

89022

GENERAL STATUTES OF  
MINNESOTA

SUPPLEMENT 1917

CONTAINING THE AMENDMENTS TO THE GENERAL STATUTES  
AND OTHER LAWS OF A GENERAL AND PERMANENT  
NATURE, ENACTED BY THE LEGISLATURE  
IN 1915, 1916, AND 1917

WITH NOTES OF ALL APPLICABLE DECISIONS

COMPILED BY

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secure adoption for children under the supervision of the state board of control may request. (Amended '17 c. 214 § 3)

**4168. Same—Visitatorial powers**—The state board of control is authorized to visit and investigate the conditions of all children for whom homes have been found by an institution within the state of Minnesota which has or may at any time have been permitted by said board to receive and find homes for dependent children. (Amended '17 c. 214 § 4)

[4168—]1. **Sections repealed**—Sections 4155, 4156, 4158, 4159, 4160, 4162 and 4169, General Statutes, 1913 are hereby repealed. ('17 c. 214 § 5)

4169. [Repealed.]

See § [4168—]1.

## CHAPTER 28

### RAILROADS, WAREHOUSES, AND GRAIN

#### RAILROAD AND WAREHOUSE COMMISSION

##### 4178. Duties—

**In general**—Trial court held warranted in finding that order of railroad and warehouse commission directing certain changes in passenger and freight service upon a branch of its system was not unreasonable or unlawful (162+1079). Railroads, ¶9(2).

An order of the commission, pursuant to this section and § 4239, will not be disturbed by the courts, where it does not appear that the commission exceeded its powers (124-533, 144+771). Railroads, ¶9(2).

Tests of reasonableness of orders of the commission (see 130-57, 153+247). Railroads, ¶9(1).

**Ordering new depot**—Ordering a depot and waiting room is legislative or administrative, but its reasonableness is a judicial question. The reasonableness of the order in the present case held shown by the evidence (135-19, 159+1089). Railroads, ¶9(1, 2).

The commission has power to require a suitable depot, including a passenger waiting room, at a place where the public convenience renders the same reasonably necessary (123-463, 144+155; 135-19, 159+1089). Railroads, ¶58.

When a depot is ordered by the commission, the order may require that the depot, in its construction, shall comply with the fire ordinances of the village (135-19, 159+1089). Railroads, ¶226.

Commission has power to require facilities at one station equal to those furnished voluntarily at other stations (122-55, 141+1102). Railroads, ¶225.

**Compelling Sunday local**—An order of the commission compelling the resumption of a Sunday local passenger train, though prima facie reasonable under § 4192, will not be sustained on appeal to the supreme court, where the district court held such order unreasonable and void; it being contrary to the public policy of the state to compel Sunday labor (130-57, 153+247). Railroads, ¶9(2).

##### 4184. Witnesses—

Cited (131-116, 154+750).

##### 4186. Complaint by attorney general that rate is unreasonable—Duty of commission—

See notes under § 4285.

##### 4187. Investigation without complaint—New rates—Notice—

See notes under § 4285.

**4191. Appeals to district court**—Any party to a proceeding before the commission, or any party affected by any order thereof, or the state of Minnesota, by 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, or in a proceeding commenced by the commission on its own motion without complaint, to the district court of one of the counties in which the order of the commission requires a service to be performed or an act to be done or not to be done by the carrier or warehouseman; or in case of train service, to the district court of one of the counties through which the train runs, at any time within thirty days after service of a

copy of such order or the parties of record, as in this chapter provided, by service of a written notice of appeal on said commission, or on its secretary. Upon service of said notice of appeal, said commission, by its secretary, shall forthwith file, with the clerk of said district court to which said appeal is taken, a certified copy of the order appealed from, together with findings of fact on which the same is based in case appeals are taken to the district court of more than one county, they shall be consolidated and tried in the district court of the county to which the first appeal was taken. (Amended '17 c. 291 § 1)

130-57, 153+247; note under § 4192, post.

#### 4192. Proceedings on appeal—Orders not appealed from—

On review of an order of railroad and warehouse commission relative to a railroad's train service, the court can only inquire whether the order is unreasonable or in violation of some constitutional or legal right of the railroad. A railroad appealing from an order of the railroad and warehouse commission relative to its train service has the burden of showing that the order is unreasonable (162+1079). Railroads, Ⓒ9(2).

Orders of the commission being made prima facie reasonable, the burden of proving that an order compelling the resumption of a Sunday local passenger train imposed a financial burden was on the appellant railroad company; but, the compulsion of Sunday labor being contrary to public policy, a holding of the district court that the order was unreasonable will be sustained. The district court does not put itself in the place of the commission, and substitute its findings for those of the commission; nor does it set aside an order of the commission on its own conception of the wisdom thereof, but merely reviews the same, to determine whether it is lawful and reasonable (130-57, 153+247). Railroads, Ⓒ9(2).

An order requiring establishment of a small station building, and the keeping of a custodian, at a flag station, is presumed to be valid and reasonable. Such presumption is not overcome in a case where the nearest station in either direction is seven miles, the tributary country is a prosperous farming district, producing an annual freight business of \$7,000, and the expense of providing the facilities ordered is not shown (123-463, 144+155). Railroads, Ⓒ9(2).

#### 4200. Appeals to supreme court—

Where, on appeal to the supreme court from an order of the district court affirming an order of the railroad and warehouse commission determining that certain charges exacted by a carrier were unlawful, an appeal bond was waived, but the district court subsequently granted a stay pending the appeal to the supreme court, the stay was collateral to the judgment, and the district court had jurisdiction to vacate the stay, and its action in so doing could not be interfered with by writ of prohibition issuing from the supreme court (161+164). Appeal and Error, Ⓒ482.

#### 4203. Dangerous crossings—Complaint—Hearing—

161+506.

#### 4221. Stock scales in stock yards—Powers of commission—

Commission held empowered to order stock scales at particular places to prevent discrimination between different localities (122-55, 141+1102). Railroads, Ⓒ225.

#### 4222. Same—Private scales prohibited—

Recovery of compensation, under Const. art. 1 § 13, for injuries to property by the construction and operation of stockyards by a railroad company (see 161+501). Eminent Domain, Ⓒ90.

#### 4223. Same—Water in stockyards—Powers of commission—

In absence of statute, a railway company is not required to furnish feed or water to live stock in its pens awaiting shipment, unless the company has accepted the care and control thereof (125-125, 145+801). Carriers, Ⓒ215(1).

#### 4229. Freight over connecting lines to be transferred in certain cases— Joint through rates—

Where one railroad company owned a controlling interest in the stock of another company, the lines of the two companies connecting and being operated as a continuous line under one control, the two lines were to be regarded as a single road for the purpose of establishing rates, and such rates must be fixed under §§ 4348-4357, post, and not under this act (133-413, 158+627). Carriers, Ⓒ12(1).

