

PUBLIC UTILITIES

CHAPTER 512

SENATE BILL NO. 2150
(Committee on Industry, Business, and Labor)
(At the request of the Public Service Commission)

JURISDICTION OVER TELEGRAPH AND TELEPHONE COMPANIES

AN ACT to amend and reenact subsection 2 of section 49-02-01, section 49-02-01.1, subsection 2 of section 49-21-01, sections 49-21-04, 49-21-09, and 49-21-10 of the North Dakota Century Code, relating to the jurisdiction of the public service commission over telegraph and telephone companies.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE
STATE OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subsection 2 of section 49-02-01 of the 1981 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

2. Telegraph, telephone, Telephone and communications utilities engaged in the transmission of messages or conversations.

SECTION 2. AMENDMENT. Section 49-02-01.1 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

49-02-01.1. Jurisdiction of commission limited as to certain utilities. Nothing in this chapter shall authorize the commission to make any order affecting rates, contracts, services rendered, adequacy, or sufficiency of facilities, or the rules or regulations of any public utility owned and operated by the state or by any city, county, township, or other political subdivision of the state or any public utility, except a telephone utility, that is not operated for profit, but all other provisions herein shall apply to such utilities. However, any telephone and telegraph utility so owned or operated shall be subject to the jurisdiction of the commission and to the provisions contained in sections 49-02-05 and 49-21-09. The rates of any nonprofit telephone company or telephone company having less than three thousand subscribers, upon a vote of the company's owners or board of directors, shall not be subject to the jurisdiction of the commission.

SECTION 3. AMENDMENT. Subsection 2 of section 49-21-01 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

2. "Physical connection" shall mean such number of trunk lines or complete wire circuits and connections as may be required to furnish reasonably adequate telephone service between different telephone companies or different telephone systems ~~or to furnish such service between different telegraph companies or different telegraph systems.~~

SECTION 4. AMENDMENT. Section 49-21-04 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

49-21-04. Schedules of rates to be filed with commission. The commission shall require each telephone company subject to the commission's rate jurisdiction, within such time as ~~it~~ the commission shall fix and in such form and detail as it may require, to file with the commission:

1. Schedules showing all rates and charges which are established and in effect at the time for any service rendered to the public by such telephone company within this state; and
2. All rules and regulations which in any manner affect the rates charged or to be charged for such service,

and such telephone company shall not make any changes thereafter in said schedules, rates, or charges other than those named in such schedule without first securing the consent of the commission.

SECTION 5. AMENDMENT. Section 49-21-09 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

49-21-09. ~~Telegraph and telephone~~ Telephone - Connections - Rates. Whenever the commission shall find, after hearing, upon notice, that a physical connection can be made reasonably between the lines of two or more telephone corporations, or ~~two or more telegraph corporations~~, by the construction and maintenance of suitable connections for the transfer of messages or conversations and that public convenience and necessity will be subserved thereby, the commission, by its order, may require that such connection be made. The commission, after hearing, may establish rates for the transfer of messages or conversations over two or more telephone lines ~~or over two or more telegraph lines~~ and may order that conversations be transmitted and messages transferred by the companies owning the same.

SECTION 6. AMENDMENT. Section 49-21-10 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

49-21-10. Transmitting messages from other telephone and telegraph companies. Every telephone corporation and telegraph corporation operating in this state shall receive, transmit, and deliver, without discrimination or delay, the conversations and messages of every other telephone and telegraph corporation with whose line a physical connection may have been made.

Approved April 13, 1983

CHAPTER 513

SENATE BILL NO. 2156
(Committee on Industry, Business, and Labor)
(At the request of the Public Service Commission)

UNREASONABLE INTERSTATE COMMERCE RATES

AN ACT to amend and reenact sections 49-02-17 and 49-02-18 of the North Dakota Century Code, relating to unreasonable rates, rules, and practices affecting interstate commerce, and to action by the public service commission to seek correction of such unreasonable rates, rules, and practices.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE STATE OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 49-02-17 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

49-02-17. Unreasonable rates, rules, and practices affecting interstate commerce. Whenever it shall come to the knowledge of the commission, either from its own investigation or by complaint made to it in any manner whatsoever, that the rates charged by any public utility including any common carrier on interstate business are unjust or unreasonable or that the rates, rules, or practices of such carrier utility:

1. Discriminate unjustly against the citizens, industries, or interests of this state;
2. Place any of the citizens, industries, or interests of this state at an unreasonable disadvantage as compared with those of other states; or
3. Are levied or, laid, or otherwise in violation of the act to regulate commerce or are in conflict with the rulings, orders, or regulations, of the interstate commerce commission of federal law, rulings, orders, or regulations,

the commission immediately shall call such facts to the attention of the officials of such common carrier operating in this state public utility and urge upon them the propriety of changing such rates, rules, or practices.

