

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

NOTICE OF PENALTIES INCURRED AND DUE FOR VIOLATIONS OF LAWS AND RULES

PENALTY ASSESSMENT: TE-160223

PENALTY AMOUNT: \$1,700

GOOD & GOODS, LLC
DBA THE ORIGINAL CANNABUS
3056 15th AVENUE WEST
SEATTLE, WA 98199

The Washington Utilities and Transportation Commission (Commission) believes that you have committed violations of Washington Administrative Code (WAC) 480-30-221 Driver Safety Requirements, which requires charter and excursion carriers to comply with Title 49 Code of Federal Regulations (CFR) Part 391 Qualifications of Drivers, Part 395 Driver Hours of Service, and Part 396 Inspection, Repair and Maintenance. RCW 81.04.405 allows penalties of one hundred dollars for every such violation. In the case of an ongoing violation every day's continuance is considered a separate and distinct violation.

On February 17, 2016, Commission Motor Carrier Investigator Sandra Yeomans conducted a compliance review of Good & Goods, LLC d/b/a The Original Cannabis (Cannabus) and documented the following violations of critical regulations:

- **Seven violations of CFR Part 391.45(a) – Using a driver not medically examined and certified.** Cannabis used a driver, Anthony Domish, who had not been medically examined and certified. Mr. Domish drove on seven occasions without being medically examined and certified.
- **One violation of CFR Part 391.51(a) – Failing to maintain a driver qualification file on each driver employed.** The company failed to create or maintain a driver qualification file for driver Anthony Domish.
- **Seven violations of CFR Part 395.8(a) – Failing to require driver to make a record of duty status.** Anthony Domish drove on seven occasions and failed to make a record of duty status.
- **One violation of CFR Part 396.3(b) – Failing to keep minimum records of inspection and vehicle maintenance.** The company keeps no vehicle inspection and maintenance records.
- **One violation of CFR Part 396.17(a) – Using a vehicle not periodically inspected.** The company does not require its drivers to perform daily inspections.

The Commission considered the following factors in determining the appropriate penalties for these violations:

1. **How serious or harmful the violation is to the public.** The violations noted are serious and potentially harmful to the public. Companies that permit their employees to perform safety-sensitive functions prior to being medically examined and certified, without documentation of driver qualifications or hours of rest, or using vehicles with no periodic inspection or documentation of maintenance put the traveling public at risk. An undocumented medical condition, unqualified driver, or a poorly maintained vehicle could present serious safety concerns.
2. **Whether the violation is intentional.** Considerations include:
 - Whether the company ignored Commission Staff's (Staff's) previous technical assistance; and
 - Whether there is clear evidence through documentation or other means that shows the company knew of and failed to correct the violation.

In its application for charter and excursion authority dated February 18, 2014, Cannabus president David R. Good acknowledged the responsibility to understand and comply with the requirements of Title 49 CFR Parts 391, 395 and 396. The company received technical assistance from Commission Motor Carrier Investigator John Foster on August 25, 2014.

The company knew, or should have known, about these requirements.

3. **Whether the company self-reported the violation.** The company did not self-report these violations.
4. **Whether the company was cooperative and responsive.** Cannabus owner David Good was cooperative and responsive.
5. **Whether the company promptly corrected the violations and remedied the impacts.** Staff has no evidence that Cannabus has corrected any of the violations noted.
6. **The number of violations.** The number of critical violations noted is notable.
7. **The number of customers affected.** The company is a charter and excursion carrier so customers were potentially put at risk. A driver not medically certified, with undocumented qualifications and rest period, or a vehicle in an unknown mechanical condition present potential safety risks to the traveling public.

8. **The likelihood of recurrence.** Staff has no information to indicate whether this company is likely to repeat these violations, but the company is small and owner appeared to be cooperative.
9. **The company's past performance regarding compliance, violations, and penalties.** Staff provided new entrant technical assistance in August 2014, and identified minor vehicle violations including defective lighting and missing DOT number. These violations had not been corrected by the time of the February 2016 compliance review. The company has no other compliance, violation or penalty history.
10. **The company's existing compliance program.** The company has no formal compliance program.
11. **The size of the company.** Cannabus operates one commercial vehicle with one driver. In 2015 the company reported \$11,172 in gross revenue and logged 1,000 miles.

The critical violations noted in the compliance review are first-time violations, but the Commission's Enforcement Policy provides that some Commission requirements are so fundamental to safe operations that the Commission will issue penalties for a first-time violation, regardless of whether Staff has previously provided technical assistance on specific issues.¹ Within these first-time violations are regulations so critical to public safety that statute (RCW 81.04.405) and enforcement policy penalize each occurrence.