#### 4230. Same—Powers and duties of commission—Notice and hearing— Schedule of rates—Revising rates—

133-413, 158+627; note under § 4229.

#### 4231. Terms of connection with manufactories, etc.—

The state may, under its police powers, apportion the necessary expense of side track facilities between the railroad company and the industry receiving the benefit of the facilities in such manner as shall be found to be reasonable (135-323, 160+866). Railroads, Ⓒ225.

**4232. Reports to commission**—Every carrier subject to supervision of the commission shall annually, on or before March 31st, 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 December 31st preceding said date 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 employes and officers, and the salary or wages paid each class; the amount 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, and may designate from time to time to what account any items shall be charged. Any such carrier failing to comply with the provisions of this section, or with any order of the commission made thereunder shall forfeit, for each day's default, one hundred dollars, to be recovered in a civil action in the name of the state. (Amended '17 c. 17 § 1)

**4237. Remedies cumulative—Attorney's fees—**

This section preserves the common law remedies, though adding a statutory one (127-180, 149+134). Carriers, Ⓒ13(3); Action, Ⓒ35.

**4239. Construction of chapter—**

The commission has power to require the establishment of a depot, including a passenger waiting room, at a place where the public convenience renders the same reasonably necessary (123-463, 144+155). Railroads, Ⓒ58, 226.

An order of the commission, under this section and § 4178, will not be disturbed by the courts, where it does not appear that the commission has exceeded its powers (124-533, 144+771). Railroads, Ⓒ9(2).

**4241. Physical valuation of railroad properties—Statements**—The railroad and warehouse commission, hereinafter called the commission, is hereby authorized, at all times, to keep up the physical valuation of the railroad properties of this state, and to that end all railroad corporations under the supervision of the commission are required to furnish to the commission on June 30th of each year, unless further time be granted by the commission, and at such other times as the commission may require, a detailed statement showing changes in the physical conditions of its properties in this state and the elements of cost entering into such changes in both debits and credits of such property, and the distribution of the debits and credits, whether charged to operating or capital accounts, verified by the president, chief engineer, general auditor or comptroller, in such manner and form as the commission may prescribe, covering the year ending December 31st next preceding. (Amended '17 c. 22 § 1)

## RAILROADS AND COMMON CARRIERS

**4247. Common carriers defined—**

Railroad company, operating stub line owned by lumber company, held a common carrier as to service performed thereon (129-121, 151+974). Carriers, Ⓒ1, 4.

**4248. Railroads, etc., defined—**

129-121, 151+974; note under § 4247.

**4256. Road crossings—**

161+506.

The entire cost of extending a new street across a railroad right of way, including planking over the railroad tracks, was properly imposed on the railroad company (124-107, 144+464). Railroads, ~~96~~.

This section, as amended in 1913, is a valid exercise of the police power, and is not a disguised attempt to levy a local assessment or tax by compelling the construction of sidewalks (130-480, 153+879). Railroads, ~~94(2)~~.

**4263. Fences and cattle guards—**

Trial court's inadvertence in not calling jury's attention to the degree of care imposed by this section, upon a railroad in the maintenance of its right of way fence, to which no exception was taken at the trial, was not reversible error (162+469). Appeal and Error, ~~263(3)~~.

In action for killing of cows escaping from their pasture by reason of defect in defendant's right of way fence, evidence held to sustain finding that defect was proximate cause of their presence on track when struck (162+469). Railroads, ~~443(6)~~.

Care required as to trespasser on track at place where fences have been constructed (see 131-281, 154+1088). Railroads, ~~359(1)~~.

Where the death of a boy nine years old resulted from his attempting to steal a ride on a freight train, the failure of the railroad company to fence the right of way was not the proximate cause of the death (130-513, 153+1086). Railroads, ~~279~~.

**4269. Ditches and culverts—**

This act is not an unreasonable exercise of the police power of the state. A ditch voluntarily constructed by a railway company prior to the taking effect of this act must be kept open as therein provided (132-265, 156+121). Railroads, ~~108~~.

**4273. Same—Distance between structures or obstructions and center line of tracks—Height of overhead obstructions—Exceptions—Unlawful to erect certain structures, etc.—**That on and after the passage of this act, it shall be unlawful for any common carrier, or any other person, to erect or reconstruct and thereafter maintain on any standard gauge road on its line or on any standard gauge side track used in connection therewith, for use in any traffic mentioned in Section one of this act [4272], any warehouse, coal chute, stock pen, pole, mail crane, stand pipe, hog drencher, or any permanent or fixed structure or obstruction, or in excavating allow any embankment of earth or natural rock to remain upon its line of railroad, or on any side track used in connection therewith at a distance less than eight feet measured from the center line of the track, which said structure or obstruction adjoins on standard gauge roads; nor shall any overhead wires, bridges, viaduct or other obstruction passing over or above its tracks as aforesaid be erected or reconstructed at a less height than twenty-one (21) feet, measured from the top of the track rail.

Provided, however, that this act shall not be construed to apply to yards and terminals of depot companies or railway companies used only for passenger service. But, nevertheless in the event of personal injury sustained by any employé of any such company in this proviso mentioned, by reason of non-compliance with the provisions of this act, such employé, or in case of his death, his personal representative, shall have all the rights, privileges and immunities enumerated in Section 9 hereof [4280]. ('13 c. 307 § 2, amended '15 c. 171 § 1)

**4274. Same—Permits in certain cases or classes of cases—**That the railroad and warehouse commission may upon application made, after a thorough investigation in any particular case or class of cases, permit any common carrier to which this act applies to erect any overhead or side obstruction at a less distance from the track than herein provided for, when in the judgment of said commission a compliance with the clearance prescribed herein would be unreasonable or unnecessary. ('13 c. 307 § 3, amended '15 c. 171 § 2)

**4284. 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 (5,000) 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 such grain warehouse, dock, wharf, mill, coal yard, quarry, brick or lime kiln, sand or gravel pit, crushed rock or concrete plant, or manufactory adjacent thereto as shall be required and on such terms as may be fixed by the commission on application of either party. (Amended '17 c. 287 § 1)

The state under its police power may require a railroad company to provide such side track facilities to industries adjacent to its tracks as shall be found to be necessary and reasonable under all the circumstances, and may apportion the necessary and reasonable expense therefor between the company and the industry involved (135-323, 160+866). Railroads, Ⓒ225.

#### 4285. Charges to be reasonable—

Cited (128-25, 150+172).

Business competition is essential to a recovery of rate differentials by a shipper who is discriminated against, where no proof is made of damage other than the difference in the rates charged. Evidence held to show such business competition. Such differentials must be computed upon the basis of equal tonnage, but such discrimination should be considered with reference to a reasonable time before and after the disfavored shipment, and hence may arise from shipments on different dates. The federal rule of damages applied as to a part of the shipments constituting interstate commerce. Payment to the carrier, by a favored shipper, of the difference between the discriminatory rate and the statutory rate, is no defense to an action for discrimination (127-180, 149+134). Carriers, Ⓒ201.

