

TITLE 61
PUBLIC UTILITY REGULATION

CHAPTER 7
PUBLIC UTILITIES LAW -- ENFORCEMENT, PENALTIES, AND INTERPRETATION

61-701. ENFORCEMENT OF LAW. It is hereby made the duty of the commission to see that the provisions of the constitution and statutes of this state affecting public utilities, the enforcement of which is not specifically vested in some other officer or tribunal, are enforced and obeyed, and that violations thereof are promptly prosecuted and penalties due the state therefor recovered and collected and to this end it may sue in the name of the people of the state of Idaho. Upon the request of the commission, it shall be the duty of the attorney general or the prosecuting attorney of the proper county, to aid in any investigation, hearing or trial had under the provisions of this act and to institute and prosecute actions or proceedings for the enforcement of the provisions of the constitution and statutes of this state affecting the public utilities and for the punishment of all violations thereof.

[(61-701) 1913, ch. 61, sec. 68, p. 248; reen. C.L. 106:149; C.S., sec. 2517; I.C.A., sec. 59-701.]

61-702. NONCOMPLIANCE WITH LAW -- LIABILITY FOR DAMAGE. In case any public utility shall do, cause to be done or permit to be done, any act, matter or thing prohibited, forbidden or declared to be unlawful, or shall omit to do any act, matter or thing required to be done, either by the constitution, any law of this state, or any order or decision of the commission, according to the terms of this act, such public utility shall be liable to the persons or corporations affected thereby for all loss, damages or injury caused thereby or resulting therefrom. An action to recover such loss, damage or injury may be brought in any court of competent jurisdiction by any corporation or person.

[(61-702) 1913, ch. 61, sec. 69, p. 248; reen. C.L. 106:150; C.S., sec. 2518; I.C.A., sec. 59-702.]

61-703. REMEDIES HEREUNDER NOT EXCLUSIVE. This act shall not have the effect to release or waive any right of action by the state, the commission or any corporation or any person for any right, penalty or forfeiture which may have arisen or accrued or may hereafter arise or accrue under any law of this state.

[(61-703) 1913, ch. 61, sec. 70a, p. 248; reen. C.L. 106:151; C.S., sec. 2519; I.C.A., sec. 59-703.]

61-704. PENALTIES CUMULATIVE. All penalties accruing under this act shall be cumulative of each other, and a suit for the recovery of one (1) penalty shall not be a bar to or affect the recovery of any other penalty or forfeiture or be a bar to any criminal prosecution against any public utility, or any officer, director, agent or employee thereof, or any other corporation or person.

[(61-704) 1913, ch. 61, sec. 70b, p. 248; reen. C.L. 106:152; C.S., sec. 2520; I.C.A., sec. 59-704.]

61-705. SUMMARY PROCEEDINGS BY COMMISSION. Whenever the commission shall be of the opinion that any public utility is failing or omitting or about to fail or omit, to do anything required of it by law, or by any order, decision, rule, direction or requirement of the commission under the provisions of this act, or is doing anything or about to do anything, or permitting anything or about to permit anything to be done, contrary to or in violation of law or of any order, decision, rule, direction or requirement of the commission, under the provisions of this act, it shall direct the attorney of the commission to commence an action or proceeding in the district court in and for the county, or city and county, in which the cause or some part thereof arose, or in which the corporation complained of, if any, has its principal place of business, or in which the person, if any, complained of, resides, in the name of the people of the state of Idaho, for the purpose of having such violations or threatened violations stopped and prevented, either by mandamus or injunction.

The attorney of the commission shall thereupon begin such action or proceeding by petition to such district court, alleging the violation or threatened violation complained of and praying for appropriate relief by way of mandamus or injunction.

It shall thereupon be the duty of the court to specify a time not exceeding twenty (20) days, after the service of the copy of the petition, within which the public utility complained of must answer the petition, and in the meantime said public utility may be restrained. In case of default in answer, or after answer, the court shall immediately inquire into the facts and circumstances of the case. Such corporations or persons as the court may deem necessary or proper to be joined as parties in order to make its judgment, order or writ effective, may be joined as parties. The final judgment in such action or proceedings shall either dismiss the action or proceeding or direct that the writ of mandamus or injunction issue or be made permanent as prayed for in the petition, or in such modified or other form as will afford appropriate relief.

