

sale shall be given by insertion of the notice of sale in the official paper of the county for at least two issues prior to the date of sale.

§ 3. FORECLOSURE BY ADVERTISING.] The provisions of this Act shall apply in cases of foreclosure by advertising the same as in foreclosure by action.

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 All Acts or parts of Acts in conflict with the provisions of this Act are hereby repealed.

§ 5. EMERGENCY.] An emergency is hereby declared to exist and this Act shall go into full force and effect upon its passage and approval.

Approved March 7, 1933.

PIPE LINES

CHAPTER 207

H. B. No. 229—(Place and Noben.)

REGULATION COMMON CARRIER PIPE LINES

An Act defining and regulating common carrier pipe lines and granting to them the right of eminent domain; empowering the Board of Railroad Commissioners of North Dakota to regulate the rates, charges and business of such common carrier pipe lines, prohibiting discrimination by said pipe lines, and providing penalties for the violation of this Act.

Be It Enacted by the Legislative Assembly of the State of North Dakota:

§ 1. Every person, firm, corporation, limited partnership, joint stock association or association of any kind whatsoever;

(a) Owning, operating, or managing any pipe line or any part of any pipe line within the State of North Dakota for the transportation of crude petroleum or gas to or for the public for hire, or engaged in the business of transporting crude petroleum or gas by pipe lines; or

(b) Owning, operating, or managing any pipe line or any part of any pipe line for the transportation of crude petroleum or gas, to or for the public for hire, and which said pipe line is constructed or maintained upon, along, over, or under any public road or highway; or

(c) Owning, operating, or managing any pipe line or any part of any pipe line or pipe lines for the transportation to or for the public hire, of crude petroleum, or gas, and which said pipe line or pipe lines is or may be constructed, operated, or maintained across, upon, along, over, or under the right of way of any railroad, corporation, or other common carrier, required by law to transport crude petroleum or gas as a common carrier; or

(d) Owning, operating or managing or participating in ownership, operation or management, under lease, contract of purchase, agreement to buy or sell, or other agreement or arrangement of any kind whatsoever, any pipe line or pipe lines, or any part of any pipe line, for the transportation from any oil or gas field or place of production, to any distributing, refining, or marketing center, or re-shipping point thereof, of crude petroleum or gas, bought of others; or

(e) Engaged in the business of producing, purchase, transportation for hire or transportation for sale within this State of natural gas, which is transported through pipe lines or any part of a pipe line, the right of way for which is granted or secured under the provisions of this Act or through exercise of the right of eminent domain; or

(f) Made a common carrier by or under the terms of contract with or in pursuance of the law of the United States, is hereby declared to be a common carrier and subject to the provisions hereof.

§ 2. It is declared that the operation of these pipe lines to which this Act applies, for the transportation of crude petroleum or gas, in connection with the purchase or purchase and sale of such crude petroleum or gas, is a business in mode of the conduct of which the public is interested, and as such is subject to regulation by law; and accordingly it is provided that from and after the expiration of thirty (30) days from the time this law takes effect the business of purchasing, or of purchasing and selling crude petroleum or gas, using in connection with such business a pipe line of the class subject to this Act to transport the crude petroleum or gas so bought or sold, shall not be conducted, unless such pipe line so used in connection with such business be a common carrier within the purview of this law and subject to the jurisdiction herein conferred upon the Board of Railroad Commissioners of North Dakota. It shall be the duty of the Attorney General to enforce these provisions by injunction or other adequate remedy.

§ 3. The right to lay, maintain, and operate pipe lines, together with telegraph and telephone lines incidental to and designed for use only in connection with the operation of such lines along, across, or under any public stream or highway in this State, is hereby conferred upon all persons, firms, limited partnerships, joint stock associations, or corporations, coming within any of the definitions of common carrier pipe lines as hereinbefore made. Any person, firm, limited partnership, joint stock association, or corporation, may acquire the right to construct pipe lines and such incidental telephone and telegraph lines along, across, or over any public road or highway in this State, by filing with the Board of Railroad Commissioners of North Dakota, an acceptance of the provisions of this law, expressly agreeing in writing that, in consideration of the rights so