Contract made prior to statutory rate regulation is no justification for discrimination in favor of the contracting party and against those compelled to pay the statutory rate (127-180, 149+134). Carriers, Ⓒ13(3).

Switching charge by railroad company on stub tracks owned by lumber company held invalid (129-121, 151+974). Carriers, Ⓒ188.

The shipper's common-law remedy for discrimination is not taken away by the statute; it providing no civil remedy (121-488, 142+3, 45 L. R. A. [N. S.] 612). Carriers, Ⓒ201.

**4286. Passengers—Maximum rates—**No railroad company owning, operating, or using a line of railroad within, or partly within the state of Minnesota shall charge, collect or receive as compensation for transporting any passenger and his or her ordinary baggage, not exceeding in weight one hundred fifty (150) pounds any sum or amount in excess of the following prices, viz.: for all distances for all companies the gross earnings of whose passenger trains, as reported to the railroad and warehouse commission in the then last report thereon, equalled or exceeded the sum of one thousand two hundred dollars per mile for each mile of road operated by said company, on which regular passenger service is maintained, as hereinafter provided, two cents per mile, and for all companies whose earnings reported as aforesaid were less than one thousand two hundred dollars per mile of road operated by said company, three cents per mile: Provided, that in the future, whenever the earnings of any company doing business in this State, as reported to the railroad and warehouse commission at the close of any year, shall increase so as to equal or exceed the sum of one thousand two hundred dollars per mile of road operated by said company, then in such case said company shall thereafter, upon the notification of the railroad and warehouse commission, be required to only receive as compensation for the transportation of any passenger, his or her ordinary baggage, not exceeding in weight one hundred fifty (150) pounds, a rate of only two cents per mile as hereinbefore provided. Provided further, that in computing the passenger earnings per mile of any company the earnings and the mileage of all branch roads owned, leased, controlled or occupied by such company, exclusive of all spurs and branches over which such company does not operate each way daily, except Sunday, at least one passenger train, or mixed train having at least two passenger coaches or one passenger coach and baggage car, shall be included in the computation, and the rate of fare shall be the same on all lines owned, leased, controlled or occupied by such company: Provided further, that no company shall charge, demand or receive any greater compensation per mile for transportation of children of the age of twelve years or under than one-half of the rate herein prescribed: Provided further, that any railroad company may charge a minimum fare of five cents for each passenger transported over its road, whenever cars are propelled or moved by

motive power other than steam: The provisions of this section shall apply to all railroad companies operating lines of railroad in this State. ('13 c. 536 § 1, amended '17-c. 23 § 1)

A proper construction of this section prior to amendment permitted a railroad company to charge three cents per mile for the first five miles of a passenger's trip, and two cents per mile for the additional distance (129-25, 150+172). Carriers, Ⓒ12(4).

**4288. Passengers—Maximum rates—**

The reasonableness of rates prescribed by statute is purely a judicial question (130-144, 153+320, L. R. A. 1916B, 764). Carriers, Ⓒ18(1).

An injunction restraining a railroad company, at the suit of stockholders, from putting in force the rates fixed by this section, suspended the operation of the statute during the pendency of the action, so that during that time an indictment would not lie for noncompliance with the statute (130-144, 153+320, L. R. A. 1916B, 764). Carriers, Ⓒ18(6); Criminal Law, Ⓒ1.

Cited in dissenting opinion (128-25, 150+172).

**4289. Same—Penalties for violation—**

130-144, 153+320, L. R. A. 1916B, 764; note under § 4288.

**4290. Freight rates—Right of carrier in first instance—Uniform classification—**

Switching charge by railroad company on stub track owned by lumber company held invalid (129-121, 151+974). Carriers, Ⓒ188.

**4292. Same—Rates not to be changed without order, etc.—**

135-271, 160+688; note under § 4299, post.

See notes under § 4285.

A schedule of rates promulgated by the railroad and warehouse commission under § 4353 does not apply to the switching of cars within a given shipping point, and hence a switching charge voluntarily fixed by a railroad company for transfer of cars to and from a particular industry was not unlawful (130-272, 153+610). Carriers, Ⓒ12(3).

**4294. Same—Application for change—Notice—Hearing—**

135-271, 160+688; note under § 4299, post.

**4298. Classification of commodities—**

Cited (130-144, 153+320, L. R. A. 1916B, 764).

135-271, 160+688; note under § 4299, post.

**4299. Same—Maximum rates—**

Cited (130-144, 153+320, L. R. A. 1916B, 764).

Where, when this act went into effect, a carrier's tariff on fence posts in carload lots was 75 per cent. of its lumber rates, and this act reduced the rate on lumber, and the carrier did not obtain the consent of the railroad and warehouse commission to a new schedule established by it, or to a change of the rules and regulations governing the rates on fence posts as they were when the law went into effect, the legal rate for fence posts remained at 75 per cent. of the lumber rate as fixed by this act (135-271, 160+688). Carriers, Ⓒ12(1).

The existence for a time of an injunction restraining enforcement of this act, did not, during such time, render the rates prescribed by the statute invalid, where the judgment in which the injunction was awarded was reversed on appeal, and the statute pronounced valid (133-93, 157+996). Carriers, Ⓒ12(1).

**4300. Same—When distance not given—Weight of carload—**

Cited (130-144, 153+320, L. R. A. 1916B, 764).

**4301. Same—Excess rates prohibited—**

Cited (130-144, 153+320, L. R. A. 1916B, 764).

Injunction against enforcement of statutory rates as affecting time of accrual of action to recover excessive freight rates paid (see 135-45, 159+1082). Limitation of Actions, Ⓒ111.

A carrier having two lines separating two intrastate points is required to transport a shipment over that line which affords the shipper the cheaper rate, in absence of a selection of the route by the shipper, and in absence of special circumstances showing that the carrier subserved the best interests of the shipper in selecting the longer route (133-93, 157+996). Carriers, Ⓒ79.

**4302. Same—Powers and duties of commission—**

Cited (130-144, 153+320, L. R. A. 1916B, 764).

**4303. Same—Duties of railroad companies—Penalties—**

Cited (130-144, 153+320, L. R. A. 1916B, 764).

**4304. Same—Existing rates—**

Cited (130-144, 153+320, L. R. A. 1916B, 764).

**4305. Duties of railroad companies—Penalties—**

See notes under § 4285.

**4306—Same—Continuation of prior act—**

See notes under § 4285.

**4307. Failure to adopt rates—Duty of attorney general—Duty of carrier—Reports—**

If more than legal rates have been exacted, the right of recovery does not necessarily depend upon statute law (135-271, 160+688). Carriers, [↔](#)12(1).

**4308. Same—Carrier to pay to commission excess rates—**

135-271, 160+688; note under § 4307.

**4309. Same—Failure to pay excess rates—Duty of commission and attorney general—Claims—Unclaimed amounts—**

135-271, 160+688; note under § 4307.

