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# RAILROADS.

## CHAPTER 122.

[S. F. 41.]

### TO REGULATE COMMON CARRIERS AND DEFINE THE DUTIES OF THE COMMISSIONERS OF RAILROADS.

AN ACT Entitled "An Act to Regulate Common Carriers, and Defining the Duties of the Commissioners of Railroads in Relation Thereto, in the State of North Dakota.

*Be it Enacted by the Legislative Assembly of the State of North Dakota.*

§ 1. (a) **TO WHOM ACT SHALL APPLY.]** That the provisions of this act shall apply to any common carrier or carriers engaged in the transportation of passengers or property wholly by railroad, or partly by railroad and partly by water, when both are used under a common control, management or arrangement for a carriage or shipment from one place or station to another, both being within the State of North Dakota; *Provided*, That nothing in this act shall apply to street railways or to the carriage, storage or handling by any common carrier of property free or at reduced rates for the United States or for the State of North Dakota, or for any municipal government or corporation within the State, or for any charitable purpose, or to or from fairs and expositions for exhibition thereat, (or stock for breeding purposes), or to the issuance of mileage, excursion or commutation passenger tickets, at rates made equal to all, or to transportation to stock shippers with cars; and nothing in the provisions of this act shall be construed to prevent common carriers, subject to the provisions of this act, from issuing passes for the free transportation of passengers, or to ministers of religion, sisters of charity, or, to missionaries or to students of any college or university or other institutions of learning of this State, or to children attending any of the educational or charitable institutions of the State subject to the provisions of this act.

(b) **TERM "RAILROAD" DEFINED.]** The term "railroad" as used in this act shall include all bridges or ferries used or operated in connection with any railroad, and also all the road in use by any corporation operating a railroad, whether owned or operated under a contract, agreement or lease; and the term "transportation" shall include all instrumentalities of shipment or carriage.

§ 2. (a) CHARGES TO BE EQUAL AND REASONABLE.] That all charges made by any common carrier, subject to the provisions of this act, for any service rendered or to be rendered in the transportation of passengers or property as aforesaid, or in connection therewith, or for the receiving, delivering, storage or handling of such property shall be equal and reasonable; and every unequal and unreasonable charge for such service is prohibited and declared to be unlawful; *Provided*, That one car load of freight of any kind or class shall be transported at as low a rate per ton, and per ton per mile, as any greater number of car loads of the same kind and class from and to the same points of origination or destination.

(b) NO PREFERENCE TO BE GIVEN.] It shall be unlawful for any common carrier, subject to the provisions of this act, to make or give any unequal or unreasonable preference or advantage to any particular person, company, firm, corporation or locality or any particular description of traffic, in any respect whatsoever or to subject any particular person, company, firm, corporation or locality, or any particular description of traffic to any unequal or unreasonable prejudice or disadvantage in any respect whatsoever.

§ 3. (a) AMPLE FACILITIES FOR TRANSFERRING, ETC.] That all common carriers, subject to the provisions of this act, shall, according to their respective powers, provide at the point of connection, crossing or intersection, ample facilities for transferring cars and for accommodating and transferring passengers, and traffic of all kinds and classes, from their lines or tracks, to those of any other common carrier whose lines or tracks may connect with, cross or intersect their own, and shall afford all equal and reasonable facilities for the interchange of cars and traffic between their respective lines, and for the receiving, forwarding and delivering of passengers and property and cars to and from their several lines and those of other common carriers connecting therewith, and shall not discriminate in their rates and charges between such connecting lines, or for freight coming over such lines; but this act shall not be construed as requiring any common carrier to use for another common carrier its tracks, equipments or terminal facilities without reasonable compensation.

(b) SHALL NOT PREVENT CARRIAGE OF FREIGHT FROM BEING CONTINUOUS.] That it shall be unlawful for any common carrier subject to the provisions of this act, to enter into any combination, contract or agreement, expressed or implied, to prevent, by change of time or schedule, or by carriage in different cars, or by any other means or devices, the carriage of freight from being continuous from the place of shipment to the place of destination; and no break of bulk, stoppage or interruption made by such common carrier shall prevent the carriage of freight from being treated as one continuous carriage from the place of shipment to the place of destination, unless such break, stoppage or interruption was made

in good faith for some necessary purpose and without any intent to avoid or unnecessarily interrupt such continuous carriage or to evade any of the provisions of this act.

(c) SHALL FURNISH, START AND RUN CARS WITHOUT DELAY.] Every common carrier operating a railway in this State shall, without unreasonable delay, furnish, start and run cars for the transportation of persons and property, which, within a reasonable time theretofore, is offered for transportation at any of its stations on its line of road and at the junctions of other railroads, and at such stopping places as may be established for receiving and discharging passengers and freights; and shall take, receive, transport and discharge such passengers and property at, from and to such stations, junctions and places, on and from all trains advertised to stop at the same, for passengers and freights, respectively, upon the due payment, or tender of payment, of tolls, freight or fare therefor, if such payment is demanded. Every such common carrier shall permit connections to be made and maintained in a reasonable manner with its side tracks to and from any warehouse, elevator or manufactory without reference to its size or capacity; *Provided*, That this shall not be construed so as to require any common carrier to construct or furnish any side track off from its own land; *Provided, further*, That where stations are fifteen miles apart or more, the common carrier, when required to do so by the Commissioners of Railroads, shall construct and maintain a side track for the use of shippers between such stations.

(d) SHALL NOT LIMIT ITS COMMON LAW LIABILITY.] Whenever any property is received by any common carrier subject to the provisions of this act, to be transported from one place to another within this State, it shall be unlawful for such common carrier to limit in any way, except as stated in its classification schedule, hereinafter provided for, its common law liability with reference to such property while in its custody as a common carrier (as hereinbefore mentioned); such liability must include the absolute responsibility of the common carrier for the acts of its agents in relation to such property.

§ 4. SHALL NOT POOL.] That it shall be unlawful for any common carrier subject to the provisions of this act, to enter into any contract, agreement, or combination with any other common carrier or carriers for the division or pooling of business of different or competing railroads, or to divide between them the aggregate or net proceeds of the earnings of such railroads, or any portion thereof; and in case of an agreement for the pooling of their business aforesaid each day of its continuance shall be deemed a separate offense.

§ 5. DISCRIMINATION AND REBATES PROHIBITED.] That if any common carrier, subject to the provisions of this act, shall, directly or indirectly, by any special rate, rebate, draw back, or other device charge, demand, collect or receive from any person or persons a greater or less compensation for any service rendered,

or to be rendered, in the transportation of passengers or property subject to the provisions of this act, than it charges, demands, collects or receives from any other person or persons, for doing for him or them a like and contemporaneous service in the transportation of passengers or property, such common carrier shall be deemed guilty of unjust discrimination, which is hereby prohibited and declared to be unlawful.

§ 6. LONG AND SHORT HAULS.] That it shall be unlawful for any common carrier, subject to the provisions of this act, to charge or receive any greater compensation for the transportation of passengers or of like kind or class and quantity of property for a shorter than for a longer distance over the same line, the shorter being included within the longer distance; but this shall not be construed as authorizing any common carrier, subject to the provisions of this act, to charge or receive as great compensation for a shorter as for a longer distance; *Provided, however,* That upon application to the Commissioners of Railroads, such common carrier may, in special cases, after investigation by the said Commissioners, be authorized to charge less for longer than for shorter distances for the transportation of passengers or property; and the Commissioners may from time to time, prescribe the extent to which such designated common carrier may be relieved from the operation of this section of this act.