An appeal may be taken to the Supreme Court from such final judgment in the same manner and with the same effect, subject to the provisions of this act, as appeals are taken from judgments of the district court in other actions for mandamus or injunction.

[(61-705) 1913, ch. 61, sec. 71, p. 248; reen. C.L. 106:153; C.S., sec. 2521; I.C.A., sec. 59-705.]

61-706. PENALTY FOR VIOLATION. Any public utility which violates or fails to comply with any provisions of the constitution of this state or of this act, or which fails, omits or neglects to obey, observe or comply with any order, decision, decree, rule, direction, demand or requirement or any part or provision thereof, of the commission, under the provisions of this act, in a case in which a penalty has not hereinbefore been provided for, such public utility is subject to a penalty of not more than \$2000 for each and every offense.

[(61-706) 1913, ch. 61, sec. 72a, p. 248; compiled and reen. C.L. 106:154; C.S., sec. 2522; I.C.A., sec. 59-706.]

61-707. CONTINUING VIOLATION. Every violation of the provisions of this act or of any order, decision, decree, rule, direction, demand or requirement of the commission, under the provisions of this act, or any part or portion thereof, by any public utility, corporation or person is

a separate and distinct offense, and in case of a continuing violation each day's continuance thereof shall be and be deemed to be a separate and distinct offense.

[(61-707) 1913, ch. 61, sec. 72b, p. 248; reen. C.L. 106:155; C.S., sec. 2523; I.C.A., sec. 59-707.]

61-708. RESPONSIBILITY FOR VIOLATION BY EMPLOYEES. In construing and enforcing the provisions of this act relating to penalties, the act, omission or failure of any officer, agent or employee of any public utility, acting within the scope of his official duties or employment, shall in every case be and be deemed to be the act, omission or failure of such public utility.

[(61-708) 1913, ch. 61, sec. 72c, p. 248; reen. C.L. 106:156; C.S., sec. 2524; I.C.A., sec. 59-708.]

61-709. PENALTY FOR VIOLATIONS BY OFFICERS AND EMPLOYEES. Every officer, agent or employee of any public utility, who violates or fails to comply with, or who procures, aids or abets any violation by any public utility of any provision of the constitution of this state or of this act, or who fails to obey, observe or comply with any order, decision, rule, direction, demand or requirement or any part or provision thereof, of the commission under the provisions of this act, or who procures, aids or abets any public utility in its failure to obey, observe and comply with any such order, decision, rule, direction, demand or requirement, or any part or provision thereof, in a case in which a penalty has not hereinbefore been provided for, such officer, agent or employee, is guilty of a misdemeanor and is punishable by a fine not exceeding \$1000, or by imprisonment in a county jail not exceeding one (1) year, or by both such fine and imprisonment.

[(61-709) 1913, ch. 61, sec. 73, p. 248; reen. C.L. 106:157; C.S., sec. 2525; I.C.A., sec. 59-709.]

61-710. PENALTY FOR VIOLATIONS BY CORPORATION OTHER THAN A PUBLIC UTILITY. Every corporation, other than a public utility, which violates any of the provisions of this act, or which fails to obey, observe or comply with any order, decision, rule, direction, demand or requirement or any part or provision thereof, of the commission under the provisions of this chapter, in a case in which a penalty has not hereinbefore been provided for, such corporation is subject to a penalty of not more than \$2000 for each and every offense.

[(61-710) 1913, ch. 61, sec. 74, p. 248; reen. C.L. 106:158; C.S., sec. 2526; I.C.A., sec. 59-710.]