**4310. Same—Failure of carrier to keep accounts, etc.—Penalty—**

135-271, 160+688; note under § 4307.

**4311. Same—Certain provisions repealed—**

135-271, 160+688; note under § 4307.

**4312. Same—When to take effect—**

135-271, 160+688; note under § 4307.

**4314. Same—Claims, when adjusted and paid—How presented—**

126-138, 147+960, Ann. Cas. 1915D, 823; note under § 4316.

**4316. Same—Penalty for failure—Fraudulent claims—**

This section is not unconstitutional either as class legislation, depriving of due process of law, or denying equal protection of the laws (126-138, 147+960, Ann. Cas. 1915D, 823). Constitutional Law, [↔](#)208(3), 247, 303.

This section does not apply to interstate transactions (131-152, 154+954). Commerce, [↔](#)61(1).

**4321. Common-law liability not to be limited—**

Carrier's liability as insurer may be limited by contract. Carrier may require stipulation that goods must be removed within 48 hours after arrival at destination (122-453, 142+727). Carriers, [↔](#)147, 157.

Reasonableness of contract limiting liability (121-258, 141+164, L. R. A. 1915D, 644). Carriers, [↔](#)218(1).

Burden of proof as to negligence (121-258, 141+164, L. R. A. 1915D, 644). Carriers, [↔](#)228(1).

A stipulation in a lease from a railroad company to an elevator company that the railroad company should not be liable for the loss of grain in its possession by fire communicated from the elevator held not to relieve the railroad company of liability for negligence (132-151, 156+117). Railroads, [↔](#)469.

121-258, 141+164, L. R. A. 1915D, 644. Carriers, [↔](#)227.

**4322-4329. [Repealed.]**

See § [4434-]55.

**4325-161+411; note under § 4326.**

**4326**—The provision making a bill of lading, acquired in good faith and for value, conclusive that the carrier issuing the same received the goods therein specified, can, since the Carmack amendment, have no application to an interstate bill of lading (161+411). Commerce, [↔](#)8(12).

**4332. Preferences forbidden—**

Cited (128-25, 150+172).

Declaratory of common law (121-488, 142+3, 45 L. R. A. [N. S.] 612). Carriers, [↔](#)13(1), 199.

Remedy at common law not impaired. Measure of recovery for discrimination (121-488, 142+3, 45 L. R. A. [N. S.] 612). Carriers, [↔](#)201.

A carrier may, after loss or damage to goods, waive provisions of its contract limiting the time within which an action may be brought therefor (131-217, 154+1076). Carriers, [↔](#)160.

Where railroad has furnished stock scales to 54 of its stations in the state, held an unlawful discrimination to refuse to install a scale at a particular station as ordered by the railroad and warehouse commission (122-55, 141+1102). Railroads, [↔](#)225.

**4334. Rebates, etc., forbidden—Penalty—**

Statute is declaratory of common law (121-488, 142+3, 45 L. R. A. [N. S.] 612). Carriers, [↔](#)13(1), 199.

Statute does not take away common-law remedy. Measure of recovery for discrimination (121-488, 142+3, 45 L. R. A. [N. S.] 612). Carriers, [↔](#)201.

**4335. Free passes, etc., forbidden—Exceptions—**From and after Jan. 1st, 1908, it shall be unlawful for any person, association, co-partnership, or corporation, or any representative thereof, to offer, give, or in any manner fur-



nish to any person, either for himself or another, any free pass or frank, or any special privilege or reduction in rate withheld from any other person for the traveling accommodation or transportation of any person or property, or the transmission of any message or communication except to persons included within the classes hereinafter designated and limited, and it shall also be unlawful for any person or persons not included within the classes hereinafter excepted or limited to solicit or receive, either for himself or another, from any person, association, co-partnership or corporation, or use in any manner or for any purpose any free pass or frank or special privilege withheld from any person for the traveling accommodation or transportation of any person or property or the transmission of any message or communication; provided, however, that nothing contained in this act shall be construed to prohibit or to make unlawful the issuing or giving of any such free ticket, free pass or free transportation to any person or persons within the classes hereinafter excepted or limited or the acceptance or use of the same by persons within such classes, that is to say, officers, bona fide agents, surgeons, physicians, attorneys and employes of such railroad or other companies or persons affected by this act and dependent members of their families, the duly elected representatives of railroad labor organizations, children under 12 years of age, ministers of religion, secretaries of Young Men's Christian Associations, persons exclusively engaged in charitable and eleemosynary work; indigent, destitute and homeless persons, and such persons when transported by charitable societies or hospitals or by public charity, and necessary agents employed in such transportation, inmates of national homes or state homes for disabled volunteer soldiers, inmates of soldiers' and sailors' homes, including those entering and returning from such homes, and boards of managers of such homes, postoffice inspectors, custom inspectors and immigration inspectors; witnesses of said railroad companies attending any legal investigation in which said company is interested; officials and linemen of telegraph and telephone companies; ex-employes retired from service on account of age or because of disability sustained while in the service of said railroad company, and the dependent members of their families, or the widows or dependent children of employes killed or dying while in the service of such railroad company; necessary care-takers of live stock, poultry, vegetables and fruit, including transportation to and from the point of delivery, employes on sleeping and express cars, railway mail service employes, newsboys on trains, baggage agents and persons injured in wrecks and physicians and nurses attending them; providing that one trip pass for a discharged employe and his family may be issued for use within 30 days of such discharge.

Provided further that the provisions of this act shall not be construed to prohibit and make unlawful the interchange of passes, and express and other franks for the officers, bona fide agents, surgeons, physicians, attorneys and employes and the dependent members of their families, of any person or company affected by this act from doing any of the things prohibited hereby free, with the object of providing relief in cases of general epidemic, pestilence or calamitous visitation.

Provided further, that the provisions of this act shall not be construed to prohibit or make unlawful the interchange of passenger transportation and message service between such railroad companies and telegraph companies and provided further that the provisions of this act shall not be construed to prohibit or make unlawful the interchange between railroad, express, telegraph and telephone companies of the transportation of persons and property, and the transmission of messages.

