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1905

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CHAPTER 28

RAILROADS, WAREHOUSES, AND GRAIN

RAILROAD AND WAREHOUSE COMMISSION

1953. Election, etc.—The general supervision of railroads and express companies doing business as common carriers, and of public warehouses, is vested in a board of three railroad and warehouse commissioners, which shall be known as the "Railroad and Warehouse Commission." Such commissioners shall be elected at the general election, and shall hold office for four years, and until their successors qualify. ('99 c. 39 s. 1)

1954. Vacancies—Vacancies in the commission shall be filled by the governor until the next general election, when a commissioner shall be elected for the unexpired term. ('99 c. 39 s. 3)

1955. Qualifications—No person in the employ of any railroad company or grain warehouse company, or who owns stocks, bonds, or other property therein, shall be eligible as a commissioner; nor shall any such commissioner, during his continuance in office, be interested in any such stock, bonds, or other property, or in any contract for the construction, repair, or maintenance of any railroad, or accept any employment, office, or retainer under any such company, or participate in any hearing or proceeding in which he has a pecuniary interest. (387c)

1956. Oath—Bond—Salary—Before entering upon the duties of his office, each commissioner shall take, subscribe, and file with the secretary of state an oath as follows: "I do solemnly swear that I will support the constitution of the United States and the constitution of this state, and that I will faithfully discharge my duties as a member of the railroad and warehouse commission of the state of Minnesota, according to the best of my ability; and that I am not in the employ of, or holding any official relation to, any common carrier or grain warehouseman, nor am I in any manner interested in any stock, bonds, or other property of any such common carrier or warehouseman." He shall also give a bond to the state, to be approved by the governor, in the sum of twenty thousand dollars, conditioned for the faithful performance of his official duties. His salary shall be three thousand dollars per annum, payable in the same manner as that of other state officers. (387d, e, 397)

See 1905 c. 240

1957. Removal—Any such commissioner may be removed by the governor for inefficiency, neglect of duty, or malfeasance in office; but before removal he shall be furnished with a copy of the charges against him, and have an opportunity to be heard in defence. ('99 c. 39 s. 2b)

1958. Quorum—A majority of the commission shall constitute a quorum, and the act or decision of a majority shall be deemed the act or decision of the commission. No vacancy in the commission shall impair the authority of the remaining members to exercise all the powers of the commission. (387b, d, f)

1959. Secretary—Employees—Standing appropriation—The commission shall appoint a secretary, not a member, who shall also act as registrar, and who shall receive an annual salary of eighteen hundred dollars, payable in the same manner as that of state officers. He shall take, subscribe, and file an oath similar to that required of the commissioners, and a like bond, in the sum of ten thousand dollars. The commission shall have authority to employ such additional help as may be necessary to carry out the provisions of this chapter, and fix their compensation. All expenses of the commission and its employees, including all necessary expenses for transportation incurred by the commissioners or their employees, under their order, in making any investigation or performing any other duties in any places except St. Paul, shall be

allowed and paid by the state on presentation of itemized vouchers therefor approved by the chairman of the commission and the state auditor and there is hereby annually appropriated for the use and purposes of the commission twenty thousand dollars, or so much thereof as may be necessary. (397)

1960. Attorneys—The attorney general shall be ex officio attorney for the commission. He shall institute and prosecute all actions which the commission shall order brought, and shall render the commissioners all advice, counsel, and assistance necessary for the proper performance of their duties. The county attorney of any county in which an action is pending, prosecuted, or defended by the direction of the commission shall aid in the prosecution or defence thereof until final determination, when requested by the commission. When necessary, the commission may employ additional counsel to assist the attorney general. (387h)

40-353, 358, 42+21.

1961. Procedure and office—The commission shall have an official seal, may from time to time make or amend general rules or orders requisite for the order and regulation of proceedings before it, including forms of notices and service thereof, which shall conform as nearly as may be to those in use in the courts, and shall conduct its proceedings in such a manner as will best conduce to the proper dispatch of business and to the ends of justice. Every vote and official act of the commission shall be entered of record, and in its discretion, or upon request of any party interested, its proceedings shall be public. The principal office of the commission shall be in the city of St. Paul, but it may hold sessions elsewhere for the convenience of parties or the public, or to prevent delay or save expense. It may, by one or more of the commissioners, prosecute any inquiry necessary to its duties in any part of the state. (397f, g)

1962. Duties—The commission shall inquire into the management of the business of all carriers and warehousemen subject to their supervision, and shall keep itself informed as to the manner in which the same is conducted, and shall obtain from such carriers and warehousemen all information necessary for the performance of its duties. One of their number shall visit the stations on the lines of each railroad as often as practicable, giving twenty days' notice in the local newspapers of the time and place of each visit, and personally inquire into the management of such railroad business, and at least once each year shall visit every county having a railroad station, and inquire into the management of such railroad business. For this purpose all common carriers and their officers and employees are required to furnish such commissioner with reasonable and proper facilities. Each commissioner, in his official capacity, shall pass free on all railroad trains, and at all suitable times may enter and remain in the cars, offices, or depots of any railroad company; and whenever, in the judgment of the commission, any common carrier fails in any respect to comply with the law, or any repairs are necessary upon its railroad, or any reasonable addition to or change of its stations, station houses, or transfer facilities, or change in the mode of operating its road or conducting its business, will promote the security or convenience of the public, the commission, by a written order, to be served as a summons in civil actions, shall require compliance with such law, or the making of such repairs, additions, or change. In case of disobedience of said order the commission may cause an action to be commenced for the enforcement thereof. (388a)

See 1905 cc. 176, 279

39-231, 234, 39+150; 44-336, 338, 46+559; 76-469, 473, 79+510; 81-87, 90, 83+465.

1963. Proceedings before commission—How commenced—Proceedings before the commission against any such carrier or public warehouseman shall be instituted by complaint, verified as a pleading in a civil action, stating in ordinary language the facts constituting the alleged omission or offence. The parties to such proceeding shall be termed, respectively, "complainant" and "respondent." (391a)

1964. Notice to respondent—Upon filing such complaint, if there appear reasonable grounds for investigating such matter, the commission shall issue

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| | 1962 | |
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an order directed to such carrier or warehouseman, requiring him to grant the relief demanded, or show cause by answer within twenty days from the service of such notice why such relief should not be granted. Such order, together with a copy of the complaint, shall forthwith be served upon the respondent. (391b)

1965. Answer—The respondent may file and serve by mail upon the complainant, within twenty days after service of the order, an answer alleging that it has already granted the relief demanded, or setting up any matter of defence. If the answer allege the granting of the relief, the complainant shall within twenty days reply, admitting or denying such allegation. If he fails to reply, or admits the allegation, the proceeding shall be dismissed. (391b)

1966
07 - 253
07 - 305

1966. Hearing—If the matter be not adjusted to the satisfaction of the commission, it shall set a time and place of hearing, and give at least ten days' notice thereof to each party. The parties may appear either in person or by attorney. The commission shall hear evidence and otherwise investigate the matter, and shall make findings of fact upon all matters involved, and such order or recommendation in the premises as may be just. A copy of such findings and order or recommendation shall forthwith be served upon each party. No proceeding shall be dismissed on account of want of pecuniary interest in the complainant. (391b, 392a, b)

1967. Notices and orders—Service—All notices and orders in proceedings before the commission shall be signed by the secretary. Service may be made of all notices, orders, and other papers provided for in this chapter by mail upon any person or firm, or upon the president, general manager, or other proper executive officer of any corporation interested. If any party has appeared by attorney, such service shall be made upon such attorney. (391b)

1968
07 - 253

1968. Witnesses—The commission in any hearing or investigation may require the attendance of witnesses and the production of any books, papers, and records. Witnesses shall receive the same fees and mileage as in civil actions. Disobedience of any subpoena in such proceeding, or contumacy of a witness, may, upon application of the commission, be punished by any district court in the same manner as if the proceeding were pending in such court. (391b, 397)

1969
07 - 97

1969. Complaint that rate is unreasonable—Duty of commission—Upon the verified complaint of any person or of any corporation, private or municipal, that any tariff of rates, fares or charges, or any part thereof, or of any classification is unequal or unreasonable, the commission shall proceed to investigate the matters alleged in such complaint, and for the purposes of such investigation they may require the attendance of witnesses and the production of books, papers and documents. If, upon the hearing, such tariff of rates, fares, or charges, or any part thereof, or of such classification, is found to be unequal or unreasonable, the commission shall make an order stating wherein the same are so unequal or unreasonable, and shall make a tariff of rates, fares, charges and classification which shall be substituted for the tariff so complained of. The tariff so made by the commission shall be deemed prima facie reasonable in all courts and shall be in full force during the pendency of any appeal or other proceedings to review the action of the commission in establishing the same. (386e)

69-353, 371, 374, 398, 412, 413, 72+713; 80-191, 197, 83+60; 186 U. S. 257.

1970
05 - 350

1970. Investigation without complaint—The commission shall also of its own motion investigate any matter relating to the management by any such carrier or warehouseman of its business or the reasonableness of any rates, fares, charges, or classifications, whenever, in its judgment, the public interests require it, and in such case the procedure shall be, as nearly as may be, as provided upon the filing of a complaint, and the findings and order in such case shall have the same effect as those made upon complaint. (388a; '07 c. 67)

1971
05 - 280
07 - 167
07 - 396

1971. Appeals to district court—Any party to a proceeding before the commission, and affected by any order thereof not administrative, or any party

affected by the order, or the attorney general, may appeal therefrom to the district court of the county in which the complainants, or a majority of them, reside, or in case none of them reside in the state, to the district court of any county in which the carrier or warehouseman, if a corporation, has an office, agent, or place of business, at any time within thirty days after service of such order upon him as in this chapter provided, by service of written notice of appeal upon the secretary of the commission. Such secretary shall thereupon file with the clerk of such court all papers and records in the proceeding. (393d; '95 c. 107)

44-336, 46+559; 60-461, 62+826.

1972. Proceeding on appeal—Upon filing such notice with proof of service with the clerk, the matter shall be pending as a civil action in such court. The court shall try the case de novo, and render such order therein as may be just and proper, which shall stand in place of the original order. No such appeal shall stay or supersede the order appealed from, unless the court, upon hearing and notice to the adverse party, so direct. (393d; '95 c. 107)

69-353, 72+713; 80-191, 83+60.

1973. Order on dismissal in certain cases—Procedure—Whenever in any proceeding pending before it relating to or involving the reasonableness of rates, fares, charges or classifications, the commission shall decide that it has not jurisdiction for the reason that the traffic covered by such rates, fares, charges and classifications is interstate commerce, it shall make an order dismissing the proceeding, stating therein the ground of such dismissal, which order may be appealed from in like manner as other appealable orders of said commission. And if in any such proceeding one of the commissioners shall dissent from the order of dismissal, the question of its jurisdiction shall be certified to the district court of a county to which an appeal might be taken, and thereupon the commission shall notify all parties to the proceeding of such certification, stating the county and date thereof. ('03 c. 189)

1974. Filing papers—Effect—When in any such case an appeal is taken or such question certified the commission shall forthwith file with the clerk of the proper district court all papers, pleadings, evidence and orders in the proceeding, and thereupon such court shall have full jurisdiction to hear and determine the question of the jurisdiction of said commission in reference to the matter appealed from or certified. Such proceeding may be brought on for hearing by either party on ten days' notice, either at a term or in vacation, and shall be heard upon the evidence taken before the commission and such further evidence as may be offered by either party. If the order of the commission is reversed, upon filing a copy of the order of reversal with the commission it shall forthwith proceed to determine the reasonableness of such rates, fares, charges and classification on the merits. ('03 c. 189)

1975. Failure to obey order or law—Whenever any such carrier or warehouseman shall fail to obey any law of the state or any order of the commission, the commission or any party interested may, upon verified petition alleging such failure, apply to the district court of the county in which such carrier or warehouseman has a principal office, or into which a line of railroad of such carrier extends, for the enforcement of such law or order or other appropriate relief. The court, upon such notice as it may direct, shall hear such matter as in case of an appeal from an order. On such hearing the findings of fact upon which such order is based shall be prima facie evidence of the matters therein stated, and the court may grant any provisional or other relief, ordinary or extraordinary, legal or equitable, which the nature of the case may require, and may impose a fine of not more than five hundred dollars for each day's failure to obey any writ, process, or order of the court, in addition to all other penalties or forfeitures provided by law. A temporary mandatory or restraining order may be made in such proceeding, notwithstanding any undetermined issue of fact, upon such terms as to security as the court may direct. (399)

66-271, 68+1085; 76-469, 475, 79+510.

