

**57TH CONGRESS, 1ST SESSION;
"RAILWAY FREIGHT RATES AND
POOLING": HEARINGS
BEFORE THE COMMITTEE ON INTERSTATE
COMMERCE, UNITED STATES SENATE,
VOL. I**

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57th Congress, 1st Session; "Railway Freight Rates and Pooling": Hearings Before the Committee on Interstate Commerce, United States Senate, Vol. I by Various

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VARIOUS

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COMMERCE, UNITED
STATES SENATE, VOL. I**

57th CONGRESS.

1st SESSION.

"RAILWAY FREIGHT RATES AND POOLING."

HEARINGS

BEFORE THE

U. S. COMMISSIONERS
COMMITTEE ON INTERSTATE COMMERCE,

UNITED STATES SENATE,

HAVING UNDER CONSIDERATION THE BILLS (S. 3521) "TO ENLARGE THE JURISDICTION
AND POWERS OF THE INTERSTATE COMMERCE COMMISSION," INTRODUCED
IN THE SENATE FEBRUARY 4, 1902, BY MR. ELKINS; AND (S. 3575)
"TO AMEND AN ACT ENTITLED 'AN ACT TO REGULATE
COMMERCE,' APPROVED FEBRUARY 4, 1887, AND ALL
ACTS AMENDATORY THEREOF," INTRODUCED
FEBRUARY 5, 1902, BY MR. NELSON.

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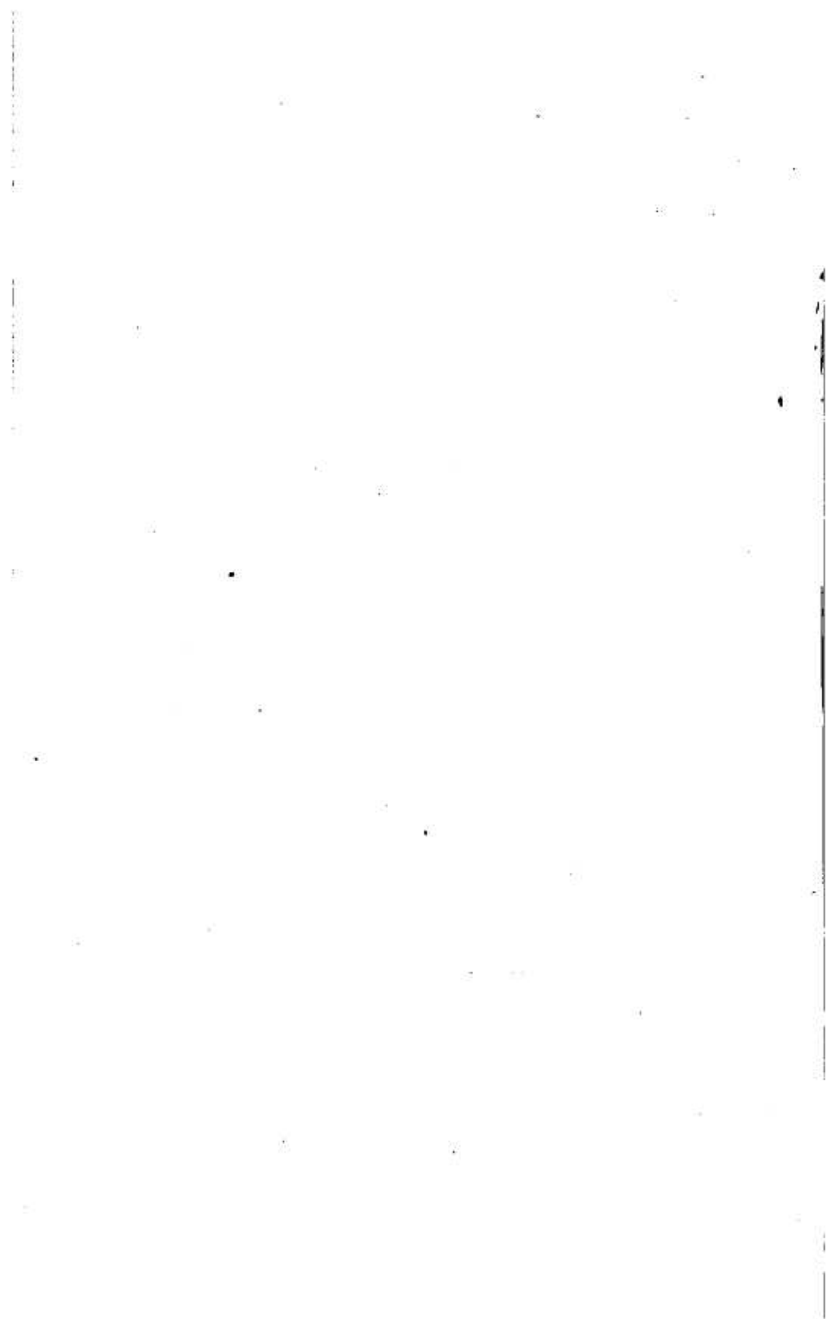
INTERSTATE COMMERCE COMMITTEE.

