

ACT 117

S.B. NO. 3220

A Bill for an Act Relating to Motor Carriers.

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

SECTION 1. Section 269-1, Hawaii Revised Statutes, is amended by amending the definition of “enforcement officer” to read as follows:

““Enforcement officer” means any person employed and authorized by the commission to investigate any matter on behalf of the commission. [~~The term also means a motor vehicle safety officer employed and assigned, pursuant to section 271-38, by the department of transportation to enforce sections 271-8, 271-12, 271-13, 271-19, and 271-29 through assessment of civil penalties as provided in section 271-27(h), (i), and (j).~~]”

SECTION 2. Section 271-4, Hawaii Revised Statutes, is amended as follows:

1. By adding a new definition to be appropriately inserted and to read: ““Department” means the department of transportation.”
2. By amending the definition of “enforcement officer” to read: ““Enforcement officer” means [any];

- (1) Any person employed and authorized by the [commission] department to investigate any matter on behalf of the [commission. The term also means a] department; and
- (2) A motor vehicle safety officer employed and assigned, pursuant to section 271-38, by the department [of transportation] to enforce [sections 271-8, 271-12, 271-13, 271-19, and 271-29 through the assessment of civil penalties as provided in section 271-27(h), (i), and (j).] this chapter.”

SECTION 3. Section 271-27, Hawaii Revised Statutes, is amended as follows:

1. By amending subsection (c) to read:

“(c) Any special agent, accountant, or examiner who knowingly and wilfully divulges any fact or information which may come to the special agent’s, accountant’s, or examiner’s knowledge during the course of any examination or inspection made under authority of sections 271-9(a)(4), 271-23, and 271-25, except as the special agent, accountant, or examiner may be directed by the [commission] department or by a court or judge thereof, shall be guilty of a misdemeanor.”

2. By amending subsections (f) through (j) to read:

“(f) Any motor carrier or any officer, agent, employee, or representative thereof, who wilfully fails or refuses to make a report to the [commission] department as required by this chapter, or to make specific and full, true, and correct answer to any question within thirty days from the time it is lawfully required by the [commission,] department, or to keep accounts, records, and memoranda in the form and manner prescribed by the [commission,] department, or knowingly and wilfully falsifies, destroys, mutilates, or alters any report, account, record, or memorandum or knowingly and wilfully files with the [commission] department any false report, account, record, or memorandum, or knowingly and wilfully neglects or fails to make full, true, and correct entries in the 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 knowingly and wilfully keeps accounts, records, or memoranda contrary to the rules, regulations, or orders of the [commission] department with respect thereto, shall be deemed guilty of a misdemeanor. As used in this subsection, the words “keep” and “kept” mean made, prepared, or compiled, as well as retained.

(g) Except when required by state law to take immediately before a district judge a person arrested for violation of this chapter, including any rule adopted pursuant to this chapter, any enforcement officer, other than a motor vehicle safety officer employed and assigned, pursuant to section 271-38, by the department [of transportation] to assess civil penalties, upon arresting a person for violation of this chapter, including any rule adopted pursuant to this chapter shall issue to the alleged violator a summons or citation printed in the form hereinafter described, warning the alleged violator to appear and answer to the charge against the alleged violator at a certain place within seven days after the arrest.

- (1) The summons or citation shall be printed in a form comparable to that of other summonses and citations used for arresting offenders and shall include all necessary information. The form and content shall be adopted or prescribed by the district courts.
- (2) The original of a summons or citation shall be given to the alleged violator and any other copies distributed in the manner prescribed by the district courts; provided that the district courts may prescribe

alternative methods of distribution for the original and any other copies.

- (3) Summonses and citations shall be consecutively numbered and any other copies of each shall bear the same number.
- (4) Any person who fails to appear at the place and within the time specified in the summons or citation shall be guilty of a misdemeanor.
- (5) If any person fails to comply with a summons or citation or fails or refuses to deposit bail as required, the enforcement officer shall cause a complaint to be entered against the person and secure the issuance of a warrant for the person's arrest.
- (6) When a complaint is made to any prosecuting officer of a violation of this chapter or any rule, the enforcement officer who issued the summons or citation shall subscribe to it under oath administered by another official whose name has been submitted to the prosecuting officer and who has been designated by the ~~[commission]~~ department to administer the same.

