

CHAPTER 115

[Engrossed Senate Bill No. 2440]

TRANSPORTATION--CARRIERS--COMMISSION AUTHORITY

AN ACT Relating to regulation of transportation and storage; and amending section 12, chapter 106, Laws of 1963 as amended by section 1, chapter 51, Laws of 1971 and RCW 46.85.120; amending section 3, chapter 59, Laws of 1963 and RCW 81.04.405; amending section 81.48.030, chapter 14, Laws of 1961 as amended by section 1, chapter 143, Laws of 1971 ex. sess. and RCW 81.48.030; amending section 3, chapter 134, Laws of 1969 and RCW 81.53.281; amending section 81.68.050, chapter 14, Laws of 1961 and RCW 81.68.050; amending section 7, chapter 150, Laws of 1965 as amended by section 4, chapter 132, Laws of 1969 and RCW 81.70.060; amending section 8, chapter 132, Laws of 1969 and RCW 81.70.095; amending section 11, chapter 150, Laws of 1965 as amended by section 9, chapter 132, Laws of 1969 and RCW 81.70.100; amending section 6, chapter 295, Laws of 1961 and RCW 81.77.050; amending section 81.80.090, chapter 14, Laws of 1961 and RCW 81.80.090; amending section 81.80.150, chapter 14, Laws of 1961 and RCW 81.80.150; amending section 81.80.270, chapter 14, Laws of 1961 as last amended by section 12, chapter 210, Laws of 1969 ex. sess. and RCW 81.80.270; amending section 2, chapter 134, Laws of 1965 ex. sess. and RCW 81.80.272; amending section 81.84.040, chapter 14, Laws of 1961 and RCW 81.84.040; repealing 81.80.180, chapter 14, Laws of 1961 and RCW 81.80.180; and prescribing penalties.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

Section 1. Section 12, chapter 106, Laws of 1963 as amended by section 1, chapter 51, Laws of 1971 and RCW 46.85.120 are each amended to read as follows:

(1) Any owner engaged in operating one or more fleets may, in lieu of registration of vehicles under the provisions of chapter 46.16 RCW and payment of excise taxes and fees imposed by chapter 82.44 RCW ((and RCW 81.80.320)), register and license each fleet for operation in this state by filing an application with the department which shall contain the following information and such other information pertinent to vehicle registration as the department may require:

(a) Total fleet miles. This shall be the total number of miles operated in all jurisdictions during the preceding year by the motor vehicles in such fleet during said year.

(b) In-state miles. This shall be the total number of miles operated in this state during the preceding year by the motor vehicles in such fleet during said year.

(c) A description and identification of each vehicle of such fleet which is to be operated in this state during the registration year for which proportional fleet registration is requested.

(2) The application for each fleet shall, at the time and in the manner required by the department, be supported by fee payment computed as follows:

(a) Divide the sum of the in-state miles by total fleet miles.

(b) Determine the total amount necessary under the provisions referred to in subsection (1) of this section to register each and every vehicle in the fleet for which registration is requested, based on the regular annual fees or applicable fees for the unexpired portion of the registration year.

(c) Multiply the sum obtained under subsection (2) (b) hereof by the fraction obtained under subsection (2) (a) hereof.

(3) The applicant for proportional registration of any fleet, the nonmotor vehicles of which are operated in jurisdictions in addition to those in which the applicant's fleet motor vehicles are operated, may state such nonmotor vehicles separately in his application and compute and pay the fees therefor in accordance with such separate statement, as to which "total miles" shall be the total miles operated in all jurisdictions during the preceding year.

(4) In no event shall the total fee payment be less than a minimum of five dollars per motor truck, truck tractor or auto stage, and three dollars per vehicle of any other type.