§ 7. (a) LONG AND SHORT HAUL.] That it shall be unlawful for any common carrier, subject to the provisions of this act, to charge or receive any greater compensation, per ton per mile for the contemporaneous transportation of the same class of freight for a longer than for a shorter distance over the same line, in the same general direction, or from the same original point of departure, or to the same point of arrival; but this shall not be construed as authorizing any common carrier, subject to the provisions of this act, to charge as high a rate per ton per mile for a longer as for a shorter distance.

(b) UNIFORM DISTRIBUTION OF CARS—COMMISSIONERS TO ESTABLISH AND PUBLISH RULES.] The Railroad Commissioners shall on or before August 1st of each year adopt a system of uniform rules which they may change from time to time as found necessary, governing the distribution of cars to be loaded, among applicants at stations and side tracks on all railroads in this State, and they shall serve a copy of such rules upon all railroad superintendents in this State, which shall be sufficient notice to such railroad company, and said rules shall have all the force and effect of an order under the provisions of this act, and the disregard of the requirements or refusal to obey the requirements of such rules shall subject, and make liable said common carrier to the pains and penalties made and provided in such case. The Railroad Commissioners shall publish said rules in one newspaper in each county having a railroad station within its limits, as elsewhere provided in this act for the publishing of rates, and shall also

cause a copy of said rules to be posted in some public place at each station and side track for the information of shippers. If any railroad company shall refuse or neglect to furnish cars as provided in the rules aforesaid at any station or side track, complaint having been made to the Railroad Commissioners or any one of them, it shall be their duty to immediately enquire into the cause of such delay in furnishing the cars demanded, and if they find just cause for complaint they are empowered and required to make such orders and rules as they may deem to be right and just to all parties concerned, the same to be enforced as other orders and rules are enforced under the provisions of this act; *Provided*, All railroad corporations, in case of a shortage of cars, shall be required to furnish at all times each branch or division of its road, its just proportion of cars required for the transportation of freight according to the amount offered for shipment on each branch or division.

(c) BUT ONE TERMINAL CHARGE FOR SWITCHING OR TRANSFERRING.] There shall in no case be more than one terminal charge for switching or transferring any car, whether the same is loaded or empty, within the limits of any one city or town. If it is necessary that any car pass over the tracks of more than one company, within such city or town limits, in order to reach its final destination, or to be returned therefrom to its owner or owners, then the company first switching or transferring such car shall be entitled to receive the entire charge to be made therefor, and shall be liable to the company or companies doing the subsequent switching or transferring thereof for its or their reasonable and equitable share of the compensation received, and if the companies so jointly interested therein cannot agree upon the share thereof which each is entitled to receive, the same shall be determined by the Commissioners of Railroads, whose decision thereon shall be final and conclusive upon all parties interested, and the said Commissioners are authorized to establish such rules and regulations in that behalf as to them may seem just and reasonable and not in conflict with this act.

§ 8. (a) SHALL PRINT AND KEEP FOR INSPECTION SCHEDULES.] That every common carrier subject to the provisions of this act, shall within sixty days after this act shall take effect, print and thereafter keep for public inspection, schedules showing the classification, rates, fares and charges for the transportation of passengers and property of all kinds and classes which such common carrier has established, and which are in force at the time, upon its railroad, as defined by the first section of this act. This schedule printed as aforesaid by such common carrier shall plainly state the places upon its railroad between which property and passengers will be carried, and shall contain "classification of freight" in force upon each of the lines of such railroad, a distance tariff, and a table of interstation distances, and shall also state separately the terminal charges, and any rules or regulations

which in anywise change, affect or determine any part of the aggregate of such aforesaid rates, fares and charges. Such schedules shall be plainly printed in large type, and copies, for the use of the public, shall be kept in every depot or station upon any such railroad, in such places and in such form that they can be conveniently inspected.

(b) TEN DAYS' NOTICE TO BE GIVEN OF CHANGES IN SCHEDULE.] No change or classification shall be made, and no change shall be made in the rates, fares and charges, which have been established and published as aforesaid, by any common carrier, in compliance with the requirements of this section, without the order or by the authority of the Railroad Commissioners except after ten days' public notice, which notice shall plainly state the changes proposed to be made in the schedules then in force, and the time when the changed schedules will go into effect, and the proposed changes will be shown by printing new schedules, or shall be plainly indicated upon the schedules in force at the time and kept for public inspection.

(c) UNLAWFUL TO CHARGE MORE THAN SPECIFIED IN SCHEDULE.] And when any common carrier shall have established and published its classifications, rates, fares and charges in compliance with the provisions of this section, it shall be unlawful for such common carrier to charge, demand, collect or receive from any person or persons a greater or less compensation for the transportation of passengers or property or for any service in connection therewith, than is specified in such published schedule of classifications, rates, fares and charges as may at the time be in force.

(d) SCHEDULES TO BE FILED.] Every common carrier, subject to the provisions of this act, shall file with the Commissioners of Railroads copies of its schedules of classifications, rates, fares, and charges which have been established and published in compliance with the requirements of this section, and shall promptly notify said Commissioners of all changes proposed to be made in the same. Every such common carrier shall also file with said Commissioners copies of all contracts, agreements or arrangements with other common carriers in relation to any traffic affected by the provisions of this act, to which contracts, agreements or arrangements it may be a party. And in cases where passengers or freight pass over lines or routes operated by more than one common carrier, and the several common carriers operating such lines or routes, establish joint schedules of rates or fares, or charges or classifications, for such lines or routes, copies of such joint schedules shall also, in like manner be filed with said Commissioners. Such joint schedules of rates, fares, charges and classifications, for such lines, so filed as aforesaid, shall also be made public by such common carriers in the same manner as hereinbefore provided for the publication of tariffs upon its own lines.

(e) COMMISSIONERS SHALL HAVE POWER TO EQUALIZE TARIFFS.] That in case the Commissioners shall at any time find that any

part of the tariffs of rates, fares, charges or classifications so filed and published as hereinbefore provided, are in any respect unequal or unreasonable, they shall have the power and are hereby authorized and directed to compel any common carrier to change the same and adopt such rate, fare, charge or classification as said Commissioners shall declare to be equal and reasonable. To which end the Commissioners shall, in writing, inform such common carrier in what respects such tariff of rates, charges, or classifications or unequal and unreasonable, and shall recommend what tariff shall be substituted therefor.

(f) IN CASE OF REFUSAL TO CHANGE TARIFF, COMMISSION SHALL PUBLISH SAME—RATES FIXED BY COMMISSION TO STAND AFTER TEN DAYS.] In case such common carrier shall neglect or refuse for ten days after such notice to substitute such tariff of rates, fares and charges or classifications, or to adopt the same as recommended by the Commission, it shall be the duty of said Commission to immediately publish such tariff of rates, fares, charges or classifications as they have declared to be equal and reasonable in one or more newspapers published in the county or counties through or into which the road or line may run, upon which the charges so recommended by the Commission are to take effect. The newspapers in which such publication shall be made, (subject to the above condition that they shall be published in the county or counties through or into which such road or line of road may run) and the duration of time which such notice shall be published shall be in the discretion of the Commission; but the tariff of rates, fares, charges or classifications recommended by the Commission shall be in full force and effect from and after the expiration of ten days from the service upon such common carrier of the notice in writing required by subdivision "e" of this section without regard to the publication authorized by this "f" subdivision; and after the expiration of ten days from the service of such notice in writing upon such common carrier it shall be unlawful for such common carrier to charge a higher or lower rate, fare, charge or classification than that fixed by said Commission.