1972
07 - 167

1975
05 - 280
07 - 73
07 - 232
07 - 396

1976. Trial—The district courts shall be deemed always open for all civil proceedings under this chapter, and any such proceeding may be brought to trial in any county in the judicial district, and shall take precedence of all other matters except criminal cases. Except when there is a constitutional right to a trial by jury, not expressly waived, all such proceedings shall be tried summarily by the court. (399)

1977. Incriminating questions—In any proceeding under this chapter, or under any law relating to common carriers or public warehousemen, the court in its discretion may require a witness to answer any question, although his answer may tend to convict him of a crime, but no person so compelled to answer shall thereafter be liable to any prosecution for such crime. (389c)

1978. Costs and attorney's fees—In any proceeding in district or supreme court under the provisions of this chapter, or under any law relating to common carriers or public warehousemen, whether by appeal or otherwise, the court may order the payment of such counsel fees and disbursements as it deems just and reasonable. (393c, 399)

1979. Proceedings in name of state—All actions or proceedings instituted by the railroad and warehouse commission shall be brought in the name of the state, and shall be prosecuted by the attorney general.

1980. Appeals to supreme court—Any party to an appeal or other proceeding in district court under the provisions of this chapter may appeal from the final judgment, or from any final order therein, in the same cases and manner as in civil actions. No bond shall be required from the commission, and no such appeal shall stay the operation of such order or judgment unless the district or supreme court shall so direct, and unless the carrier appealing from a judgment or order fixing rates for transportation of persons or property shall give bond in a sum and with sureties approved by a judge of the court ordering the stay, conditioned that the appellant will refund to the person entitled thereto any amount received for such transportation above the amount finally fixed by the court. Any person paying such excessive charges shall have a claim for the excess, whether paid under protest or not, and, unless refunded within thirty days after written demand made after final judgment, may recover the same by action against such carrier, or such carrier and the sureties on such bond. The appeal may be filed in the supreme court before or during any term thereof, and shall be immediately entered on the calendar and heard upon such notice as the court may prescribe. (393c, d; '97 c. 288)

05 1981 - 350

1981. Commission to fix joint rates—If any carrier required by law to fix joint rates shall fail within reasonable time so to do, or to apportion such rate, or to fix the terms and rates upon which cars may be transferred from one road to another in through shipment of freight, or to provide proper and convenient facilities for the transfer of freight from one road to another, the commission, upon proper notice and opportunity for hearing, shall establish and apportion such rate, and make all proper rules, regulations, and orders in regard to all such matters, subject to the provisions of this chapter. (381c, d; '95 c. 91)

71-519, 74+893; 80-191, 83+60.

07 1982 - 167

09 1982 - 195

1982. Rates fixed to be published—All rates and classifications fixed by the commission, and not appealed from, shall be adopted and published by the carriers affected. If not so adopted and published, the commission shall publish the same, and such rates and classifications so fixed shall take effect ten days after publication. The schedule so fixed shall be prima facie evidence that such rates and classifications are reasonable, and no carrier shall charge or maintain a higher or lower rate or classification than that so fixed until a court of competent jurisdiction shall have otherwise ordered. (386f)

60-461, 472, 62+826; 186 U. S. 257.

1983. Terms of connection with warehouses, etc.—If the owner of any manufactory, warehouse, mill, stone quarry, or brick or lime kiln entitled to connection with any railroad, and the carrier operating such railroad, fail to

agree upon the terms for such connection, upon petition of either party, and proper notice to the adverse party, the commission shall fix such terms by proceedings as herein provided in case of complaints to it, and subject to appeal as in such cases. (7732)

1984. Reports to commission—Every carrier subject to supervision of the commission shall annually, on or before September 1, unless additional time be granted, file with the commission a report verified by such carrier, or by its president, vice-president, treasurer, comptroller, auditor, or receiver, in such form as the commission may prescribe, covering the year ending June 30 next preceding, and showing in detail the amount of capital stock issued; the amount and manners of payment therefor; the dividends paid; the surplus fund, if any; the number of stockholders; the funded and floating debts, and the interest paid or due thereon; the cost and value of all the carrier's property, franchises, and equipments; the number of employees and officers, and the salary or wages paid each class; the amounts expended for improvements, how expended, and the character of such improvements; the earnings and receipts from each branch of business and from all other sources; the operating and other expenses; the balance of profit or loss; and a complete exhibit of the financial operations of the year, with an annual balance sheet; the amount of land received as grants from the state and from the United States; the amount of such land sold and the average price received per acre; the amount unsold and its average appraised value per acre; information in regard to rates and regulations concerning fares and freights; agreements, arrangements, or contracts with express, telegraph, sleeping and dining car companies, fast freight lines, and other common carriers, with copies of such contracts, agreements, or arrangements; and such other matters as the commission may require; and the commission may prescribe a uniform system of accounts and the manner of keeping the same. Any such carrier failing to make such report shall forfeit, for each day's default, one hundred dollars, to be recovered in a civil action in the name of the state. ('97 c. 284)

07 1984
- 410

1985. Reports of commission—The commission shall report to the governor annually on or before December 1, and at other times if required by him, their doings for the preceding year, with such facts, statements, and explanations as will show the actual working of the system of railroad transportation of the state, in its bearings on the business and prosperity of the people, and such suggestions relative thereto as it shall deem proper. It shall also biennially recommend to the governor any amendment of the railroad and warehouse laws which it shall deem desirable, and, when directed by the governor, shall investigate any matter subject to its supervision, and report thereon. All such reports shall be transmitted by the governor to the legislature as soon as practicable. (396)

1986. Remedies cumulative—Attorney's fees—Nothing in this chapter shall be construed to abridge or limit the duties and liabilities of common carriers or warehousemen, or the remedies now existing at common law or by statute, and the provisions of this chapter are in addition thereto. Any common carrier or warehouseman who shall do or cause to be done any act in this chapter forbidden, or fail to do any act therein enjoined, or who shall aid or abet in any such act or neglect, shall be liable in damages to any person injured thereby; and in any action for such damages the plaintiff, if he recover, shall be allowed by the court a reasonable attorney's fee, to be taxed and allowed in addition to statutory costs. (389a, 396c)

1987. Violations of law—Penalty—Any common carrier or warehouseman who shall do, or attempt to do, any act forbidden by this chapter, or shall fail to do anything therein required of him, or shall wilfully suffer or permit any such unlawful act or omission, when no specific penalty is imposed therefor, if a natural person, shall be guilty of a gross misdemeanor, and shall be punished by a fine of not less than twenty-five hundred dollars, nor more than five thousand dollars for the first offence, and not less than five thousand dollars nor

07 1987
07 - 73
97

more than ten thousand dollars for each subsequent offence; and, if such carrier or warehouseman be a corporation, it shall forfeit to the state for the first offence not less than twenty-five hundred dollars nor more than five thousand dollars, and for each subsequent offence not less than five thousand dollars nor more than ten thousand dollars, to be recovered in a civil action. All fines and forfeitures collected under the provisions of this chapter shall be paid into the state treasury to the credit of the general revenue fund. (390)

40-353, 42+21.

1988. Construction of chapter—The provisions of this chapter shall be liberally construed with a view to the public welfare, efficient transportation facilities, and substantial justice between shippers and passengers and common carriers, and the commission shall at all times do everything within the scope of its powers to secure such ends, and to facilitate commerce and the safety, convenience, and comfort of passengers and employees.

1989. Orders prima facie evidence—In any action or proceeding brought to enforce any order of the commission, or when such order is brought in question in any of the courts of the state, it shall be prima facie evidence of the facts therein stated.

RAILROADS AND COMMON CARRIERS

101-¹⁹⁹⁰M - 145

1990. Common carriers defined—The term "carrier," as used in this chapter, shall include all common carriers engaged in the transportation of persons or property between places within this state by railroad, or partly by railroad and partly by water, when both are used under a common control, ownership, management, or arrangement for such carriage, without regard to the motive power, whether such carrier owns or operates the line or lines over which such passengers or freight are transported, or carries the same over the lines or in the cars of any other company as an express or transportation company, but shall not include street railways so far as relates to the carriage of persons or property wholly within the limits of any municipality or municipalities. (379a; '95 c. 152)

101-¹⁹⁹¹M - 132
112-NW 14

1991. Railroads, etc., defined—The term "railroad," as used in this chapter, shall include all bridges or ferries used or operated in connection with any railroad, and also all the road in use by any corporation operating a railroad, whether owned, or operated under a lease or other contract; and the term "transportation" shall include all instrumentalities of shipment or carriage. (379b)

07 ¹⁹⁹² - 276

1992. Construction of railroads—All steam railroads shall be of the standard gauge of four feet eight and one-half inches, and shall be substantially and safely constructed. ('99 c. 78)

07 ¹⁹⁹³ - 276

1993. Construction of switches—In order to guard against accidental injuries to employees and others, every railroad company shall properly adjust, fill, block, and guard all its frogs, switches, and guard rails. Any such company violating this section, in addition to its liability to any person injured or to his legal representatives, shall forfeit to the state not less than five hundred dollars nor more than two thousand dollars; and such violation shall be deemed a separate offence for each period of thirty days that the same shall continue. (2681-2683)

49-488, 52+133; 58-540, 60+669.

07 ¹⁹⁹⁴ - 396

1994. Signs at crossings—Every such company shall maintain, wherever any of its lines crosses a public road, a proper and conspicuous sign indicating such crossing. Any such company failing to comply with any requirement of this section shall forfeit to the town or municipality having charge of such road ten dollars for each day that such failure continues. (2684, 2690)

42-247, 44+7; 43-524, 46+74.

05 ¹⁹⁹⁵ - 280
07 - 396

1995. Road crossings—Every such company shall construct and maintain in good repair and free from snow or other obstruction, wherever any of its lines shall cross a public road, sufficient crossings, consisting of:

1. Sufficient grades, sixteen feet in width on each side of the center of such road, and of such slope as may be deemed necessary by the officers having charge of the public road;

2. A plank covering of the same width, securely spiked, extending the full length of the ties, the planks not more than one inch apart, the planking not more than two and one-half inches from the rails, and the surface thereof on a level with the top of the rails.

In municipalities such grades and planking shall extend the full width of the street, or of that part thereof graded or used for travel, and like planking shall be placed between all tracks which are not more than fifteen feet apart. In case of roads newly established, such crossing shall be constructed within thirty days after the service on the nearest station agent or section foreman of such company of a notice, signed by the proper officer or officers having charge of such road, that such crossing is required. (2685-2689)

43-524, 46+74; 55-223, 56+820; 67-213, 69+898; 89-139, 94+439.

1996. Farm crossings—Any such company constructing a railroad so as to leave parts of any farm on different sides of such road shall construct a proper farm crossing at some place convenient for such farm. (2696)

39-8, 38+627; 42-75, 78, 43+785; 76-506, 79+516; 79-398, 82+670; 80-24, 82+1085; 104+960.

1997. Fences and cattle guards—Every such company shall build and maintain, on each side of all lines of road owned or operated by it, good and substantial fences, except at station and depot grounds and other places which the necessary business of the road or public convenience requires to be open, and except in the platted part of any municipality. It shall also build and maintain such fences in such parts of any municipality as may be directed by the governing body thereof upon notice as in case of road crossings. It shall also build and maintain good and sufficient cattle guards at all road crossings and other openings. (2692)

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05 - 280
07 - 333
07 - 396

1. In general—A constitutional exercise of police power (11-515, 392; 35-503, 29+202; 149 U. S. 364). A police regulation; not a regulation of partition fences (26-268, 3+353; 37-103, 33+316; 68-216, 71+20). Object of statute (104+228; 68-216, 71+20). No such duty at common law (15-350, 283; 25-328; 104+228). Enforced strictly (104+234). Applicable to all railroads (26-268, 3+353; 46-250, 48+915). Statutory wire fence sufficient (32-88, 19+392; 104+827). Duty to maintain and repair (30-18, 13+921; 30-489, 16+271; 34-281, 25+595; 47-429, 50+474). Unnecessary under present law for county board to act (25-328). Fencing necessary though cattle guards impracticable (52-276, 53+1129). Meaning of "on each side" (63-37, 65+125). Duty of parallel railroads (84-397, 87+1117). Duty absolute and imperative (84-397, 87+1117; 80-508, 83+454). Duty to keep gates closed (93-428, 101+795. See § 2002).