Sec. 2. Section 3, Chapter 59, Laws of 1963 and RCW 81.04.405 are each amended to read as follows:

In addition to all other penalties provided by law every public service company subject to the provisions of this title and every officer, agent or employee of any such public service company who violates or who procures, aids or abets in the violation of any provision of this title or any order, rule, regulation or decision of the commission, and every person or corporation violating the provisions of any cease and desist order issued pursuant to section 15 of this 1973 amendatory act, shall incur a penalty of one hundred dollars for every such violation. Each and every such violation shall be a separate and distinct offense and in case of a continuing violation every day's continuance shall be and be deemed to be a separate and distinct violation. Every act of commission or omission which procures, aids or abets in the violation shall be considered a violation under the provisions of this section and subject to the penalty herein provided for.

The penalty herein provided for shall become due and payable

when the person incurring the same receives a notice in writing from the commission describing such violation with reasonable particularity and advising such person that the penalty is due. The commission may, upon written application therefor, received within fifteen days, remit or mitigate any penalty provided for in this section or discontinue any prosecution to recover the same upon such terms as it in its discretion shall deem proper and shall have authority to ascertain the facts upon all such applications in such manner and under such regulations as it may deem proper. If the amount of such penalty is not paid to the commission within fifteen days after receipt of notice imposing the same or application for remission or mitigation has not been made within fifteen days after violator has received notice of the disposition of such application the attorney general shall bring an action in the name of the state of Washington in the superior court of Thurston county or of some other county in which such violator may do business, to recover such penalty. In all such actions the procedure and rules of evidence shall be the same as an ordinary civil action except as otherwise herein provided. All penalties recovered under this title shall be paid into the state treasury and credited to the public service revolving fund.

Sec. 3. Section 81.48.030, chapter 14, Laws of 1961 as amended by section 1, chapter 143, Laws of 1971 ex. sess. and RCW 81.48.030 are each amended to read as follows:

The right to fix and regulate the speed of railway trains within the limits of code cities, cities of the second class, third class, towns, and at grade crossings as defined in RCW 81.53.010 where such grade crossings are outside the limits of cities and towns, is vested exclusively in the commission: PROVIDED, That RCW 81.48.030 and 81.48.040 shall not apply to street railways which may be operating or hereafter operated within the limits of said cities and towns.

Sec. 4. Section 3, chapter 134, Laws of 1969 and RCW 81.53.281 are each amended to read as follows:

There is hereby created in the state treasury a "grade crossing protective fund," to which shall be transferred all moneys appropriated for the purpose of carrying out the provisions of RCW 81.53.261, 81.53.271, 81.53.281 and 81.53.291. At the time the commission makes each allocation of cost to said grade crossing protective fund, it shall certify that such cost shall be payable out of said fund. Upon completion of the installation of any such signal or other protective device, the railroad shall present its claim for reimbursement for the cost of installation from said fund of the amount allocated thereto by the commission. The annual cost of maintenance shall be presented and paid in a like manner. The

commission is hereby authorized to recover administrative costs from said fund in an amount not to exceed three percent of the direct appropriation provided for any biennium, and in the event administrative costs exceed three percent of the appropriation, the excess shall be chargeable to regulatory fees paid by railroads pursuant to RCW 81.24.010.

Sec. 5. Section 81.68.050, chapter 14, Laws of 1961 and RCW 81.68.050 are each amended to read as follows:

((The commission shall collect the following miscellaneous fees from auto transportation companies:))

Any application for a certificate of public convenience and necessity or ((to amend a certificate, twenty-five dollars;)) amendment thereof, or application to sell, lease, mortgage, or transfer a certificate of public convenience and necessity or any interest therein, ((ten dollars)) shall be accompanied by such filing fees as the commission may prescribe by rule: PROVIDED, That such fee shall not exceed two hundred dollars.

Sec. 6. Section 7, chapter 150, Laws of 1965 as amended by section 4, chapter 132, Laws of 1969 and RCW 81.70.060 are each amended to read as follows:

Each annual application for a certificate to act as a charter party carrier of passengers pursuant to the ((provision)) provisions of this chapter shall be accompanied by an annual renewal fee of twenty-five dollars. Each initial application for a permanent or temporary certificate, or transfer or encumbrance of a certificate shall be accompanied by ((a)) such filing fee ((of)) as the commission may prescribe by rule: PROVIDED, That such fee shall not exceed two hundred dollars.