SENATE OF THE UNITED STATES.

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THE ELKINS BILL AS ORIGINALLY INTRODUCED.

[S. 3521, Fifty-seventh Congress, first session.]

A BILL To enlarge the jurisdiction and powers of the Interstate Commerce Commission.

1 *Be it enacted by the Senate and House of Representatives of the United States of*
2 *America in Congress assembled,* That any definite order made by the Interstate
3 Commerce Commission after hearing and determination had on any petition
4 hereafter presented pursuant to section thirteen of an act entitled "An act to
5 regulate commerce," approved February fourth, eighteen hundred and eighty-
6 seven, declaring any existing rate or rates in said petition complained of, for the
7 carriage of any given article or articles, person or persons, or any regulation or
8 practice affecting such rates, to be unjustly discriminative or unreasonable,
9 and declaring what rate, regulation, or practice affecting such rate for the
10 future, in substitution, would be just and reasonable, shall become operative
11 and be observed by the party or parties against whom the same shall be
12 made, within thirty days after notice; or in case of proceeding for review as
13 hereinafter provided, then within forty days after notice; but the same may
14 at any time be modified, suspended, or revoked by the Commission, but shall
15 in no case continue in force and be obeyed beyond the period of one year
16 from the day the same becomes originally operative and is observed. If
17 such substituted rate shall be a joint one, and the carriers parties to that rate
18 shall be unable to agree upon the apportionment thereof among themselves
19 within ten days after any such order shall become operative, then the Com-
20 mission may declare as part of its order what would be a just and reason-
21 able proportion of such rate to be received by each carrier. Such order
22 as to its justness, reasonableness, and lawfulness, whether in respect to the rate,
23 regulation of practice complained of, or that prescribed in substitution therefor,
24 or the apportionment of a joint rate, or otherwise, shall be reviewable by any
25 circuit court of the United States for any district through which any portion of
26 the road of the carrier shall run, to which a petition filed on its equity side shall
27 be first presented by any party interested. Pending such review the said order
28 shall be suspended unless upon application to and hearing by said court it shall
29 be otherwise ordered; said court and the Supreme Court in case of appeal may,
30 at any time, upon application and notice, suspend or revoke the said order. The
31 several circuit courts of the United States are hereby invested with full jurisdic-
32 tion and powers in the premises, including the issuance and pursuit of the neces-
33 sary process to secure appearance of the parties. The court shall also direct
34 notice to the Commission of the filing of said petition; whereupon it shall be the
35 duty of the Commission, within ten days after the receipt thereof, to cause to be filed

1 in said court, duly certified, a complete copy of its entire record, including peti-
2 tions, answers, testimony, report, and opinion of the Commission, order, and all
3 other papers whatsoever in connection therewith. The court shall thereupon
4 proceed to hear the same either upon the petition, record, and testimony returned
5 by the Commission; or, in its discretion, may, upon the application of either
6 party, and in such manner as it shall direct, cause additional testimony to be
7 taken; and thereupon if said court shall be of the opinion that said order was
8 made under some error of law, or is, upon the facts, unjust or unreasonable, it
9 shall suspend or revoke the same by appropriate decree; otherwise said order
10 shall be affirmed. Any party to the cause may appeal to the Supreme Court of
11 the United States within thirty days of the rendition of any final decree of said
12 court, which court shall proceed to hear and determine the same in due course
13 without regard to whether the one year hereinbefore limited for the continu-
14 ance of said order shall have expired or not.

15 Sec. 2. That it shall be lawful for any two or more common carriers to
16 arrange between and among themselves for the establishment or maintenance of
17 rates. It shall also be lawful for such carriers to agree, by contract in writing,
18 filed with the Interstate Commerce Commission, upon the division of their
19 traffic or earnings, or both; and upon the complaint by petition or any party
20 interested that any such contract so filed unjustly and unlawfully affects any
21 person or persons, community or communities, it shall be the duty of the Com-
22 mission to promptly investigate the matters so complained of in such manner
23 and by such means as it shall deem proper, and make report in writing with
24 respect thereto, which report shall include the findings of fact upon which the
25 conclusions of the Commission are based, and be entered of record. If such
26 findings sustain in any material particular the allegations of said petition, then it
27 shall be the duty of said Commission to make an order either annulling said
28 contract after thirty days' notice, or directing that the said contract and the
29 practices thereunder, in the respects found to be unjust and unlawful, shall be
30 changed in the manner prescribed in the order. Should such requirements of
31 the Commission as to changes be not observed by the carriers, and written
32 acceptance thereof be not filed with the Commission within thirty days after
33 notice, then said contract filed as aforesaid shall be annulled. Any such order
34 shall be subject to all the provisions of section one of this act with respect to
35 definitive orders made upon petitions presented pursuant to section thirteen of
36 an act entitled "An act to regulate commerce," approved February fourth,
37 eighteen hundred and eighty-seven.