2. Within municipal limits—Prior to the revision there was no exception as to municipal limits (33-136, 22+179; 44-275, 46+363; 72-47, 74+898, 80+628; 80-508, 83+454).

3. Implied exceptions—Streets—Depot grounds—There is no duty where there is no right—where a fence would obstruct public streets, highways or grounds (33-136, 22+179; 42-34, 43+652; 84-397, 87+1117). Exception as to station and depot grounds (33-136, 22+179; 36-518, 32+783; 37-103, 33+316; 37-52, 33+314; 39-485, 40+613; 41-101, 42+924; 42-480, 44+530). Exception does not necessarily extend to full length of "yards" (80-508, 83+454). Repair shops and yards held within statute (104+234). Possibly switching yards are excepted (80-508, 83+454; 84-397, 87+1117). Public necessity or convenience the limit of the exception (33-136, 22+179; 36-518, 32+783; 39-485, 40+613; 84-397, 87+1117). Burden on railroad to prove facts giving rise to exception (41-101, 42+924; 72-47, 74+898, 80+628; 80-508, 83+454; 84-397, 87+1117). Mere inconvenience to the company does not create an exception (33-136, 22+179). Fences must be built to prevent passing through depot grounds to track beyond (36-518, 32+783).

4. Cattle guards—Where necessary (40-91, 41+458). When impracticable duty to fence unaffected (52-276, 53+1129). Unnecessary to keep free from snow and ice (34-57, 24+558; 42-158, 43+905). Duty to keep in repair (36-296, 30+892).

1998. Liability for failure to fence, etc.—Any such company failing to comply with the requirements of § 1997 shall be liable for all damages resulting therefrom, and for all domestic animals killed or injured by its negligence; and, if it shall fail to pay the actual damages occasioned by such killing or injury within thirty days after such damage occurs, then, in case of recovery therefor by action brought after such thirty days, if in district court the plaintiff shall recover double costs, and if in justice court ten dollars costs. Such

company, before the commencement of action, may make tender for such injury, and if the amount recovered, exclusive of interest, shall not exceed the tender, the plaintiff shall recover no costs nor disbursements. (2693-2695)

1. General liability—The general liability is distinct from the special liability for loss or injury of domestic animals (104+228). Liable to abutting landowner for depreciation of property or rental value from failure to fence (35-503, 29+292; 38-215, 36+340; 41-131, 42+788; 46-250, 48+915; 149 U. S. 364). Liable for death or injury of child straying on unfenced road (68-216, 71+20; 80-508, 83+454; 84-397, 87+1117. See 104+827). Whether a child would have been turned by a legal fence is a question of fact. Failure to fence prima facie, but not conclusive, evidence of negligence (104+827).

2. Liability for animals killed or injured—Liable only where injury is the natural and proximate consequence of the neglect to fence (30-74, 14+360; 104+228. See 32-88, 19+392; 60-134, 61+1130). Liability extends only to animals killed on right of way. Object of statute. G. S. 1894 § 2695 not applicable (104+228). Not liable for injuries by animals passing over unfenced tracks and trespassing on adjoining lands (25-328). Contributory negligence a defence (24-394; 27-111, 6+448; 29-425, 13+673). Liability extends to all domestic animals including estrays. Merely permitting animals to run at large unlawfully does not in itself constitute contributory negligence (31-91, 16+537; 26-268, 3+353; 29-425, 13+673; 55-192, 56+752; 57-26, 58+822. See 42-480, 44+530). No defence that animals were trespassing on land from which they passed to tracks (26-268, 3+353). Acts constituting contributory negligence (29-425, 13+673). Contributory negligence held a question for the jury (27-360, 7+366; 57-26, 58+822; 53-122, 54+1061; 55-192, 56+752). Animals accidentally escaping from owner (52-276, 53+1129; 53-122, 54+1061). Duty in operating trains where land is not fenced (27-360, 7+366; 104+827). Injury resulting from failure to repair (30-18, 13+921; 30-489, 16+271; 34-281, 25+595). Liability extends to all animals that would be turned by a legal fence. Whether sheep and hogs would be turned depends on their size—ordinarily a question for the jury (32-88, 19+392; 34-216, 25+347). Burden of proving plaintiff's contributory negligence on railroad (24-394; 41-101, 42+924). Condition of road where animals enter controls; not condition where they are killed or injured (41-101, 42+924).

3. Double costs—Constitutional (29-425, 13+673; 34-216, 25+347). Allowable on appeal from justice court (34-216, 25+347). Not allowable when action begins within thirty days (37-52, 33+314). Not applicable to supreme court (72-47, 74+898, 80+628). Cited (27-111, 6+448; 31-91, 16+537; 104+228).

1999. Fences—Crossings—Cattle guards—Any such company operating a line of railroad in this state, which has failed or neglected to fence said road and to erect crossings and cattle guards, shall be liable for all damages sustained by any person in consequence of such failure or neglect: Provided, that the measure of damages for failure to construct or maintain such fence shall be as follows: The owner of any land abutting on the line of railway of such company may serve notice on any of its station agents between April 1 and October 1 of any year, requiring the construction of a fence on the line between his land and its right of way. If such company shall not construct the same within forty days after service of such notice, the landowner may recover of the company an amount not exceeding twice the cost of such construction, with costs and reasonable attorney's fee, to be allowed by the court, or he may construct such fence after the expiration of such time, and receive from the company double the cost of construction, with like costs and attorney's fee. Such fence shall be kept in repair by such company in like manner and under like penalties as if built by such company. But failure to serve such notice shall not relieve such company from liability for damages for injuries to persons or domestic animals or other property, resulting from failure to fence its road. ('97 c. 346)

80-508, 83+454; 104+228.

2000. Fences between railroad and public road—If any such company shall fail to fence its line where the same adjoins a public road or street, or lies so near thereto as to render travel thereon dangerous, the governing body of the town or municipality having charge of such road or street, by notice as in case of abutting landowner, may require such fence to be built; and, in case of failure to build such fence for the time provided in § 1999, such town or municipality shall have the rights and remedies given by said section to such abutting owner. (2699)

2001. Farm crossings and drains—Persons owning lands abutting upon a railroad may construct, at their own expense, crossings under, over, or across

such railroad, and drains under and across the same, at such places and in such manner as not to obstruct or impair the use of such railroad, which crossings and drains shall be maintained and kept in repair by the company. Before constructing the same, the owner of the land shall serve on the nearest station agent of the company a notice, stating in detail the work which he desires to perform, and the company may construct such work; but the same shall not be opened for the use of the landowner until he pays the reasonable cost of construction. (2697)

38-491, 38+487.

2002. Gates at farm crossings—Any such company which shall erect at a farm crossing a gate for the exclusive use of the owner and occupants of such farm, provide a lock for the same, and deliver the key thereof to such owner or occupant, shall not be liable to such owner or occupant for any animal killed or injured by reason of such gate being left open without fault of such company, unless such killing or injury results from the wanton or malicious act of such company or its employees. (6889)

40-91, 41+458; 53-122, 54+1061; 79-398, 82+670; 80-24, 82+1085; 93-428, 101+795.

2003. Platforms for freight—Every such company shall provide at all stations in villages containing two hundred and fifty inhabitants or more, and at other stations and sidings when required by the commission, immediately alongside of its tracks or side tracks, platforms with approaches at each end, suitable and convenient for loading upon and unloading from its cars heavy machinery and other freight. Such platforms shall be at least twelve feet wide, strongly built, and floored with plank at least three inches thick. The platforms, exclusive of approaches, shall be at least thirty-two feet long, and of the height of the floor of an ordinary box car, and the approaches of such grade that heavily loaded teams can be driven up and down the same. Any such company failing to comply with the provisions of this section shall forfeit to the state not less than five hundred dollars nor more than one thousand dollars for every thirty days that such failure shall continue. (2708, 2709)

2003
104-M - 5

2004. Platforms for loading—Whenever required by the commission, every railroad company shall construct and maintain at each station and siding a suitable platform for the purpose of loading grain, live stock and other commodities into its cars for shipment. The commission may require the enlargement of any platform so constructed or the construction of additional platforms at any such station or siding, whenever it deems it necessary for said purpose. Every such company which shall fail to construct any such platform within sixty days after the service on it of the order of the commission requiring such construction, shall forfeit to the state twenty-five dollars for each day thereafter that such platform remains unconstructed. ('99 c. 222)

2005. Combined railroad and toll bridges—Any such company may construct and maintain at its own expense any of its bridges and the approaches thereto, so as to answer for ordinary travel, and, unless within one mile from a toll bridge previously built by an incorporated bridge company over the same stream, may charge and collect for its use reasonable toll, subject to the approval of the proper county board. Such tolls shall be uniform, and the rates thereof shall be conspicuously posted on or near the toll house. Such company may contract with any person or corporation for the payment of a fixed sum, yearly or otherwise, in lieu of such toll. (2691)

2006. Side tracks to elevators, mills, etc.—Every such company, upon written demand of the owner of any grain warehouse or mill of not less than five thousand bushels capacity, adjacent to the right of way of such company, and at or near any regular station thereof, shall construct, maintain, and operate at its own expense proper side tracks connecting such warehouse or mill with the tracks of such railroad, and afford the owner thereof proper and reasonable facilities for shipment therefrom. Should additional right of way be required for such side track, the cost and expense of procuring it shall be paid by the owner of said mill or warehouse. Such company shall also construct,

maintain, and operate side tracks connecting with its road any grain warehouse, mill, quarry, brick or lime kiln, or manufactory adjacent thereto, on such terms as may be agreed upon with the owner or fixed by the commission, on application of either party. (7730)

2007
05 - 350
07 - 97
07 - 232

2007. Charges to be reasonable—All charges made by any such carrier for the transportation of passengers or property, whether over one or more railroads, or in connection therewith, or for the receiving, delivering, storage, or handling of such property, shall be equal and reasonable; and every unequal or unreasonable charge for such service is prohibited. One car load of freight of any kind or class shall be transported at as low a rate per ton, and per ton per mile, as any greater number of car loads of the same kind and class from and to the same points of origination or destination. (380a, 381c; '95 c. 91) 60-461, 62+826. See 1905 c. 176

2008. Common-law liability not to be limited—The liability of common carriers at common law with reference to property in their custody shall not be limited by contract or otherwise, except as stated in their published classification schedules. Such liability must include absolute responsibility for the acts of their agents in reference to such property. (381g) 65-168, 68+4.

2009
07 - 449

2009. Preferences forbidden—It shall be unlawful for any common carrier to make or give any unequal or unreasonable preference or advantage to any particular person, company, firm, corporation or locality, or any particular description of traffic in any respect whatsoever; or to subject any particular person, company, firm, corporation or locality or any particular description of traffic, to any unequal or unreasonable prejudice in any respect whatsoever. (380b, 383) See 1905 c. 177 50-371, 52+962; 55-8, 56+248; 79-188, 199, 81+835.