Sec. 7. Section 8, chapter 132, Laws of 1969 and RCW 81.70.095 are each amended to read as follows:

The commission may with or without a hearing issue temporary certificates to engage in the business of operating a passenger charter carrier company, but only after it finds that the issuance of such temporary certificate is consistent with the public interest. Such temporary certificate may be issued for a period up to one hundred eighty days where the territory covered thereby is not contained in the certificate of any other passenger charter carrier company. In all other cases such temporary certificate may be issued for a period not to exceed one hundred twenty days. The commission may prescribe such special rules and regulations and impose such special terms and conditions with reference thereto as in its judgment are reasonable and necessary in carrying out the provisions of this chapter. ((The commission shall collect a fee of twenty-five dollars for an application for such temporary certificate;))

Sec. 8. Section 11, chapter 150, Laws of 1965 as amended by

section 9, chapter 132, Laws of 1969 and RCW 81.70.100 are each amended to read as follows:

No certificate issued pursuant to this chapter or rights to conduct any of the services therein authorized shall be leased, assigned or otherwise transferred or encumbered, unless authorized by the commission. ~~((A filing fee of fifty dollars shall accompany all such applications.))~~

Sec. 9. Section 6, chapter 295, Laws of 1961 and RCW 81.77.050 are each amended to read as follows:

~~((The commission shall collect the following miscellaneous fees from garbage and refuse collection companies:))~~

Any application for a certificate of public convenience and necessity or ((to amend a certificate, twenty-five dollars;)) amendment thereof, or application to sell, lease, mortgage, or transfer a certificate of public convenience and necessity or any interest therein, ((ten dollars)) shall be accompanied by such filing fee as the commission may prescribe by rule: PROVIDED, That such fee shall not exceed two hundred dollars.

Sec. 10. Section 81.80.090, chapter 14, Laws of 1961 and RCW 81.80.090 are each amended to read as follows:

The commission shall prescribe forms of application for permits and for extensions thereof for the use of prospective applicants, and for transfer of permits and for acquisition of control of carriers holding permits, and shall make regulations for the filing thereof. Any such application((s for permits and for extensions thereof)) shall be accompanied by ((the following fees: Applications for permits:.....twenty-five dollars; Applications for temporary permits:.....ten dollars; Applications for extension of permits:.....ten dollars)) such filing fee as the commission may prescribe by rule: PROVIDED, That such fee shall not exceed two hundred dollars.

Sec. 11. Section 81.80.150, chapter 14, Laws of 1961 and RCW 81.80.150 are each amended to read as follows:

The commission shall make, fix, construct, compile, promulgate, publish, and distribute tariffs containing compilations of rates, charges, classifications, rules and regulations to be used by all common carriers. In compiling such tariffs it shall include within any given tariff compilation such carriers, groups of carriers, commodities, or geographical areas as it determines shall be in the public interest. Such compilations and publications may be made by the commission by compiling the rates, charges, classifications, rules, and regulations now in effect, and as they may be amended and altered from time to time after notice and hearing, by issuing and distributing revised pages or supplements to such tariffs or reissues thereof in accordance with the orders of the

