authorized special agent, accountant, or examiner of the commission upon demand and display of proper credentials. As used in this subsection, the words 'keep' and 'kept' shall be construed to mean made, prepared, or compiled, as well as retained; the term 'lessor' means a lessor of any right to operate as a motor carrier; and the term 'motor carrier' or 'lessor' includes a receiver or trustee of any such motor carrier or lessor.

(e) No report by any motor carrier of any accident arising in the course of the operations of such carriers, made pursuant to any requirement of the commission, and no report by the commission of any investigation of any such accident, shall be admitted as evidence, or used for any other purpose, in any suit or action for damages growing out of any matter mentioned in such report or investigation.

Sec. -24. Records to be maintained in State. Each motor carrier maintaining an office or place of business within this State shall keep therein all books, accounts, papers and records required by the commission to be kept within this State. No such books, accounts, papers, or records shall be at any time removed from the State except upon such conditions or rules as the commission may prescribe. Motor carriers performing transportation regulated under this chapter which do not maintain an office or place of

business within the State shall make books, accounts, papers and records pertaining to such transportation available to the commission at its request at a place designated within this State, for examination by the commission, or in the alternative reimburse the commission for the actual expense of examining such books, accounts, papers, or records at the place outside of the State where such records are kept.

Sec. -25. Unlawful operation. (a) Any person knowingly and willfully 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 and upon conviction thereof, be fined not less than \$100 nor more than \$500 for the first offense and not less than \$200 nor more than \$500 for any subsequent offense. Each day of such violation shall constitute a separate offense.

(b) Any person, whether carrier, shipper, or consignee, or any officer, employee, agent, or representative thereof, who shall knowingly offer, grant, or give, or solicit, accept, or receive any rebate, concession or discrimination in violation of any provisions 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, shall knowingly and willfully assist, suffer, or permit any person or persons, natural or artificial, to obtain transportation of passengers or property subject to this chapter for less than the applicable rate, fare, or charge, or who shall knowingly and willfully by any such means or otherwise fraudulently seek to evade or defeat regulation as in this chapter provided for motor carriers, shall be deemed guilty of a misdemeanor and upon conviction thereof be fined not less than \$200 nor more than \$500 for the first offense and not less than \$250 nor more than \$2000 for any subsequent offense.

(c) Any special agent, accountant, or examiner who knowingly and willfully divulges any fact or information which may come to his knowledge during the course of any examination or inspection made under authority of sections-7(a) (5),-21 and-23, except as he may be directed by the commission or by a court or judge thereof, shall be guilty of a misdemeanor and shall be subject to a fine of not more than \$500 or imprisonment for not exceeding six months, or both.

(d) It shall be unlawful for any motor carrier or any officer, receiver, trustee, lessee, agent, or employee of such carrier, or for any other person authorized by such carrier or person to receive information, knowingly to disclose to, or permit to be acquired by any person other than the shipper or consignee without the consent of such shipper or consignee, any information concerning the nature, kind, quantity, destination, consignee, or routing of any property tendered or delivered to such motor carrier for such transportation, which information may be used to the detriment or prejudice of such shipper or consignee, or which may improperly disclose his business transactions to a competitor; and it shall also be unlawful for any person to solicit or knowingly receive any such information which may be so used.

(e) Nothing in this chapter shall be construed to prevent the giving of such information in response to any legal process issued under the authority of any court, or to any officer or agent of the government of the United States or of any state thereof or of any political sub-division of any state,

in the exercise of his power or to any officer or other duly authorized person seeking such information for the prosecution of persons charged with or suspected of crimes or to another carrier, or its duly authorized agents, for the purpose of adjusting mutual traffic accounts in the ordinary course of business of such carriers.