2010
05 - 176

2010. Certain preferences allowed—Nothing in this chapter shall prevent the carriage, storage, or handling of property free, or at reduced rates, for the United States, the state, or for any municipal corporation thereof, or for charitable purposes, or for exhibition at fairs or expositions, or of stock for breeding purposes; or the issuance of mileage, excursion or commutation passenger tickets at rates equal for all; or giving such reduced rates to ministers of religion, sisters of charity, missionaries, students of any educational, or inmates of any charitable, institution; nor the free transportation of passengers when allowed by law. (379a)

2010
09 - 493

2011. Pooling forbidden—No such carrier shall enter into any agreement or combination with any other carrier for the division or pooling of the business of different and competing carriers, or to divide the aggregate or net proceeds of the earnings of such carriers, or any part thereof, and any such agreement or combination shall be deemed a separate offence for each day of its continuance. (382)

2012
07 - 232
07 - 377

2012. Public schedule of rates—Every such company shall keep at every station or depot of its road, convenient for and open to public inspection, schedules printed in large type, showing all classifications, rates, fares, and charges for transportation of freight and passengers in force at the time upon its road. Such schedules shall plainly state the places between which persons and property will be carried, shall show the classification of freight, a distance tariff, a table of distances between stations, and shall state separately the terminal charges, and any rules or regulations in any way affecting the aggregate of such rates, fares, and charges. Every such schedule shall contain a rate for the transportation of sugar beets to any beet-sugar manufactory which shall be the same for all distances not exceeding one hundred and twenty-five miles. And every such company shall keep posted in a conspicuous place, at every such station, accessible to shippers, notice that such schedules are so kept thereat. (386a; '97 c. 265) See 1905 c. 176

2012-2020
09 - 136

2013
07 - 232

2013. Change in schedule—No change in the classification shall be made, and no change shall be made in the rates, fares, and charges, which have been

established and published as aforesaid, by any common carrier, in compliance with § 2012, except after ten days' public notice, which shall plainly state the changes proposed to be made in the schedules then in force, and the time when the changed schedules will go into effect; and the proposed changes shall be shown by printing new schedules, or shall be plainly indicated upon the schedules in force at the time and kept for public inspection. And no change shall be made in any schedule of rates or schedule of joint rates which has been in effect for sixty days, so as to raise the rates for transportation of grain, lumber, coal, or live stock, either by change of rates or of classification, except upon the written order of the commission allowing such change, made upon hearing and such notice to shippers as the commission shall direct. Any company violating any provision of this section shall forfeit to the state one hundred dollars for each day such violation shall continue. (386b; '99 c. 100)

See 1905 c. 176

2014. Schedules to be filed—Every railroad company shall file with the commission copies of such schedules, and shall promptly notify the commission of all proposed changes therein. Every such company shall also file with the commission copies of all its traffic agreements or arrangements with other carriers. Copies of all joint schedules of rates, fares, or classifications shall also be filed with the commission and be made public in the same manner as hereinbefore provided for the publication of tariffs. (386d)

2015. Unlawful charges—No such carrier shall charge, demand, collect, or receive for any service a greater or less sum than that fixed in its published schedules. (386c)

07 2015
- 232
09 2015
- 195

2016. Switching charges—There shall be but one terminal charge for switching or transferring any car within any one municipality. If it is necessary that any car in such transfer pass over the tracks of more than one railroad within such limits, the company first so transferring such car shall receive the entire charge therefor, and shall be liable to each company doing subsequent switching thereof for its just share of such charge, subject to the rules adopted by the commission. Any disagreement as to such division shall be finally determined by the commission. (385c)

2017. Long and short haul—No carrier shall charge or receive any greater compensation for the transportation of passengers or of like kind or class and quantity of property, for a shorter than for a longer distance over the same line, the shorter being included within the longer distance; but this shall not be so construed as to authorize any carrier to charge or receive as great compensation for a shorter as for a longer distance; but upon application to the commission such carrier, in special cases, after investigation by the commission may be authorized to charge less for longer than for shorter distances, for the transportation of passengers or property; and the commission may from time to time prescribe the extent to which such designated carriers may be relieved from the operation of this section. No carrier shall charge or receive any greater compensation per ton per mile for the contemporaneous transportation of the same class of freight for a longer than for a shorter distance over the same line in the same general direction, or from the same original point of departure, or to the same point of arrival; but this shall not be construed so as to authorize any carrier to charge as high a rate per ton per mile for a longer as for a shorter distance. (384, 385)

05 2017
07 - 350
- 232

2018. Joint rates—Upon the demand of any person interested, any railroad companies shall establish reasonable joint through rates between points on their respective lines within this state. No such company shall be required to send its cars over the line of another company when its own lines or connections reach the point to be reached on such other road, but the charge for transportation between any two points shall not exceed the established through joint rate between such points. (381b, 381f)

05 2018
- 350

2019. Transfer facilities—All such railroad companies, at all points of connection, intersection, or crossing at grade of different railroads, where it is practicable, shall provide reasonable, ample, and equal facilities, by track con-

07 2019
- 27

nection, passenger platforms, and otherwise, for transferring cars, passengers, and property between their respective roads without unreasonable delay. They shall not discriminate in their rates or charges between such connecting lines or on freight coming over them; but no such company shall be required to furnish to another railroad company its tracks, equipment, or terminal facilities without reasonable compensation. (381a; '95 c. 91)

71-519, 74+893; 88-448, 93+112; 40-353, 42+21; 179 U. S. 287. See 92-374, 378, 100+95.

2020. Adjustment of costs of transfer—Each such company shall pay its proportionate share for the building and maintenance of tracks and switches necessary for such transfer facilities. If such companies cannot agree upon such proportion, either company may apply to the commission to determine the same. (381a; '95 c. 91)

2021. Transfer of car-load shipments—Freight in car-load lots shall be transferred without unloading from the cars containing the same, unless such unloading and reloading shall be done without charge to the shipper or receiver, under such contract arrangements as the connecting companies may make, or under rules prescribed by the commission. (381b; '95 c. 91)

92-20, 23, 99+365.

2022. Smaller shipments—Less than car-load lots shall be transferred at cost, and the charge for such transfer shall be included in the joint rate. All railroad companies shall give the same facilities to local or state as to interstate traffic. (381b; '95 c. 91)

2023. Division of cars among applicants—Whenever any railroad company shall be unable to furnish enough cars at any station or side track to supply all persons demanding them for the shipment of freight, such cars as the company can furnish shall be divided among the applicants equally until each shipper has received at least one car, after which the balance shall be divided ratably in proportion to the amount of daily receipts of grain or other freight to each shipper, or to the total amount of grain offered at such station or side track. (385b)

2024. Empty cars kept closed—To prevent the spread of noxious weeds, every such company shall keep the doors of all empty freight cars closed during transit on any of its lines in this state. Every such company violating the provisions of this section shall forfeit to the state not less than ten dollars nor more than twenty-five dollars for each offence. ('95 c. 271)

2025. Transportation of live stock—Every such company shall furnish, at proper points designated by it, suitable cars for the transportation of live stock of all kinds, and shall transport the same at a rate not to exceed the highest rate charged by such company for any kind of stock in such car. Stock of different kinds shall be carried in the same car, at the option of the shipper, and at his expense for properly partitioning the car. Any such company failing to comply with any provision of this section shall forfeit to the party aggrieved not less than one hundred dollars nor more than five hundred dollars. (2710-2712)

85-337, 88+1001.

2026. Transportation of shippers, etc.—Every such company receiving for shipment live stock by the car load shall without additional charge transport in a caboose, or other suitable car, with the first such car load, one person to care for such stock, and one person in addition for each four additional car loads shipped at the same time. Any company failing to comply with the provisions of this section shall be liable to the shipper for all damages sustained by him by reason of such failure, and any judgment recovered for such damages shall include a reasonable attorney's fee. ('99 c. 170)

2027. Time allowed for loading produce—Every such company shall allow a shipper thirty-six hours, exclusive of Sundays, without additional charge, in which to load any car ordered for the shipment of grain or other farm produce. ('03 c. 320)

07 2023 23

07 2025 232
07 - 355

2025-2026
09 - - 467

09 2026 380

07 2027 23

2028. Depots and waiting rooms—Every such railroad company shall provide and maintain, at all villages and cities upon its lines, depots with suitable waiting rooms for passengers and rooms for the storage of freight. In places of one thousand inhabitants or more, such depots shall have separate waiting rooms for men and women, of sufficient size to accommodate all passengers stopping thereat, and not less than fifteen by eighteen feet in size and ten feet in height, properly and comfortably furnished, heated, lighted, and ventilated, and in such condition open for the reception of passengers for at least one-half hour before and after the arrival of each passenger train. (2702; '01 c. 270)

87-195, 91+465; 193 U. S. 53. See 1905 c. 208

2029. Certain depots to be kept open—When the annual business from outgoing and incoming traffic at any station amounts to eight thousand dollars or more, such company shall keep an agent at such station during the business hours of each business day; and no station shall be abandoned, nor the depot removed, nor an agent withdrawn therefrom without the written consent of the commission. The commission may by written order authorize the withdrawal of such agent at stations where the business is periodical, during such time as there is no business thereat, or the abandonment of any station where the business from outgoing and incoming traffic is less than fifteen hundred dollars for any consecutive three months. (2702; '01 c. 270; '03 c. 319)

2030. Penalty—Any company failing to comply with any of the provisions of §§ 2028, 2029 shall forfeit to the state for each such violation not less than five hundred dollars nor more than one thousand dollars; and each period of thirty days that any such failure shall continue shall be deemed to constitute a separate offence. (2703; '01 c. 270)

2031. Trains to stop at stations—All trains carrying passengers, except through and limited trains not advertised for local business, shall stop at the depot in each city and village, and at other stations at which such train is advertised to stop, a sufficient time, not less than one minute, to safely discharge and receive passengers. (2705, 2706; '01 c. 270)

57-385, 59+487 (affirmed, 166 U. S. 427); 67-18, 69+632.

2032. New road—Notice to commission—Filing map, etc.—Every railroad company, before opening any railroad, branch, or extension to public use, shall notify the commission that the same is finished and in a safe condition for operation, and within one year thereafter shall file with said commission a map and profile thereof, with table of grades, curvatures, and mileage, and a statement of other characteristics of such road in such form as the commission may prescribe, certified by its president and chief engineer. (1670)

2033. Stopping trains at crossings—Every company operating a railroad shall cause all trains on such railroad to come to a full stop not less than ten nor more than sixty rods before reaching any railroad junction or crossing at grade, unless such stoppage is rendered unnecessary by an interlocking plant or other device approved by the written order of the commission, or by the court upon appeal. Any company violating any of the provisions of this section shall forfeit not less than twenty dollars nor more than one hundred dollars, to be recovered in a civil action before any justice of the peace of the county in which such violation occurs, upon the complaint of any person, one-half to go to the complainant, and one-half to the school fund of the county. (2706)

67-18, 69+632; 85-387, 88+994.

2034. Transfer of passengers—Trains shall stop at all junctions and railroad crossings where transfer of passengers is required as at stations, and, as far as can reasonably be done, companies shall so adjust their time-tables as to facilitate such transfer. In case trains on intersecting roads are due at any such junction or crossing at practically the same time, within two minutes of each other, the train first arriving shall wait for the other train five minutes, unless it is known that such train cannot arrive within said time. Any superintendent, engineer, conductor, or other officer or employee of any railroad

company who shall violate any of the provisions of this section, or cause a violation thereof, shall be guilty of a gross misdemeanor. (2707)

09 2035 - - 382

2035. Toilet rooms in cars—Every such company shall provide, in all cars and cabooses used for carrying passengers or other persons not employees of such company, suitable toilet rooms for the use of such persons. Any such company failing to comply with the provisions of this section shall forfeit to the state one hundred dollars for each day that such default shall continue. ('99 c. 314)

2036. Fire extinguishers and tools—Every such company shall keep, at each end of each passenger and sleeping car run or operated by it, fire extinguishers of good and approved construction, in good condition for use, and in a safe and convenient position, and in each car two saws and two axes, one of each to be kept inside and one outside of the car, in convenient places for use in case of accident. Any company violating any provision of this section shall forfeit to the state not more than one thousand dollars, and any officer, agent, or employee of such company who shall be responsible for such violation shall be guilty of a gross misdemeanor, and punished by a fine of not more than one thousand dollars. (402, 403)

09 2037 - - 182

2037. Prevention of fire—Every company operating a railroad shall use upon each locomotive engine a good and efficient spark arrester, and shall keep the ground for fifty feet on each side of the center of the main track clear of combustible materials, except ties and other material necessary for the maintenance and operation of the road, from April 15 to December 1. No company shall permit any of its employees to leave a deposit of fire, live coals, or ashes in the immediate vicinity of woodland or lands liable to be overrun by fire, and every engineer, conductor, or trainman discovering fire adjacent to the track shall report the same promptly at the first telegraph station reached by him. In seasons of drought, every such company shall give its employees particular instructions for the prevention and extinguishment of fires, and shall cause warning placards furnished by the forestry commissioner to be conspicuously posted at every station in the vicinity of forests and grass lands, and, when a fire occurs near the line of its road, shall concentrate such help and adopt such measures as shall be available for its extinguishment. Any company violating any provision of this section shall forfeit to the state not more than one hundred dollars for each offence, and any railroad employee violating the same shall be guilty of a misdemeanor, and shall be punished by a fine of not less than five dollars nor more than fifty dollars. ('95 c. 196 s. 12; '03 c. 363 s. 12)

07 2038 - - 261

2038. Abandonment of road—No company operating any line of railroad, the construction whereof has been helped by public aid or local subscription, shall abandon such line, or any part thereof once opened for business, or close traffic thereon, except as provided in § 2039. Any company violating any provision of this section shall forfeit to the state not less than two hundred dollars nor more than one thousand dollars for each day such violation continues. (2755)

70-105, 112, 72+835. See 89-363, 95+297.

