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# WAREHOUSES

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## CHAPTER 251.

[S. B. No. 215—King.]

### PUBLIC WAREHOUSES.

An Act to Amend and Re-enact Sections 3118, 3119, 3120, 3121, and 3122 of the Compiled Laws of North Dakota for 1913, relating to Public Warehouses; Penalty.

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

§ 1. AMENDMENT.] That Section 3118 of the Compiled Laws of North Dakota for 1913 is hereby amended and re-enacted to read as follows:

§ 3118. WAREHOUSE ON RAILROAD RIGHT OF WAY. APPLICATION.] Any person, firm or corporation desirous of erecting and operating at or contiguous to any railroad station or siding a warehouse or elevator for the purchase, sale, shipment or storage of grain for the public for hire may make application in writing containing a description of that portion of the right of way of said railroad on which said person, firm or corporation, desires to erect a warehouse, or elevator, and the size and capacity of the warehouse or elevator proposed to be erected and the time for which it is desired to maintain said warehouse or elevator, to the person, firm or corporation owning, leasing or operating the railway at such station or siding for the right, privilege and easement of erecting and maintaining for the time stated in said application, and for reasonable compensation such warehouse or elevator as aforesaid, upon the right of way appertaining to such railway at such siding or station, and within and between the outside switches of the yard of such railway station or siding and upon paying or tendering money which said person, firm or corporation deems to be reasonable compensation for the right, privilege and easement aforesaid, they shall immediately upon tendering said sum of money be entitled absolutely and unconditionally to erect their warehouse or elevator on such railroad right of way, and the said person, firm or corporation owning, leasing or operating said railway at such station or siding shall immediately render them the same service they would be entitled to had the said person, firm or corporation owning, leasing or operating said railway at such station or siding, sold or leased said site to the person, firm or corporation desirous of erecting and operating said warehouse or elevator; and said person, firm or corporation desirous of erecting such elevator or warehouse shall be entitled to the right, privilege and easement and shall be entitled to erect such elevator or warehouse and

for the time therein specified and shall immediately become invested with said right, privilege and easement aforesaid.

§ 2. AMENDMENT.] That Section 3119 of the Compiled Laws of the State of North Dakota for 1913 be amended and re-enacted to read as follows:

§ 3119. COMPENSATION. NOTICE TO APPLICANT.] The application provided in section 3118 shall also state the amount the applicant deems a reasonable compensation for the right, privilege and easement he desires to acquire, and after the same is tendered and in case the sum tendered is not accepted and the parties cannot agree upon the amount to pay for such right, privilege and easement, the same shall be ascertained, assessed and determined by proceedings in the district court of the county in which the station or siding at which the right, privilege and easement sought is situated, which court is hereby given full jurisdiction in the premises and shall at all times be deemed open and in session for the purpose of this article. It shall be the duty of any person, firm or corporation to whom application is made for the right to erect and maintain an elevator or warehouse under the provisions of this article to within ten days after the receipt of said application notify said applicant in writing of the acceptance or rejection of the amount stated in said application to be reasonable compensation for the right, privilege and easement sought to be acquired, and in case said person, firm or corporation fails to notify the applicant within said ten days, said person, firm or corporation shall be deemed to have accepted said amount, but regardless of whether it is accepted or not, the applicant for said site shall be deemed to have acquired the right, privilege and easement asked for.

§ 3. AMENDMENT.] That Section 3120 of the Compiled Laws of the State of North Dakota for 1913, is hereby amended and re-enacted to read as follows:

§ 3120. PROCEDURE IN DISTRICT COURT.] Proceedings in district court shall be instituted and carried on as follows: The person, firm or corporation to whom application is made for the right to maintain and operate an elevator or warehouse aforesaid, shall present to and file with the district court a petition in writing and under oath, specifying and describing the right, privilege and easement sought and attained and the time for which the same was sought and attained, and the facts that the parties to the proceedings are unable to agree upon the amount of the compensation therefor. A copy of the application for such privilege shall be attached to said petition and thereupon it shall at once be the duty of the court, by its order in writing, to fix upon a place and a time not more than twenty days thereafter where and when the court will try, ascertain, assess and determine the amount of such compensation; a certified copy of which order at least twenty days before the time so fixed shall be served upon the party who sought and attained the right, privilege and easement, as summons are

served in civil actions of said court, and such service when made shall be ample notice to and summons for the party so served to appear and join in the proceedings and shall be ample to give the court full jurisdiction over the party against whom the proceedings are instituted and the property involved in the proceedings.