(g) PENALTY FOR REFUSING TO PUBLISH OR FILE SCHEDULES, ETC.] If any common carrier, subject to the provisions of this act shall neglect or refuse to publish or file its schedule of classifications, rates, fares or charges or any part thereof as provided in this section, or if any common carrier shall refuse or neglect to carry out such recommendation made and published by such commissioners, such common carrier shall be subject to a writ of mandamus, to be issued by any judge of the Supreme Court, or of any of the district courts of this State upon application of the Commissioners to compel compliance with the requirements of this section, and with the recommendation of the Commissioners and failure to comply with the requirements of the writ of mandamus shall be punishable as and for contempt, and the Commissioners, as complainants, may also apply to any such judge for a writ of

injunction against such common carrier from receiving or transporting property or passengers within this State until such common carrier shall have complied with the requirements of this section and the recommendations of said Commissioners, and for any willful violation or failure to comply with such requirements or such recommendations of said Commissioners, the court may award such costs, including counsel fees, by way of penalty, on the return of said writs and after due deliberation thereon, as may be just.

(h) APPEALS FROM ORDERS OF COMMISSIONERS—POWERS OF COURTS TO AMEND OR MODIFY ORDERS APPEALED FROM.] Any common carrier subject to the provisions of this act, may appeal to any district court of this State from any order made by said Commissioners regulating or fixing its tariffs of rates, fares, charges or classifications, or from any other order made by said Commissioners under the provisions of this act, by serving a notice in writing upon the secretary of said Commissioners, or any one of said Commissioners within sixty days after such common carrier shall have received written notice from said Commissioners of the making of such order. If the order appealed from does not regulate or fix the common carrier's tariffs of rates, fares or charges, the district court to which the appeal is taken may in its discretion suspend the operation and effect of the order appealed from, pending such appeal. The district courts of this State shall be deemed to be always in session for the purpose of hearing and determining all appeals taken under the provisions of this act. The common carrier taking such appeal may bring the same on for hearing and determination at any time after taking such appeal, upon serving a notice to that effect upon any one of the Commissioners or upon their secretary at least sixty days prior to the day set for such hearing. The district court shall, upon the hearing of such appeal, receive and consider such evidence as may be adduced by either party, and shall rescind, modify or alter said order appealed from in such manner as may be equitable and just. Either party may appeal from the decision of the district court to the Supreme Court of this State by serving a notice of such appeal upon the opposite party. For the purpose of hearing such appeals, the Supreme Court shall always be in session and appeals to it may be heard summarily by either party's serving upon the other a notice of hearing, at least fifteen days before the day fixed for such hearing. When evidence has been taken before the district court, such evidence may be signed by the judges of said district court, the party presenting such evidence to said judges for signature, giving the other party five days' notice of the time and place of such presentation. The evidence signed as aforesaid, shall become part of the record in the case and upon an appeal to the Supreme Court being taken as hereinbefore mentioned, shall be transmitted by the clerk of the district court, to the Supreme Court, together with all the records and files in the

case. The Supreme Court may reverse, affirm or modify the decision of the district court as may seem equitable and just.

§ 9. ATTORNEY GENERAL EX-OFFICIO ATTORNEY FOR COMMISSIONERS.] The Attorney General of the State of North Dakota shall be *ex-officio* attorney for the Commissioners of Railroads and shall give them such counsel and advice as they may from time to time require; and he shall institute and prosecute any [and] all suits which said Commissioners of Railroads may deem it proper and expedient to prosecute; and he shall render such Commissioners of Railroads all counsel, advice and assistance necessary to carry out the provisions of this act, or of any law of this State, according to the true intent and meaning thereof. It shall likewise be the duty of the district attorney of any county in which suit is instituted or prosecuted, to aid in the prosecution of the same to a final issue upon the request of such Commissioners. Said Commissioners are hereby authorized at the request of the Attorney General to employ such additional legal counsel as he may think proper, to assist in the prosecution of any suit they may determine to bring under the provisions of this act, or of any law of this State.

§ 10. (a) POWERS AND DUTIES OF COMMISSIONERS.] That the Commissioners of Railroads shall have authority to inquire into the management of the business of all common carriers, subject to the provisions of this act, and shall keep itself informed as to the manner and method in which the same is conducted, and shall have the right to obtain from such common carriers full and complete information, necessary to enable the Commissioners to perform the duties and carry out the objects for which they were created; in order to enable said Commissioners efficiently to perform their duties under this act, it is hereby made their duty to cause one of their number to visit the various stations on the lines of each railroad as often as practicable after having given twenty days' notice of such visit and the time and place thereof in the local newspapers, and at least once in twelve months to visit each county in the State in which is, or shall be located a railroad station, and personally inquire into the management of such railroad business, and for this purpose, all railroad companies and common carriers, and their officers and employes, are required to aid and furnish each of the commissioners with reasonable and proper facilities and each or all of the said commissioners shall have the right, in his or their official capacity, [to] pass free on any railroad trains on all railroads in this State, and to enter and remain in at all suitable times, any and all cars, offices or depots, on or upon the railroads of any railroad company in this State, in the performance of official duties; and whenever, in the judgment of the commissioners, it shall appear that any common carrier fails in any respect or particular to comply with the laws of this State, or whenever in their judgment any repairs are necessary upon its railroad, or any addition to or

change of its stations or station house is necessary, or any change in the mode of operating its roads or conducting its business is reasonable or expedient in order to promote the security, convenience and accommodation of the public, said Commissioners shall inform such railroad company by a notice thereof in writing to be served as a summons in civil actions required to be served by the statutes of this State in actions against corporations, when certified by the clerk or secretary of the Railroad Commissioners, and if such common carrier shall neglect or refuse to comply with such order, then the Commissioners may, in their discretion, cause suits or proceedings to be instituted to enforce its orders as provided in this act.

§ 11. (a) LIABILITY FOR NEGLIGENCE OF DUTY.] That in case any common carrier, subject to the provisions of this act, shall do, cause to be done, or permit to be done, any act or thing in this act prohibited, or declared to be unlawful, or shall omit to do any act, matter or thing in this act required to be done, such common carrier shall be liable to the person or persons, party or parties injured thereby, for the full amount of damages sustained in consequence of any such violations of the provisions of this act, together with a reasonable counsel or attorney's fees to be fixed by the court in every case of recovery, which attorney's fees shall be taxed and collected as part of the costs in the case.

(b) SUIT MAY BE BROUGHT IN CASE OF DAMAGES.] That any person or persons, party or parties claiming to be damaged by the action or non-action of any common carrier, subject to the provisions of this act, may either make complaint to the Commissioners, as hereinbefore provided for, or may bring suit in his or their own behalf for the recovery of the damages for which such common carrier may be liable under the provisions of this act, in any district court of the State, of competent jurisdiction; but such person or persons shall not have the right to pursue both of said remedies at the same time.

(c) COURT MAY COMPEL OFFICERS TO ATTEND AS WITNESSES.] In any such action brought for the recovery of damages the court before which the same may be pending may compel any director, officer, receiver, trustee or agent of any corporation or company, defendant in such suit, to attend, appear and testify in such case, and may compel the production of the books and papers of such corporation or company, party to any such suit; the claim that any such testimony or evidence may tend to criminate the person giving such evidence shall not excuse such witness from testifying, but such evidence or testimony shall not be used against such person on the trial of any criminal proceeding.