38 Sec. 3. That if any party bound thereby shall refuse or neglect to obey or per-
39 form any order of the Commission mentioned in section one or section two of this
40 act at any time while the same is in force as provided by said section, obedience
41 and performance thereof shall be summarily enforced by writ of injunction or
42 other proper process, mandatory or otherwise, which shall be issued by any cir-
43 cuit court of the United States upon petition of said Commission, accompanied by a
44 certified copy of the order alleged to be violated, and evidence of the violation
45 alleged; and in addition thereto the offending party shall be subject to a penalty

1 of ten thousand dollars, which, together with costs of suit, shall be recoverable
2 by said Commission by action of debt in any circuit court of the United States,
3 and when so recovered shall be for the use of the United States. Where, how-
4 ever, any order made by the Commission shall involve the rate on traffic passing
5 in part over the line or lines of any railroad company operating in any foreign
6 country, and passing in part over lines of railroad companies operating within
7 the United States, or shall involve the usages of such foreign road with respect
8 to such traffic, then in case such order shall not be observed it shall be lawful
9 for the Commission, or the court having jurisdiction, in addition to the other
10 remedies herein provided, to enforce the order against the traffic so passing in
11 part through a foreign country and in part through the United States, by suspen-
12 sion of the movement thereof within the United States, save upon the condition
13 that the terms of the order shall be complied with.

14 SEC. 4. That anything done or omitted to be done by a corporation common
15 carrier, subject to the act to regulate commerce, which, if done or omitted by
16 any lessee, trustee, receiver, officer, agent, or representative of such corporation,
17 would constitute a misdemeanor under said act, shall be held to be a misde-
18 meanor by such corporation, and upon conviction thereof it shall be subject to
19 like penalties as are prescribed in said act with reference to individuals, except
20 as such penalties are herein changed. The willful failure upon the part of any
21 carrier subject to said act to file and publish the tariffs of rates and charges as
22 required by said act, or strictly to observe such tariffs until changed according
23 to law, shall be a misdemeanor, and upon conviction thereof the individual or
24 corporation offending shall be subject to a fine not less than one thousand dol-
25 lars nor more than twenty thousand dollars for each offense; and the willful
26 complicity upon the part of any person owning or interested in the traffic to
27 which any other rate shall be given than those prescribed in said tariffs shall
28 likewise constitute a misdemeanor, and, upon conviction, shall subject the
29 offender to the like penalties last hereinbefore proscribed with reference to the
30 carrier. In all convictions occurring after the passage of this act, for offenses
31 under said act to regulate commerce (whether committed before or after the
32 passage of this act), or for offenses under this section, no penalty shall be
33 imposed on the convicted party other than the fine prescribed by law, imprison-
34 ment wherever now proscribed as part of the penalty being hereby abolished.

35 SEC. 5. That in any proceeding for the enforcement of the provisions of the
36 statutes relating to interstate commerce, whether such proceedings be instituted
37 before the Interstate Commerce Commission or be commenced originally in any
38 circuit court of the United States, it shall be lawful to include as parties all per-
39 sons, in addition to the carrier interested in or affected by the rate, regulation,
40 or practice under consideration, and inquiries, investigations, orders, and decrees
41 may be made with reference to and against such additional parties in the same
42 manner, to the same extent and subject to the same provisions, as is or shall be
43 authorized by law with respect to carriers.

44 SEC. 6. That whenever the Interstate Commerce Commission shall have reason-
45 able ground for belief that any common carrier is engaged in the carriage of

1 passenger or freight traffic between given points at less than the published rates
2 on file, it shall be authorized to present a petition to the circuit court of the
3 United States having jurisdiction of the parties, alleging such practice; where-
4 upon it shall be the duty of the court to summarily inquire into the circum-
5 stances, and, upon being satisfied of the truth of the allegation, to enforce an
6 observance of the published tariffs by proper orders and process, which said
7 orders and process may be enforceable as well against the parties interested in
8 the traffic as against the carrier.

9 Sec. 7. That all acts and parts of acts in conflict with the provisions of this
10 act are hereby repealed, but such repeal shall not affect causes now pending nor
11 rights which have already accrued, but such causes shall be prosecuted to a con-
12 clusion and such rights enforced in a manner heretofore provided by law.

13 Sec. 8. That this act shall take effect from its passage.