61-711. PENALTY FOR VIOLATION BY EMPLOYEE OF CORPORATION OTHER THAN A PUBLIC UTILITY. Every person who, either individually, or acting as an officer, agent or employee of a corporation other than a public utility, violates any provision of this act, or fails to observe, obey or comply with any order, decision, rule, direction, demand or requirement, or any part or portion thereof, of the commission under the provisions of this act, or who procures, aids or abets any such public utility in its violation of this act, or in its failure to obey, observe or comply with any such order, decision, rule, direction, demand or requirement, or any part or portion thereof, in a case in which a penalty has not hereinbefore been provided for is guilty of a misdemeanor, and is punishable by a fine not exceeding \$1,000, or by impris-

onment in a county jail not exceeding one (1) year, or by both such fine and imprisonment.

[(61-711) 1913, ch. 61, sec. 75, p. 248; reen. C.L. 106:159; C.S., sec. 2527; I.C.A., sec. 59-711.]

61-712. ACTION TO RECOVER PENALTIES -- DISPOSITION OF FINES. Actions to recover penalties under this act shall be brought in the name of the state of Idaho, in the district court in and for the county in which the cause of action or some part thereof arose, or in which the corporation complained of, if any, has its principal place of business, or in which the person, if any, complained of, resides. Such action shall be commenced and prosecuted to final judgment by the attorney of the commission. In any such action, all penalties incurred up to the time of commencing the same may be sued for and recovered. In all such actions, the procedure and rules of evidence shall be the same as in ordinary civil actions, except as otherwise herein provided. All fines and penalties recovered by the state in any such action, together with the costs thereof, shall be paid into the state treasury to the credit of the general fund. Any such action may be compromised or discontinued on application of the commission upon such terms as the court shall approve and order.

[(61-712) 1913, ch. 61, sec. 76, p. 248; reen. C.L. 106:160; C.S., sec. 2528; I.C.A., sec. 59-712.]

61-712A. CIVIL PENALTY FOR VIOLATION. Any person who violates or fails to comply with, or who procures, aids or abets any violation of title 61, Idaho Code, governing safety of pipeline facilities and the transportation of gas, or of any order, decision, rule or regulation duly issued by the Idaho public utilities commission governing the safety of pipeline facilities and the transportation of gas, shall be subject to a civil penalty of not to exceed two thousand dollars (\$2,000) for each violation for each day that the violation persists. However, the maximum civil penalty shall not exceed two hundred thousand dollars (\$200,000) for any related series of violation.

[61-712A, added 1970, ch. 7, sec. 1, p. 11.]

61-712B. COMPROMISE OF CIVIL PENALTY. Any civil penalty may be compromised by the Idaho public utilities commission. In determining the amount of the penalty, or the amount agreed upon in compromise, the appropriateness of the penalty to the size of the business of the person charged, the gravity of the violation, and the good faith of the person charged in attempting to achieve compliance, after notification of a violation, shall be considered. The amount of the penalty, when finally determined, or the amount agreed upon in compromise, may be deducted from any sums owing by the state to the person charged or may be recovered in a civil action in the state courts.

[61-712B, added 1970, ch. 7, sec. 2, p. 11.]

61-713. SEPARABILITY. If any section, subsection, sentence, clause or phrase of this act is for any reason held to be unconstitutional, such decision shall not affect the validity of the remaining portions of this act. The legislature hereby declares that it would have passed this act, and each section, subsection, sentence, clause and phrase thereof, irrespective of the fact that any one or more other sections, subsections, sentences, clauses or phrases be declared unconstitutional.

[(61-713) 1913, ch. 61, sec. 78, p. 248; reen. 1915, ch. 105, sec. 1, p. 246; compiled and reen. C.L. 106:161; C.S., sec. 2529; I.C.A., sec. 59-713.]

61-714. FOREIGN AND INTERSTATE COMMERCE. Neither this act, nor any provision thereof, except when specifically so stated, shall apply or be construed to apply to commerce with foreign nations or commerce among the several states of the union, except in so far as the same may be permitted under the provisions of the Constitution of the United States and the acts of congress.

[(61-714) 1913, ch. 61, sec. 79, p. 248; reen. C.L. 106:162; C.S., sec. 2530; I.C.A., sec. 59-714.]