

**FIRST ENGROSSMENT
with Conference Committee Amendments**

Fifty-fifth
Legislative Assembly
of North Dakota

ENGROSSED SENATE BILL NO. 2037

Introduced by

Legislative Council

(Government Organization Committee)

1 A BILL for an Act to create and enact a new section to chapter 32-03 and a new section to
2 chapter 49-10.1 of the North Dakota Century Code, relating to the liability of the owner or
3 operator of a railroad for injury of an individual riding on a locomotive or railroad car without
4 authority from the owner or operator and to the determination of train speeds; to amend and
5 reenact sections 49-05-06, 49-06-01, 49-09-04.2, 49-09-04.4, and 49-11-21 of the North
6 Dakota Century Code, relating to the regulation of railroads; and to repeal sections 49-09-04.1,
7 49-09-05, 49-09-08, 49-09-09, 49-09-11.1, 49-09-11.2, 49-09-11.3, 49-09-11.4, 49-09-11.5,
8 49-09-11.6, 49-09-11.7, 49-10.1-04, 49-10.1-06, 49-10.1-09, 49-11-10, 49-11-11, 49-11-12,
9 49-16-11, and 49-17.2-31 of the North Dakota Century Code, relating to the regulation of
10 railroads.

11 **BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:**

12 **SECTION 1.** A new section to chapter 32-03 of the North Dakota Century Code is
13 created and enacted as follows:

14 **Limited liability of owner or operator of railroad.** An individual who is injured while
15 boarding or attempting to board a moving locomotive or railroad car, without authority from the
16 owner or operator of the railroad, or who having boarded a locomotive or railroad car without
17 authority from the owner or operator of the railroad, is injured while riding or getting off the
18 locomotive or railroad car, may not recover any damages from the owner or operator of the
19 railroad for that injury unless the injury is proximately caused by an intentional act of the
20 railroad owner or operator and the railroad owner or operator knew that serious injury was the
21 probable result of the act, or that the owner or operator of the railroad acted with wanton and
22 reckless disregard of the probable result of the act. This section does not exempt a railroad
23 corporation from any liability created under chapter 49-16 or the federal Employer's Liability Act
24 [45 U.S.C. 51 et seq.] for injuries to its employees or agents.

1 **SECTION 2. AMENDMENT.** Section 49-05-06 of the 1995 Supplement to the North
2 Dakota Century Code is amended and reenacted as follows:

3 **49-05-06. Hearing by commission on proposed change of rates.** Whenever a
4 notice or any schedule stating an individual or joint rate, classification, contract, practice, or
5 rule, ~~or regulation~~, increasing or decreasing, or resulting in an increase or decrease in any rate,
6 ~~shall be~~ is filed with the commission, the commission may suspend by motion ~~such the~~ the rate,
7 classification, contract, practice, or rule, ~~or regulation~~, but the period of suspension ~~thereof~~
8 ~~shall may~~ not extend more than seven months ~~for common carriers by rail and motor vehicle~~
9 ~~and for other public utilities~~ beyond the time when it otherwise would go into effect. Upon
10 complaint or upon its own initiative without complaint the commission may order a hearing,
11 upon due notice, concerning the propriety of ~~such the~~ the rate, classification, contract, practice, or
12 rule, ~~or regulation~~. On such hearing, the commission shall establish the rates, classifications,
13 contracts, practices, or rules, ~~or regulations~~ proposed, in whole or in part, or others in lieu
14 thereof, which it ~~shall find~~ finds to be just and reasonable. At any such hearing, the burden to
15 show that the increased rate or proposed change of rate, classification, ~~regulation~~, rule, or
16 practice is just and reasonable ~~shall be~~ is upon the public utility ~~making application therefor~~
17 applying for the increase. All such rates, classifications, contracts, practices, or rules, ~~or~~
18 ~~regulations~~ not ~~so~~ suspended, on the expiration of thirty days from the time of filing ~~the same~~
19 with the commission, or of such lesser time as the commission may grant, ~~shall go into effect~~
20 ~~and be the established and~~ become effective rates, classifications, contracts, practices, or
21 rules, ~~and regulations~~, subject to the power of the commission, after a hearing had on its own
22 motion or upon complaint, to alter or modify the same.

