

pay to the treasurer of the county within which any such sale is to be held by him, the license fee hereinbefore provided. Provided, however, that the payment of such license fee shall not be required for the selling at auction of pure bred or registered live stock, nor be required from auctioneers from any state which does not require the payment of a license fee by non-resident auctioneers.

Section 2. PENALTY.] Any person not a resident of the State of North Dakota, holding any such sale without first paying the license fee hereinbefore provided, shall be guilty of a misdemeanor, and upon conviction thereof shall be fined One Hundred (\$100.00) Dollars. Each such sale so held without the payment of such license fee, shall constitute a separate offense.

§ 3. REPEAL.] All acts or parts of acts in conflict herewith are hereby repealed.

§ 4. EMERGENCY.] An emergency is hereby declared to exist, and this act shall take effect and be in force from and after its passage and approval.

Approved February 19, 1927.

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## AUTO TRANSPORTATION

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### CHAPTER 90 (S. B. No. 246—Atkins)

#### AUTO TRANSPORTATION COMPANIES

An Act to Amend and Re-enact Article 55b of Chapter 38 of the Political Code of the State of North Dakota, Being Sections 2976v1 to 2976v16, both inclusive, of the Supplement to the 1913 Compiled Laws of North Dakota, Providing for the Supervision and Regulation of the Transportation of Persons and Property for Compensation Over Any Public Highway by Motor Propelled Vehicles; Defining Auto Transportation Companies; Providing for Supervision and Regulation Thereof by the Board of Railroad Commissioners of the State of North Dakota; Providing for the Enforcement of the Provisions of This Act and for Punishment for Violation Thereof.

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

§ 1. AMENDMENT.] That Sections 2976v1 to 2976v16, both inclusive, of the Supplement to the 1913 Compiled Laws of North Dakota, being Article 55b of Chapter 38 of the Political Code of the State of North Dakota, be and the same are hereby amended and re-enacted as follows:

§ 2976v1. DEFINITION OF TERMS.]

(a) The term "Corporation" when used in this act means a corporation, company or association, or joint stock association.

(b) The term "person" when used in this act means an individual, a firm or a co-partnership.

(c) The term "Commission" when used in this act means the Board of Railroad Commissioners of the State of North Dakota, or the director of Public Works, or such other board or body as may succeed to the powers and duties now held by the Board of Railroad Commissioners.

(d) The term "auto transportation company" when used in this act means every corporation or person, their lessees, trustees, receivers or trustees appointed by any court whatsoever, owning, controlling, operating or managing any motor propelled vehicle not usually operated on or over rails, used in the business of transporting persons, and, or property for compensation over any public highway in this state; provided, that the term "auto transportation company" as used in this act shall not include corporations or persons, their lessees, trustees, receivers or trustees appointed by any court whatsoever, insofar as they own, control, operate or manage hotel busses, taxicabs or transfer trucks, operated exclusively within the incorporated limits of any city, town or village, school busses wherever operated, motor propelled vehicles operated exclusively in transporting agricultural, horticultural or dairy or other farm products from the point of production to the market, or rural mail carriers employed by the United States Government.

(e) The term "public highway," when used in this act, means every street, road, or highway in this state, and shall include any highway, state road, county road, public street, avenue, alley, driveway, boulevard, or other place built, supported, maintained, controlled or used by the public or the state, county, district, or municipal officers for the use of the public as a highway or for the transportation of persons and, or property, or as a place of travel.

(f) The words "between fixed termini or over a regular route," when used in this act, mean the termini or route over which any Class "A" auto transportation company usually or ordinarily operates any motor propelled vehicles, even though there may be departures from the said termini or route, whether such departures be periodic or irregular. Whether or not any motor propelled vehicle is operated by any auto transportation company "between fixed termini or over a regular route" or otherwise, within the meaning of this act, shall be a question of fact, and the finding of the Commission thereon shall be final and shall not be subject to review.

(g) The word "certificate" means the certificate of public convenience and necessity authorized to be issued by the Commission, after notice and hearing, under the provisions of this act, to Class "A" auto transportation companies.

(h) The word "permit" means the permit authorized to be issued by the Commission, under the provisions of this act, to Class "B" auto transportation companies.

(i) The words "for compensation" mean for remuneration of any kind, paid or promised, either directly or indirectly.

§ 2976v2. OPERATION OF VEHICLES.] No auto transportation company, nor corporation, nor person, or its or their legal representatives, shall operate on any public highway in this state any motor propelled vehicle for the transportation of persons and, or property for compensation, except in accordance with the provisions of this act.