07 2039 - - 261

2039. Procedure for abandonment—Any such company desiring to abandon any part of its road may present to the district court of any county in which such part, or any considerable portion thereof, is located, a petition setting forth the reason for such abandonment and other matters pertinent thereto. The court shall thereupon issue an order requiring all persons interested in the maintenance of such part of said road to show cause on the first day of a general term of such court why the part of such line described in the order should not be abandoned. Four weeks' published notice of such order shall be given in each county in which any part of the line described therein is located, and the publication shall be completed, and the petition and order, with proof of publication, filed with the clerk, at least twenty days before the return day. At any time before the return day any taxpayer owning or occupying land adjacent to the road may file with the clerk a protest against

such abandonment. The petition and protest shall constitute the pleadings, and the propriety of abandonment shall be tried by a jury as a question of fact as in a civil action, and a decree entered granting or denying the petition. (2755, 2756)

2040. Action against company—Whenever any such railway company has abandoned, taken up, or ceased to operate its lines for sixty consecutive days without having complied with the requirements of § 2039, any town, municipality or individual which has issued bonds or given promissory notes or other thing of value to such railway company may recover the same, or the cash value thereof, by action against said company in the district court of any county where such road has been abandoned, and the county attorney may commence proceedings in the name of the state for the penalty heretofore provided, and to compel the restoration of the track so abandoned, and the re-opening for business of the stations closed. The foregoing provisions shall not apply to forest or ore roads constructed exclusively for logging or mining purposes. (2757, 2758)

07 2040 - 261

2041. Fire caused by engine—Negligence—In all actions for damage caused by fire scattered or thrown from railroad cars or engines, the fact that such fire was so scattered and thrown shall be prima facie evidence of negligence on the part of the railroad company operating such cars or engines. (2700)

09 2041 - 378

The statute merely makes the fact of the fire being scattered or thrown from railroad cars and engines prima facie evidence of negligence. The existence of such negligence is still the issue to be presented by the complaint and tried by the jury. The statute simply relieves plaintiff of the initiative in proof of negligence. It does not relieve him of any proof save that of negligence. The presumption of negligence does not arise and defendant need not introduce evidence to rebut it until plaintiff has made out a case for the jury on the issue of the cause of the fire (35-361, 29+6; 65-112, 67+794; 29-12, 11+122; 32-526, 21+732; 63-66, 65+93; 22 Fed. 811). Plaintiff's case must rest upon something more than mere speculation or conjecture (83-370, 86+451). Evidence to rebut presumption must be as broad as the presumption and must satisfactorily rebut every negligent act or omission which might, under the circumstances of the case, reasonably or naturally have caused the fire (29-12, 11+122; 35-170, 28+215; 43-334, 45+608; 45-481, 48+22). Presumption is overcome by satisfactory proof that the engine was properly constructed and managed and in suitable repair (43-319, 45+611. See 40-60, 41+301; 63-233, 65+443). Whether presumption is overcome is ordinarily a question for the jury (29-12, 11+122; 32-526, 21+732; 35-170, 28+215). Presumption held not overcome (29-12, 11+122; 29-58, 11+146; 31-57, 16+488; 32-526, 21+732; 33-359, 23+536; 35-170, 28+215; 36-452, 32+176; 40-60, 41+301; 39-413, 40+270; 43-334, 45+608; 43-427, 45+719; 43-519, 45+1132; 45-17, 47+260; 45-481, 48+22; 46-269, 48+1117; 58-104, 59+978; 62-207, 64+392; 62-243, 64+562; 63-233, 65+443. See, prior to statute, 21-60). Presumption held overcome (43-319, 45+611). No presumption that right of way was in unsafe condition (36-522, 32+751).

2042. Negligence of fellow servant—Every company owning or operating, as a common carrier or otherwise, a railroad, shall be liable for all damages sustained within this state by any agent or servant thereof, without contributory negligence on his part, by reason of the negligence of any other servant thereof, and no contract, nor any rule or regulation of such company, shall impair or limit such liability. But this section shall not be so construed as to render any railroad company liable for damages sustained by any such agent or servant while engaged in the construction of a new road, or any part thereof, not open to public travel or use. (2701)

2042
110-NW - 4332042
100-M - 135
110-NW 434

1. To what servants applicable—Not applicable to all servants of railroads (40-249, 41+974). Applicable only to those who are exposed to the peculiar hazards incident to the use and operation of railroads (43-222, 45+156; 45-355, 47+1068; 93-63, 100+681; 104+1079; 136 Fed. 147). Not necessary that employment of servant injured and of servant causing injury should be of same kind (44-17, 46+149). Held applicable to sectionman run over by passing train (44-17, 46+149); to sectionman pushed off a hand-car (45-355, 47+1068); to laborer injured when boarding a construction train (48-46, 50+930); to sectionman against whom a hand-car was thrown by a passing train (53-341, 55+137); to wiper in roundhouse hit by wire cable (60-319, 62+386); to wiper in roundhouse injured by moving engine (63-137, 65+260); to one required to step from platform to top of moving freight cars (63-203, 65+269); to sectionman repairing tracks injured by falling rail (65-69, 67+804); to brakeman coupling cars (85-447, 89+68; 93-497, 101+1134, 102+1134); to brakeman boarding train (86-77, 90+122); to sectionman injured

in removing hand-car from tracks (86-152, 90+381; 57 Fed. 1037); to engineer of locomotive (93-63, 100+681); to sectionman hit by stone thrown from moving engine (93-339, 101+504); to fireman on engine (42-68, 43+783); to a car cleaner (70 Fed. 15). Held not applicable to helper of boiler-maker in railroad shop (40-249, 41+974); to one repairing railroad bridge (43-222, 45+156); to one loading railroad iron from ground to flat-car (47-9, 49+302); to one working in railroad repair shops (69-524, 72+805); to one working about a steam shovel (70-474, 73+409; 79-245, 82+576; 104+1079); to one employed in removing lumber of trestle work (80-27, 82+1086). Held question for jury whether servant was subjected to railroad hazards (74-432, 77+240; 83-385, 86+413).

2. **Who liable**—Statute applicable to a railroad company operating a line composed of the lines or tracks of several different companies (48-46, 50+930); to a private logging railroad (85-447, 89+68. See 113 Fed. 382; 136 Fed. 147); to contractors operating a railroad in repairing the road (86-77, 90+122); to private mining railroad (93-63, 100+681; 93-497, 101+1134, 102+1134. See 136 Fed. 147); to a receiver (63-137, 65+260). Not applicable to street railways (61-435, 63+1099; 65-387, 67+1006. See 48-391, 51+125).

3. **Proviso as to new roads**—42-68, 43+783; 48-46, 50+930; 93-63, 100+681.

4. **Contributory negligence**—Statute does not change rule that burden of proving contributory negligence is on defendant (48-391, 51+125).

2043. Licenses for ticket agents—Every corporation, common carrier, firm, or person operating any line of railroad, steamboat line, or steamboat, shall furnish to each of its authorized ticket agents a certificate of agency duly signed by or on behalf of such carrier, and, in case of a corporation, attested by its corporate seal. Upon presentation of such certificate and payment of a license fee of three dollars, the secretary of state shall issue to such agent a license to sell transportation tickets for such carrier. Such certificate and license shall be kept conspicuously posted in the office of such agent, and no person not so licensed shall sell any ticket or other evidence of right to passenger transportation. Any person not so licensed who shall sell, barter, or otherwise transfer any such ticket or other evidence of right to passenger transportation, or any part thereof, shall be guilty of a gross misdemeanor. (2785-2788)

57-345, 59+317.

2044. Redemption of unused tickets—Every such carrier shall redeem, upon presentation to any of its authorized ticket agents, any passenger ticket, coupon, or mileage book, unused in whole or in part, and which has not by its terms expired, and shall pay therefor a pro rata share of the price at which such ticket was sold, or, if wholly unused, the entire purchase price. Any such carrier violating the provisions of this section shall forfeit to the state not to exceed five hundred dollars. (2789, 2791)

57-345, 59+317; State v. Manford, Filed Jan. 26, 1906.

2045. Application of preceding provisions—All the provisions of this chapter regarding the construction, maintenance, and operation of railroads, and the duties and liabilities of railroad companies, shall apply to any firm or person operating a railroad, whether as owner, lessee, trustee, receiver, or otherwise, and the term "company," wherever used in this chapter, shall be construed to include any such firm or person when such construction is not inconsistent with the context.

2046. Collection of forfeitures—All forfeitures provided by this chapter shall be collected by civil action in the name of the state, and the attorney general and the county attorney of any county in which the cause of action arises shall prosecute such action.

STORAGE AND SHIPMENT OF GRAIN

TERMINAL WAREHOUSES

2047. Defined—All elevators or warehouses located at St. Paul, Minneapolis and Duluth, and other points in the state which are now, or may hereafter be designated as terminal points, in which grain is received for storage in bulk and that of different owners mixed together or so stored that identity of the different lots or parcels is not preserved, shall be public warehouses, known as terminal warehouses. (7659)

38-95, 35+718; 92-374, 378, 100+95; 180 U. S. 452.

2048. License—All public warehouses shall be annually licensed by and be under the supervision and subject to the inspection of the commission. Written application under oath shall be made to the commission for license, specifying the kind of warehouse, its location, the name of the person, firm, or corporation operating the same, and of each member of the firm or officer of the corporation. The license fee shall be two dollars. Such license may be revoked by the commission for violation of law or of any rule or regulation by it prescribed, upon notice and hearing. A license may be refused to any warehouseman whose license has been revoked within the preceding year. (7660-7662)

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2049. Storage and inspection—Warehouseman's duties—Receipts—Every such warehouseman shall receive for storage and shipment, so far as the capacity of his warehouse will permit, all grain in suitable condition for storage, tendered him in the usual course of business, without discrimination of any kind. All grain shall be inspected on receipt and stored with other grain of the same grade. The warehouseman shall give a warehouse receipt therefor in such form as shall be prescribed by the commission. Any provision in such receipt attempting to limit or modify the legal liability of the warehouseman shall be void. The manner of receipt of such grain shall be stated in the receipt, with the number and distinctive mark of each car, and the name of each barge or other vessel. The issuance of any warehouse receipt differing in form or language from that prescribed by the commission shall be a misdemeanor. (7663, 7664) See 1905 c. 302

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Receipts (78-379, 81+204, 543; 78-475, 81+526; 79-94, 81+750; 89-98, 94+218; 91-346, 98+96).

2050. Sale, etc., of stored grain forbidden—No such warehouseman shall sell or otherwise dispose of or deliver out of store any such grain without the express authority of its owner and the return of the storage receipt, except as herein provided, nor mix together grain of different grades in store, nor select grain of different qualities, but of the same grade, for storage or delivery, nor in any way tamper with grain of others while in his possession or custody, with the purpose of securing any profit to himself or any other person, or attempt to deliver grain of one grade for that of another. Any person violating any provision of this section shall be punished by a fine of not more than one thousand dollars or imprisonment in the state prison for not more than five years, or both. (7650-7652, 7663, 7672)

59-151, 60+1087; 77-128, 79+656.

