

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

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

PENALTY ASSESSMENT: TE-190790

PENALTY AMOUNT: \$5,700

Lemyn's Legacy Inc.
d/b/a Spokane Party Bus
4508 N. Monroe St.
Spokane, WA 99205

The Washington Utilities and Transportation Commission (Commission) believes Lemyn's Legacy Inc., d/b/a Spokane Party Bus (Spokane Party Bus or Company), violated Washington Administrative Code (WAC) 480-30-900, Interstate Operations, and WAC 480-30-221, Vehicle and Driver Safety Requirements, which adopts Title 49 Code of Federal Regulations (49 CFR) Part 391 – Qualifications of Drivers, 49 CFR Part 393 – Parts and Accessories Necessary for Safe Operation, and 49 CFR Part 395 – Hours of Service of Drivers.

Revised Code of Washington (RCW) 81.04.405 allows penalties of \$100 for each violation. In the case of an ongoing violation, every day's continuance is considered a separate and distinct violation.

On September 18, 2019, Commission Motor Carrier Safety Supervisor Jason Sharp completed a routine safety investigation of Spokane Party Bus and documented the following violations:

- **Fifty-three violations of 49 CFR § 391.45(a) – Using a driver not medically examined and certified.** Spokane Party Bus allowed driver Chauncy Welliver to drive without being medically certified on 53 occasions between March 2 and August 23, 2019.
- **One violation of 49 CFR § 391.51(a) – Failing to maintain driver qualification file on each driver employed.** The Company failed to maintain a driver qualification file for Chauncy Welliver.
- **One violation of 49 CFR § 393.75(c) – Tire tread depth measuring less than 1/32 of an inch measured in two adjacent major tread grooves three separate locations eight inches apart.** Commission staff (Staff) discovered a commercial motor vehicle with less than 1/32 tread depth across three separate locations eight inches apart on both duals of rear passenger side tires.¹ This commercial motor vehicle was placed out-of-service.
- **Thirty violations of 49 CFR § 395.8(a)(1) – Failing to require driver to prepare a record of duty status using appropriate method.** Spokane Party Bus failed to require driver Chauncy Welliver to prepare a record of duty status on 30 occasions between July 1 and July 30, 2019.

¹ Vehicle Identification Number 1GBJG31U761256761.

- **One violation of WAC 480-30-900 – Carrier operating under interstate authority issued by the United States Department of Transportation or its successor agency must register with the Commission and pay fees as required by the Uniform Carrier Registration (UCR) program.** The Company failed to register for UCR program and pay fees.

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

1. **How serious or harmful the violations are to the public.** The violations noted are serious and potentially harmful to the public. Companies that: (1) use drivers that are not medically examined and certified, (2) fail to maintain driver qualification files, (3) fail to require drivers to create records of duty status, and (4) use commercial motor vehicles that are in need of repairs put the traveling public at risk. These violations present serious safety concerns.
2. **Whether the violations were intentional.** Considerations include:
 - Whether the Company ignored 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.

On January 29, 2016, the Commission received the Company's application for charter and excursion service authority. In the application, Sarah Grant, part owner of Spokane Party Bus, acknowledged the Company's responsibility to understand and comply with applicable motor carrier safety regulations.

On March 9, 2016, Staff provided new entrant safety regulation training to Spokane Party Bus, and Sarah Grant acknowledged receiving training related to 49 CFR § 391.45, 49 CFR § 391.51, and 49 CFR § 395.8.

The Company knew or should have known about these requirements.

3. **Whether the Company self-reported the violations.** Spokane Party Bus did not self-report these violations.
4. **Whether the Company was cooperative and responsive.** The Company was cooperative throughout the safety investigation.
5. **Whether the Company promptly corrected the violations and remedied the impacts.** Spokane Party Bus has not provided Staff with evidence that it has corrected the violations.
6. **The number of violations.** Staff identified 18 violation types with a total of 104 individual occurrences.