(f) Any motor carrier or any officer, agent, employee, or representative thereof, who shall willfully fail or refuse to make a report to the commission as required by this chapter, or to make specific and full, true, and correct answer to any question within 30 days from the time it is lawfully required by the commission so to do, or to keep accounts, records, and memoranda in the form and manner prescribed by the commission, or shall knowingly and willfully falsify, destroy, mutilate, or alter any such report, account, record, or memorandum, or shall knowingly and willfully file with the commission any false report, account, record or memorandum, or shall knowingly and willfully neglect or fail to make full, true, and correct entries in such accounts, records, or memoranda of all facts and transactions appertaining to the business of the carrier, or person required under this chapter to keep the same, or shall knowingly and willfully keep any accounts, records, or memoranda contrary to the rules, regulations, or orders of the commission with respect thereto, shall be deemed guilty of a misdemeanor and upon conviction thereof be subject for each offense to a fine of not more than \$2,000. As used in this subsection, the words 'keep' and 'kept' shall be construed to mean made, prepared, or compiled, as well as retained.

(g) Any motor carrier or lessor, or any officer, agent, employee, or representative thereof, who shall fail or refuse to keep, preserve, or forward any account, record, or memorandum in the substance, form, or manner prescribed in this chapter or in any rule, order, or regulation prescribed under this chapter, or who shall fail or refuse to comply with any requirement of this chapter with respect to the filing with this commission, as prescribed by it, any annual periodical, or special report, or other report, tariff, schedule, contract, document, or data or with any rule, order or regulation prescribed with respect to such filing, or who shall fail or refuse to make full, true, or correct answer to any question required by the commission to be made under the provisions of this chapter, shall pay a penalty to the State of Hawaii in the sum of \$100 for each such offense, and, in the case of a continuing violation, not to exceed \$50 for each additional day during which such failure or refusal shall continue. A penalty shall become due and payable when the person incurring it receives a notice in writing reasonably describing the violation and advising that the penalty is due. The commission may, upon written application therefor received within 15 days, remit or mitigate any such penalty upon such terms as it deems proper, and shall ascertain the facts involved in such application in the manner it deems proper. If the amount of a penalty is not paid to the commission within 15 days after receipt of the notice imposing it, or within 15 days after the violator has received notice of the disposition of his application for remission or mitigation, the attorney general shall bring a civil action for the recovery of such penalty. All penalties provided for in this section shall be paid into the treasury of the State of Hawaii.

Sec. -26. Collection of rates and charges. No common carrier by motor vehicle shall deliver or relinquish possession at destination of any freight transported by it until all tariff rates and charges thereon have been paid, except under such rules and regulations as the commission may from time to time pre-

scribe to govern the settlement of all such rates and charges, including rules and regulations for weekly or monthly settlement, and to prevent unjust discrimination or undue preference or prejudice; provided that the provisions of this section shall not be construed to prohibit any such carrier from extending credit in connection with rates and charges on freight transported for the United States, for any department, bureau, or agency thereof, or for any state or political subdivision thereof.

Sec. -27. Identification of carriers. The commission is hereby authorized, under such rules and regulations as it shall prescribe, to require the display of suitable identification plate or plates, upon any motor vehicle used in transportation subject to any of the provisions of this chapter, to provide for the issuance of such plates, and to receive the payment of such carriers of the reasonable cost thereof. All moneys so collected shall be paid into the treasury of the State of Hawaii. Any substitution, transfer, or use of any such identification plate or plates, except such as may be duly authorized by the commission, is hereby prohibited and shall be unlawful.

Sec. -28. Allowances to shippers for transportation services. If the shipper of property transported under this chapter, directly or indirectly, renders any service connected with such transportation, or furnishes any instrumentality used therein, the charge and allowance therefor shall be published in tariffs or schedules filed in the manner provided in this chapter and shall be no more than is just and reasonable; and the commission may, after hearing on a complaint or on its own initiative, determine what is a reasonable charge as the maximum to be paid by the carrier or carriers for the services so rendered or for the use of the instrumentality so furnished, and fix the same by appropriate order.

Sec. -29. Hearings. (a) All hearings, investigations, and proceedings shall be governed by this section and by rules of practice and procedure adopted by the commission, and in the conduct thereof, the technical rules of evidence need not be applied. 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 motor carrier, including any rule, regulation, rate, or charge, heretofore established or fixed by or for any motor carrier, in violation or claimed to be in violation, of any provision of law or of any order or rule of the commission.