2051. Delivery of grain—Upon return of the receipt to the proper warehouseman, properly indorsed, and upon payment or tender of all advances and legal charges, grain of the grade and quantity named therein shall be delivered to the holder of such receipt within twenty-four hours after facilities for receiving the same have been provided. If such warehouseman shall fail so to deliver it, he shall be liable to the owner in damages at the rate of one cent a bushel for each day's delay, unless he shall deliver the property to the several owners in the order of demand as rapidly as it can be done by ordinary diligence. If upon such demand and tender the warehouseman shall fail so to deliver such grain, the person entitled thereto may recover the same by action; and such warehouseman shall also be guilty of larceny. (7647, 7648, 7717)

27-521, 527, 8+758; 37-464, 35+268; 41-116, 42+855; 77-128, 134, 79+656.

2052. Bond—Every person applying for a license for a terminal warehouse at Minneapolis, St. Paul or Duluth shall file with the commission a bond to the state in a penal sum to be fixed by such commission, not less than ten thousand dollars nor more than fifty thousand dollars, for each such warehouse, conditioned for the faithful discharge of his duties as such warehouseman, and full compliance with all the laws of the state and rules of the commission relative thereto. If such warehouseman apply for license for more than one warehouse in the same county, but one bond need be given. (7661)

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2053. Special bins—At the request of the owner or consignee, such warehouseman may store any grain of the same grade and of the same owner or

consignee in a separate bin, which shall thereupon be marked and known as a special bin. If a warehouse receipt be issued for such grain, it shall state that it is separately stored, and give the number of the bin. The warehouseman, at the request of the owner, may clean, dry, or otherwise improve the condition or value of such lot of grain, but it shall only be delivered in such separate lot, or as the grade fixed by its inspection when received, without regard to its improvement by drying or cleaning. (7663, 7672)

2054. Inspection—All grain received at a terminal warehouse shall be inspected and graded by a state inspector, and reinspected in like manner upon delivery from such warehouse. The charges for such inspections shall be paid by the warehouseman and added to the storage, and the chief inspector may recover such charges from the warehouseman. (7663)

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2055. Rules to be prescribed by commission—The commission shall make such rules as may be necessary in regard to the receipt, care, and delivery of grain, the issuance, cancelation, division, and consolidation of warehouse receipts, and such other matters relative to the management of the business of terminal warehouses as it shall deem proper.

2056. Statements to commission—Every terminal warehouseman shall post conspicuously in his business office, on or before Tuesday morning of each week, a statement of the amount of grain of each kind and grade in store in his warehouse at the close of business on the preceding Saturday, and render a like statement, verified by him or his bookkeeper having personal knowledge of the facts, to the warehouse registrar of the commission. He shall also make a daily statement to said registrar of the amount of each kind and grade of such grain received in store in his warehouse the preceding day; the amount shipped or delivered, and the warehouse receipt canceled on such delivery, stating the number of each receipt and the amount, kind and grade of grain shipped or delivered thereon; the amount, kind and grade of grain delivered for which no warehouse receipt was issued, and how and when the same was received, the aggregate of such reported cancelations and delivery of unreceipted grain corresponding in amount, grade, and kind with the shipments and deliveries reported; and shall also at the same time report the receipts canceled upon issue of new ones, with the number of each such receipt canceled and that issued in its place. He shall also furnish the registrar any further information regarding receipts issued or canceled necessary for correct record of all such receipts, and of grain received and delivered, and shall make a further verified statement to the commission of the condition and management of any terminal warehouse under his control, at such times and in such form as the commission may require. It is hereby made the duty of the secretary of the commission to act as warehouse registrar in accordance with the spirit and intent of this chapter. (7668, 7669)

2057. Schedule of rates—Maximum charges—Every such warehouseman shall annually, during the first week in September, publish in some newspaper—daily if there be one—published in the place where his warehouse is situated, a schedule of storage rates for the ensuing year, which shall not be increased during such year, and no discrimination in rates shall be made by any such warehouseman. The charge for receiving, handling, storing, and delivering grain at such warehouse shall not exceed one and one-half cents per bushel for the first fifteen days or part thereof, one-half cent for each fifteen days or part thereof thereafter, or four cents for continuous storage from November 15 to May 15 next succeeding. (7671)

2058. Examination—Every person having an interest in any grain stored in any such warehouse, and every state grain inspector, shall have the right to examine at all times during ordinary business hours any grain so stored, and all parts of such warehouse; and every such warehouseman, his agents and servants, shall furnish proper facilities for such examination. (7673)

2059. Control and inspection of scales—All scales in such terminal warehouses, or used for weighing grain in railroad yards at terminal points, shall

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be under the control of the state weighmasters and subject to inspection by them, exempt from the jurisdiction of sealers of weights and measures. They shall be inspected at the request of any person interested in any grain weighed or to be weighed thereon. If found incorrect, the cost of inspection shall be paid by the owner thereof; otherwise by the person requesting inspection. No scales found incorrect shall be used until re-examined and found correct. (7673; '95 c. 338)

2060. Boards of grain inspection—The boards heretofore known as the boards of appeals for the inspection of grain at Minneapolis and at Duluth shall hereafter be known as the "Minneapolis Grain Inspection Board" and the "Duluth Grain Inspection Board," respectively. Each board shall consist of three members appointed by the governor, who shall have the same qualifications as grain inspectors, and not more than two of whom shall be of the same political party. Their term of office shall be for two years from August 1 succeeding their appointment, and until their successors qualify. The governor may remove any member and fill any vacancy for the unexpired term. Members of either board shall have the right to act at either Duluth or Minneapolis. ('99 c. 199 s. 1)

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2061. Bond—Before entering on the duties of his office, each member of such boards shall give bond to the state, with sureties to be approved by the governor, in the sum of five thousand dollars, conditioned for the faithful discharge of the duties of his office. No surety on any such bond shall be interested in or connected with any grain, warehouse or commission business, firm, or corporation. ('99 c. 199 s. 6)

2062. Minnesota grades—The two boards, or a majority of the six members thereof, shall meet annually in joint session on or before September 15, and establish the grades of all grain subject to state inspection; to be known as "Minnesota grades." Such grades, and the tests thereof, shall be published daily for one week in a newspaper in each of the cities of Minneapolis and Duluth, and all grain received at any public warehouse shall be graded accordingly. Such grades shall not be changed before the next annual meeting without the concurrence of at least five members of such boards. (7695; '99 c. 199 s. 3)

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2063. Duties of boards—Each of such boards shall recommend to such commission the discharge of any inspector deemed by them incompetent or otherwise unfit, and make such other reports and recommendations as they deem advisable. ('99 c. 199 s. 4)

2064. Salaries—The salaries of the members of such boards shall be fixed by the commission and approved by the governor, and such salaries and all their necessary expenses shall be paid out of the grain inspection fund on the order of the commission. ('99 c. 199 s. 7)

2065. Chief inspector—Such commission shall appoint a chief inspector, whose term of office shall be for two years, unless sooner removed by the commission. Such inspector shall give bond to the state in the sum of ten thousand dollars, with sureties to be approved by the commission, conditioned for the faithful and impartial discharge of the duties of his office according to law and the rules and regulations prescribed by the commission, and the payment of all damages sustained by any person, caused by his failure to perform such duties. (7680)

2066. Deputy inspectors—The chief inspector, with the approval of the commission, shall appoint such number of deputies as may be required. One such deputy in each of the cities of St. Paul, Minneapolis, and Duluth shall be styled "chief deputy." Each deputy inspector shall give bond as required of the chief inspector, but in the sum of five thousand dollars. They shall be under the control and supervision of the chief inspector, and may be removed by him. (7681, 7682, 7684)

2067. Standard samples—The chief inspector shall furnish standard samples of grain of each Minnesota grade to any grain warehouseman in the state, upon request and payment of the actual cost thereof. (7696)

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2068. Duty of inspectors—Such inspectors shall inspect and grade all grain received at or shipped from any terminal warehouse in car-load or boat-load lots, and give a certificate of the inspection to the person entitled thereto. Their decisions shall be conclusive as to the grade and dockage of such grain, and the certificate shall be evidence thereof, unless changed upon re-inspection or appeal. (7691)

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2069. Appeals—Any owner, consignee or shipper of grain, or any warehouseman, who is dissatisfied with the inspection of grain by any chief or deputy inspector, may appeal from his decision to the nearest board of grain appeals by filing notice of such appeal with the chief deputy inspector and paying him a fee of one dollar for each car, which shall be refunded if the appeal is sustained. Such deputy inspector shall forthwith transmit the notice to said board of appeals. The decision of said board, fixing the grade of such grain, shall be final. (7692)

2070. Withholding grain from store—The owner or consignee of grain consigned to a terminal warehouse may have the same withheld from storage and delivered to him or his order by giving notice to the carrier in possession thereof, and to the warehouseman to whom such grain was consigned, and paying all charges that may be a lien thereon. Such grain shall be removed within twenty-four hours after the car or boat containing the same is placed in a proper and convenient place for unloading. If the grain be delivered contrary to such notice, such warehouseman, and the carrier so delivering the same, shall be jointly and severally liable to the owner for double its value. (7693)

2071. Unauthorized storage forbidden—No contract, agreement, understanding, or combination shall be entered into between any public warehouseman and any common carrier or other person for the delivery of any grain at any public warehouse contrary to the direction of the owner, nor shall any grain be so delivered or received. (7694)

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2072. Weighmasters and weighers—The commission shall appoint at each terminal point a state weighmaster and such weighers as may be necessary, who shall have the control of the weighing of all grain subject to state inspection, except when otherwise ordered by the party shipping the same. Every such weighmaster and weigher shall give bond to the state in the sum of five thousand dollars, conditioned for the faithful discharge of his duty. (7674, 7675, 7677)

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2073. Weighmasters' records and certificates—All weighmasters and weighers shall keep such records as may be prescribed by the commission, and shall furnish to any person for whom weighing is done a certificate under his hand, showing the amount of each weight, the number and initial letter or other distinctive mark of each car weighed, place and date of weighing, and contents of car. Such certificate shall be prima facie evidence of the facts therein certified. (7705, 7706)

75-308, 77+973.

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2074. Fees for inspection and weighing—The fees for inspection and weighing shall be fixed by the commission, and shall be a lien upon the grain. If the grain is in transit, such fees shall be paid by the carrier and treated as advance charges, and, if received for storage, by the warehouseman, and added to the storage charges. All moneys so collected, and all fines and penalties for violation of any provision of this subdivision, shall be paid into the state treasury, and known as the "Grain Inspection Fund." and paid out only on order of the commission and auditor's warrant. All interest received from deposits of said moneys shall be credited on the first of each month to such fund, and notice of the amount of such interest shall be sent to the chief inspector. (7676, 7690, 7699, 7700; '03 c. 326)

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2075. Qualifications of inspectors and weighmasters—No member of a board of appeals, chief or deputy inspector, weighmaster, or weigher shall during his term of service be in any way interested in the handling, storing, ship-

ping, purchasing or selling of grain, or any of its products, nor in the employment of any person or corporation engaged therein, nor shall he be a member of any board of trade or organization of like character. (7677, 7686)

2076. Filing of bonds and suits thereon—All bonds required by this subdivision shall be filed with the secretary of state, and suit may be brought thereon by any person injured by the misconduct of the principal. (7683)

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2077. Removal of inspectors and weighmasters—Upon written complaint filed with the commission, charging any inspector, deputy inspector, weighmaster, or weigher with official misconduct, inefficiency, incompetency, or neglect of duty, the commission shall investigate such charge, and, if it be sustained, shall remove such officer. (7687)

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2078. Penalties—Personating inspector—Any person not duly appointed and qualified, who shall assume to act as a state inspector or deputy inspector of grain, shall be guilty of a misdemeanor and be punished by a fine of not less than fifty dollars nor more than one hundred dollars. (7688)