SECTION 2. AMENDMENT. Section 49-02-18 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

49-02-18. Failure of ~~carrier~~ utility to adjust rates - Action by public service commission. Whenever discriminatory, unreasonable, or unjust, rates, rules, or practices on interstate business are not changed or adjusted so as to remove or remedy the discrimination, unreasonableness, or unjustness, within a reasonable time, the commission, ~~whenever it can be done legally,~~ shall present the facts involved in such discrimination to the interstate commerce commission and appeal to it for relief take the action necessary in an appropriate proceeding to obtain relief from such rates, rules, or practices. If the commission deems it necessary, the attorney general, with such other assistance as may be provided by law, shall prosecute any charge growing out of any such discrimination.

Approved April 8, 1983

CHAPTER 514

SENATE BILL NO. 2159
(Committee on Industry, Business, and Labor)
(At the request of the Public Service Commission)

PUBLIC UTILITIES CUSTOMER DEPOSITS

AN ACT to create and enact a new section to chapter 49-04 of the North Dakota Century Code, relating to interest on customer deposits required by public utilities; and to repeal section 49-20-14 of the North Dakota Century Code, relating to meter deposits to electric power companies.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE STATE OF NORTH DAKOTA:

SECTION 1. A new section to chapter 49-04 of the North Dakota Century Code is hereby created and enacted to read as follows:

Customer deposits - Interest. A public utility may require from a customer a deposit for service in accordance with commission rules. A public utility shall pay interest on all customer deposits for service held by such utility at a rate to be determined by the commission.

SECTION 2. REPEAL. Section 49-20-14 of the North Dakota Century Code is hereby repealed.

Approved March 18, 1983

CHAPTER 515

HOUSE BILL NO. 1438
- (Representatives C. Martin, Richard, Knudson)
(Senators Leibhan, Tallackson)

UTILITY ACTION FOR UNAUTHORIZED METERING

AN ACT to provide a civil action to utilities against persons who engage in bypassing, tampering, or unauthorized metering of electricity, gas, water, or any other service.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE
STATE OF NORTH DAKOTA:

SECTION 1. Definitions. As used in this Act, unless the context or subject matter otherwise requires:

1. "Bypassing" means the act of attaching, connecting, or in any manner affixing any wire, cord, socket, motor or other instrument, device, or contrivance to the utility supply system or any part thereof in a manner as to transmit, supply, or use any utility service without passing through an authorized meter for measuring or registering the amount of utility service.
2. "Customer" means the person responsible for payment for utility services for the premises, and includes employees and agents of the customer.
3. "Tampering" means damaging, altering, adjusting, or in any manner interfering with or obstructing the action or operation of any meter provided for measuring or registering the amount of utility service passing through the meter.
4. "Unauthorized metering" means removing, moving, installing, connecting, reconnecting, or disconnecting any meter or metering device for utility service by a person other than an authorized employee or agent of a utility.
5. "Utility" means any public utility, municipally owned utility, or cooperative utility which provides electricity, gas, or water, or any combination thereof, for sale to consumers.

6. "Utility service" means the provision of electricity, gas, water, or any other service or commodity furnished by the utility for compensation.
7. "Utility supply system" includes all wires, conduits, pipes, cords, sockets, motors, meters, instruments, and all other devices used by the utility for the purpose of providing utility service.

SECTION 2. Civil action allowed.

1. A utility may bring a civil action for damages against any person who commits, authorizes, solicits, aids, abets, or attempts any of the following acts which results in loss to the utility:
 - a. Bypassing.
 - b. Tampering.
 - c. Unauthorized metering.
2. A utility may bring a civil action for damages pursuant to this section against any person who knowingly receives utility service through means of bypassing, tampering, or unauthorized metering.
3. In any civil action brought pursuant to this section, the utility is entitled, upon proof of willful or intentional bypassing, tampering, or unauthorized metering, to recover three times the amount of the actual loss caused by the bypassing, tampering, or unauthorized metering, plus all reasonable expenses and costs incurred on account of the bypassing, tampering, or unauthorized metering. Reasonable expenses and costs include expenses and costs for investigation, disconnection, reconnection, service calls, employees and equipment, expert witnesses, costs of the suit, and reasonable attorneys' fees.

