

Although the Supreme Court has held that in such a case the duty of the Commission to administer and enforce the act carries with it right to defend its orders in its own name when the Department declines to do so, it is nevertheless embarrassing and inefficient to continue the present practice.

From this standpoint as to give a reviewing court the most assistance, we believe that the defense of our orders should be placed directly with the Commission.

As shown in items 3(b) and 4 of the chart, this bill fully protects the rights of the United States by requiring that a copy of the petition for review be served on the Attorney General as well as the Commission and by permitting the Attorney General to intervene in a Commission case as a matter of right.

The balance of this bill, Mr. Chairman, deals with review of decisions by the courts of appeals in the Supreme Court and certain miscellaneous provisions.

Under the present law a decision of a three-judge district court is subject to a right of direct appeal to the Supreme Court (28 U.S.C. sec. 1253). This is a so-called appeal as of right, in the sense that the Supreme Court does not purport to exercise a discretion as to whether or not to review the case on its merits.

Paragraph (b) of S. 2687, summarized as item 6 of the chart, would provide for Supreme Court review by certiorari, rather than by appeal. This conforms to the method of seeking Supreme Court review which is applicable to all other Federal agencies. This paragraph would also preserve the Commission's present right to seek review in the Supreme Court with or without the concurrence of the Department of Justice by stating that, "The United States or the Commission or an aggrieved party may file such petition for a writ of certiorari."

Paragraph (h) of S. 2687, shown in item 7 of the chart, preserves a portion of the existing law, the balance of which is repealed by section 2 of this bill (28 U.S.C. sec. 2321).

This paragraph provides for nationwide service of process, orders, and writs issued by the courts of appeals in cases arising under final orders of the Commission covered by this bill and proceedings arising in the district courts under sections 20 and 23 of the act and section 3 of the Elkins Act, all of which deal with the enforcement of various accounting, reporting, and tariff requirements of the act and, the rights of the shippers to nondiscriminatory treatment by the carriers.

This provision is an exception to the general rule that a court's process does not run outside the State in which it is located, in the case of the district courts, or the circuit, in the case of the courts of appeals.

Its retention is believed desirable because of the widespread operations of the Nation's carriers. In connection with this paragraph, I should like to call the committee's attention to the second amendment made by the Senate which involves a minor stylistic error on line 25 of page 6.

That line was amended to read as follows:

"... in cases arising under sections 20, 23, of this Act and section 3 of the Act of February 19, 1903 (49 U.S.C. 43)".