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2079. Misconduct of inspectors and weighmasters—Any inspector or deputy inspector, weighmaster or weigher, who shall knowingly or carelessly inspect or weigh any grain improperly, or give any false certificate of inspection or weight, or accept money or other consideration, directly or indirectly, for any neglect or improper performance of duty, or who shall be guilty of any neglect of duty, and any person who shall improperly influence, or attempt to influence, any such officer in the performance of his official duty, shall be guilty of a gross misdemeanor and shall be punished by a fine of not less than one hundred dollars nor more than one thousand dollars, or imprisonment in the county jail for not less than thirty days nor more than one year, or by both such fine and imprisonment. (7689)

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2080. Obstructing weighmaster—Any person or corporation who shall obstruct any state weighmaster or weigher in the performance of his official duties, by preventing his proper access to the scales used in the weighing of grain or otherwise, shall forfeit to the state one hundred dollars for each offence. (7679)

05 2080
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2081. Standing appropriation—All moneys which shall come into the state treasury on account of the grain inspection fund, or so much thereof as may be necessary, are hereby annually appropriated to the payment of the salaries, fees, and expenses provided in this subdivision, to be disbursed on the order of the commission. The commission shall fix the salaries of inspectors, weighers, and all other employees of the state grain department and prescribe the time and manner of payment thereof. (7713)

05 2081
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2082. Inspectors to examine cars—The chief inspector of grain, and any deputies, or officials, serving under him, before opening the doors of any cars containing grain, upon their arrival at any of the several places designated by law as terminal points in this state, for the purposes of inspecting the same, shall first ascertain the condition of such cars and determine whether any leakages have occurred while said cars were in transit; also whether or not the doors are properly secured and sealed, making a record of such facts in all cases and recording the same in a proper book to be kept for the purpose. After such examination shall have been duly made and recorded and the inspection of such grain has been made, the said officials of the state grain inspection department, above mentioned, shall securely close and reseal such doors as have been opened by them, using a special seal of the said state grain inspection department for the purpose. A record of all original seals broken by said officials and the time when broken; also a record of all state seals substituted therefor and the time when such state seals were substituted, together with a full description of said seals, with their numbers, shall be made by the said officials. (7707)

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2083. Police protection—All railroad companies, warehousemen and millers operating at the terminal points of this state shall furnish ample and sufficient police protection at all of their several terminal yards and on their terminal

tracks to securely protect all cars containing grain, while the same are in their possession, shall prohibit and restrain all unauthorized persons, whether under the guise of samplers, sweepers, or under any other pretext whatever, from entering or loitering in or about their respective railroad yards or tracks and from entering any cars of grain under their control, or removing grain therefrom, and shall employ and detail such number of watchmen as may be necessary for the purpose of carrying out the provisions of the within section. Any failure to comply with the provisions of this section, and § 2082, shall be deemed a misdemeanor. (7708, 7709, 7711)

LOCAL WAREHOUSES

2084. Defined—All elevators and warehouses in which grain is received, stored, shipped, or handled, situated on the right of way of any railroad company, or adjacent thereto to be used in connection with its line of railway at any station or siding other than Minneapolis, St. Paul and Duluth, shall be public warehouses, known as local warehouses, and shall be under the supervision and subject to the inspection of the commission. (7714; '95 c. 148 s. 1)

77-128, 133, 79+656; 77-223, 79+962; 89-98, 119, 94+218; 180 U. S. 452.

2085. License—All such elevators and warehouses shall be licensed annually by the commission. Application for license must be made before transacting warehouse business. Every license issued shall expire on August 31 following. The fees shall be one dollar for each license issued. Such license shall be revoked by the commission for cause upon notice and hearing. (7714; '95 c. 148 s. 1)

2086. State inspection and weighing—The commission, upon proper application for state inspection or weighing of grain by any person interested at any other point than St. Paul, Minneapolis or Duluth, may furnish such service if it is deemed expedient: Provided, such person first agrees to pay all costs of the service. Rules governing state inspection and weighing at other terminals shall apply at such points. ('01 c. 157)

2087. Storage—Warehouseman's duties—Receipts—Every public warehouseman shall receive for storage and shipment, so far as the capacity of his warehouse will permit, all grain in suitable condition for storage tendered him in the usual course of business, without discrimination of any kind. A warehouse receipt in form prescribed by the commission, consecutively numbered, shall be issued and delivered to the owner immediately upon receipt of each lot or parcel of grain, giving the true and correct grade and weight thereof. Any provision in such receipt attempting to limit or modify the legal liability of the warehouseman shall be void. The failure to issue such receipt as directed, or the issuance of slips, memoranda or any other form of receipt, shall be deemed a misdemeanor, and no slip, memoranda, or any other form of receipt shall be admissible in evidence in any civil action. (7717; '95 c. 148 s. 4)

91-346, 98+96.

See 1905 c. 302

2088. Delivery of grain—On the return and surrender of any receipts and payment of lawful charges, the grain represented therein shall be immediately deliverable to the owner, or his order, and shall not be subject to any further charge for storage after demand for delivery shall have been made and facilities for receiving and shipping the same have been provided. If not delivered within twenty-four hours after such demand, the warehouseman shall be liable to the owner in damages not exceeding one cent a bushel for each day's delay unless he shall deliver to different owners in the order demanded as rapidly as it can be done by ordinary diligence. (7717; '95 c. 148 s. 4)

79-416, 82+678.

2089. Records and warehouse receipts—Every local warehouseman shall keep in proper books a record of all grain received, stored, or shipped, stating the weight, grade, dockage for dirt or other cause, and the name of the owner. Every warehouse receipt issued by him shall state that delivery to the owner is to be made at the place of original storage, or, at the option of the owner,

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in quantities not less than a car load on track on the same line or railway at any terminal point in the state to be designated by the owner. (7717; '95 c. 148 s. 4)

2090. Certificates of shipment—If the owner elects a delivery on track at a terminal point, the warehouseman shall give him a certificate in evidence of the surrender of the original warehouse receipts and his right to such shipment, which shall state on its face the date and place of issue, the name of the consignor, consignee and destination, and specify the kind of grain, and grade and net quantity, exclusive of dockage, to which the owner is entitled. Such grain shall be subject only to the freight and other lawful charges accruing up to the time of delivery at terminal point. No actual delivery shall be deemed to have been made until the grade and quantity of the grain called for in the certificate as determined by the inspection and weighing has been established. (7717; '95 c. 148 s. 4)

2091. Reports to commission—Every such warehouseman shall at such times as the commission may require, render such commission, on blanks or forms prepared by it, itemized and verified reports of all grain received, stored, delivered and shipped from such warehouse operated by him since his last report. Such report shall state the grade, dockage and gross and net weight of all such grain, and shall particularly specify and account for any surplus or overage accruing during the year. The commission may cause every such warehouse and the business thereof and the mode of conducting the same, to be inspected by one or more of its members, or by its authorized agent, whenever deemed proper, and the property, books, records, accounts, papers and proceedings of every such warehouseman shall at all times during business hours be subject to such inspection. (7721; '95 c. 148 s. 7)

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MISCELLANEOUS PROVISIONS

2092. Delivery for storage a bailment—The delivery of grain to any warehouseman for storage, although it be mingled with that of others, or shipped or removed from the original place of storage, shall be deemed a bailment, and not a sale. (7645)

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112-NW 69
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33-111, 121, 22+244; 34-149, 157, 24+699; 40-182, 41+971; 41-116, 42+855; 43-33, 44+673; 44-471, 47+152; 63-314, 65+631; 77-128, 79+656; 79-94, 81+750; 89-98, 119, 94+218.

2093. Carriers' receipts—Every common carrier transporting grain shall give the shipper, on request, a receipt for the number of pounds of grain received from him, and shall deliver such quantity to the consignee or proper connecting carrier, less loss from transportation, not to exceed sixty pounds to each car. (7653)

2094. Penalties—Such carrier shall forfeit to the state, for each refusal to give such receipt, not less than ten dollars nor more than fifty dollars, and for each failure to deliver the proper quantity of grain, not less than fifty dollars nor more than one hundred dollars. (7654)

2095. Elevator charges, when forbidden—No railroad company shall charge or collect elevator or other charges for handling grain or for the use of any elevator, when such grain is loaded by the shipper and not passed through an elevator, or make any distinction in charges of any kind against a person shipping grain otherwise than through an elevator. (2713)

2096. Unlicensed warehouses—Any person or corporation operating such warehouse without license shall forfeit to the state, for each day's operation, fifty dollars, and such operation may be enjoined upon complaint of the commission. (7715)

2097. Warehouse receipts, etc., transferred by indorsement—Warehouse receipts and bills of lading for property in transit, unless the words "Not negotiable" are plainly written or stamped on the face thereof, may be transferred by indorsement, and such indorsement shall transfer to the indorsee the title to the property and all rights of the indorser in respect thereto. (7649)

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27-521, 528, 8+758; 44-224, 236, 46+342, 560; 55-107, 56+582; 64-245, 66+988; 78-379, 384, 81+204, 543; 83-498, 86+772.

2098. Pooling forbidden—No public warehouseman shall enter into any contract, agreement, understanding, or combination with any other such warehouseman for pooling or division of the earnings of competing warehouses, or divide with any such warehouseman the gross or net earnings of such warehouses, or any portion thereof. And in case of any such agreement each day of its continuance shall constitute a separate offence. (7722; '95 c. 148 s. 8)

2099. Overloading grain cars—Every railway company shall place painted lines inside of each of its cars used for the carriage of grain, indicating the height to which the various kinds of grain can be loaded therein, and no car shall be loaded with any kind of grain above its appropriate line. The person loading any such car shall state in the bill of lading, prior to its being signed by the agent of the railway company, that the car is loaded to or below such line, and such agent, before signing the bill, shall verify such statement. The bill of lading so signed shall be prima facie evidence of the loading, and no charges for loading in excess of the quantity so limited shall lie against such car. No railway company that fails to equip any car as aforesaid shall collect any charges for the transportation of grain in said car above the regular tariff rates for carload lots. Every person who shall load any car above the appropriate line, and every agent of any railway company who shall refuse to sign any such bill of lading, shall be guilty of a misdemeanor and punished by a fine of not less than ten dollars nor more than twenty-five dollars. ('95 c. 150)

2100. General supervision by commission—Rules—The commission shall exercise general supervision over the grain interests of the state, and of the handling, inspection, weighing, and storage of grain, and of the management of public warehouses, shall investigate all complaints of fraud or injustice in the grain trade, and may fix the charges of public warehousemen, and shall make all proper rules and regulations for carrying out and enforcing the provisions of this chapter, and of all laws of the state relating to such subjects. The commission may also furnish inspection and weighing service to private terminal warehouses on such terms as it shall deem proper. (7697, 7698)

2101. Shipper to affix tags—Every shipper of grain shall fasten upon the inside of each car shipped by him a card giving the number and initials or other distinctive mark of such car, the date of shipment, and the exact weight of the grain in such car, as claimed by the shipper. If he fail so to do, the official weight shall be prima facie evidence of the quantity of grain shipped in such car. (7712)

2102. Breaking seals—Any person who, without legal authority, shall break or remove any seal upon any car loaded with grain, or otherwise break or enter such car, shall be guilty of a misdemeanor. (7710)

2103. Violation of provisions of this subdivision—Any person who shall violate any of the provisions of this subdivision, where no specific penalty is prescribed, shall be guilty of a gross misdemeanor, and punished by a fine of not less than fifty dollars nor more than five hundred dollars. Any corporation which shall violate any such provision shall forfeit to the state, for each violation, not less than fifty dollars nor more than five hundred dollars. (7723)

2104. Grain includes flax seed—The term "grain" wherever used in this subdivision shall be held to include flax seed.

79-94, 81+750.

2105. Warehouse receipts—Numbering—All warehouse receipts for grain issued by the same warehouse shall be consecutively numbered, and no two receipts bearing the same number shall be issued from the same warehouse during any one year, except in case of a lost or destroyed receipt, in which case the new receipt shall bear the same date and number as the original, and shall be plainly marked on its face "Duplicate." (7664, 7717; '95 c. 148 s. 4)

See 1905 c. 302

ELEVATOR SITES

2106. Use of right of way for warehouse—Any person shall have the right to use, as a site for a public warehouse, a proper portion of the right of way

07 2098 - 252

07 2100 - 73
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07 - 357

07 2105 - 230

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of any railroad, within the outside switches at any station or siding, upon the payment of reasonable compensation. (7724)

63-70, 73, 65+136; 65-515, 68+208.