The Commission has considered these factors and determined that Cannabus should be penalized \$1700 -- \$100 for each of the following seventeen violations of WAC 480-30-221 Driver Safety Requirements, which adopts CFR Parts 391, 395 and 396:

- Seven violations of CFR Part 391.45(a) – Using a driver not medically examined and certified. These are first-time violations, but the Commission grants no leeway with this type of violation. Drivers who are not medically examined and certified put the traveling public at risk.
- One violation of CFR Part 391.51(a) – Failing to maintain a driver qualification file on each driver employed.
- Seven violations of CFR Part 395.8(a) – Failing to require driver to make a record of duty status.
- One violation of CFR Part 396.3(b) – Failing to keep minimum records of inspection and vehicle maintenance.
- One violation of CFR Part 396.17(a) – Using a vehicle not periodically inspected.

¹ Docket A-120061 – Enforcement Policy of the Washington Utilities & Transportation Commission – Section V.

This information, if proven at a hearing and not rebutted or explained, is sufficient to support the penalty assessment.

Your penalty is due and payable now. If you believe the violations did not occur, you may deny committing the violation and contest the penalty assessment through evidence presented at a hearing or in writing. The Commission will grant a request for hearing only if material issues of law or fact concerning the violation require consideration of evidence and resolution in a hearing. Any contest of the penalty assessment must include a written statement of the reasons supporting that contest. Failure to provide such a statement will result in denial of the contest.

If there is a reason for the violations that you believe should excuse you from the penalty, you may ask for mitigation (reduction) of this penalty through evidence presented at a hearing or in writing. The Commission will grant a request for hearing only if material issues of law or fact require consideration of evidence and resolution in a hearing. Any request for mitigation must include a written statement of the reasons supporting that request. Failure to provide such a statement will result in denial of the request. See RCW 81.04.405.

If you properly present your request for a hearing and the Commission grants that request, the Commission will review the evidence supporting your dispute of the violation or application for mitigation in a Brief Adjudicative Proceeding before an administrative law judge. The administrative law judge will consider the evidence and will notify you of his or her decision.

You must act within 15 days after receiving this notice to do one of the following:

- Pay the amount due.
- Contest the occurrence of the violations.
- Request mitigation to contest the amount of the penalty.

Please indicate your selection on the enclosed form and send it to the Washington Utilities and Transportation Commission, Post Office Box 47250, Olympia, Washington 98504-7250, **within FIFTEEN (15) days** after you receive this notice.

If you do not act within 15 days, the Commission may refer this matter to the Office of the Attorney General for collection. The Commission may then sue you to collect the penalty.

DATED at Olympia, Washington, and effective February 24, 2016.



GREGORY J. KOPTA
Administrative Law Judge

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION
PENALTY ASSESSMENT TE-160223

PLEASE NOTE: You must complete and sign this document, and send it to the Commission within 15 days after you receive the penalty assessment. Use additional paper if needed.

I have read and understand RCW 9A.72.020 (printed below), which states that making false statements under oath is a class B felony. I am over the age of 18, am competent to testify to the matters set forth below and I have personal knowledge of those matters. I hereby make, under oath, the following statements.

1. **Payment of penalty.** I admit that the violation occurred and enclose \$ _____ in payment of the penalty.

2. **Contest the violation.** I believe that the alleged violation did not occur for the reasons I describe below:

a) I ask for a hearing to present evidence on the information I provide above to an administrative law judge for a decision

OR b) I ask for a Commission decision based solely on the information I provide above.

3. **Application for mitigation.** I admit the violation, but I believe that the penalty should be reduced for the reasons set out below:

a) I ask for a hearing to present evidence on the information I provide above to an administrative law judge for a decision

OR b) I ask for a Commission decision based solely on the information I provide above.

I declare under penalty of perjury under the laws of the State of Washington that the foregoing, including information I have presented on any attachments, is true and correct.

Dated: _____ [month/day/year], at _____ [city, state]

Name of Respondent (company) – please print

Signature of Applicant

RCW 9A.72.020:

“Perjury in the first degree. (1) A person is guilty of perjury in the first degree if in any official proceeding he makes a materially false statement which he knows to be false under an oath required or authorized by law. (2) Knowledge of the materiality of the statement is not an element of this crime, and the actor’s mistaken belief that his statement was not material is not a defense to a prosecution under this section. (3) Perjury in the first degree is a class B felony.”