SECTION 3. Disputable presumptions of bypassing, tampering, or unauthorized metering.

1. It is a disputable presumption that a tenant or occupant of premises where bypassing, tampering, or unauthorized metering occurred, caused or had knowledge of the bypassing, tampering, or unauthorized metering if the tenant or occupant had access to the part of the utility supply system on the premises where the bypassing, tampering, or unauthorized metering occurred, and if the tenant or occupant was responsible or partially responsible for payment, either directly or indirectly, to the utility or to any other person for utility service to the premises.

2. It is a disputable presumption that a utility customer at premises where bypassing, tampering, or unauthorized metering occurred, caused or had knowledge of the bypassing, tampering, or unauthorized metering if the customer controlled access to the part of the utility supply system on the premises where the bypassing, tampering, or unauthorized metering occurred.

SECTION 4. Reservation. This Act does not limit or control any other statutory rights or causes of action which may be brought by a utility.

Approved March 8, 1983

CHAPTER 516

SENATE BILL NO. 2294
(Erickson, Adams)

ABANDONED RAILWAY LINE MATERIAL REMOVAL

AN ACT to amend and reenact section 49-09-04.3 of the North Dakota Century Code, relating to removal of abandoned materials from abandoned railway lines.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE
STATE OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 49-09-04.3 of the 1981 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

49-09-04.3. Abandoned railway lines - Removal of abandoned materials - Charge by city, county, or state. Unless otherwise allowed by the commission, any railroad corporation abandoning the use of any railway line in North Dakota this state shall remove and clear all rail, ties, materials, supplies, and debris from, and shall control noxious weeds on the railway line right of way within a reasonable time. On request of a city or county in which there is an abandoned line, the commission shall require the railroad corporation, as to railway line right of way in that city or county, within a reasonable time, take the action required by this section. On request of any state agency having an interest in any property abutting an abandoned railway line right of way, the commission shall require the railroad corporation, as to that railway line right of way, within a reasonable time, to take the action required by this section. The commission may shall take all action necessary and appropriate, including the adoption of rules pursuant to under chapter 28-32, to enforce this section. If a railroad corporation fails to take action required by this section, the requesting entity may do the work on the parts of the abandoned railway line right of way under that entity's jurisdiction. A county may do the work on the parts of the abandoned railway line right of way in the county, regardless of whether those parts are inside city limits. The entity doing the work may charge the railroad corporation the reasonable expense of doing the work. If the charges remain unpaid after ninety days, the entity may certify to the county auditor the amount of the charges imposed under this section. These charges become part of the taxes levied against the land for the ensuing year and must be collected in the same manner as other real estate taxes, and placed to the credit of the jurisdiction entitled to the charges. The taxpayer's right to appeal the assessment is governed by chapter 57-23.

Approved April 8, 1983

CHAPTER 517

HOUSE BILL NO. 1397
(Representatives Brokaw, Schoenwald, Shockman)
(Senators Barth, Wogsland, Kusler)

RAILWAY RECORDS OPEN UPON LINE ABANDONMENT

AN ACT to create and enact a new section to chapter 49-09 of the North Dakota Century Code, relating to railway corporation and railroad holding company records to be open to the public service commission upon abandonment of a railway line; and to declare an emergency.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE STATE OF NORTH DAKOTA:

SECTION 1. A new section to chapter 49-09 of the North Dakota Century Code is hereby created and enacted to read as follows:

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

SECTION 2. EMERGENCY. This Act is hereby declared to be an emergency measure and shall be in effect from and after its passage and approval.

Approved March 17, 1983

CHAPTER 518

HOUSE BILL NO. 1695
(Representatives Schoenwald, Gerl, Mushik)
(Senators Walsh, Barth, Lashkowitz)

AMTRAK RAIL PASSENGER SERVICE' AGREEMENTS

AN ACT to authorize the governor or highway commissioner to make agreements with the state of Montana and relevant federal agencies for renewal of certain Amtrak rail passenger service; and to provide an appropriation.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE
STATE OF NORTH DAKOTA:

SECTION 1. Agreement to restore Amtrak service. The governor or the highway commissioner may make agreements in accordance with applicable federal law with the state of Montana and relevant federal agencies for the renewal of service on the Amtrak north coast Hiawatha route from Fargo to Spokane, Washington.