2107. Application—Whoever wishes to exercise such right may make written application to the person or company operating such railroad for such site, describing it, stating the size and capacity of the proposed warehouse, the station or siding at which it is to be built, the time for which such site is desired, and the amount of compensation the applicant is willing to pay. (7724, 7725)

2108. Acceptance or rejection of offer—Within ten days after the receipt of such application, the operator of such railroad shall notify the applicant in writing of his acceptance or rejection of the compensation offered. If he fail so to do, he shall be deemed to have accepted the same. Upon acceptance and payment or tender of the compensation, the applicant shall thereupon be entitled to the site described. (7724, 7725)

2109. Proceedings on rejection—If the offer be rejected, and the parties fail to agree on compensation, the applicant may present to and file in the district court of the county a verified petition, setting forth the making of the application, with a copy thereof, the compensation offered, its rejection, and the failure of the parties to agree. The court shall thereupon by order fix a time and place for hearing such petition, not more than thirty days from its presentation. Such order shall be served as a summons in said court is served, at least twenty days before the time set for such hearing, which service shall give the court jurisdiction of both person and property. (7726)

65-515, 68+208.

2110. Trial—If such hearing be set at a time other than a term of court where a petit jury is in attendance, the court, unless a jury be waived, shall order the selection of twenty-four jurors from the list returned by the county board in the manner provided for drawing jurors for a general term of such court, and the case shall be tried as other civil actions, and the compensation to be paid shall be assessed, both as a gross sum and an annual rental. The respondent shall elect either to receive the gross sum or the annual rental, and, if he fail to elect, the petitioner may do so, and judgment shall be entered accordingly. (7727)

2111. Appeal—Either party may appeal as from a judgment in a civil action within thirty days from the entry of judgment; but such appeal shall not stay the right of the petitioner to use the site designated, if the petitioner shall give bond with sureties approved by the court, in double the gross sum or annual rental fixed by the judgment, conditioned to pay such sum or rental, and abide and satisfy any judgment the supreme court may render in the premises. (7727)

2112. Costs—If the amount fixed by the final judgment be more than that offered in the application, the respondent shall recover costs and disbursements as in a civil action; otherwise, the petitioner. (7727)

2113. Abandonment—If the compensation, as finally fixed or agreed upon, be not paid within thirty days after the amount is finally settled, or if the applicant shall not begin the erection of such warehouse within two months, and complete the same and open it for business as a public warehouse within five months, after designation of the site, the application shall be deemed abandoned. (7727, 7729)

COMMISSION MERCHANTS

2114. Definition—License—Bond—For the purpose of this subdivision, a commission merchant is a person who may receive for sale, for account of the consignor, any agricultural products or farm produce. No person shall sell, or receive or solicit consignments of such commodities for sale, on commission, without first obtaining a license from the railroad and warehouse commission to carry on the business of a commission merchant, and executing and

filing with the secretary of state a bond to the state for the benefit of his consignors; the amount of the bond to be fixed and sureties to be approved by the commission, who may increase or reduce the amount of the bond from time to time. ('99 c. 225 ss. 1, 4, 6)

77-483, 80+633, 778; 94-225, 102+697.

2115. Application for license—Conditions of bonds—Additional bonds—The application for license shall be in writing, state the commodities for which license to sell is wanted, and give the business address of the applicant and the estimated volume of business to be done monthly. If he desires a license which shall authorize him to sell grain, the bond shall be conditioned that he report to all persons consigning grain to him, and pay to them the proceeds of its sale, less commissions and actual disbursements; otherwise, the bond shall be conditioned for the faithful performance of his duties as commission merchant. All licenses shall expire May 31 of each year. The fee for each license shall be one dollar. Such license may be revoked by the commission for cause, upon notice and hearing. ('99 c. 225 ss. 1, 4)

2116. Commission may require confidential statements—For the purpose of fixing or changing the amount of a bond the commission shall require statements of his business from the licensee, and, if he fail to render such statements or to furnish any new bond required, the commission may revoke his license. All such statements shall be for the exclusive information of the commissioners, unless they shall be required for use in court, in which case the commissioners shall produce them. ('99 c. 225 s. 4)

2117. Statement to consignor—Whenever a licensee sells any grain he shall render a true statement in writing to the consignor within twenty-four hours of the amount sold, price received, name and address of purchaser, and the day, hour, and minute of the sale, and shall forward vouchers for all charges and expenses. ('99 c. 225 s. 2)

94-225, 102+697.

2118. Complaint — Investigation — Report—Whenever a consignor of a commodity other than grain, after demand therefor, shall have received no remittance or report of its sale, or shall be dissatisfied with the remittance, sale, or report, he may complain in writing, under oath, to the commission, who shall investigate the matter complained of. In making the investigation the commission may compel the licensee to produce all information, books, records and memoranda concerning the matter, and they shall give the complainant a written report of the investigation. This report shall be prima facie evidence of the matters therein contained. ('99 c. 225 s. 3)

2119. Action on bond—If any licensee shall fail to account for any consignment of any of the commodities mentioned in this subdivision, or to pay to the consignor moneys due on such consignment, the consignor or his agent, within ninety days of the date of shipment, may file with the commission an affidavit setting forth the matters complained of. Thereupon such consignor, within a year after the cause of action accrues, may bring an action upon the bond of the licensee, and recover the amount due him on account of such consignment. If such licensee has become liable to more than one consignor, and the amount of his bond be insufficient to pay the entire liability, the consignors shall be compensated in proportion to their several claims. ('99 c. 225 s. 5; '01 c. 277)

2120. Violations—Penalty, etc.—Any person engaged in selling any property as herein specified, who fails or neglects to comply with any of the provisions of this subdivision, shall be guilty of a misdemeanor and, on conviction thereof, shall be punished by a fine of not less than twenty-five dollars; and the commission, either upon such conviction, or upon its own findings after investigation, if the facts warrant it, may cancel the license of any person guilty of any violation of law, or of conduct prejudicial to the interests of those making consignments to him to be sold on commission. Where a license has been canceled, the commission may refuse to issue any license to such person

for a term of one year. Whenever requested to do so by any interested shipper, the commission shall have power to investigate any sale or transaction carried on by any person licensed hereunder, and for that purpose shall have the right to examine the books and accounts of any licensed commission merchant which in any manner relate to such sale or transaction. Any licensed commission merchant, or any agent in charge of such books or accounts, who shall fail or refuse to submit such books or accounts for the examination of the commission, shall be guilty of a misdemeanor. ('99 c. 225 s. 7)

94-225, 102+697.

See 1905 c. 126

PACKING HOUSE CERTIFICATES

2121. Certificates on products—Every person engaged in the slaughter of cattle, sheep or hogs, and dealing in the products thereof, who owns or controls the building wherein such business is conducted or such commodities stored, may issue warehouse certificates for any of the commodities actually in store, and may sell, assign, transfer, pledge, or incurber the same to the amount described therein. Such certificate shall contain the name and address of the person issuing it, the location of the warehouse, the date of issue, the quantity of each commodity, and its brand or mark of identification, if any, and be signed by the person issuing the same. ('03 c. 403 s. 1)

2122. Interest in warehouse—Certified copy—Before issuing any such certificate, he shall file with the register of deeds of the county where the warehouse is located a written declaration, stating his name and residence, that he intends controlling a warehouse for the storage and sale of such commodities, a correct description of the warehouse, its location, and the name of any other person in any way interested therein. It shall be signed, acknowledged, and recorded in a book kept for that purpose, and a certified copy thereof shall be filed with the clerk of the city, village, or town wherein such business is conducted, and be kept in the same manner as chattel mortgages are required to be filed and kept, and the party making the declaration shall be indexed as the vendor, and the public as the vendee. ('03 c. 403 s. 2)

2123. Statement printed on back—Every such certificate issued shall have printed on the back thereof a statement that the party issuing it has complied with the law, and shall give the book, page, and place where the record of such declaration may be found, and the day of filing. Such certificate, when so issued and delivered, shall transfer to the holder the title to the commodities therein described, shall be assignable by indorsement, and thereupon shall be prima facie evidence of title to such commodities in the indorsee. It shall be registered by the party issuing the same in a book kept for that purpose, which shall show the date, number, and name of party to whom issued, the kind and quantity of the commodities, and any brands or marks thereon, and be open to inspection by any person holding any outstanding certificate in force, his agent or attorney; and when the commodity specified therein has been delivered, or it has in any other manner become inoperative, that fact, with the date of such delivery or other termination of liability, shall be entered in the register in connection with the entry of its issuance. ('03 c. 403 ss. 3, 4)

2124. Property in warehouse—No person shall issue such warehouse certificate unless the property therein described is actually in the warehouse; and it shall remain there until otherwise ordered by the holder of the certificate, subject to the conditions of the contract between the warehouseman and the person to whom such certificate was issued, or his assigns, as to the time of its remaining therein; and no second certificate shall be issued for the same property or any part thereof while the first is outstanding and in force, nor shall the property be sold, incumbered, shipped, transferred, or removed by the warehouseman without the written consent of the certificate holder. ('03 c. 403 s. 5)

2125. Damages for injury—Any person injured by any violations of §§ 2123, 2124 may recover the actual damages sustained, and, if the violation

was wilful, in addition thereto exemplary damages not exceeding double the actual damages, which shall be found by special verdict. ('03 c. 403 s. 6)

2126. Penalties—Every person who shall wilfully alter or destroy any register of such certificates; or issue any receipt of certificates without entering and preserving in such book the registered memorandum; or shall knowingly issue any such certificates when the commodities therein described are not in the warehouse; or who, with intent to defraud, shall issue a second or other certificate for which a former valid certificate is outstanding; or who shall, under such circumstances, sell, incumber, ship, transfer, or remove from the warehouse any such certified property, or knowingly permit the same to be done, without the written consent of the certificate holder; or who knowingly receives, or helps to remove, any such property; shall be guilty of a felony, and punished by imprisonment in the state prison for not more than five years, or by a fine of not more than ten thousand dollars. ('03 c. 403 s. 7)

CHAPTER 29

PUBLIC HEALTH

2127. State board of health—The state board of health shall consist of nine members, learned in sanitary science, who shall be appointed by the governor for such periods that the terms of three members will end on the first Monday of January in each year. Vacancies therein shall be filled by like appointment for the unexpired terms, and each member shall serve until his successor qualifies. (425)

2128. Meetings—Officers—Quorum—The board shall hold an annual meeting at the capitol on the second Tuesday in January, at which it shall elect from its members a president. Regular meetings shall be held at the same place on the second Tuesdays in April, July, and October of each year. Special meetings may be held at such times and places as the secretary or any two members of the board shall appoint, upon three days' notice to the members by mail. The board shall elect a secretary, to serve during its pleasure, who may or may not be one of its members. A majority shall be a quorum, and any meeting may be adjourned from time to time. (425)

2129. General duties of officers—The president shall preside at the meetings, when present, and, in the absence or disability of the secretary, shall perform all the duties imposed upon the latter by law, and be paid therefor; but he may appoint a secretary pro tem. to keep the minutes of a meeting. The secretary shall be the executive officer of the board, and, in addition to keeping a record of its proceedings, shall see that all lawful rules and orders of the board, and all duties laid upon it by law, are enforced and performed, and that every law enacted in the interests of human health is obeyed. And he shall be the custodian of the official records and documents of the board. (427, 428)

2130. General duties of board—Reports—The board shall exercise general supervision over all health officers and boards, take cognizance of the interests of health and life among the people, investigate sanitary conditions, learn the cause and source of diseases and epidemics, observe the effect upon human health of localities and employments, and gather and diffuse proper information upon all subjects to which its duties relate. It shall gather, collate, and publish medical and vital statistics of general value, and advise all state officials and boards in hygienic and medical matters—especially those involved in the proper location, construction, sewerage, and administration of prisons, hospitals, asylums, and other public institutions. It shall report its doings and discoveries to the legislature at each regular session thereof, with such information and recommendations as it shall deem useful. (426)

2131. General and special rules—The board may adopt, alter, and enforce reasonable regulations, of permanent application throughout the whole or any