§ 12. PENALTY FOR NON-COMPLIANCE WITH THIS ACT.] That any common carrier, subject to the provisions of this act, or whenever such common carrier is a corporation, any director or officer thereof, or any receiver, trustee, lessee, agent or person acting for, or employed by such corporation, who alone or with any other

corporation, company, person or party, shall willfully do or cause to be done, or shall willfully suffer or permit to be done, any act, matter or thing in this act prohibited or declared to be unlawful, or who shall aid or abet therein, or shall willfully omit or fail to do any act, matter or thing in this act required to be done, or shall cause or willingly suffer or permit any act, matter or thing so directed or required by this act to be done, not to be done, or shall aid and abet therein any such omission, or shall be guilty of any willful infraction of this act, or shall aid or abet therein, shall be deemed guilty of a violation of the provisions of this act and shall, upon conviction thereof in any district court of the State within the jurisdiction of which such offense was committed, be subject to a penalty of not less than \$2,500 or more than \$5,000 for the first offense, and not less than \$5,000 or more more than \$10,000 for each subsequent offense.

§ 13. (a) PERSONS AGGRIEVED MAY APPLY TO COMMISSION BY PETITION.] That any person, firm, corporation or association, or any mercantile, agricultural or manufacturing society, or any body politic or municipal organization, complaining of anything done or omitted to be done by any common carrier subject to the provisions of this act, in contravention of the provisions thereof, may apply to said Commissioners by petition, which shall briefly state the facts.

(b) DUTIES OF COMMISSIONERS UPON SUCH APPLICATION.] Whereupon a statement of the charges thus made shall be forwarded by the Commissioners to such common carrier, who shall be called upon to satisfy the complaint, or to answer the same in writing within a reasonable time to be specified by the Commissioners. If such common carrier within the time specified, shall make reparation for the injury alleged to have been done, said carrier shall be relieved of liability to the complainant only, for the particular violation of the law thus complained of. If such carrier shall not satisfy the complaint within the time specified, or there shall appear to be any reasonable ground for investigating said complaint, it shall be the duty of the Commissioners summarily to investigate the matter complained of, in such manner and by such means as it shall deem proper. No complaint shall at any time be dismissed because of absence of direct damages to the complainant. And for the purposes of this act the Commissioners shall have power to require the attendance of witnesses and the production of all books, papers, contracts, agreements and documents relating to any matter under investigation, and, to that end, may invoke the aid of any of the courts of this State, in requiring the attendance of witnesses and the production of books, papers and documents, under the provisions of this act.

(c) HOW COURTS SHALL PROCEED IN CASE OF REFUSAL TO OBEY SUBPŒNAES.] Any of the district courts of this State, within the jurisdiction of which such injury is carried on, shall, in case of contumacy or refusal to obey a subpœna issued by the Commis-

sioners to any common carrier subject to the provisions of this act, or, when such common carrier is a corporation, to an officer or agent thereof, or to any person connected therewith, if proceedings are instituted in the name of such Commissioners as plaintiffs, issue an order requiring such common carrier, officer or agent, or person to show cause why such contumacy or refusal should not be punished as and for contempt, and if upon the hearing the court finds that the injury is within the jurisdiction of the Commissioners, and that such contumacy or refusal is willful and the same is persisted in, such contumacy or refusal shall be punished as though the same had taken place in an action pending in the district court for any judicial district in this State. The claim that any such testimony or evidence may tend to criminate the person giving such evidence shall not excuse such witness from testifying; but such evidence or testimony shall not be used against such persons on the trial of any criminal proceeding.

§ 14. (a) FINDINGS OF COMMISSIONERS TO BE MADE IN WRITING. ] Whenever an investigation shall be made by said Commissioners, it shall be its duty to make a report in writing in respect thereto, which shall include the findings of fact upon which the conclusions of the Commissioners are based, together with their recommendation as to what reparation, if any, should be made by the common carrier to party or parties who may be found to have been injured; and such findings so made shall thereafter, in all judicial proceedings, be deemed *prima facie* evidence as to each and every fact found. All reports of investigations made by the Commissioners shall be entered of record, and a copy thereof shall be furnished to the party who may have complained, and to any common carrier that may have been complained of, and the record thereof shall [be] public.

(b) IN CASE FINDINGS ARE AGAINST COMMON CARRIER, REPORT MUST BE MADE TO THEM. ] If in any case in which an investigation shall be made by said Commissioners it shall be made to appear to the satisfaction of the Commissioners, either by testimony of witnesses or other evidence, that anything has been done or omitted to be done by any common carrier, in violation of the provisions of this act or to any law cognizable by said Commissioners, or that any injury or damages has been sustained by the party or parties complaining, or by other parties aggrieved in consequence of any such violation, it shall be the duty of the Commissioners to forthwith cause a copy of its report in respect thereto to be delivered to such common carrier, together with a notice to said common carrier to cease and desist from such violation and to make reparation for the injury so found to have been done within a brief but reasonable time, to be specified by the Commissioners; and if within the time specified it shall be made to appear to the Commissioners that such common carrier has ceased from such violation of law, and has made reparation for the injury found to have been done, in compliance with the re-

port and notice of the Commissioners, or to the satisfaction of the party complaining, a statement to that effect shall be entered of record by the Commissioners, and the said common carrier shall thereupon be relieved from further liability or penalty for such particular violation of law.

(c) IN CASE OF NEGLECT TO MAKE REPARATION, COMMISSIONERS TO FORWARD REPORT TO ATTORNEY GENERAL.] But if such common carrier shall neglect or refuse, within the time specified, to desist from such violation of law, and make reparation for the injury done in compliance with the notice and report of the Commissioners as aforesaid, it shall be the duty of the Commissioners to forthwith certify the fact of such neglect or refusal, and forward a copy of its report and such certificate to the Attorney General of the State for redress and punishment as hereinafter provided.

§ 15. (a) ATTORNEY GENERAL TO BRING SUIT.] That it shall be the duty of the Attorney General to whom said Commissioners may forward their report and certificate, as provided in the next preceding section of this act, when it shall appear from such report that any injury or damages has been sustained by any party or parties by reason of such violation of law by such common carrier, to forthwith cause suit to be brought in the district court in the judicial district wherein such violation occurred, on behalf and in the name of the person or persons injured, against such common carrier, for the recovery of damages for such injury as may have been sustained by the injured party; and the cost and expenses of such prosecution shall be paid out of the appropriation hereinafter provided for for the uses and purposes of this act.

(b) POWER OF COURT.] And the said court shall have power to hear and determine the matter on such short notice to the common carrier complained of as the court shall deem reasonable; and such notice shall be served on such common carrier, his or its officers, agents or servants, in such manner as the court shall direct; and said court shall proceed to hear and determine the matter speedily, and without the formal pleading and proceedings applicable to ordinary suits in equity; but in such manner as to do justice in the premises, and to this end such court shall have power, if it thinks fit, to direct and prosecute in such mode and by such persons as it may appoint, all such inquiries as the court may think needful to enable it to form a just judgment in the matter of such petition. And on such hearing the report of said Commissioners shall be *prima facie* evidence of the matters therein stated.