23 **SECTION 3. AMENDMENT.** Section 49-06-01 of the North Dakota Century Code is
24 amended and reenacted as follows:

25 **49-06-01. Valuation of property as basis for determining reasonableness of rates**
26 ~~—Railroads and motor carriers may be excepted.~~ The commission, for the purpose of
27 ascertaining just and reasonable rates and charges of public utilities, or for any other purpose
28 authorized by law, shall investigate and determine the value of the property of every public
29 utility, except railroads and motor carriers, used and useful for the service and convenience of
30 the public, excluding therefrom the value of any franchise or right to own, operate, or enjoy the
31 same in excess of the amount, exclusive of any tax or annual charge, actually paid to any

1 political subdivision of the state as a consideration for the grant of ~~such~~ the franchise or right,
2 and exclusive of any value of the right by reason of a monopoly or merger. ~~The value of the~~
3 ~~property of railroads and motor carriers may, in the discretion of the commission, be required in~~
4 ~~establishing just and reasonable rates and charges. However, unless the commission~~
5 ~~determines that the value of the property of railroads and motor carriers is pertinent and~~
6 ~~essential in the establishment of just and reasonable rates and charges, such valuation shall~~
7 ~~not be made.~~ The commission shall prescribe the details of the inventory of the property of
8 each public utility to be valued.

9 **SECTION 4. AMENDMENT.** Section 49-09-04.2 of the 1995 Supplement to the North
10 Dakota Century Code is amended and reenacted as follows:

11 **49-09-04.2. Abandoned railroad right of way - Sale.**

- 12 1. When service is discontinued on any railroad right of way in the state and the
13 property is offered for sale, lease, exchange, or other disposal by the railroad or an
14 affiliated entity, the property must first be offered for public purposes.
- 15 2. If right-of-way property along abandoned rail lines is first offered for public
16 purposes and refused, the lessee operators of grain and potato warehouses
17 located on the property must be given the next option to purchase, lease,
18 exchange, or otherwise acquire the property described in their lease. Adjoining
19 agricultural landowners must thereafter be given the next option to acquire the
20 property adjoining their land.
- 21 3. When abandoned railroad right of way is offered for wildlife programs or projects,
22 the proposed acquisitions must first be approved by the board of county
23 commissioners of the county or counties in which the right of way is located under
24 section 20.1-02-17.1 if offered to the state game and fish department or under
25 section 20.1-02-18.1 if offered to the United States department of the interior.
- 26 4. ~~This section is subservient to the right of the public service commission to receive~~
27 ~~rail property in trust under section 49-09-04.1.~~

28 **SECTION 5. AMENDMENT.** Section 49-09-04.4 of the 1995 Supplement to the North
29 Dakota Century Code is amended and reenacted as follows:

30 **49-09-04.4. Railroad abandonment - Records to be open to commission.** A

31 railway corporation or railroad holding company having identified a railroad line in North Dakota

1 for abandonment pursuant to 49 U.S.C. 10904(e)(2)(B) shall provide the commission or its
2 designated representatives with access to all records directly relating to the railroad line to be
3 abandoned ~~and to the railway corporation or railroad holding company~~ so an accurate
4 assessment can be made of the line's revenues, profits, and losses. After notice of intent to
5 abandon is given to the governor by the railway corporation or railroad holding company, the
6 commission or its representatives may examine the railway corporation's or railroad holding
7 company's records that are directly related to the railroad line to be abandoned to determine
8 the accuracy of the claims concerning the railway line and to determine whether an
9 abandonment protest should be filed with the ~~interstate commerce commission~~ surface
10 transportation board.

11 **SECTION 6.** A new section to chapter 49-10.1 of the North Dakota Century Code is
12 created and enacted as follows:

13 **Determination of train speeds.** If the governing body of a city proposes to establish a
14 speed limit on trains passing through its corporate limits and an agreement cannot be reached
15 with the railway company operating the railroad, the governing body of the city may file with the
16 commission a petition that sets forth the facts and requests the commission's assistance in
17 resolving the matter.

18 **SECTION 7. AMENDMENT.** Section 49-11-21 of the North Dakota Century Code is
19 amended and reenacted as follows:

20 **49-11-21. ~~Bell, horn, or whistle~~ Warning device sounded at crossing by**
21 **locomotive.** ~~A bell of at least thirty pounds [13.61 kilograms] in weight or a steam whistle or an~~
22 ~~air horn shall~~ warning device must be placed on each locomotive engine and ~~shall~~ must be
23 ~~rung or whistled or~~ sounded at a distance of at least eighty rods [402.34 meters] from the place
24 where the ~~said~~ railroad ~~shall cross~~ crosses any other road or street and ~~shall~~ must continue to
25 be ~~kept ringing or whistling or~~ sounded until it ~~shall have~~ has crossed ~~said~~ the road or street.

26 **SECTION 8. REPEAL.** Sections 49-09-05, 49-09-08, 49-10.1-04, 49-10.1-06,
27 49-10.1-09, 49-11-10, 49-11-11, and 49-11-12 of the North Dakota Century Code and sections
28 49-09-04.1, 49-09-09, 49-09-11.1, 49-09-11.2, 49-09-11.3, 49-09-11.4, 49-09-11.5, 49-09-11.6,
29 49-09-11.7, 49-16-11, and 49-17.2-31 of the 1995 Supplement to the North Dakota Century
30 Code are repealed.