

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

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

PENALTY ASSESSMENT: TE-170373

PENALTY AMOUNT: \$2,300

Bayview Chauffeured Transportation LLC
15701 Nelson Place
Seattle, WA 98188

The Washington Utilities and Transportation Commission (Commission) believes that you have committed violations of Washington Administrative Code (WAC) 480-30-221 Vehicle and Driver Safety Requirements, which requires charter and excursion carriers to comply with Title 49 CFR, Part 382 – Controlled Substances and Alcohol Use and Testing, Part 383 – Commercial Driver's License Standards: Requirements and Penalties, and Part 391 – Qualifications of Drivers.

Revised Code of Washington (RCW) 81.04.405 allows penalties of one hundred dollars for each violation of Title 49 CFR Parts 382, 383 and 391. In the case of an ongoing violation, every day's continuance is considered a separate and distinct violation. RCW 81.04.530 allows penalties of up to \$1,500 for an employer who operates without having in place a controlled substance and alcohol testing program which meets the requirements of Title 49 CFR Part 382.

In March, 2017, Commission Motor Carrier Investigator Francine Gagne conducted a compliance review of Bayview Chauffeured Transportation LLC (Bayview Transportation) and documented the following acute and critical violations:

- **One violation of Title 49 CFR Part 382.115(a) – Failing to implement an alcohol and/or controlled substances testing program on the date the employer begins commercial motor vehicle operations.** Bayview Transportation is enrolled in a non-DOT compliant alcohol and/or controlled substances testing program.
- **Seven violations of Title 49 CFR Part 383.23(a) – Operating a commercial motor vehicle without a valid commercial driver's license.** Bayview Transportation allowed its employee Kellee Boyd to drive a commercial vehicle on seven occasions after she surrendered her commercial driver's license on August 10, 2016. Ms. Boyd drove on October 5 and 7, November 26, 29, and 30, December 3, 2016, and January 10, 2017.
- **One violation of Title 49 CFR Part 391.51(b)(2) – Failing to maintain copy of time-of-hire motor vehicle record in each employee's file.** Bayview Transportation failed to

maintain time-of-hire driver record inquiries in the files of four employees: Lonnie Burdine, Miroslav Marev, John Thompson, and Leo Randolph, Sr.

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 operate without an approved controlled substances and alcohol testing program, employ drivers who are not properly licensed, or fail to maintain documentation of employees' driving history put the traveling public at risk. An impaired or unqualified driver, or a driver with a history of violations present serious safety concerns.
2. **Whether the violation is intentional.** Considerations include:
 - Whether the company ignored Commission staff's (Staff) 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 received by the Commission on March 3, 2015, Lonnie Burdine, Operations Manager for Bayview Transportation, acknowledged his responsibility to understand and comply with applicable motor carrier safety rules. Staff conducted a new entrant visit with Bayview Transportation on March 31, 2015 and provided additional technical assistance to the company. Staff noted that Bayview Transportation appeared to have a solid understanding of these requirements. 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.** Bayview Transportation was cooperative and responsive.
5. **Whether the company promptly corrected the violations and remedied the impacts.** The company was cooperative and receptive to technical assistance, but staff is not aware of any immediate steps taken to correct these violations.
6. **The number of violations.** For a company this size, the number of violations is unremarkable.
7. **The number of customers affected.** The company traveled 21,500 miles and reported \$217,000 in gross revenue for 2016. A significant number of passengers were likely affected by these safety violations.
8. **The likelihood of recurrence.** The Commission does not know if the company is likely to repeat these violations, however the company was cooperative and receptive of staff's assistance.

9. **The company's past performance regarding compliance, violations, and penalties.** This is the company's first compliance review. There is no history of previous safety violations, however the Commission penalized Bayview Transportation \$1,000 in 2016 for failure to submit its annual report.
10. **The company's existing compliance program.** Bayview Transportation has no formal compliance program.
11. **The size of the company.** Bayview Transportation operates three commercial vehicles with seven drivers. The company reported \$217,000 in gross revenue and 21,500 miles traveled in 2016.

These 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 mandatory penalties for each occurrence of a first-time violation.¹ The Commission generally will assess penalties per type of violation, rather than per occurrence, for other first-time violations that do not meet the criteria for mandatory penalties. The Commission will assess penalties for any repeat violations found in future compliance investigations, including for each occurrence of a repeat violation.

The Commission has considered these factors and determined that it should penalize Bayview Transportation \$2,300 for violations of WAC 480-30-221 Driver Safety Requirements, which adopts CFR Parts 382, 393 and 391, calculated as follows:

- One violation of Title 49 CFR Part 382.115(a) – Failing to implement an alcohol and/or controlled substances testing program on the date the employer begins commercial motor vehicle operations. In accordance with RCW 81.04.530, the Commission assesses the statutory penalty of \$1,500 for this violation.
- Seven violations of Title 49 CFR Part 383.23(a) – Operating a commercial motor vehicle without a valid commercial driver's license. The Commission assesses a penalty of \$100 for each occurrence of this violation, for a total of \$700.
- One violation of Title 49 CFR Part 391.51(b)(2) – Failing to maintain copy of time-of-hire motor vehicle record in each employee's file. The Commission assesses a penalty of \$100 for one violation of this type.

This information, if proved 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 any or all of the violations did not occur, you may deny committing the violation(s) 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(s) require consideration of evidence and

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

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 any or all of 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(s) 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 take additional enforcement action, including but not necessarily limited to suspending or revoking your certificate to provide regulated service, assessing additional penalties, or referring this matter to the Office of the Attorney General for collection.

DATED at Olympia, Washington, and effective May 30, 2017.



GREGORY J. KOPTA
Administrative Law Judge

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION
PENALTY ASSESSMENT TE-170373

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 (if you do not include reasons supporting your contest here, your request will be denied):

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 (if you do not include reasons supporting your application here, your request will be denied):

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.”