(c) FURTHER POWERS OF COURT—APPEALS TO SUPREME COURT.] And if it be made to appear to such court, on such hearing, or on report of any such person or persons, that the lawful order or requirements of such Commissioners drawn in question, has been violated or disobeyed, it shall be lawful for such court to issue a writ of injunction, or other proper process, mandatory or other-

wise, to restrain such common carrier from further continuing such violation or such disobedience of such order or requirement of said Commissioners, and enjoining obedience to the same; and in case of any disobedience of any such writ of injunction or other proper process, mandatory or otherwise, it shall be lawful for such courts to issue writs of attachment, or any other process of said courts incident or applicable to writs of injunction or other proper process, mandatory or otherwise, against such common carrier; and if a corporation, against one or more of the directors, officers or agents of the same, or against any owner, lessee, trustee, receiver or other person failing to obey such writ of injunction or other proper process, mandatory or otherwise; and said court may, if it shall think fit, make an order directing such common carrier or other person so disobeying such writ of injunction or other proper process, mandatory or otherwise, to pay such sum of money not exceeding [for] each carrier or person in default the sum of five hundred (500) dollars for every day after a day to be named in the order, that such carrier or other person shall fail to obey such injunction or other proper process, mandatory or otherwise; and such monies shall be payable as the court shall direct either to the party complaining, or into court to abide the ultimate decision of the court; and payment thereof may, without prejudice to any other mode of recovering the same, be enforced by attachment or order in the nature of a writ of execution, in like manner as if the same had been recovered by a final decree in *personam* in such court. Each party to such proceeding before said court, may appeal to the Supreme Court of the State, under the same regulations now provided by law in respect to security for such appeal; but such appeal shall not operate to stay or supersede the order of the court or the execution of any writ or process thereon, unless the court hearing or deciding such case should otherwise direct; and such court may, in every such matter, order the payment of such costs and counsel fees as shall be deemed reasonable.

(d) **MAY APPEAL IN CASE SUIT IS NOT COMMENCED IN TEN DAYS.]**  
In case the Attorney General shall not within a period of ten days after the making of any order by the Commissioners, commence judicial proceedings for the enforcement thereof, any railroad company, or other common carrier affected by such order, may at any time within the period of thirty days after the service of it upon him or it of such order, and before commencement of proceedings, appeal therefrom to the district court of any judicial district through or into which his or its route may run, by the service of a written notice of such appeal upon some member of such Commissioners. And upon the taking of such appeal, and the filing of the notice thereof, with the proof of service, in the office of the clerk of such court, there shall be deemed to be pending in such court a civil action of the character and for the purposes mentioned in Sections 11 and 15 of this act. Upon such appeal, and upon the hearing of and application for the enforcement of any such

order made by the Commissioners or by the Attorney General, the court shall have jurisdiction to examine the whole matter in controversy, including matters of fact as well as questions of law, and to affirm, modify or recind such order in whole or in part, as justice may require; no appeal as aforesaid shall stay or supersede the order appealed from and pending the final decision of all appeals to the courts the rates fixed shall remain in full force and effect.

§ 16. (a) COMMISSIONERS MAY PROSECUTE.] That whenever facts, in any manner ascertained by said Commissioners, shall in their judgment warrant a prosecution, it shall be the duty of said Commissioners to immediately cause suit to be instituted and prosecuted against any common carrier who may violate any of the provisions of this act, or of any law of this State. All such prosecutions shall be in the name of the State of North Dakota except as otherwise provided in this act, or in any law of this State, and may be instituted in any county in the State through or into which the line of any common carrier so sued may extend, and all penalties recovered under the provisions of this act, or of any law of this State, in any suit instituted in the name of the State, shall be immediately paid into the State Treasury by the sheriff or other officer or person collecting the same; and the same shall be by the State Treasurer placed to the credit of the general revenue fund.

(b) COURTS ALWAYS IN OPEN SESSION.] For the purpose of this act, except its penal provisions, the district courts and Supreme Court of the State shall be deemed to be always in open session.

§ 17. (a) ANNUAL REPORTS REQUIRED FROM ALL COMMON CARRIERS.] That the Commissioners are hereby directed to require annual reports from all common carriers subject to the provisions of this act, to fix the time and prescribe the manner in which said report shall be made, and to require from such carriers specific answers to all questions upon which the Commissioners may need information. Such annual reports shall show in detail the amount of capital stock issued, the amounts paid therefor, and the manner of payment for the same, the dividends paid, the surplus fund, if any, and the number of stockholders, the funded and floating debts and the interest paid thereon; the cost and value of the carrier's property, franchises and equipment, the number of employes and the salary paid each class, the amounts expended for improvements each year, how expended, and the character of such improvements; the earnings and receipts of each branch of business, and from all sources, the operating, and other expenses; the balance of profit and loss; and complete exhibit of the financial operations of the carrier each year, including an annual balance sheet; also the total number of acres of land received as grants from the United States, the number of acres of said grants sold, and average price received per acre, the number of acres of grants unsold and the appraised value per acre. Such detailed reports

shall also contain such information in relation to rates or regulations concerning fares or freights and agreements, arrangements or contracts with express companies, telegraph companies, sleeping and dining car companies, fast freight lines, and other common carriers, as the Commissioners may require, with copies of such contracts, agreements or arrangements.

§ 18. (a) COMMISSIONERS TO MAKE ANNUAL REPORTS. That such Commissioners shall, on or before the first day of December in each year, and oftener if required by the Governor to do so, make a report to the Governor of their doings for the preceding year, containing such facts, statements and explanations as will disclose the actual working of the system of railroad transportation in its bearings upon the business and prosperity of the people of this State, and such suggestions in relation thereto as to them may seem appropriate.

(b) SHALL MAKE SPECIAL REPORTS BIENNIALLY.] They shall also, at such times as the Governor shall direct, examine any particular subject connected with the conditions and management of such railroads and report to him in writing their opinion thereon, with their reasons therefor. Said Commissioners shall also investigate and consider what, if any, amendment or revision of the railroad laws of this State, the best interests of the State demand, and they shall make a special biennial report on said subject to the Governor. All such reports made to the Governor shall be by him transmitted to the legislature at the earliest practicable time.

(c) PENDING LITIGATIONS NOT TO BE AFFECTED BY THIS ACT.] Nothing in this act contained shall in any way abridge or alter the remedies now existing at common law or by statute, but the provisions of this act are in addition to such remedies; *Provided*, That no pending litigation shall in any way be affected by this act. The decision of a majority of the Commission shall be considered the decision of the board on all questions arising for its consideration. Witnesses summoned before the Commission shall be paid the same fees and mileage that are paid witnesses in the district court of the State. All expenses of the Commission in making an investigation or examinations in any other place than the city of Bismarck, shall be allowed and paid out of the State Treasury on the presentation of itemized vouchers therefor approved by the chairman of the Commission and the State Auditor.

§ 19. REPEAL.] All acts and parts of [acts] conflicting with the provisions of this act are hereby repealed.

§ 20. EMERGENCY.] An emergency existing, in the fact that there is no law in force which properly defines the duties and powers of the board of Railroad Commissioners, this act is intended to remedy that defect; this act shall take effect and be in force from and after its passage and approval.

Approved March 19, 1890.

## CHAPTER 123.

[H. F. 54.]