(c) All matters upon which complaint may be founded may be joined in one hearing, and no motion shall be entertained against a complaint for misjoinder of causes of action or grievances or misjoinder or nonjoinder of parties. In any review by the courts of orders or decisions of the commission the same rule shall apply with regard to the joinder of causes and parties as herein provided. The commission shall not be required to dismiss any complaint because of the absence of direct damage to the complainant.

(d) Upon the filing of a complaint, the commission shall cause a copy thereof to be served upon the person or motor carrier complained of. Service in all hearings, investigations, and proceedings pending before the commission may be made upon any person upon whom a summons may be served in any proceeding before the courts of this State, and may be made personally or by mailing in a sealed envelope, registered or certified, with postage prepaid. The com-

mission shall fix the time when and place where a hearing will be had upon the complaint and shall serve notice thereof, not less than 10 days before the time set for such hearing, unless the commission finds that public necessity requires that such hearing be held at an earlier date.

(e) At the time fixed for any hearing before the commission or the time to which the hearing has been continued, the complainant and the person complained of, and such persons as the commission allows to intervene, shall be entitled to be heard and to introduce evidence. The commission shall issue process to enforce the attendance of all necessary witnesses. After the conclusion of the hearing, the commission shall make and file its order, containing its decision which shall be based on findings of fact and conclusions of law therein stated. A copy of each order, certified under the seal of the commission, shall be served upon the person complained of, or his attorney. The order shall, of its own force, take effect and become operative 20 days after the service thereof, except as otherwise provided, and shall continue in force either for a period designated in it or until changed or abrogated by the commission. If the commission believes that an order cannot be complied with within 20 days, it may prescribe such additional time as in its judgment is reasonably necessary to comply with the order, and may on application and for good cause shown, extend the time for compliance fixed in its order.

(f) A complete record of all proceedings and testimony before the commission on any formal hearing shall be taken down by a reporter appointed by the commission, and the parties shall be entitled to be heard in person or by attorney. In case of an action to review an order or decision of the commission, a transcript of such testimony, together with all exhibits or copies thereof introduced, and of the pleadings, records, and proceedings in the cause, shall constitute the record of the commission, but if the party or parties to the proceeding and the commission stipulate that certain questions alone and a specified portion only of the evidence shall be certified to the supreme court for its judgment, such stipulation and the questions and evidence therein specified shall constitute the record on review.

(g) Any motor carrier may complain on any of the grounds upon which complaints are allowed to be filed by other parties, and the same procedure shall be adopted and followed as in other cases, except that the complaint may be heard ex parte by the commission or may be served upon any party designated by the commission.

(h) The commission may at any time upon notice to the motor carrier affected, and after opportunity to be heard as provided in the case of complaints, rescind, alter, or amend any order or decision made by it. Any order rescinding, altering, or amending a prior order or decision shall, when served upon the motor carrier affected, have the same effect as an original order or decision.

(i) In all collateral actions or proceedings, the orders and decisions of the commission which have become final shall be conclusive.

Sec. -30. Reconsideration and rehearings. (a) After any order or decision has been made by the commission, any party to the action or proceeding may apply for reconsideration or a rehearing in respect to any matters determined in the action or proceeding and specified in the application for reconsideration or rehearing. The commission may grant such application if in its judgment sufficient reason is made to appear. No appeal shall be taken from any order or decision of the commission before an application for reconsideration or rehearing shall have been filed with and determined by the commission.

(b) The application for reconsideration or a rehearing shall set forth specifically the ground or grounds on which the applicant considers the decision or order to be unlawful. No person shall in any court urge or rely on any ground not so set forth in the application.

(c) Any application for reconsideration or a rehearing made 10 days or more before the effective date of the order as to which reconsideration or a rehearing is sought, shall be either granted or denied before the effective date, or the order shall stand suspended until the application is granted or denied. Any application for reconsideration or a rehearing made within less than 10 days before the effective date of the order as to which reconsideration or rehearing is sought, and not granted within 20 days, may be taken by the party making the application to be denied, unless the effective date of the order is extended for a period of the pendency of the application.

