

thereof or, *in any district having two or more judges*, within one day after it is ascertained which judge is to preside at the trial or hearing thereof or at the hearing of any motion, order to show cause or argument on demurrer, may make and file with the clerk of the court in which the action is pending and serve on the opposite party an affidavit stating that, on account of prejudice or bias on the part of such judge, he has good reason to believe, and does believe that he cannot have a fair trial or hearing thereof, and thereupon such judge shall forthwith without any further act or proof secure some other judge of the same or another district to preside at the trial of such cause or hearing of motion, demurrer or order to show cause, and shall continue the cause on the calendar, until such judge can be present. In criminal actions such affidavit shall be made and filed with such clerk by the defendant or his attorney not less than two days before the expiration of the time allowed him by law to prepare for trial, and in any of such cases such presiding judge shall be incapacitated to try such cause: Provided, that in criminal cases such judge, for the purpose of securing a speedy trial, may, in his discretion, change the place of trial to another county."

Approved April 17, 1937.

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#### CHAPTER 238—H. F. No. 127

*An act to amend Mason's Minnesota Statutes of 1927, Sections 4753, 4754, 4755, 4759 and 4760, relating to the promotion of the safety of employes and travelers on railroads by requiring common carriers engaged in operating railroads in the State of Minnesota to establish and maintain a safe and sufficient clearance between structures located on and over their roadways and cars passing over their lines, and to establish and maintain a safe and sufficient clearance between their tracks and by requiring other persons and corporations to establish and maintain a safe and sufficient clearance between structures and obstructions and the roadway of such common carriers and for other purposes.*

Be it enacted by the Legislature of the State of Minnesota :

Section 1. **Law amended.**—That Mason's Minnesota Statutes, 1927, Section 4753, be, and the same is hereby, amended to read as follows:

"4753. **Clearance between structure of cars, etc.**—That the provisions of this act shall apply to *any person, corporation or anyone owning, operating or maintaining any structure or obstruction adjacent to any railway tracks and to any corporation or receiver*

thereof, or to any person or persons while engaged as common carriers in the transportation by railroad of passengers or property within this state to which the regulative powers of this state extend, except railways operated by the electric trolley system.”

**Sec. 2. Law amended.**—That Mason’s Minnesota Statutes, 1927, Section 4754 be, and the same is hereby, amended to read as follows:

“4754. **Unlawful structure.**—That on and after the passage of this act, it shall be unlawful for any common carrier, or any other person, to erect or reconstruct and thereafter maintain on any standard gauge, road on its line or on any standard gauge sidetrack used in connection therewith, for use in any traffic mentioned in Section one of this act, any warehouse, coal chute, stock pen, pole, mail crane, standpipe, hog drencher, or any permanent or fixed structure or obstruction, or in excavating allow any embankment of earth or natural rock to remain upon its line of railroad, or on any sidetrack used in connection therewith at a distance less than eight feet measured from the center line of the track, which said structure or obstruction adjoins on standard gauge roads; nor shall any overhead wires, bridges, viaduct or other obstruction passing over or above its tracks as aforesaid be erected or reconstructed at a less height than twenty-one (21) feet, measured from the top of the track rail.

*Provided, however, that any existing structure may be maintained and repaired only when the cost of such repairs in any 12 month period does not exceed 25% of the original cost of the structure. If the cost of the repairs to be made in any 12 month period exceed 25% of the original cost of the structure then, in that event, such repairs shall not be made unless the same are authorized by the Railroad and Warehouse Commission after a hearing. No such structure shall be further repaired or maintained when there has been expended a sum equal to 50% of the original cost of the structure in repairs or maintenance. In construing this Act, a platform shall be regarded as a separate structure.*

“Provided, further, that this act shall not be construed to apply to yards and terminals of depot companies or railway companies used only for passenger service. But, nevertheless, in the event of personal injury sustained by any employe of any such company in this proviso mentioned, by reason of non-compliance with the provisions of this act, such employe, or in case of his death, his personal representative, shall have all the rights, privileges and immunities enumerated in Section 9 hereof.”

**Sec. 3. Law amended.**—That Mason’s Minnesota Statutes, 1927, Section 4755, be, and the same is hereby, amended to read as follows:

"4755. **Exceptions.**—That the Railroad and Warehouse Commission may upon application made, after a thorough investigation in any particular case, permit any common carrier or any person or corporation to which this act applies to erect any overhead or side obstruction at a less distance from the track than herein provided for, and to reconstruct and maintain the same when in the judgment of said commission a compliance with the clearance prescribed herein would be unreasonable or unnecessary or the erection of such overhead or side obstruction or the reconstruction and maintenance of the same at a less distance from the track than herein provided would not create a condition unduly hazardous to the employes of such common carrier or any person or corporation."

Sec. 4. **Law amended.**—That Mason's Minnesota Statutes, 1927, Section 4759, be, and the same is hereby, amended to read as follows:

"4759. **Penalties for violations—duties of attorney general and commission.**—That any common carrier, corporation or person subject to the provisions of this act violating any of the provisions thereof, shall be liable to a penalty of five hundred dollars (\$500.00) for each and any such violation; and each day that any structure or obstruction is maintained in violation of this act, shall constitute a separate offense, such penalty to be recovered in a suit or suits to be brought in the name of the State of Minnesota by the attorney general or under his direction in any court having jurisdiction thereof in the locality where such violation shall have been committed, and it shall be the duty of the attorney general under the direction of the State Railroad and Warehouse Commission to bring such suits upon duly verified information being lodged with him by any person of such violation being committed, and it shall also be the duty of said State Railroad and Warehouse Commission to lodge with the attorney general information of any such violation as may come to its knowledge."

Sec. 5. **Law amended.**—That Mason's Minnesota Statutes, 1927, Section 4760, be, and the same is hereby, amended to read as follows:

"4760. **Duties of inspectors of bureau of labor, etc.**—That on and after the passage of this act, where any structure is at a less distance from the track than herein provided the Commission shall provide for warning signs to be placed thereon of such design and type as the Commission shall deem proper unless the Commission shall determine such a sign is unnecessary. It shall be the duty of the railroad inspectors of the bureau of labor, industries and commerce to report to the Railroad and Warehouse Commission and to the attorney general any violation of the provisions of this act of which they may obtain knowledge."

Approved April 17, 1937.