RAILROADS TO BUILD PLATFORMS TO FACILITATE SHIPMENT OF  
LIVE STOCK, ETC.AN ACT to Facilitate the Shipment of Live Stock, Grain and Other Com-  
modities.*Be it Enacted by the Legislative Assembly of the State of North Dakota:*

§ 1. RAILROADS TO BUILD PLATFORMS.] Every railroad company or corporation doing business in this State, shall within sixty days after this act shall go into effect, upon notice from the Commissioners of Railroads, build, erect and complete one or more platforms for the transfer of live stock, grain and other commodities from wagons or otherwise to cars at each and every station designated in said notice; said platform to be erected where there will be safety to life and property.

§ 2. PLATFORMS, HOW BUILT.] Each platform shall be not less than twelve feet wide and thirty-two feet long, extending two feet and eight inches above the rails of the track, with suitable approaches to and from said platform to admit the driving of loaded teams thereon.

§ 3. PENALTY FOR NEGLECT TO BUILD PLATFORMS.] Every railroad company or corporation neglecting or refusing to comply with the requirements of this act after having been properly notified, shall be deemed guilty of a misdemeanor, and be subject to a fine of not less than five hundred (500) dollars for every thirty days such failure shall continue after notice as aforesaid.

§ 4. DUTY OF COMMISSIONERS TO NOTIFY RAILROADS.] Every Commissioner of Railroads who shall fail to notify such railroad company after receiving a petition signed by ten taxpayers residents of the place or its vicinity where such platform is to be erected, shall be deemed guilty of a misdemeanor, and shall be fined not less than one hundred (100) dollars nor more than three hundred (300) dollars for each offense; *Provided*, Said Commissioner of Railroads shall, upon examination, deem such platform or platforms necessary.

§ 5. WHEN PLATFORMS TO BE ENLARGED.] The Commissioners of Railroads shall have power to order an enlargement of such platforms whenever petitioned to that effect, and whenever the capacity of such platform is in their judgment clearly insufficient for the accommodation of the public.

§ 6. PLATFORM SCALES.] Every railroad company shall allow suitable scales to be erected, either upon the platform or upon

the grounds adjacent thereto, if upon their right of way, for weighing and shipping purposes.

§ 7. EMERGENCY.] Whereas, an emergency exists, in that the platform provided for in this bill will be needed before July; therefore, this act shall take effect and be in force from and after its passage and approval.

Approved February 17, 1890.

## CHAPTER 124.

[H. F. 172.]

### REGULATING SHIPMENT OF LIVE STOCK AND GRAIN.

#### AN ACT Relating to the Shipment of Live Stock and Grain.

*Be it Enacted by the Legislative Assembly of the State of North Dakota:*

§ 1. BILL OF LADING TO STATE NUMBER OF STOCK.] Whenever any shipper of hogs, cattle, sheep, horses or other animals, shall present his stock at any railroad station, and to any railroad agent in the State of North Dakota, for purposes of transportation, it shall be the duty of said railroad agent to count or cause to be counted said hogs, cattle, sheep, horses or other animals, and the number so counted shall be by the agent named in the bill of lading or receipt for said stock. And if said railroad agent neglect or refuse to count or have counted said stock, then the railroad company employing said agent shall be held responsible for the number of animals specified in the bill of lading according to shipper's count.

§ 2. SHIPPER'S RIGHT TO PUT MORE THAN ONE KIND OF STOCK OR GRAIN IN CAR.] Whenever any shipper shall order one or more cars from any railroad company for the purpose of transportation of stock or grain, he shall have the right and privilege to put in said car or cars two or more species of live stock or different kinds of grain; and no railroad company or railroad agent shall charge for any car in which is shipped two or more species of live stock any greater prices than are charged when only one species of said stock is shipped therein, nor shall said railroad agent or railroad company charge any greater sum when two or more kinds of grain are shipped in any car than is charged when only one kind of grain which is in said car is shipped; *Provided*, That said different species of stock or kinds of grain which are placed in said car or cars do not exceed the maximum limit of pounds allowed by law and by the railroad company when only one species of live stock or one kind of grain is shipped in said car or cars; *Provided, further*, That when more than one kind of

stock or grain shall be shipped in the same car, the highest rate may be the rate of freight to be charged.

§ 3. RESPONSIBILITY OF RAILROAD COMPANY FOR VIOLATION OF THIS ACT.] Any loss sustained by any shipper from the refusal on the part of any railroad company to conform to the requirements of this act shall be assessed and collected as any other damages and losses are assessed and collected against railroad companies.

Approved February 10, 1890.

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## CHAPTER 125.

[H. F. 274.]

### FIXING MAXIMUM RATES FOR TRANSPORTATION OF NORTH DAKOTA COAL.

AN ACT to Fix the Maximum Rates that Railroad Companies May Charge for the Transportation of Coal Mined Within the State of North Dakota.

*Be it Enacted by the Legislative Assembly of the State of North Dakota:*

§ 1. MAXIMUM COAL RATES.] All railroad companies doing business as common carriers within the State of North Dakota shall not charge for the transportation of coal mined within the State from any station or siding within the State to any station or siding within the State a greater rate per ton than the following: For the first fifty miles or fractional part thereof, seventy-five (75) cents per ton; for any distance over fifty miles and not to exceed 100 miles, ninety-five (95) cents per ton; for any distance over 100 miles and not to exceed 150 miles, one dollar and fifteen cents (\$1.15) per ton; for any distance over 150 miles and not to exceed 200 miles, one dollar and thirty-five cents (\$1.35) per ton; for any distance over 200 miles and not to exceed 250 miles, one dollar and fifty-five cents (\$1.55) per ton; for any distance over 250 miles and not to exceed 300 miles, one dollar and seventy-five cents (\$1.75) per ton; for any distance over 300 miles and not to exceed 350 miles, one dollar and ninety-five cents (\$1.95) per ton; for any distance over 350 miles and not to exceed 400 miles, two dollars and fifteen cents (\$2.15) per ton.

§ 2. PENALTY FOR FAILURE TO COMPLY WITH ACT.] Any neglect or refusal to carry out any part of the provisions of this act shall subject the railroad company so refusing or neglecting to carry out the provisions of this act, to a fine or penalty of not less than twenty-five (25) dollars per day for each and every day so neglecting or refusing, to be recovered by any person suffering

loss or damage thereby; said forfeiture or penalty may be recovered in any court of competent jurisdiction.

§ 3. ACT TO BE ENFORCED BY RAILROAD COMMISSIONERS.] It shall be the duty of the Commissioners of Railroads to enforce the provisions of this act in the name of the State of North Dakota.

§ 4. REPEAL.] All acts or parts of acts in conflict with the provisions of this act are hereby repealed.

§ 5. EMERGENCY.] An emergency existing in that there are no laws now in force for the regulating of railroad freight rates for the transportation of coal mined in the State of North Dakota, this act shall take effect and be in force immediately from and after its passage and approval.

Approved March 3, 1890.

## CHAPTER 126.

[S. F. 43.]

### PROVIDING FOR TRANSFER OF FREIGHT AT CROSSINGS.

AN ACT Entitled "An Act to Provide for the Transfer of Freight at Railroad Crossings and the Maintenance of Depots at the Same."