§ 2976v3. CLASSIFICATION OF COMPANIES.] Auto transportation companies are hereby divided into two classes for the purposes of this act, to be known as Class "A" auto transportation companies, and Class "B" auto transportation companies. Class "A" auto transportation companies shall embrace all auto transportation companies operating between fixed termini or over a regular route. Class "B" auto transportation companies shall embrace all auto transportation companies not operating between fixed termini or over a regular route.

§ 2976v4. POWER OF COMMISSION; RATES.] The "Commission" of the State of North Dakota is hereby vested with power and authority and it is hereby made its duty to supervise and regulate every auto transportation company in this state subject to the provisions of this act; to fix just, fair, reasonable, sufficient and non-discriminatory rates, fares, charges, classifications, rules and regulations of each auto transportation company; to alter rates, rules and regulations; to regulate the accounts, service, rates of speed of such auto transportation company and safety of operations of each such auto transportation company; to require the filing of annual and other reports, tariffs, schedules, or other data by such auto transportation companies; and to supervise and regulate auto transportation companies in all other matters affecting the relationship between such auto transportation companies and the traveling and shipping public. The Commission shall have power and authority, by general order or otherwise, to prescribe rules and regulations in conformity with this act, applicable to any and all such auto transportation companies; and within such limits shall have power and authority to make orders and to prescribe rules and regulations affecting auto transportation companies.

The Commission may, at any time, by its order duly entered after a hearing had upon notice to the holder of any certificate hereunder, and an opportunity to such holder to be heard, at which it shall be proved that such holder wilfully violates or refuses to

observe any of its proper orders, rules or regulations, or any provisions of this act, suspend, revoke, alter or amend any certificate issued under the provisions of this article, but the holder of such certificate shall have all the rights of rehearing, review and appeal as to such order of this Commission as is provided for in Section 2976v10 of this article.

The Commission shall have power and authority, by general order or otherwise, to prescribe rules and regulations in conformity with this act, applicable to any and all auto transportation companies. All rules and regulations in relation to schedules, service, tariffs, rates, facilities, accounts and reports shall have due regard for the difference existing between Class A and Class B auto transportation companies as herein defined, and shall be just, fair and reasonable as to said two classes of companies in their relation to each other, to the public, and to other common carriers.

In fixing the tariffs or rates to be charged for the carrying of persons and, or property, the Commission shall take into consideration, among other things, the kind and character of service to be performed, the public convenience and necessity therefor, and the effect of such tariffs and rates upon other common carriers, if any, and as far as possible avoid detrimental or unreasonable competition with existing transportation service.

No time schedule, tariff or rates shall be put into effect or be changed or altered except upon hearing duly had and an order therefor by the Commission. Notice of such hearing shall be served upon any competing auto transportation company or railroad; provided, however, that in case of an emergency or where application is made for minor or unimportant alterations of time schedules the Commission may, in its discretion, authorize the changing or alteration of time schedules without a hearing, and prior to the service of such notice, but in that event notice shall be served within a reasonable time after such action on the part of the Commission and any competing auto transportation company or railroad affected by such change may, upon application, be entitled to a hearing upon such alteration or change.

No auto transportation company shall charge or demand or collect or receive a greater or less or different compensation for the transportation of persons and, or property, or for any service in connection therewith, than the rates, fares and charges which have been duly approved therefor by an order of the Commission; nor shall any auto transportation company refund or remit in any manner or by any device, any portion of the rates, fares and charges required to be collected by the Commission's order, nor extend to any shipper or person any privilege or facilities in the transportation of persons and, or property, except such as have been provided for by an order of the Commission.

§ 2976v5. CONSENT OF COMMISSION TO OPERATION: CERTIFICATE, TERMS AND CONDITIONS.] No auto transportation company shall hereafter operate for the transportation of persons and, or property for compensation, between fixed termini or over a regular route in this state, without first having obtained from the Commission, under the provisions of this act, a certificate declaring that public convenience and necessity require such operation. Any right, privilege, permit or certificate held, owned or obtained by any auto transportation company, may be sold, assigned, leased, transferred or inherited as other property, only upon authorization by the Commission. The Commission shall have power, after notice and hearing, when the applicant requests a certificate to operate in a territory already served by a certificate holder under this act, to issue said certificate as prayed for, or for good cause shown to refuse to issue same, or to issue it for the partial exercise only of said privilege sought, and may attach to the exercise of the rights granted by said certificate such terms and conditions as, in its judgment, the public convenience and necessity may require.