(h) Any motor carrier or lessor, or any officer, agent, employee, or representative thereof, who fails or refuses to comply with any provision of this chapter, or any rule, requirement, or order thereunder, and any person located in this State, or any officer, agent, employee, or representative of any ~~[such]~~ the person, who engages the services of any motor carrier or lessor, or any officer, agent, employee, or representative thereof, who fails or refuses to comply with any provision of this chapter, or any rule, requirement, or order, may be assessed a civil penalty for an amount determined by the ~~[commission]~~ department subject to this section payable to the State in a sum:

- (1) Up to \$1,000 for each offense;
- (2) In the case of a continuing violation, not less than \$50 and not more than \$500 for each additional day during which the failure or refusal continues; and
- (3) Up to \$5,000 for each fourth or subsequent violation within one calendar year.

(i) Notwithstanding subsection (h), a motor carrier who fails to file, within the prescribed time, a financial report with the ~~[commission]~~ department pursuant to its rules may be assessed a civil penalty payable to the State up to the sum of one-sixteenth of one per cent of the gross revenues from the motor carrier's business during the preceding calendar year, if the failure is for not more than one month, with an additional one-sixteenth of one per cent for each additional month or fraction thereof during which the failure continues, but in no event shall the total civil penalty be less than the sum of \$50.

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

- (1) The citation may contain an order of abatement and an assessment of civil penalties as provided in subsection (h). All penalties collected under this subsection shall be deposited in the treasury of the State. Service of a citation issued under this subsection shall be made by personal service whenever possible or by certified mail,

restricted delivery, sent to the last known business or residence address of the person cited.

- (2) Any person served with a citation under this subsection may submit a written request to the ~~[commission]~~ department for a hearing within twenty days from the receipt of the citation, with respect to the violations alleged, the scope of the order of abatement, and the amount of civil penalties assessed. If the person cited under this subsection notifies the ~~[commission]~~ department of the request for a hearing in time, the ~~[commission]~~ department shall afford the person an opportunity for a hearing under chapter 91. The hearing shall be conducted by the ~~[commission,]~~ department, or the ~~[commission]~~ department may designate a hearings officer to hold the hearing.
- (3) If the person cited under this subsection does not submit a written request to the ~~[commission]~~ department for a hearing in time, the citation shall be deemed a final order of the ~~[commission-]~~ department. The ~~[commission]~~ department may apply to the appropriate court for a judgment to enforce the provisions of any final order issued by the ~~[commission]~~ department or designated hearings officer pursuant to this subsection, including the provisions for abatement and civil penalties imposed. In any proceeding to enforce the final order, the ~~[commission]~~ department need only produce a certified copy of the final order and show that the notice was given and that a hearing was held or the time granted for requesting the hearing has run without a request.
- (4) If any party is aggrieved by the decision of the ~~[commission]~~ department or the designated hearings officer, the party may appeal, subject to chapter 602, in the manner provided for civil appeals from the circuit courts; provided that the operation of an abatement order shall not be stayed on appeal unless specifically ordered by a court of competent jurisdiction after applying the stay criteria enumerated in section 91-14(c). The sanctions and disposition authorized under this subsection shall be separate and in addition to all other remedies either civil or criminal provided by law. The ~~[commission]~~ department may adopt any rules under chapter 91 that may be necessary to fully effectuate this subsection.”

SECTION 4. Section 271-37, Hawaii Revised Statutes, is amended to read as follows:

“~~[[§271-37]]~~ **Attorney general; aid in enforcement.** Upon written request of the ~~[public utilities commission,]~~ department, the attorney general shall prosecute all violations on behalf of the ~~[commission]~~ department for the enforcement of the provisions of this chapter.”

SECTION 5. Section 271-38, Hawaii Revised Statutes, is amended to read as follows:

“~~§271-38~~ **Enforcement.** ~~[At the request of the public utilities commission, the department of transportation]~~ The department shall assign a motor vehicle safety officer employed by the department ~~[of transportation]~~ to assist in the enforcement of ~~[sections 271-8, 271-12, 271-13, 271-19, and 271-29, through the assessment of civil penalties as provided in section 271-27(h), (i), and (j)]~~ this chapter.”

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SECTION 6. The full transfer of enforcement responsibilities of the motor carrier law from the public utilities commission to the department of transportation pursuant to this Act shall be completed before December 31, 2024.

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

SECTION 8. This Act shall take effect on July 1, 2024.

(Approved June 27, 2024.)