Provided further, that no free transportation shall be issued or given to any person when such person is a member of, employed by or in any way connected with any political committee or a candidate for or incumbent of any office or position under the constitution and laws of this state except as herein provided, and except that any railroad company may issue free passes to its employes while occupying office or position other than judicial under a municipality or public school district, or while acting under appointment as a notary public in this state. (Amended '17 c. 53 § 1)

[4337—]1. **Free transportation of soldiers in time of war**—Whenever a state of war exists between the United States of America and any other nation it shall be lawful for any common carrier engaged in the transportation of passengers within this state to transport any soldier, sailor or marine of the United States or any member of the Minnesota National Guard or of the organized state militia free of charge when in uniform for trips wholly within the State of Minnesota. ('17 c. 375 § 1)

[4338—]1. **Rates for transportation of sand, gravel and rock for public roads, etc.—Power of commission**—The railroad and warehouse commission is hereby authorized to make schedules of intra-state rates for railroads for the transportation of sand, gravel and crushed rock to be used in the construction of public roads and streets by or under the direction of public authorities, which rates may be lower than those charged for transporting the same kind of freight for all other purposes. ('17 c. 495 § 1)

[4340—]1. **Suburban railways in cities and villages—Passengers, baggage and freight**—The governing body of any city or village may by a revocable license, or by a franchise duly approved by the electors in accordance with its charter, permit a suburban railway using other than steam power to enter such city or village for the purpose of carrying passengers, baggage and light freight. Such license or franchise shall specify its terms and conditions and shall designate the route to be followed, but shall not be construed as a contract between the parties. ('15 c. 310 § 1)

[4340—]2. **Same—Joint use of tracks, etc.—Power of commission to fix compensation, etc.**—Where the designated route is already provided with tracks and other equipments, said suburban railway and the corporation owning or controlling said tracks and equipments may enter into an agreement for the joint use thereof upon equitable terms. Upon the failure of the interested parties to agree among themselves, the State Railroad and Warehouse Commission, when applied to by either party or by the city or village council, shall hear the matter and by an order fix the rate of compensation to be paid by such suburban railways for the use of the tracks, overhead wires, electric current and other accessories to be used in the operation of such suburban railway under the schedule established and the license or franchise granted by such city or village, and such suburban railway shall thereupon be entitled to the use of said tracks, overhead wires, electric current and other accessories under the terms of said order, and may enforce said right by mandamus proceedings in the courts of this state. ('15 c. 310 § 2)

[4340—]3. **Same—Cars and equipment—Ordinances, etc.**—That said suburban railways shall provide for operation within such city or village limits, cars and equipment substantially similar to the cars and equipment used by the street railways operating upon the tracks over the route so designated; and while operating upon such street railway tracks, shall comply with and be subject to all ordinances, laws, traffic rules, time schedules and regulations applicable to such street railways as the city council or other governing body may from time to time adopt, except where such suburban railways are specifically exempted by any such council from compliance with any ordinances or other municipal regulation of such city or village. ('15 c. 310 § 3)


**4341. Pooling forbidden—**

Cited (121-488, 142+3, 45 L. R. A. [N. S.] 612).

**4342. Public schedule of rates—**

Cited (121-488, 142+3, 45 L. R. A. [N. S.] 612; 130-272, 153+610).

**4344. Schedules to be filed—**

Tariff rates for transportation of goods and property by common carriers are prescribed by law, of which all concerned are charged with notice. Carrier of goods from point without to point within state is not liable to purchasers of goods from consignee for its agent's error in quoting tariff rate on connecting line to another point within state, or for erroneous statement that it would go forward on through tariff rate (162+519). Carriers, 

**4345. Unlawful charges—**

See notes under § 4334.

**4346. Switching charges—**

Where a railroad and terminal switching company was absorbed by railroad company as a terminal switching facility, order of railroad and warehouse commission abolishing switching charges by the railroad and terminal company was not unlawful or unreasonable. Order of state railroad and warehouse commission requiring a railroad which had taken over a switching company to continue operation of company's lines without switching charge for services rendered was within its jurisdiction (162+689). Carriers, Ⓒ12(1).

**4347. Long and short haul—**

Cited (123-25, 150+172).

**4348. Unjust discrimination in freight rates prohibited—**

Carrier, in delivering goods to point within state from point without state, was under no legal duty to correctly quote purchaser from consignee rates upon connecting line to another point within state (162+519). Carriers, Ⓒ30.

This act applies to movement of cars or commodities between stations, and not to switching or like movements within a shipping point, such as a village or city (130-272, 153+610). Carriers, Ⓒ12(3).

Where one railroad company owned a majority of the stock of another company, the tracks of the two companies connecting and being operated under one management as a continuous line, the two roads were to be considered as a single line for the purpose of establishing freight rates, and such rates must be fixed under this act, and not under §§ 4229, 4230, ante (133-413, 158+627). Carriers, Ⓒ12(1).

**4349. Same—Other evidence not excluded—Application to all railways—**

133-413, 158+627; note under § 4348.

**4350. Same—Rates per 100 pounds, per ton, per car, etc., in like class, to be the same in proportion—**

133-413, 158+627; note under § 4348.

**4351. Same—Application of act—Terms defined—**

133-413, 158+627; note under § 4348.

This act applies to movement of cars or commodities between stations, and not to movements within a shipping point, such as switching or like movements (130-272, 153+610). Carriers, Ⓒ12(3).

**4352. Same—Powers of commission not abridged, etc.—**

133-413, 158+627; note under § 4348.

**4353. Same—Commission to make schedule of reasonable maximum rates for each railroad—Class and commodity rates—Switching or drayage—Feeding cattle—Common rate points—**The Board of Railroad and Warehouse Commission of this state is hereby empowered and directed to make for each of the railroad corporations doing business in this state, as soon as practicable, a schedule of reasonable maximum rates of charges for the transportation of freight and cars on each of said railroads and said power to make schedule shall include the classification of such rates and it shall be the duty of said commission to make such classification and said schedules so made by said commission shall, in all suits brought against any such railroad corporation wherein is in any way involved the charges of any such railroad corporation for the transportation of any freight or cars or unjust discrimination in relation thereto be deemed and taken in all the courts of this state as prima facie evidence that the rates therein fixed are reasonable and just maximum rates of charges. The commission may fix different schedules of class or commodity rates for railroads of the same class. The maximum rates shall not apply to switching or drayage rates. The commission may define switching and drayage service to apply to the movement of traffic within and between points, and fix reasonable maximum rates for the same, which shall be independent of any rates that may be made for line haul transportation, and in the making of said rates the commission shall not be governed entirely by the distance principle established by this act. The commission may fix rates for feeding cattle which shall apply to out movement from terminal markets. The commission may unite two or more stations or commercial centers into a common rate point, and may designate the classes of freight which shall take common rates, and fix the mileage that shall govern between the common rate point

and any or all other points in the state. The distances so fixed shall not apply as a measure of the rate for the movement of the same class of freight for similar distances between other points. (Amended '15 c. 367 § 1)

133-413, 158+627; note under § 4348.

This section, as amended by 1915 c. 367, is not violative of Const. art. 3 § 1, as an attempt to delegate legislative power (134-217, 158+982). Carriers, 62; Constitutional Law, 62.

An order of the railroad and warehouse commission under this section, as amended by 1915 c. 367, establishing St. Paul, Minneapolis, Minnesota Transfer, Hopkins, and St. Louis Park a common point, held not invalid as a denial of due process of law, contrary to the fourteenth amendment of the federal constitution (134-217, 158+982). Constitutional Law, 298(2).

This act has reference to movements of cars and commodities between stations, and not to switching and like movements within a shipping point, such as a city or village; this construction being supported by the amendment in 1915 of this section (130-272, 153+610). Carriers, 12(3).