7. **The number of customers affected.** The Company employs one driver and operates one commercial motor vehicle. Spokane Party Bus traveled 8,854 miles in 2018. These safety violations presented a significant public safety risk.
8. **The likelihood of recurrence.** Staff provided technical assistance with specific remedies to help the Company assess how well its safety management controls support safe operations and how to begin improving its safety performance. The Company was cooperative with Staff, and expressed a desire to come into compliance. In light of these factors, Staff believes the likelihood of recurrence is low.
9. **The Company's past performance regarding compliance, violations, and penalties.** On June 20, 2017, Spokane Party Bus was penalized \$1,000 in Docket TE-170626 for failing to file a complete annual report and pay regulatory fees by May 1, 2017. The Commission suspended a \$750 portion of the penalty subject to the conditions that the Company file a complete annual report, pay its regulatory fee, and pay the unsuspended portion of the penalty. Spokane Party Bus satisfied the conditions by filing a complete annual report, paying its regulatory fee, and paying the \$250 unsuspended portion of the penalty.

The Company has no history of penalties for safety violations.

10. **The Company's existing compliance program.** Sarah Grant, co-owner of Spokane Party Bus, is responsible for the Company's safety compliance program.
11. **The size of the Company.** Spokane Party Bus currently operates one commercial motor vehicle and employs one driver. The Company reported \$27,441 in gross revenue for 2018.

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.² The Commission generally will assess penalties per type of violation, rather than per occurrence, for first-time violations of those critical regulations that do not meet the requirements for mandatory penalties. The Commission will assess penalties for any equipment violation meeting the Federal Motor Carrier Safety Administration's "out-of-service" criteria and also for repeat violations of critical regulations, including each occurrence of a repeat violation.

The Commission has considered these factors and determined that it should penalize Spokane Party Bus \$5,700, calculated as follows:

- Fifty-three violations of 49 CFR § 391.45(a) – Using a driver not medically examined and certified. The Commission assesses a penalty of \$100 for each occurrence of this violation, for a total of \$5,300.

² Docket A-120061 – Enforcement Policy of the Washington Utilities & Transportation Commission – Section V.

- One violation of 49 CFR § 391.51(a) – Failing to maintain driver qualification file on each driver employed. The Commission assesses a penalty of \$100 for this first-time violation.
- One violation of 49 CFR § 393.75(c) – Tire tread depth measuring less than 1/32 of an inch measured in two adjacent major tread grooves three separate locations eight inches apart. The Commission assesses a penalty of \$100 for this out-of-service violation.
- Thirty violations of 49 CFR § 395.8(a)(1) – Failing to require driver to prepare a record of duty status using appropriate method. The Commission assesses a “per category” penalty of \$100 for this first-time violation.
- One violation of WAC 480-30-900 – Carrier operating under interstate authority issued by the United States Department of Transportation or its successor agency must register with the Commission and pay fees as required by the Uniform Carrier Registration (UCR) program. The Commission assesses a penalty of \$100 for this first-time violation.

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 any or all of the violations did not occur, you may deny committing the violation(s) and contest the penalty through evidence presented at a hearing or in writing. Alternatively, 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 the 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 to contest the violation(s) or for mitigation of the penalty 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 violation(s).
- Admit the violations but request mitigation of the penalty amount.

Please indicate your selection on the enclosed form and submit it electronically through the Commission’s web portal **within FIFTEEN (15) days** after you receive this notice. If you are unable to use the web portal, you may submit it via email to records@utc.wa.gov. If you are unable to submit the form electronically, you may send a paper copy to the Washington Utilities and Transportation Commission, PO Box 47250, Olympia, Washington 98504-7250.

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 Lacey, Washington, and effective October 2, 2019.

/s/ Rayne Pearson
RAYNE PEARSON
Director, Administrative Law Division

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION
PENALTY ASSESSMENT TE-190790

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 violations occurred and enclose \$5,700 in payment of the penalty.

2. **Contest the violation(s).** I believe that the alleged violation(s) 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 violations, 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