*Be it Enacted by the Legislative Assembly of the State of North Dakota:*

§ 1. DUTY OF RAILROAD COMPANIES TO PROVIDE MEANS OF TRANSFER AT CROSSINGS.] In all cases where any line of railroad shall cross or intersect any other line of railroad in this State, it shall be the duty of the railroad companies owning or operating such intersecting railroad lines within sixty days, as hereinafter required so to do, to provide at such crossing or intersection suitable and sufficient facilities, such as building Y's or other tracks, platforms, warehouses, depots, etc., for transferring cars and for accommodating and transferring passengers and traffic of all kinds and classes from one such line of railroad to another and to afford equal and reasonable facilities for the interchange of cars and traffic between their respective lines.

§ 2. TRANSFER FACILITIES TO BE AFFORDED IF PETITIONED FOR.] Whenever any twenty or more resident freeholders residing within ten miles of the crossing or intersection of any railroad lines shall petition said railroad companies owning or operating said intersecting railroad lines, it shall be the duty of such railroad companies to build, equip and operate within sixty days thereafter the necessary Y's, tracks and switches necessary for the transfer of all kinds and classes of freight by car lots from one such line to the other.

§ 3. WAREHOUSES, DEPOTS, ETC., TO BE BUILT IF PETITIONED FOR.] Whenever any fifty resident freeholders residing within ten miles of any crossing or intersection of any railroad lines shall petition said railroad companies owning or operating said intersecting lines of railroad, it shall be the duty of said railroad companies within sixty days thereafter to build, equip, operate and maintain suitable Y's, tracks, switches and also a suitable warehouse and depot for the accommodation of passengers and of freight of all kinds and classes and the said railroad companies shall maintain an agent there who shall be a telegraph operator, provided with all necessary instruments, wires, etc., necessary for the transacting of business in such manner as the business of other stations on their respective lines is usually transacted.

§ 4. RAILROAD COMPANIES, HOW NOTIFIED.] Upon the presentation of a petition, signed by the requisite number of freeholders, as provided by Sections 2 and 3 of this act, it shall be the duty of the clerk of court of the county in which said railroad crossing or intersection is situated, as mentioned in said petition, to transmit within three days thereafter (upon receipt of fifty (50) cents for filing and one (1) dollar for a certified copy thereof) a certified copy of the said petition to the general manager of each of said intersecting lines of railroad, and the said clerk of the court shall thereupon make a suitable record of the sending of such copies as to time, etc., which record, together with the original petition, shall be *prima facie* evidence in any court of law of such notification to said railroad companies.

§ 5. DUTIES OF RAILROAD COMMISSIONERS IN CASE OF FAILURE TO COMPLY WITH THIS ACT.] If any railroad company or companies to whom such petitions are addressed shall fail to comply with any of the provisions of this act within the time prescribed by Section 1 of this act, any person who may have signed any petition under Sections 2 or 3, may appeal to the Railroad Commissioners by filing with said Railroad Commissioners an affidavit setting forth the fact that said petition has not been granted, and also a certified copy of the original petition; it shall then be the duty of said Railroad Commissioners to condemn all lands necessary for the requirements of the prayer of said petition in such manner as lands are usually condemned for public purposes; *Provided, however,* That said Railroad Commissioners cannot easily obtain the right-of-way or a deed to such lands as may be necessary in building any Y's, tracks, depots or platforms; *Provided, further,* That in all cases where there is room upon the rights of way of any intersecting lines of railroad the Commissioners shall build all tracks, Y's, switches, depots, platforms, etc., thereon immediately proceed to build such tracks, Y's, switches, depots, platforms, etc., as are required by the different sections of this act to be built, and the cost thereof shall immediately thereon become a lien upon the rolling stock, road bed, equipments, earnings, etc.,

of such railroad companies and may be by such Railroad Commissioners collected by law in such case made and provided.

§ 6. ACTIONS AGAINST RAILROAD COMPANIES, HOW BROUGHT.] In all cases where it becomes necessary for the Railroad Commissioners to build any tracks, Y's, switches, depots, platforms, etc., under any of the provisions of this act, and the railroad companies owning or operating any intersecting lines fail to pay for the same within thirty days after being duly notified of and presented with an itemized account of one-half the costs of constructing the same, the said Railroad Commissioners are hereby empowered to present the State Auditor with a verified account in writing of the cost of building of any such tracks, Y's, switches, platforms, etc., and the costs of all lands necessarily condemned or bought in the construction of the same, and the State Auditor shall thereupon draw his warrant upon the State Treasurer for the amount thereof in favor of said Railroad Commissioners. Immediately upon receipt of such warrant it shall be the duty of the Railroad Commissioners to commence an action against all railroad companies interested for the recovery of the costs of the construction of all such Y's, tracks, switches, platforms, depots, etc. Said action shall be in the name of the State as plaintiff, and shall be maintained and prosecuted as all such actions are maintained and prosecuted.

§ 7. TARIFF FOR TRANSFER OF CARS—PENALTY FOR FAILURE TO TRANSFER.] The cost of transferring a car of freight of any kind or class shall be one (1) dollar, and the rate both before and after transfer shall be in accordance with the rate of the respective lines from which and to which such car may be transferred subject to all regulations of law in such cases made and provided; *Provided, however,* That the same rate shall be charged from any point on any railroad to any point on any other railroad that corresponds with the schedule rate of the road first making shipment to a point correspondingly distant on their own line with the costs of transfer added. If any railroad company shall fail to forward any car or other quantity of freight consigned to them and transferred from any other line of railroad within forty-eight hours thereafter, they shall be liable for all damages caused by such delay and a fine of twenty-five (25) dollars per day, upon conviction thereof in any court of competent jurisdiction, for each and every day of such delay.

§ 8. INTERSECTED RAILROADS TO BEAR EQUAL EXPENSE.] The cost of constructing, maintaining and operating all facilities and structures required by the provisions of this act shall be borne equally between the railroad companies owning and operating such intersecting lines.

§ 9. All acts and parts of acts inconsistent with this act are hereby repealed.

Approved February 12, 1890.

## CHAPTER 127.

[H. F. 158.]

## REQUIRING RAILROAD COMPANIES TO KEEP CROSSINGS IN REPAIR.

## AN ACT Requiring Railway Companies to Build and keep in Repair Highway Crossings.

*Be it Enacted by the Legislative Assembly of the State of North Dakota:*

§ 1. SHALL BUILD AND KEEP IN REPAIR GOOD CROSSINGS.] That all railway companies operating a line or lines of railways in this State, shall build or cause to be built and kept in repair, good and sufficient crossings over such line or lines of railway at all points where any public highway in use is now or may hereafter be intersected by such lines of railway.

§ 2. CROSSING DEFINED—HOW CONSTRUCTED.] A good and sufficient crossing as required to be built and kept in repair as demonstrated in Section 1 of this act, shall be, and is hereby construed to be as follows, to-wit:

First. Of a grade of earth on one or both sides of the railroad track, as the location may require, a grade or grades of earth twenty feet in width, the middle point of which shall be as near as practicable at the middle point of the highway, and such grade shall be of such shape as shall be necessary for the safety and convenience of the traveling public.

Second. That plank shall be firmly spiked on and for the full length of the ties used in the road bed of such railway, where such crossing occurs, and such plank, when so laid, shall be no more than one inch apart, except where the rails prevent, in which the plank next inside of such rail shall be no more than two and one-half inches from the inside surface of such rail, and the thickness of the plank so used shall be three inches and so laid that the upper surface of the plank shall be on a level with the upper surface of the rail, and all such plank shall extend along such railway twenty feet in width of such highway grade, and all plank so laid shall not be removed or taken up for any greater length of time than is necessary for the repairs or replacing of such crossing.