**4354. Same—Classification of railroads as to gross earnings—**

133-413, 158+627; note under § 4348.

**4355. Same—Shipment over two or more lines—Reasonable rates—**

133-413, 158+627; note under § 4348.

**4356. Same—Penalty for violation—**

133-413, 158+627; note under § 4348.

**4357. Same—Prosecution, in what counties—Duty of county attorney, etc.—**

133-413, 158+627; note under § 4348.

**4359. Transfer facilities—**

Cited (130-272, 153+610).

Where two railroad companies constructed a certain railroad and owned all its capital stock and bonds, held, that such railroad constituted one of the terminal facilities of the controlling companies, and the latter could not make a special charge for switching shipments thereon, where they made no such charge for shipments to industries located on their own lines; and they could not obviate the discrimination by making a charge on their own lines, where the line haul included the switching charges (134-169, 158+817). Carriers, 199, 201.

**4374. Same—Damages not offset by demurrage—Live stock—**

Evidence of injuries from delay in transportation (121-278, 141+161).

**4379. 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 and minimum weight charged by such company for any kind of stock in such car, except that the cattle rate and minimum weight will apply when by the use of same a lower charge results. 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. (Amended '15 c. 254 § 1)

**4381. Livestock arriving at terminal—Time for delivery at stockyards and unloading—**That all live stock arriving at any terminal over any line of railroad in this state, which is billed to any stock yard within twenty miles of said terminal where live stock is bought, sold or transferred, shall be delivered to chutes of such stock yard within five hours after its arrival at such terminal unless prevented by an act of God; of which time any terminal railroad whose principal business is transferring live stock from terminal interchanging points to stock yards for unloading shall be allowed not more than three hours time of the said six hours after the live stock has been delivered to it in which to deliver said live stock to the stock yard chutes. (Amended '17 c. 378 § 1)

**4385. Shipment of cream—**

Creamery company held not entitled to restrain carrier from complying with this act, and the attorney general from enforcing it, on the ground that compliance with the act would

interfere with plaintiff's business, plaintiff claiming that the act is unconstitutional (124-239, 144+764, 49 L. R. A. [N. S.] 951). Injunction, ☞105(2).

This section applies to all railroad companies doing business in the state, and to shipments arising without and terminating within, as well as to those originating within and terminating without, the state, and as such an unreasonable interference with interstate commerce (125-332, 147+109). Commerce, ☞61(1).

**4386. Same—Penalty for violation—False statements, etc.—**

125-332, 147+109; note under § 4385.

[4388—]1. **Stock cars to be cleaned monthly**—It shall be the duty of every railway company operating a railroad within this state to cause every railroad car used in the transportation of live stock in this state to be properly and thoroughly cleaned by removing all litter, manure and refuse from such car once in each month between the first day of March and the first day of December of each year. ('15 c. 41 § 1)

[4388—]2. **Same—Certain stock cars to be cleaned before loading**—It shall be the duty of every railway company operating a railroad within this state to cause to be cleaned and properly disinfected immediately before loading every car used for transporting live stock for feeding or breeding purposes from any railway terminal point in this state to any other point in this state. ('15 c. 41 § 2)

[4388—]3. **Same—Powers and duties of live stock sanitary board**—The State Live Stock Sanitary Board is hereby authorized to make and to change from time to time all reasonable rules and regulations for the disinfection of cars used for the transportation of live animals within this state. The said board shall furnish from time to time to each railway company operating a railroad within this state copies of said rules. It is hereby made the duty of every such railway company to obey each and every one of said rules. ('15 c. 41 § 3)

[4388—]4. **Same—Penalty for violation**—Any railway company violating any of the provisions of this act shall be guilty of a misdemeanor and shall on conviction thereof be fined not less than fifty dollars (\$50.00) nor more than five hundred dollars (\$500.00). ('15 c. 41 § 4)

**4390. Depots and waiting rooms—**

As to who is a "through passenger" (see 123-153, 143+263, 48 L. R. A. [N. S.] 262). Carriers, ☞247(1).

As to a passenger suffering injuries in Iowa, held, that a railroad company carrying passengers is obliged reasonably to heat its stations in winter for the accommodation of passengers, but such duty is owing to passengers only (123-153, 143+263, 48 L. R. A. [N. S.] 262). Carriers, ☞282, 286(8).

**4391. Certain depots to be kept open—**

This section may be considered as indicating the legislative policy in a proceeding not brought thereunder (123-463, 144+155).

**4399. Trains to stop at stations—**

Whether defendant violated the duty prescribed by this section, and whether plaintiff was guilty of contributory negligence, held for the jury (124-517, 145+746). Carriers, ☞320(29); (130-246, 153+518). Carriers, ☞320(26), 347(11).

Negligence in discharging passengers (121-511, 141+845). Carriers, ☞303(1).

A person entering a train to assist an outgoing passenger is within the protection of this section, and is entitled to a reasonable time to alight (124-517, 145+746). Carriers, ☞304(3).

Carrier is required to afford reasonable opportunity for passengers on freight train to alight in safety (128-193, 150+800). Carriers, ☞280(5).

**4406. Stopping trains at crossings—**

Where it appeared that a railroad company had been violating this section, an order of the railroad and warehouse commission requiring that trains be brought to a stop before passing a junction was proper (124-533, 144+771). Railroads, ☞240.

[4408—]1. **Toilet facilities required in interurban cars**—The railroad and warehouse commission may upon a hearing, order the installation of sanitary toilet facilities in any interurban and suburban car operating in regular service under its jurisdiction, and failure of any company or corporation owning and operating such car to comply with such order, shall subject it to a fine of not less than one hundred dollars (\$100.00).

This act shall not apply to cars running between the cities of St. Paul and Minneapolis nor to any such interurban or suburban cars operated over a distance of less than eighteen miles beyond the city limits of either of said cities. ('17 c. 449 § 1)

[4408—]2. **Same—Power of local authorities—**The authorities of any municipality through which such cars are or may be operated shall have the right to regulate the closing of such closet within such municipalities. ('17 c. 449 § 2)

**4421. Headlights on certain locomotives—**

The use of a 1,500 candle power electric headlight on an engine used in switching operations, the effect of which was to blind and dazzle the eyes of a switchman's helper, so that he was run over and killed, held to justify a finding of negligence (133-257, 158+232). Master and Servant, ⇨278(18).