§ 2976v6. PETITION ON APPLYING FOR CERTIFICATE OR PERMIT.] Any Class A auto transportation company making application for a certificate under this act shall file with the Commission a duly verified petition which shall specify the following matters:

1. The name and address of the applicant and the names and addresses of its officers, if any.
2. The public highway or highways over which, and the fixed termini between which, or the route or routes over which it intends to operate, if the same are fixed.
3. The kind of transportation, whether of persons or property, together with a full and complete description of the character of the vehicle or vehicles to be used, including the seating capacity of any vehicle to be used for passenger traffic and the tonnage capacity of the vehicle to be used in freight traffic.
4. The proposed time schedule.
5. A schedule of the tariff or rates desired to be charged for the transportation of freight or passengers.
6. A complete and detailed description of the property proposed to be devoted to the public service.
7. A detailed statement showing the assets and liabilities of such applicant.
8. And such other or additional information as the Commission may by order require.

Any class B auto transportation company making application for a permit under this act shall file with the Commission a duly verified petition which shall specify the following matters:

1. The name and address of the applicant and the names and addresses of its officers, if any.
2. The kind of transportation, whether of persons and, or property, together with a full and complete description of the character of the vehicle or vehicles to be used, including the seating capacity of any vehicle to be used for passenger traffic and the tonnage capacity of the vehicle to be used in freight traffic.
3. A schedule of the tariff or rates desired to be charged for the transportation of freight or passengers.
4. A complete and detailed description of the property proposed to be devoted to the public service.
5. A detailed statement showing the assets and liabilities of such applicant.
6. And such other or additional information as the Commission may by order require.

§ 2976v7. HEARING: FIXING TIME AND PLACE OF: SERVICE OF NOTICE OF.] Upon the filing of such petition the Commission shall fix a time and place for hearing thereon which shall not be less than ten (10) days after such filing. The Commission shall cause notice of hearing thereon to be served upon an officer or owner of any auto transportation company that, in the opinion of the Commission, might be affected by the granting of any such certificate, and upon a station agent of any railroad operating into or through any village or city located on the proposed route of the applicant, and on the State Highway Department, at least ten days before the date of the hearing, and any such railroad, auto transportation company, State Highway Department, or any other interested party may appear and offer testimony for or against the granting of such certificate. Provided, however, that permits may be issued to Class "B" carriers with or without hearing, in the discretion of the Commission.

§ 2976v8. CONSIDERATION GIVEN ON DETERMINING WHETHER CERTIFICATE SHALL BE ISSUED.] In determining whether or not a certificate should be issued, the Commission shall give reasonable consideration to the transportation service being furnished or that could be furnished by a railroad and the effect which such proposed transportation service may have upon other forms of transportation service which are essential and indispensable to the communities to be affected by such proposed transportation service or that might be affected thereby, and to the traffic already existing upon

the route proposed to be traveled and the effect that such proposed service may have upon the existing travel upon said route and the excess cost of maintaining such highway on account of the installation of such additional service, if any. The Commission shall avoid as far as possible, consistent with the public interest, the duplication of transportation service.

§ 2976V9. INSURANCE OR BOND REQUIRED.] The Commission shall, in the granting of a certificate or permit to operate any auto transportation company for transporting persons and, or property for compensation, require the owner or operator to first procure liability and property damage insurance from a company licensed to make liability insurance in the State of North Dakota or a surety bond of a company licensed to write surety bonds in the State of North Dakota, in such amounts as the Commission may fix as being adequate for the protection of the interests of the public, with due regard to the hazard and density of traffic, which insurance policy or surety bond shall guarantee the payment of any final judgment obtained against the insured for death or injury to persons or loss, or damage to property, not exceeding the amounts determined by the Commission and specified in such policy or bond, resulting from the negligence of such auto transportation company. Each policy of insurance or surety bond required, shall be filed with the Commission and kept in full force and effect, and failure to so do shall be cause for the revocation of the certificate.

§ 2976V10. COMPLAINTS; ORDERS; DECISIONS; APPEALS.] In all respects in which the Commission has power and authority under this act, applications and complaints may be made and filed with it and notices issued thereon, hearing held, opinions and decisions made and filed, petitions for rehearing filed and acted upon, and appeals from such orders and decisions may be taken by any party to the District Court of the county where such hearing was held, unless otherwise provided for in this article, in the same manner and under the same terms and conditions provided for by Sections 4609C1 to 4609C56, inclusive, Supplement to the 1913 Compiled Laws of North Dakota.