(d) If any application for reconsideration or rehearing is granted without a suspension of the order involved, the commission shall forthwith proceed to determine the matter with all dispatch and shall determine the matter within 20 days after final submission. If no determination is made within that time, it may be taken by any party to the proceeding that the order involved is affirmed.

(e) An application for reconsideration or rehearing shall not excuse any person from complying with and obeying any order or decision, or any requirement of any order or decision of the commission theretofore made, or operate in any manner to stay or postpone the enforcement thereof, except in such cases and upon such terms as the commission by order directs.

(f) If, after reconsideration or rehearing the commission is of the opinion that the original order or decision, or any part thereof, is in any respect unjust or unwarranted, or should be changed, the commission may abrogate, change, or modify it. The order or decision abrogating, changing or modifying the original order or decision shall have the same force and effect as an original order or decision, but shall not affect any right or the enforcement of any right arising from or by virtue of the original order or decision unless so ordered by the commission.

Sec. -31. Appeals. From every order made on an application for reconsideration or rehearing by the commission under the provisions of this chapter an appeal shall lie to the supreme court in like manner as an appeal lies from an order or decision of a circuit judge at chambers. The appeal shall not of itself stay the operation of the order appealed from, but the supreme court may stay the same after a hearing upon a motion therefor, upon such conditions as it may deem proper as to giving a bond and keeping the necessary accounts or otherwise in order to secure a restitution of the excess charges, if any, made during the pendency of the appeal in case the order appealed from should be sustained in whole or in part.

Sec. -32. Witnesses. (a) Each witness who appears by order of the commission shall receive for his attendance the same fees and mileage allowed by law to witness in civil cases, which shall be paid by the party at whose request the witness is subpoenaed. When any witness who has not been required to attend at the request of any party is subpoenaed by the commission, his fees and mileage shall be paid from the fund appropriated for the use of the commission in the same manner as other expenses of the commission are paid. Any witness subpoenaed except one whose fees and mileage may be paid from the funds of the commission, may, at the time of service, demand the fee to which he is entitled for travel to and from the place at which he is required to appear,

and one day's attendance. If such witness demands such fees at the time of service, and they are not at that time paid or tendered, he shall not be required to appear. All fees or mileage to which any witness is entitled under the provisions of this section may be collected by action therefor instituted by the person to whom such fees are payable. No witness furnished with free transportation shall receive mileage for the distance he may have traveled on such free transportation.

(b) In case of the refusal of any witness to attend or testify or produce any papers required by a subpoena issued by the commission, the commission may file in the circuit court a petition setting forth that due notice has been given of the time and place of attendance of the witness, or the production of the papers, and that the witness has been summoned in the manner prescribed in this section and has failed and refused to attend or produce the papers required by the subpoena, or has refused to answer questions propounded to him in the course of the proceeding. The petition shall include a request for an order of the court, compelling the witness to attend and testify or produce the papers before the commission.

(c) Upon the filing of a petition the court shall enter an order directing the witness to appear before the court at a time and place fixed in the order and show cause why he has not attended and testified or produced said papers before the commission. The time fixed shall not be more than 10 days from the date of the order. A copy of the order shall be served upon the witness. If it appears to the court that the subpoena was regularly issued by the commission, the court shall thereupon enter an order that the witness appear before the commission at the time and place fixed in the order, and testify or produce the required papers, and upon failure to obey the order, the witness shall be dealt with as for contempt of court.

(d) The commission or any party may, in any investigation or hearing before the commission, cause the deposition of witnesses residing within or without the State to be taken in the manner prescribed by law for like depositions in civil actions in the circuit courts of this State and to that end may compel the attendance of witnesses and the production of books, waybills, documents, papers, and accounts.

(e) No person shall be excused from testifying or from producing any book, waybill, document, paper, or account in any investigation or inquiry by or hearing before the commission when ordered to do so, upon the ground that the testimony or evidence, book, waybill, document, paper, or account required of him may tend to incriminate him or subject him to penalty, but no person shall be prosecuted, punished, or subjected to any penalty for or on account of any act, transaction, matter or things concerning which, under oath, he has testified or produced documentary evidence, but no person so testifying shall be exempt from prosecution or punishment for any perjury committed by him in his testimony. Nothing herein contained shall be construed as in any manner giving to any corporate motor carrier immunity of any kind.