§ 4. AMENDMENT.] That Section 3121 of the Compiled Laws of North Dakota for 1913, is hereby amended and re-enacted to read as follows:

§ 3121. TRIAL. ELECTION OF GROSS SUM OR ANNUAL RENTAL.] At the time and place so fixed for ascertaining, assessing and determining the compensation aforesaid, the court shall immediately proceed to try said matter, without a jury, if the parties consent, and if they do not consent and if the time and place fixed for said hearing is at a general or special term of said court where a petit jury has been summoned, the court shall proceed to a hearing of such matter with a jury selected and sworn from the panel present at such term, in the same manner as jurors are selected in civil actions, and if the regular panel is exhausted before a jury is secured, talesmen may be summoned. In case said proceedings are made returnable at any other time than at a term where a petit jury shall have been summoned, the court shall make an order requiring the selection of twenty-four jurors from those returned by the county commissioners, which jury shall be drawn and selected in the same manner as provided by law for the drawing of jurors for general terms of the district court, and from the jurors so returned a jury shall be selected the same as in civil actions and the trial shall proceed after the manner of trials in civil actions, and the court or jury, as the case may be, shall find and assess compensation both in the form of an annual rental and in the form of a gross sum for the right, privilege and easement sought, and immediately after the finding or verdict has been made the party against whom the proceedings have been taken shall elect whether to receive the annual rental or the gross sum found, and in case such election is not made by this party, then the other party to the proceedings may make such election, and after election is made as aforesaid, judgment shall be rendered adjudging, among other things that upon payment of the gross sum found or the annual rental found, yearly in advance, as the case may be, the party in whose favor said judgment is rendered shall be entitled to a writ of execution in proper form to immediately invest such party with the right, privilege and easement aforesaid.

§ 5. AMENDMENT.] That Section 3122 of the Compiled Laws of North Dakota for 1913, is hereby amended and re-enacted to read as follows:

§ 3122. FORFEITURE. APPEAL. COSTS.] In case the annual rental is elected the same shall be paid, yearly in advance, and if not so paid after thirty days default the right, privilege and easement aforesaid shall be absolutely forfeited. Within thirty days after the entry of said judgment as hereinbefore provided,

but not later, an appeal may be taken by either party to the supreme court, but such appeal shall not stay or hinder the use or enjoyment to the fullest extent of the right, privilege and easement asked for by the petition conferred by the judgment, if the party instituting the proceedings shall make and file a bond with sureties, to be approved by the court, in an amount double the gross sum or annual rental, conditioned to pay such sum or rental and to abide and satisfy any judgment the supreme court may render in the premises. Costs and disbursements as in civil actions shall, in each court, be paid by the unsuccessful party. If the finding of the court or jury is for a less or the same amount as tendered by the applicant before the person, firm or corporation owning, leasing or operating the railway at such station or siding instituted the proceedings, then the applicant shall be deemed the successful party, but if the amount found is larger than the sum tendered, then the person, firm or corporation owning, leasing or controlling said railway at such station or siding shall be deemed to be the successful party. In the Supreme Court, if the judgment or order appealed from is reversed or modified, the appellant shall be deemed the successful party; but if the judgment or order appealed from is affirmed, the respondent shall be deemed the successful party.

§ 3118 B. PENALTY.] If the person, firm or corporation owning, leasing or operating the railway at such station or siding either directly or indirectly, by any agent, servant or attorney interferes with the construction or operation of said warehouse or elevator upon said selected site, or refuses to render the service necessary for the proper maintenance and operation of said elevator or warehouse as asked for in the application and petition aforesaid, they shall be deemed guilty of a misdemeanor.

Approved March 9, 1917.

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## WEEDS

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### CHAPTER 252.

[S. B. No. 239—Welford.]

#### COMMISSIONERS OF NOXIOUS WEEDS.

An Act to Amend and Re-enact Sections 624 and 627 of the Compiled Laws of North Dakota for the year 1913, Relating to the Commissioner of Noxious Weeds.

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

§ 1. That Section 624 of the Compiled Laws of North Dakota for the year 1913 is hereby amended and re-enacted to read as follows:

§ 624. WEED COMMISSIONERS; HOW APPOINTED.] Whenever the board of county commissioners of any county is petitioned by