commission: PROVIDED, That the commission, upon good cause shown, may establish temporary rates, charges, or classification changes (~~to be made permanent, however, only after notice and hearing~~) which may be made permanent only after publication in an applicable tariff for not less than sixty days, and determination by the commission thereafter that the rates, charges or classifications are just, fair and reasonable: PROVIDED FURTHER, That temporary rates shall not be made permanent except upon notice and hearing if within sixty days from date of publication, a shipper or common carrier, or representative of either, shall file with the commission a protest alleging such temporary rates to be unjust, unfair or unreasonable. For purposes of this proviso, the publication of temporary rates in the tariff shall be deemed adequate public notice. Nothing herein shall be construed to prevent the commission from proceeding on its own motion, upon notice and hearing, to fix and determine just, fair and reasonable rates, charges and classifications. The proper tariff, or tariffs, applicable to a carrier's operations shall be available to the public at each agency and office of all common carriers operating within this state. Such compilations and publications shall be sold by the commission for not to exceed ten dollars for each tariff. Corrections to such publications shall be furnished to all subscribers to tariffs in the form of corrected pages to the tariffs, supplements or reissues thereof. In addition to the initial charge for each tariff, the commission shall charge an annual maintenance fee of not to exceed ten dollars per tariff to cover the cost of issuing corrections or supplements and mailing them to subscribers: PROVIDED, That copies may be furnished free to other regulatory bodies and departments of government and to colleges, schools, and libraries. All copies of the compilations, whether sold or given free, shall be issued and distributed under rules and regulations to be fixed by the commission: PROVIDED FURTHER, That the commission may by order authorize common carriers to publish and file tariffs with the commission and be governed thereby in respect to certain designated commodities and services when, in the opinion of the commission, it is impractical for the commission to make, fix, construct, compile, publish and distribute tariffs covering such commodities and services.

Sec. 12. Section 81.80.270, chapter 14, Laws of 1961 as last amended by section 12, chapter 210, Laws of 1969 ex. sess. and RCW 81.80.270 are each amended to read as follows:

No permit issued under the authority of this chapter shall be construed to be irrevocable. Nor shall such permit be subject to transfer or assignment except upon a proper showing that property rights might be affected thereby, and then in the discretion of the commission(~~7~~ and upon the payment of a fee of twenty-five dollars)).

No person, partnership or corporation, singly or in combination with any other person, partnership or corporation, whether a carrier holding a permit or otherwise, or any combination of such, shall acquire control or enter into any agreement or arrangement to acquire control of a common or contract carrier holding a permit through ownership of its stock or through purchase, lease or contract to manage the business, or otherwise except after and with the approval and authorization of the commission: PROVIDED, That upon the dissolution of a partnership, which holds a permit, because of the death, bankruptcy, or withdrawal of a partner where such partner's interest is transferred to his spouse or to one or more remaining partners, or in the case of a corporation which holds a permit, in the case of the death of a shareholder where a shareholder's interest upon death is transferred to his spouse or to one or more of the remaining shareholders, the commission shall transfer the permit to the newly organized partnership which is substantially composed of the remaining partners, or continue the corporation's permit without making the proceeding subject to hearing and protest. In all other cases any such transaction either directly or indirectly entered into without approval of the commission shall be void and of no effect, and it shall be unlawful for any person seeking to acquire or divest control of such permit to be a party to any such transaction without approval of the commission.

Every carrier who shall cease operation and abandon his rights under the permits issued him shall notify the commission within thirty days of such cessation or abandonment, and return to the commission the identification cards issued to him.

Sec. 13. Section 2, chapter 134, Laws of 1965 ex. sess. and RCW 81.80.272 are each amended to read as follows:

Except as otherwise provided in RCW 81.80.270 any permit granted to any person under this chapter and held by that person alone or in conjunction with others other than as stockholders in a corporation at the time of his death shall be transferable the same as any other right or interest of the person's estate subject to the following:

(1) Application for transfer shall be made to the commission in such form and contain such information as the commission shall prescribe (~~and shall be accompanied by a fee of twenty-five dollars~~). The transfer described in any such application shall be approved if it appears from the application or from any hearing held thereon or from any investigation thereof that the proposed transferee is fit, willing and able properly to perform the services authorized by the permit to be transferred and to conform to the provisions of this chapter and the requirements, rules and regulations of the commission thereunder, otherwise the application

shall be denied.