SECTION 2. APPROPRIATION. Any federal funds that become available during the biennium ending June 30, 1985, to implement the provisions of this Act are hereby appropriated. Funds appropriated pursuant to this section may not be expended without approval of the budget section of the legislative council.

Approved April 5, 1983

CHAPTER 519

SENATE BILL NO. 2153
(Committee on Transportation)
(At the request of the Public Service Commission)

CONTRACT MOTOR CARRIERS

AN ACT to amend and reenact sections 49-18-19 and 49-18-25 of the North Dakota Century Code, relating to regulation of contract motor carriers.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE
STATE OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 49-18-19 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

49-18-19. Regulation of contract motor carriers by commission --Minimum rates. The commission shall:

1. Supervise and regulate every contract motor carrier of property or passengers for the purpose of promoting safety upon the highways and the conservation of their use.
2. Supervise and regulate the accounts and methods of operation of the same.
3. Prescribe such rules and regulations as it may deem necessary in carrying out the provisions of this chapter.
4. Supervise and regulate all contract motor carriers of property or passengers in all matters affecting the relationship between such motor carriers and the traveling and shipping public.
5. Prescribe rules and regulations covering the operations of contract motor carriers in competition with common carriers of this state. Supervise and regulate any contract, including but not limited to supervision and regulation of provisions related to rates and service, entered into by a contract motor carrier of property or passengers so as to prevent unfair or unjust competition, discrimination, or preference between any contract motor carrier and any common motor carrier and between the

patrons of any contract motor carrier and the patrons of any common motor carrier.

- 6- Prescribe minimum rates, fares, and charges to be collected by such contract motor carriers, which shall not be less than the rates prescribed for common carriers for substantially the same service.

SECTION 2. AMENDMENT. Section 49-18-25 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

49-18-25. Unreasonable preference by contract motor carrier prohibited. Contract carriers to file with the commission. No contract motor carrier shall-

- 1- Give or cause any undue or unreasonable advantage or preference to those whom he serves as compared with the patrons of any common motor carrier, as that term is used in this chapter, or the patrons of any other common carrier.
- 2- Subject the patrons of any such common carriers to any undue or unreasonable discrimination or disadvantage.
- 3- By unfair competition, destroy or impair the service or business of any common motor carrier or of any other common carrier, or the integrity of the state's regulation of any such service or business.

The commission may enforce these requirements. Each such contract motor carrier shall maintain on file with the commission a statement of his its charges and of such other matters as the commission may require.

Approved March 4, 1983

CHAPTER 520

SENATE BILL NO. 2363
(Mutch, Erickson)

MOTOR VEHICLE LEASE BY COMMON CARRIERS

AN ACT to create and enact a new section to chapter 49-18 of the North Dakota Century Code, relating to motor vehicle leasing for common and contract motor carriers.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE STATE OF NORTH DAKOTA:

SECTION 1. A new section to chapter 49-18 of the North Dakota Century Code is hereby created and enacted to read as follows:

Motor vehicle leases. A common or contract motor carrier of property may transport property using a motor vehicle acquired by lease, with or without driver, from the owner of the motor vehicle. A lease of a motor vehicle need not be for any minimum duration.

Approved March 15, 1983

CHAPTER 521

HOUSE BILL NO. 1473
(E. Pomeroy, Horgan, Lloyd, Vig)

AVOIDANCE AREAS FOR ENERGY FACILITY SITING

AN ACT to amend and reenact subsection 2 of section 49-22-05.1 of the North Dakota Century Code, relating to exclusion and avoidance areas in energy conversion and transmission facility siting.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE
STATE OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subsection 2 of section 49-22-05.1 of the 1981 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

2. The commission shall develop criteria which shall be used in identifying exclusion and avoidance areas and which shall guide the site, corridor, and route suitability evaluation and designation process. Except for transmission lines in existence before July 1, 1983, areas within five hundred feet of an inhabited rural residence must be designated avoidance areas. This criterion does not apply to a water pipeline. The five hundred foot avoidance area criteria for an inhabited rural residence may be waived by the owner of the inhabited rural residence in writing. The criteria may also include an identification of impacts and policies or practices which may be considered in the evaluation and designation process.

Approved April 14, 1983