

**Fifty-fifth Legislative Assembly, State of North Dakota, begun in the
Capitol in the City of Bismarck, on Monday, the sixth day of January,
one thousand nine hundred and ninety-seven**

SENATE BILL NO. 2037
(Legislative Council)
(Government Organization Committee)

AN ACT to create and enact a new section to chapter 32-03 and a new section to chapter 49-10.1 of the North Dakota Century Code, relating to the liability of the owner or operator of a railroad for injury of an individual riding on a locomotive or railroad car without authority from the owner or operator and to the determination of train speeds; to amend and reenact sections 49-05-06, 49-06-01, 49-09-04.2, 49-09-04.4, and 49-11-21 of the North Dakota Century Code, relating to the regulation of railroads; and to repeal sections 49-09-04.1, 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, 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, 49-16-11, and 49-17.2-31 of the North Dakota Century Code, relating to the regulation of railroads.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

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

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

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

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

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

49-06-01. Valuation of property as basis for determining reasonableness of rates - Railroads and motor carriers may be excepted. The commission, for the purpose of ascertaining just and reasonable rates and charges of public utilities, or for any other purpose authorized by law, shall investigate and determine the value of the property of every public utility, except railroads and motor carriers, used and useful for the service and convenience of the public, excluding therefrom the value of any franchise or right to own, operate, or enjoy the same in excess of the amount, exclusive of any tax or annual charge, actually paid to any political subdivision of the state as a consideration for the grant of such the franchise or right, and exclusive of any value of the right by reason of a monopoly or merger. ~~The value of the property of railroads and motor carriers may, in the discretion of the commission, be required in establishing just and reasonable rates and charges. However, unless the commission determines that the value of the property of railroads and motor carriers is pertinent and essential in the establishment of just and reasonable rates and charges, such valuation shall not be made.~~ The commission shall prescribe the details of the inventory of the property of each public utility to be valued.

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

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

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

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

49-09-04.4. Railroad abandonment - Records to be open to commission. A railway corporation or railroad holding company having identified a railroad line in North Dakota for abandonment pursuant to 49 U.S.C. 10904(e)(2)(B) shall provide the commission or its designated representatives with access to all records directly relating to the railroad line to be abandoned ~~and to the railway corporation or railroad holding company~~ so an accurate assessment can be made of the line's revenues, profits, and losses. After notice of intent to abandon is given to the governor by the railway corporation or railroad holding company, the commission or its representatives may examine the railway corporation's or railroad holding company's records that are directly related to the railroad line to be abandoned to determine the accuracy of the claims concerning the railway line and to determine whether an abandonment protest should be filed with the ~~interstate commerce commission~~ surface transportation board.

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

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

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

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

SECTION 8. REPEAL. Sections 49-09-05, 49-09-08, 49-10.1-04, 49-10.1-06, 49-10.1-09, 49-11-10, 49-11-11, and 49-11-12 of the North Dakota Century Code and sections 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, 49-09-11.7, 49-16-11, and 49-17.2-31 of the 1995 Supplement to the North Dakota Century Code are repealed.

President of the Senate

Speaker of the House

Secretary of the Senate

Chief Clerk of the House

This certifies that the within bill originated in the Senate of the Fifty-fifth Legislative Assembly of North Dakota and is known on the records of that body as Senate Bill No. 2037.

Senate Vote: Yeas 46 Nays 0 Absent 3

House Vote: Yeas 89 Nays 6 Absent 2

Secretary of the Senate

Received by the Governor at _____ M. on _____, 1997.

Approved at _____ M. on _____, 1997.

Governor

Filed in this office this _____ day of _____, 1997,

at _____ o'clock _____ M.

Secretary of State