acquired, it shall be and become a common carrier pipe line, subject to the duties and obligations conferred or imposed in this Act. This right to run along, across or over any public road or highway, as before provided for, can only be exercised upon condition that the traffic thereon shall be not interfered with, and that such road or highway be promptly restored to its former condition of usefulness, and the restoration thereof be subject also to the supervision of the County Commissioners of the county in which said highway is situated. And, provided, that in the exercise of the privileges herein conferred, such pipe lines shall compensate the county for any damage done to such public road, in the laying of pipe lines, telegraph or telephone lines, along or across the same; and nothing herein shall be construed to grant any pipe line company the right to use any public street or alley in any incorporated city or town, except by express permission from the city or governing authority thereof. Provided further, that such pipe line company, in the acceptance of the common carrier provisions of this Act, shall expressly agree that it will without discrimination accept, carry, or purchase, the oil or gas of the State or of any citizen or company not the owner of any pipe line, operating a lease or purchasing oil or gas; at prices and under regulations to be prescribed by the Board of Railroad Commissioners of North Dakota.

Every person, firm, corporation, limited partnership, joint stock associations, or association of any kind mentioned in this Act, which shall have filed with the Board of Railroad Commissioners of North Dakota, its acceptance of the provisions of this Act, is hereby granted the right and power of eminent domain in the exercise of which he, it, or they, may enter upon and condemn the land, rights of way, easements and property of any person or corporation necessary for the construction, maintenance, or authorization of his, its, or their common carrier pipe line, the manner and method of such condemnation and the assessment and payment of the damages therefor to be the same as is provided by law in the case of railroads. The right of eminent domain and the right to use public lands, highways, or roads for right of way for pipe lines shall be acquired only by compliance with the provisions of this Act, and all Acts and parts of Acts in conflict herewith shall be construed in connection with and be made subject to the provisions hereof.

§ 4. The Board of Railroad Commissioners of North Dakota shall have the power to establish and enforce rates or charges and regulations for gathering, transporting, leading, and delivering crude petroleum or gas by such common carrier in this state, and for the use of storage facilities necessarily incident to such transportation and to prescribe and enforce rules and regulations for the government and control of such common carriers in respect to their pipe lines and receiving, transferring, and loading facilities, and it shall be its duty to exercise such power upon petition by any person show-

ing substantial interest in the subject. No order establishing or prescribing rates, rules, and regulations shall be made except after hearing and at least ten days and not more than thirty days notice to the person, firm, corporation, partnership, joint stock association, or association owning or controlling and operating the pipe line or pipe lines affected. In the event any rate shall be filed by any pipe line and complaint against same or petition to reduce same shall be filed by any shipper, and such complaint be sustained, in whole or in part, all shippers who shall have paid the rates so filed by the pipe line shall have the right to reparation or reimbursement of all excess in transportation charges so paid over and above the proper rate as finally determined on all shipments made after the date of the filing of such complaint.

§ 5. Every common carrier as above defined shall exchange crude petroleum tonnage or gas with each like common carrier and the Board of Railroad Commissioners of North Dakota shall have the power to require such connections and facilities for the interchange of such tonnage or gas to be made at every locality, reached by both pipe lines whenever the necessity therefor exists and subject to such rates and regulations as may be made by the Board of Railroad Commissioners of North Dakota; and any such common carrier under like rules and regulations shall be required to install and maintain facilities for the receipt and delivery of crude petroleum or gas of patrons at all points on such pipe line. No carrier shall be required to receive or transport any crude petroleum or gas except such as may be marketable under rules and regulations to be prescribed by the Board of Railroad Commissioners of North Dakota, which they are hereby empowered and required to prescribe. The Board of Railroad Commissioners of North Dakota is also empowered and required to make rules for the ascertainment of the amount of water and other foreign matter in oil or gas tendered for transportation, and for deduction therefor and for the amount of deduction to be made for temperature, leakage, and evaporation. It is provided, however, that the recital herein of particular powers on the part of said Board of Railroad Commissioners of North Dakota shall not be construed to limit the general powers conferred by this Act. Until set aside or vacated by some decree or order of a court of competent jurisdiction, all orders of the Board of Railroad Commissioners of North Dakota as to any matter within its jurisdiction shall be accepted as prima facie evidence of their validity.