§ 3. NOTICE TO BE SERVED.] It shall be the duty of the officer or officers having charge of any public highway intersected by any line of railway to serve a written notice upon the nearest station agent or superintendent having charge of that portion of the railway where such intersection occurs, that such crossing as herein described shall be built or repaired.

§ 4. CROSSINGS TO BE BUILT WITHIN THIRTY DAYS.] It shall be

the duty of any railway company so receiving such notice; to build or cause to be built a good and sufficient crossing, as described in Section 2 of this act, within a period of thirty days from and after receiving such notice.

§ 5. LIABILITY FOR DAMAGES FOR NEGLIGENCE.] Any railroad company which shall neglect to comply with the terms of this act, shall be liable to pay damage to the county, city, village or town in which the highway is situated, the sum of thirty (30) dollars for such neglect. The same to be recovered in an action brought in the name of the county, city, village or town, as the case may be. It is hereby made the duty of the state's attorney to prosecute to judgment any claim arising under the foregoing provision, without charge to the said county, city, village or town for attorney's fees.

§ 6. That all acts or parts of acts conflicting with this act are hereby repealed.

Approved March 3, 1890.

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## CHAPTER 128.

[H. F. 238.]

### RAILROADS TO PUT IN SIDETRACKS ADJOINING COAL MINES.

AN ACT Compelling Railroad Companies to put in Sidetracks Adjacent to Coal Mines in the State of North Dakota.

*Be it Enacted by the Legislative Assembly of the State of North Dakota:*

§ 1. SIDETRACKS ADJACENT TO COAL MINES, WHEN TO BE BUILT.] Whenever any person, persons or corporations owning or operating any coal mine or mines within the State of North Dakota from which mine or mines not less than fifty cars of coal have been shipped from any one station over any portion of any railroad within the limits of the State of North Dakota shall petition any such railroad company to build a sidetrack or spur at least 300 feet in length adjacent to said mine or mines, it shall then be the duty of such railroad company to build, equip and operate such sidetrack or spur; *Providing*, Such spur is not nearer than two miles from any station already in operation; *Provided, further*, That any person, company or corporation opening a coal mine within two miles of any station may petition for a sidetrack or spur, and by executing an indemnity bond in favor of said railroad company in the sum of \$2,000, conditioned on the agreement that said person, company or corporation will ship within one year after the completion of such spur or sidetrack, not less than 100

car loads of coal, and when such bond is duly executed with two sureties, approved by the county judge of the county wherein such sidetrack is situated or attached for judicial purposes, the said railroad company shall within sixty days build, equip and operate such sidetrack or spur as provided for in this section. And the Commissioners of Railroads shall have power to locate said sidetrack or spur and order them properly provided with platforms and other conveniences for loading coal and other commodities thereat.

§ 2. PENALTY.] Any neglect or refusal to comply with any part of the provisions of this act within fifteen days after being requested in writing by the parties or party operating the coal mine, or by any one of the board of Commissioners of Railroads to put in said sidetrack shall subject said railroad company to a forfeiture of fifty (50) dollars per day for each and every day said railroad company shall neglect or refuse to comply with the provisions of this act, to be recovered by the party or parties affected by said neglect or refusal; said forfeiture or penalty may be recovered in any court of competent jurisdiction in this State; *Provided*, No railroad shall be compelled to put in a sidetrack where it cannot be done without grading, between the fifteenth day of November and the fifteenth day of May of any year.

§ 3. RAILROAD COMMISSIONERS TO ENFORCE THIS LAW.] The Commissioners of Railroads of this State shall enforce the provisions of this act in the name of the State of North Dakota.

§ 4. REPEAL.] All acts or parts of acts in conflict with the provisions of this act are hereby repealed.

§ 5. EMERGENCY.] An emergency existing in that there is no law now in force for the compelling of railroads to put in side tracks adjacent to coal mines, therefore this act shall take effect and be in force from and after its passage and approval.

Approved March 3, 1890.

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CHAPTER 129.

[S. F. 6.]

RELATING TO TRANSFER OF BONDS FROM ONE COMPANY TO AN-  
OTHER.

AN ACT Authorizing Railroad Companies to Take, Acquire, Purchase, Sell or  
Guarantee the Payment of the Bonds and Other Securities of any Other  
Railroad Company.

*Be it Enacted by the Legislative Assembly of the State of North Dakota:*

§ 1. TRANSFER OF RAILROAD SECURITIES.] Any railroad corporation, whether chartered by or organized under, the laws of this State, or of the Territory of Dakota, or of the United States, or of any other state or territory, may take, purchase, hold, sell and dispose of, or guarantee the payment of the bonds and securities of any other railroad corporation whose line of road is continuous of, or, by lease, traffic contract or otherwise connected with its own line.

Approved March 3, 1890.

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CHAPTER 130.

[S. F. 82.]

RIGHT-OF-WAY MAPS TO BE FILED.

AN ACT to Require all Railroad Corporations Doing Business in the State of  
North Dakota to File with the County Clerk of any County in Which any  
Railroad or Part Thereof May be located, a Map Showing all Railroad and  
Right of Way Owned by said Corporation.

*Be it Enacted by the Legislative Assembly of the State of North Dakota:*

§ 1. RAILROADS, TO SECURE AND FILE MAPS OF RIGHT OF WAY.] That all railroad corporations now doing business in the State of North Dakota shall file, within ninety days after the passage of this act, with the county clerk of any county, in which any railroad or part thereof may be located, a map showing the correct location of any and all right of way lines of railroad and side-tracks in said county, owned or occupied by said railroad corpora-

tions or any of them, also showing the number of acres in each parcel of land included by said railroad corporation or any of them in said county as right of way.

§ 2. SAME.] That any railroad corporation who may hereafter acquire any right of way or other property, as set forth in Section 1 of this act shall file, within six months after the location of their right of way a map as provided for in Section 1 of this act.

§ 3. PENALTY.] Any railroad corporation which shall violate any of the provisions of this act shall, upon conviction thereof in any court of competent jurisdiction, be fined in a sum of not less than one hundred (100) dollars nor more than five hundred (500) dollars.

Approved March 8, 1890.

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## REPORTS.

### CHAPTER 131.

[S. F. 180.]

#### QUARTERLY REPORTS OF COUNTY OFFICERS TO BE PUBLISHED.

AN ACT to Amend Chapter 48 of the Session Laws of 1889, Entitled "An Act to Amend Section 103 of Chapter 28 of the Political Code," Relating to Publication of Receipts and Disbursements of County Treasurers.

*Be it Enacted by the Legislative Assembly of the State of North Dakota:*

§ 1. QUARTERLY REPORTS OF COUNTY OFFICERS TO BE PUBLISHED.] That Section 103 of Chapter 28 of the Political Code be and is hereby amended to read as follows: "The county clerk or auditor and county treasurer conjointly shall make out quarterly a detailed exhibit under oath, showing the receipts and disbursements of the county for the preceding quarter and also the assets and liabilities at the time of making out the same; said exhibit shall show the amount of all orders on the treasury issued during the quarter next preceding, on what account, and also the liabilities of the county, stated in detail, and the assets of every kind as near as may be, showing also the amounts of funds in the treasury at the time of making said exhibit, on what account paid in, the kind of funds and the place or places where said funds are deposited. Said exhibit shall be made out quarterly, and posted up in the office of the treasurer on the first Monday in March, June, September and December of each year, and said statement shall