(2) Temporary continuance of motor carrier operations without prior compliance with the provisions of this section will be recognized as justified by the public interest in cases in which the personal representatives, heirs or surviving spouses of deceased persons desire to continue the operations of the carriers whom they succeed an interest subject to such reasonable rules and regulations as the commission may prescribe.

In case of temporary continuance under this section the successor shall immediately procure insurance or deposit security as required by RCW 81.80.190.

Immediately upon any such temporary continuance of motor carrier operations and in any event not more than thirty days thereafter the successor shall give notice of the succession by written notice to the commission containing such information as the commission shall prescribe.

Sec. 14. Section 81.84.040, chapter 14, Laws of 1961 and RCW 81.84.040 are each amended to read as follows:

~~((The commission shall collect the following miscellaneous fees from steamboat companies:))~~ Any application for a certificate of public convenience and necessity ~~((, or to amend certificate, fifty dollars;))~~ or amendment thereof, or application to sell, lease, mortgage, or transfer a certificate of public conveyance and necessity or any interest therein, ~~((ten dollars))~~ shall be accompanied by such filing fee as the commission may prescribe by rule: PROVIDED, That such fee shall not exceed two hundred dollars.

NEW SECTION. Sec. 15. There is added to chapter 14, Laws of 1961 and to chapter 81.04 RCW a new section to read as follows:

Whether or not any person or corporation is conducting business requiring operating authority, or has performed or is performing any act requiring approval of the commission without securing such approval, shall be a question of fact to be determined by the commission. Whenever the commission believes that any person or corporation is engaged in operations without the necessary approval or authority required by any provision of this Title, it may institute a special proceeding requiring such person or corporation to appear before the commission at a location convenient for witnesses and the production of evidence and bring with him books, records, accounts and other memoranda, and give testimony under oath as to his operations or acts, and the burden shall rest upon such person or corporation of proving that his operations or acts are not subject to the provisions of this chapter. The commission may consider any and all facts that may indicate the true nature and extent of the operations or acts and may subpoena such witnesses and documents as it deems necessary.

After having made the investigation herein described, the commission is authorized and directed to issue the necessary order or orders declaring the operations or acts to be subject to, or not subject to, the provisions of this Title. In the event the operations or acts are found to be subject to the provisions of this Title, the commission is authorized and directed to issue cease and desist orders to all parties involved in the operations or acts.

In proceedings under this section no person or corporation shall be excused from testifying or from producing any book, waybill, document, paper or account before the commission when ordered to do so, on 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 or forfeiture; but no person or corporation shall be prosecuted, punished or subjected to any penalty or forfeiture for or on account of any account, transaction, matter or thing concerning which he shall under oath have testified or produced documentary evidence in proceedings under this section: PROVIDED, That no person so testifying shall be exempt from prosecution or punishment for any perjury committed by him in his testimony.

NEW SECTION. Sec. 16. Section 81.80.180, chapter 14, Laws of 1961 and RCW 81.80.180 are each hereby repealed.

Passed the Senate February 19, 1973.

Passed the House March 1, 1973.

Approved by the Governor March 19, 1973.

Filed in Office of Secretary of State March 19, 1973.

CHAPTER 116

[Engrossed Senate Bill No. 2464]

HIGHWAY CONSTRUCTION--SMALL BUSINESS AND MINORITY CONTRACTORS--
 BID ASSISTANCE

AN ACT Relating to the construction and maintenance of highways; amending section 47.28.030, chapter 13, Laws of 1961 as last amended by section 1, chapter 78, Laws of 1971 ex. sess. and RCW 47.28.030; and amending section 47.28.050, chapter 13, Laws of 1961 as amended by section 1, chapter 180, Laws of 1969 ex. sess. and RCW 47.28.050.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

Section 1. Section 47.28.030, chapter 13, Laws of 1961 as last amended by section 1, chapter 78, Laws of 1971 ex. sess. and RCW 47.28.030 are each amended to read as follows:

A state highway shall be constructed, altered, repaired, or