§ 6. Such common carriers of crude petroleum or gas shall make and publish their tariffs under such rules and regulations as may be prescribed by said Board of Railroad Commissioners of North Dakota, the Board shall require them to take reports and may investigate their books and records kept in connection with such business. The Board of Railroad Commissioners of North Dakota shall require of such common carrier pipe lines monthly reports duly

verified under oath, of the total quantity of crude petroleum owned by such pipe lines and of that held by them in storage for others, as also of their unfilled storage capacity, provided no publicity shall be given by the Board of Railroad Commissioners of North Dakota to the reports as to stock of crude petroleum on hand of any particular pipe line; but the Board of Railroad Commissioners of North Dakota, in its discretion, may make public the aggregate amounts held by all the pipe lines making such reports, and of their aggregate storage capacity. The Board of Railroad Commissioners of North Dakota shall have the power and authority to hear and determine complaints, to require attendance of witnesses, and to institute suits and sue out such writs and processes as may be necessary for the enforcement of its orders. Where pipe lines within the scope of this Act are engaged in interstate transportation of oil or gas, the Board of Railroad Commissioners of the State of North Dakota are hereby granted authority to act jointly and in conjunction with the supervisory body which exercises jurisdiction and control of such pipe line or pipe lines within any other state; for the purpose of control, supervision, making joint rates for interstate transportation of oil or gas, or any other matters within the scope of this Act.

§ 7. No such common carrier in its operations as such shall discriminate between or against shippers in regard to facilities furnished or services rendered or rates charged under same or similar circumstances in the transportation of crude petroleum or gas; nor shall there be any discrimination in the transportation of crude petroleum or gas produced or purchased by itself directly or indirectly. In this connection the pipe line shall be considered as a shipper of the crude petroleum or gas produced or purchased by itself directly or indirectly and handled through its facilities. No such carrier in such operation shall directly or indirectly charge, demand, collect, or receive from any one a greater or less compensation for any service rendered than from another for a like contemporaneous service; provided this shall not limit the right of the Board of Railroad Commissioners of North Dakota to prescribe rates and regulations different from or to some places from other rates or regulations for transportation from or to other places as it may determine; nor shall any carrier be guilty of discrimination when obeying any order of the Board of Railroad Commissioners of North Dakota. When there shall be offered for transportation more crude petroleum than can be immediately transported, the same shall be equitably apportioned. Gas shall be taken pro rata on the basis of open flow production of the wells connected to the pipe line or lines and the delivery of each well shall be regulated accordingly. The Board of Railroad Commissioners of North Dakota may make and enforce general or specific regulations in this regard.

§ 8. The Board of Railroad Commissioners of North Dakota when necessary shall make and enforce rules and regulations either

general in their nature or applicable to particular oil fields for the prevention of actual waste of oil or gas or operations in the field dangerous to life or property.

§ 9. Any common carrier as herein defined who shall violate any provisions of this Act, or who shall fail to perform any duty herein imposed or any valid order of the Board of Railroad Commissioners of North Dakota, when not stayed, or suspended by order of Court, shall be subject to a penalty of not less than \$100.00 nor more than \$1,000.00 for each offense, such penalty to be recoverable at suit of the Attorney General of the State of North Dakota in the name of the State and for its use. Actual damages may also be recovered by and for the use of any person, corporation, or association of persons against whom there shall have been an unlawful discrimination as herein defined; such suit to be brought in the name of and for the use of the party aggrieved, and may be maintained in any court of proper jurisdiction having due regard to the ordinary statutes of venue. For the wilful violation of any of the provisions herein forbidding discrimination on the part of common carriers, it is hereby provided that the owners, officers, agents or employees of such carriers who may be guilty thereof shall be deemed guilty of a misdemeanor; each violation of any of such provisions shall be deemed a separate and distinct offense and upon conviction thereof the party violating same shall be fined in the sum of not less than fifty dollars nor more than one thousand dollars, and may be further punished by confinement in the county jail for not less than ten days nor more than six months.

§ 10. Subject to the provisions of this Act and the rules and regulations which may be prescribed by the Board of Railroad Commissioners of North Dakota, every such common carrier shall receive and transport crude petroleum or gas delivered to it for transportation and shall so receive and transport same and perform its other duties with respect thereto without discrimination.

§ 11. If any of the provisions of this Act shall be held unconstitutional, or for any reason shall be held void, such holding shall not have the effect to nullify the remaining parts or provisions of this Act, but the parts not so held to be void shall nevertheless remain in full force and effect.

§ 12. REPEAL.] All Acts and parts of Acts in conflict herewith are hereby repealed.

§ 13. EMERGENCY.] This Act shall be in full force and effect from and after its passage and approval.

Approved March 9, 1933.