Sec. -33. Agreements between carriers. (a) For purposes of this section the term 'anti trust laws' means any law of the State of Hawaii previously enacted or hereafter enacted pertaining to unlawful restraints of trade and monopolies.

(b) Any carrier party to an agreement between or among two or more carriers relating to rates, fares, classifications, divisions, allowances, or

charges (including charges between carriers and compensation paid or received for the use of facilities and equipment), or rules and regulations pertaining thereto, or procedures for the joint consideration, initiation or establishment thereof, may, under such rules and regulations as the commission may prescribe, apply to the commission for approval of the agreement, and the commission shall by order approve any such agreement (*if approval thereof is not prohibited by subsections (d) or (e) if it finds that, by reason of furtherance of the transportation policy declared in this chapter, the relief provided in subsection (h) should apply with respect to the making and carrying out of such agreement; otherwise the application shall be denied. The approval of the commission shall be granted only upon such terms and conditions as the commission may prescribe as necessary to enable it to grant its approval in accordance with the standard above set forth in this subsection.

(c) Each conference, bureau, committee, or other organization established or continued pursuant to any agreement approved by the commission under the provisions of this section shall maintain such accounts, records, files, and memoranda and shall submit to the commission such reports, as may be prescribed by the commission, and all such accounts, records, files, and memoranda shall be subject to inspection by the commission or its duly authorized representatives.

(d) The commission shall not approve under this section any agreement between or among carriers of different classes unless it finds that such agreement is of the character described in subsection (b) of this section and is limited to matters relating to transportation under joint rates or over through routes; and for purposes of this subsection carriers by aircraft are carriers of one class; carriers by motor vehicles are carriers of one class; carriers by water are carriers of one class.

(e) The commission shall not approve under this section any agreement which establishes a procedure for the determination of any matter through joint consideration unless it finds that under the agreement there is accorded to each party the free and unrestrained right to take independent action either before or after any determination arrived at through such procedure.

(f) The commission is authorized, upon complaint or upon its own initiative without complaint, to investigate and determine whether any agreement previously approved by it under this section, or terms and conditions upon which such approval was granted, is not or are not in conformity with the standard set forth in subsection (b), or whether any such terms and conditions are not necessary for purposes of conformity with such standard, and, after such investigation, the commission shall by order terminate or modify its approval of such agreement if it finds such action necessary to insure conformity with such standard, and shall modify the terms and conditions upon which such approval was granted to the extent it finds necessary to insure conformity with such standard or to the extent to which it finds such terms and conditions not necessary to insure such conformity. The effective date of any order terminating or modifying approval, or modifying terms and conditions, shall be postponed for such period as the commission determined to be reasonably necessary to avoid undue hardship.

(g) No order shall be entered under this section except after interested parties have been afforded reasonable opportunity for hearing.

* So in original. Closing parenthesis missing.

(h) Parties to any agreement approved by the commission under this section and other persons are, if the approval of such agreement is not prohibited by subsections (d) or (e), hereby relieved from the operation of the anti trust laws with respect to the making of such agreement, and with respect to the carrying out of such agreement in conformity with its provisions and in conformity with the terms and conditions prescribed by the commission.

(i) Any action of the commission under this section in approving an agreement, or in denying an application for such approval, or in terminating or modifying its approval of an agreement, or in prescribing the terms and conditions upon which its approval is to be granted, or in modifying such terms and conditions, shall be construed as having effect solely with reference to the applicability of the relief provisions of subsection (h).