§ 2976V11. VIOLATION OF PROVISIONS.] Every officer, agent or employee of any corporation, and every other person who violates or fails to comply with, or who procures, aids or abets in the violation of any provisions of this act, or who fails to obey, observe or comply with any order, decision, rule or regulation, direction, demand or requirement or any part or provision thereof, is guilty of a misdemeanor and punishable as such.

§ 2976V12. FEES.] Every Class A auto transportation company now operating or which shall hereafter operate in this state

shall at the time of making application for a certificate and annually thereafter on or between April 1st and April 15th of each calendar year, pay a fee of not less than fifteen dollars (\$15.00) nor more than thirty dollars (\$30.00) to be fixed by the Commission in each instance.

Miscellaneous fees shall be as follows:

Application for transfer of a certificate of public convenience and necessity .....	\$5.00
Application for the mortgaging of a certificate of public convenience and necessity .....	5.00
Application for the issuance of a duplicate certificate of public convenience and necessity .....	3.00
For copies of any records of the Commission pertaining to auto transportation companies—per one hundred words or portion thereof .....	.15

All sums collected hereunder shall be turned over by the Commission to the State Treasurer, within thirty days after their receipt and be by him credited to a special fund to be used by the Commission, upon proper voucher and audit by the State Auditing Board, for the expenses of said Commission in administering the provisions of this act.

§ 2976VI3. CREATION OF AUTO TRANSPORTATION FUND.] For the purpose of carrying out the provisions of this act, there is hereby created in the State Treasury a state fund to be known as the "Auto Transportation Fund." All fees collected by the Commission as herein provided shall be paid into the State Treasury monthly and shall be credited to the said "Auto Transportation Fund."

§ 2976VI4. FEES.] Every Class B auto transportation company now operating or which shall hereafter operate in this state shall at the time of the issuance of such permit and annually thereafter on or between April 1st and April 15th of each calendar year, pay a minimum fee of \$10.00 for each motor propelled vehicle used by any such company for the transportation of persons; and, if the passenger seating capacity of such vehicle exceeds eight passengers, a further fee computed on the basis of 50 cents per passenger for such additional seating capacity shall be paid. For each motor propelled vehicle used by any such company for transporting property for hire, every such company shall pay a minimum fee of \$10.00 at the time and in the manner aforesaid; and, if the rated capacity of any vehicle exceeds three tons, an additional fee computed on the basis of \$2.00 for each additional rated ton capacity shall be paid.

§ 2976VI5. FORFEITURE OF RIGHTS.] Any auto transportation company shall forfeit all rights under a certificate issued under the provisions of this act by non-use thereof for a period of sixty days after the granting of such certificate.

§ 2976VI6. BALANCE OF STATUTE NOT TO BE AFFECTED BY UNCONSTITUTIONALITY OF ACT.] If any section, subsection, sentence, clause or phrase of this act is for any reason held to be unconstitutional, such decision shall not affect the validity of the remaining portions of this act.

§ 2. REPEAL.] All acts and parts of acts in conflict with this act are hereby repealed.

§ 3. EMERGENCY.] An emergency is hereby declared to exist and does exist, and this act shall be in force and effect from and after its passage and approval.

Approved March 7, 1927.

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## BANKS AND BANKING

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### CHAPTER 91

(H. B. No. 79—Committee on Banks and Banking)

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#### CERTIFICATES OF AUTHORITY OF BANKS

An Act to Amend and Re-enact Section 5149 of the Compiled Laws of North Dakota for 1913, Relating to the Organization of Banking Associations and Empowering the State Banking Board to Supervise and Control the Issuance of Certificates of Authority Thereto.

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

§ 1. AMENDMENT.] Section 5149 of the Compiled Laws of North Dakota for 1913 is hereby amended and re-enacted to read as follows:

§ 5149. The organization certificate shall be acknowledged before a clerk of some court of record or a notary public and shall be, together with the acknowledgment thereof, authenticated by the seal of such court or notary. The same shall thereupon be transmitted to the State Banking Board with a request for permission to present the same to the Secretary of State, with application to him for the issuance of a certificate of authority. Upon receiving such organization certificate the Board shall cause notice of the application therefor to be published in the official newspaper of the county within which such association is proposed to be established, which notice shall contain a statement of a time and place where the Board will hear such application and that any person objecting thereto may appear and show cause why such application should not be approved. At the time and place so stated the said Board shall diligently inquire whether the place where said Banking Association is proposed to be located is in need of further banking facilities and whether the proposed association is adapted to the filling of such needs, and whether the proposed incorporators are