[4423—]1. **Abandonment of road—Fines to municipalities—**Whenever a railroad or other common carrier is fined on account of an abandonment or tearing up of its tracks, or any part thereof, such fine shall go to such municipalities as have been injured by such action through disturbance of their manufacturing or business interests or otherwise. ('15 c. 317 § 1)

[4423—]2. **Same—Disposition, how made—**The disposition of such fine shall be determined by the district court of the district in which the prosecution was conducted and shall be heard as are ordinary civil actions upon petition of such municipalities setting forth the facts, but no such petition shall be filed later than six months after the payment of such fine. Such fines shall not be turned into the state treasury until such petitions, if any, have been disposed of and shall be distributed in accordance with the judgment of the court. ('15 c. 317 § 2)

[4423—]3. **Same—Fines paid when—**This act shall apply to any fines paid since January 1, 1915, irrespective of when prosecution was instituted, provided that petition be filed within six months after this act goes into effect, and to provide for such cases the sum of two thousand dollars (\$2,000) is hereby appropriated out of any moneys in the state treasury not otherwise appropriated, and upon presentation of a certified copy of the judgment of any district court showing any municipality to be entitled to any such fine, or part thereof, the state auditor shall draw a warrant upon the treasurer in favor of such municipality for the amount named in said judgment. ('15 c. 317 § 3)

**4426. Fire caused by engine—Insurable interest—**

Negligence in permitting spread of fire (121-357, 141+491, 45 L. R. A. [N. S.] 215). Railroads, ⇨457.

Evidence held to support a verdict for plaintiff (121-439, 141+523). Railroads, ⇨482(1).

Proximate cause of injury (121-357, 141+491, 45 L. R. A. [N. S.] 215). Railroads, ⇨482(1).

Contributory negligence of owner of property, suing under Wisconsin statute, considered (123-423, 144+145, Ann. Cas. 1915A, 496). Railroads, ⇨484(6).

**4427. Negligence of fellow servant—**

132-195, 156+272.

**In general—**Evidence held insufficient to sustain a verdict, it being merely conjectural as to whether a brakeman was injured by a cause for which the railroad company was liable (124-487, 145+393). Master and Servant, ⇨276(2).

A railroad foreman and crew held not negligent in the method pursued in replacing defective ties with new ones, so as to render the railroad company liable for injuries to plaintiff's foot (125-12, 145+399). Master and Servant, ⇨279(4).

Evidence held to show negligence in backing a train at excessive speed without maintaining a lookout and giving the customary signals (123-109, 143+121). Master and Servant, ⇨278(18).

**Contributory negligence—**Where there is a custom or practice to keep a lookout on backing trains and to ring the bell, a question of an employe's contributory negligence, who relied on such precaution, was for the jury (123-109, 143+121). Master and Servant, ⇨28, 289(28).

Contributory negligence and assumption of risk on the part of employes attempting to couple cars on a switch track, defeating recovery for their death caused by the switching of cars against the cars on which they were working, held, under the evidence, a question for the jury (127-381, 149+660). Master and Servant, ⇨288(3), 289(33).

**Assumption of risk**—A servant, engaged with a crew in laying a switch, held not to assume risk of injury by being struck by flying tie thrown by fellow employes merely because he knew that ties had been thrown before (121-473, 141+843). Master and Servant, Ⓒ213.

**To what servants applicable**—The foreman of a switching crew held, under the evidence, guilty of negligence in failing to anticipate the presence of yard employes between cars on a switch track attempting to couple the same, rendering the railroad company liable for death of such employes, caused by the act of the foreman in causing other cars to be run against the cars about which they were working (127-381, 149+660). Master and Servant, Ⓒ276(8).

A section hand, struck by a trespassing horse with which an engine collided, held entitled to recover, where the trainmen failed to keep a lookout, give a warning, or slacken speed (128-505; 151+177). Master and Servant, Ⓒ286(31).

Evidence held to show negligence on the part of fellow employes in throwing a tie in such a way that it struck plaintiff. (121-473, 141+843). Master and Servant, Ⓒ279.

An engineer in a switching yard, where men are constantly working upon the tracks, must keep a lookout for them, and use reasonable care to avoid injuring them (130-222, 153+529). Master and Servant, Ⓒ137(4), 278(18).

An employe unloading logs from cars standing on an unloading track, detached from an engine, is not exposed to "railroad hazards," and this section does not apply. The "rule of haste" applies only where the work must be done with unusual haste by reason of its relation to the operation of the railroad, and such haste is the cause of the accident (123-249, 143+739). Master and Servant, Ⓒ180(1).

An employe of a mining company, engaged in laying a switch and side track, whose hand was injured by the skidding of a tie thrown by fellow employes while he was taking a stone from beneath a rail, held engaged in the "hazards of a railroad," where the crew in which he was working was being urged by the foreman to hasten the work so that trains might not be delayed (121-473, 141+843). Master and Servant, Ⓒ180.

[4427—]1. **Liability for injury or death of employe—Negligence of fellow servant, etc.—Damages for death, how distributed**—That every company, person or corporation owning or operating, as a common carrier or otherwise, a steam railroad or railway in the State of Minnesota, shall be liable in damages to any employee suffering injury while engaged in such employment; or, in case of death of such employee, to the surviving widow or husband and children of such employee; and, if none, then to such employee's parents; and, if none, then the next of kin dependent upon such employee, for such injury or death resulting in whole or in part from the negligence of any of the officers, agents or employees of such employer, or by reason of any defect or insufficiency due to the employer's negligence.

The damages recoverable in case of death to be distributed to the parties in interest in the same proportion as personal property of persons dying intestate. ('15 c. 187 § 1)

[4427—]2. **Same—Defect in appliances, etc.**—That every company, person or corporation owning or operating, as a common carrier or otherwise, a steam railroad or railway in the State of Minnesota, shall be liable in damages to any person suffering injury while he is engaged in the line of his employment, or in case of the death of such employee, to his or her surviving widow or husband and children of such employee; and, if none, then of such employee's parents; and, if none, then of the next of kin dependent upon such employee, for such injury or death resulting in whole or in part from the negligence of any of the officers, agents or employees of such employer, or by reason of any defect or insufficiency in such employer's appliances, machinery or apparatus furnished. ('15 c. 187 § 2)

[4427—]3. **Same—Contributory negligence**—That in all actions hereafter brought against any such employer under or by virtue of any of the provisions of this act, to recover damages for personal injury to the employee, or where such injuries have resulted in his death, the fact that the employee may have been guilty of contributory negligence shall not bar a recovery but the damages shall be diminished by the jury in proportion to the amount of negligence attributable to such employee; provided, that no such employee who may be injured or killed shall be held to have been guilty of contributory negligence in any case where the violation by such employer of any statute enacted for the safety of employees contributed to the injury or death of such employee. ('15 c. 187 § 3)

[4427—]4. **Same—Assumption of risk**—That in any action brought against any employer under or by virtue of any of the provisions of this act to recover for injuries to or the death of any of its employees, such employee shall not be held to have assumed the risk of his employment in any case where the violation by the employer of any statute enacted for the safety of employees contributed to the injury or death of such employee. ('15 c. 187 § 4)