Sec. -34. Safety compliance fee, gross weight fee, and other fees and charges. (a) Every motor vehicle operated by a motor carrier or a private carrier of property as provided in section-7(a) hereof shall display at all times the safety identification decal or emblem issued every year by the commission to identify each of the motor vehicles belonging to motor carriers currently complying with the requirements of said section-7(a). The motor carrier or private carrier of property shall pay the commission for each such safety identification decal or emblem, for each of its motor vehicles, the annual fee of \$3.00 at the time the carrier submits its application for the issuance to it of the number of such decals or emblems it needs for that calendar year or the portion thereof remaining. Any substitution or transfer of such decal or emblem shall be unlawful. The motor carrier or private carrier of property shall further pay for each safety inspection of each motor vehicle, as required by the commission's rules and regulations, the fee of \$3.00 for each motor vehicle or whatever lesser amount as is determined by the commission to be a necessary and reasonable vehicle safety fee. No other safety identification or inspection fee shall be collected by the State or any political subdivision thereof for any other safety inspection of aforesaid motor vehicle.

(b) In addition to all other fees to be paid by him, every common carrier by motor vehicle and every contract carrier by motor vehicle, including those within the provisions of section-5(1), shall pay to the commission each year at the time of, in connection with, and before receiving his gross weight identification emblem or his identification plate as provided by section-27 hereof for each motor vehicle owned or operated by him based upon the maximum gross weight thereof, the following fees for each calendar year or portion thereof remaining:

Less than 4,000 lbs.	\$ 7.00
4,000 lbs. or more and less than 6,000	8.00
6,000 lbs. or more and less than 8,000	9.00
and continuing with increments of \$1.00 for every additional 2,000 pounds until the following gross weight fees are reached:	
56,000 lbs. or more and less than 58,000 lbs.	\$34.00
58,000 lbs. or more and less than 60,000 lbs.	35.00
60,000 lbs. or more	36.00

The commission may determine, however, that the full amounts of aforesaid fees are not needed for any calendar year and may determine fees of lesser amounts to be necessary and reasonable for said year and may vary the

aforesaid schedule of fees accordingly. Aforesaid emblems shall be affixed in a conspicuous place upon the motor vehicle as prescribed by the commission and shall be so displayed throughout the year. Any transfer or substitution of any such emblem shall be unlawful.

(c) The commission shall establish fair and reasonable fees for the following applications which shall be paid to the commission at the time of submission to it of said applications:

- 1. Applications for certificates and permits as provided by sections-10 and-11.
- 2. Applications for extensions of certificates as provided by section-10(d).
- 3. Applications for temporary certificates and permits as provided by section-14.
- 4. Application for authority to sell, lease, assign, encumber, merge, etc., the property necessary or useful in the performance of duties to the public or certificates or permits or to purchase motor carrier stock, etc., as provided in section-16.
- 5. Application for approval of plans and specifications for construction in Hawaii or modification of a motor vehicle or class of motor vehicles which will at any time operate upon the highway as provided in section-7(a) (6).

(d) The commission may charge an amount it deems necessary and reasonable to defray the cost of supplying to the carriers and the public the application forms and other forms, schedules, tariffs, copies of regulations, and other pamphlets and materials it provides either by the individual copy or in bulk.

(e) All of the fees and charges collected under the provisions of this section shall be paid into the treasury of the State of Hawaii.

Sec. -35. Separability of provisions. If any provision of this chapter, or the application thereof to any person, or commerce, or circumstance, is held invalid, the remainder of the chapter, and the application of such provision to other persons, or commerce, or circumstances, shall not be affected thereby."

SECTION 3. Immediate staffing. The commission may employ, without regard to the requirements of chapter 3 and the residency requirements of section 5-1, Revised Laws of Hawaii 1955, a superintendent of transportation, a rate and records examiner and a traffic and safety officer who will assist the commission in the performance of its duties and obligations under this chapter. The commission may fix the individual compensation of the aforesaid three persons with the approval of the governor and without regard to the provisions of chapter 4, Revised Laws of Hawaii 1955. The commission is authorized to include in subsequent budgets of the commission an amount to carry out the purpose of this Act. This section shall take effect on July 1, 1961.

SECTION 4. Time effective. This Act (except as to section 3 which shall take effect on July 1, 1961) shall take effect and be in force on and after the 21st day of August, 1961; provided, however, that the commission shall, if found by it necessary in the public interest, by order, extend the time of the taking effect of any provision of this Act to such time after the 21st day of August, 1961, as the commission shall prescribe, but not beyond four calendar months thereafter.

(Approved June 2, 1961.) **H.B. 34.**