[4427—]5. **Same—Contracts, etc., exempting employer void—Payments by employer for insurance, etc.**—That any contract, rule, regulation or device whatsoever the purpose or intent of which shall be to enable any employer to exempt such employer from any liability created by this act, shall to that extent be void; provided, that in any action brought against any such employer under or by virtue of any of the provisions of this act, such employer may set off therein any sum he has contributed or paid to any insurance, relief, benefit or indemnity that may have been paid to the injured employee, or the persons entitled thereto on account of the injury or death for which said action was brought. ('15 c. 187 § 5)

[4427—]6. **Same—"Employer" to include whom**—That the term employer as used in this act shall include the receiver or receivers or other persons or corporations charged with the duty of management and operation of any business employing labor. ('15 c. 187 § 6)

[4427—]7. **Same—Survival of action**—That any right of action given by this act to a person suffering injury shall survive for the benefit of the surviving widow or husband and children of any such employee; and if none, then of such employee's parents; and if none, then of the next of kin dependent upon such employee, but in such cases there shall be only one recovery for the same injury. ('15 c. 187 § 7)

[4427—]8. **Same—Limitation of action**—That no action shall be maintained under this act unless commenced within two years from the day the cause of action accrues. ('15 c. 187 § 8)

[4432—]1. **Mileage books—Rates—Redemption of unused coupons**—Every railroad company owning, operating or using a steam railroad in this state for the intrastate transportation of passengers, shall from and after the effective date of the order provided for in sections 3 [4432—3] and 5 [4432—5] of this act keep on sale at all its ticket offices in this state mileage books for passenger transportation containing coupon tickets representing two thousand miles, good for intrastate transportation between stations on said railroad in this state, when presented for transportation by the original purchaser thereof. Such mileage books shall be sold at a price not to exceed the maximum rate per mile authorized by law to be charged by the railroad company issuing the same for the intrastate transportation of passengers between stations in this state, and the tickets contained therein shall show on their face the rate per mile paid therefor. Such mileage books shall be valid for one year from the date of purchase and if not wholly used within the year, the company issuing the same shall redeem the unused coupons therein, if presented by the purchaser for redemption within thirty days after the expiration of the year, at the rate per mile paid therefor. ('17 c. 118 § 1)

[4432—]2. **Same—Increase of rates—Unused coupons**—If any such railroad company after issuing a mileage book or books hereunder and before such mileage book or books shall be used up by the purchaser thereof, shall lawfully issue mileage books hereunder at an increased rate, the unused coupons in all unexpired mileage books theretofore issued shall thereafter be good on such railroad only for the proportionate mileage which the rate paid therefor would have purchased at such increased rate. ('17 c. 118 § 2)

[4432—]3. **Same—Powers and duties of commission—Notice and hearing—Rules and regulations**—The railroad and warehouse commission of this state within ten days after this act takes effect, shall notify every railroad company owning, operating or using a steam railroad in this state, that it will



upon a day named in such notice, which day shall not be earlier than thirty days after the giving of such notice, take up for investigation the subject of requiring all railroad companies owning, operating or using steam railroads in this state to accept for the intrastate transportation of passengers between stations on their said railroads in this state, mileage tickets issued by other railroad companies pursuant to the provisions of this act. All corporations, partnerships and persons interested in the subject may present themselves at the hearing and be heard under such reasonable rules and regulations as the said commission may prescribe. In such investigation, which shall be conducted with all due diligence, the said commission shall take into consideration the financial responsibility of the various railroad companies owning, operating or using steam railroads in this state, and the rates authorized by law to be charged by such railroad companies for the intrastate transportation of passengers between stations on their said railroads in this state; and any other pertinent matters; and after considering the same shall make findings of fact relative to the matters considered by it and an order based thereon wherein it shall establish just and reasonable rules and regulations, pursuant to which such railroad companies shall be required to accept for the intrastate transportation of passengers between stations on their said railroads in this state, mileage tickets issued by other railroad companies pursuant to this act. ('17 c. 118 § 3)

[4432—]4. **Same—Certain companies excluded**—If on such investigation the commission shall find that any such railroad company is financially irresponsible or that for any other just and reasonable cause other railroad companies ought not to be required to accept for transportation mileage tickets issued by such company, the said commission shall in its rules and regulations exclude from the operation of section 6 of this act [4432—6], mileage tickets issued by any such company. ('17 c. 118 § 4)

[4432—]5. **Same—Order and service—Publication of rules, etc., to be issued when provisions become effective**—The order shall fix the date when such rules and regulations shall become effective, which shall be not less than thirty days from the making and filing of such order, and shall be served upon the railroad companies affected thereby as provided in section 1967, Revised Laws of 1905, the same being section 4183, General Statutes of 1913. Every such railroad company shall publish and adopt such rules and regulations and shall comply therewith as soon as the same shall become effective. ('17 c. 118 § 5)

[4432—]6. **Same—Mileage book interchangeable**—Subject to the provisions of such rules and regulations every such railroad company shall accept for the intrastate transportation of passengers between stations in this state over all steam railroads owned, operated or used by it, mileage tickets issued by other railroad companies pursuant to the provisions of this act. ('17 c. 118 § 6)

[4432—]7. **Same—Revision of rules and regulations**—The railroad and warehouse commission upon such reasonable notice as it may prescribe may from time to time upon its own motion, or upon the application of any corporation, partnership or person interested therein, revise change or add to any rule or regulation fixed hereunder and any such revised, changed or added rules and regulations shall be served in the same manner and have the same force and effect as the rules and regulations originally established. ('17 c. 118 § 7)

[4432—]8. **Same—Equivalent to highest class tickets**—Any such mileage book when presented for transportation, either to the railroad company issuing the same or to another railroad company pursuant to the rules and regulations fixed by the commission, shall entitle the purchaser thereof to the same rights and privileges in respect to the transportation of both person and property, to which the highest class ticket issued by the railroad company to which it is presented would entitle him. ('17 c. 118 § 8)

## BILLS OF LADING

## PART I—THE ISSUE OF BILLS OF LADING

[4434—]1. **Bills governed by this act**—Bills of lading issued by any common carrier shall be governed by this act. ('17 c. 399 § 1)

This act is entitled "An act to make uniform the law of bills of lading." The federal Bills of Lading Act, passed in August, 1916, made certain changes in the Uniform Bills of Lading Act, approved by the National Conference of Commissioners on Uniform State Laws. These and other changes in the Uniform Act are shown in italics.

[4434—]2. **Form of bills—Essential terms**—Every bill must embody within its written or printed terms:

- (a) The date of its issue,
- (b) The name of the person from whom the goods have been received,
- (c) The place where the goods have been received.
- (d) The place to which the goods are to be transported,
- (e) A statement whether the goods received will be delivered to a specified person, or to the order of a specified person,
- (f) A description of the goods or of the packages containing them which may, however, be in such general terms as are referred to in Section 23 [4434—23], and,
- (g) The signature of the carrier.

A negotiable bill shall have the words "order of" printed thereon immediately before the name of the person upon whose order the goods received are deliverable.

A carrier shall be liable to any person injured thereby for the damage caused by the omission from a negotiable bill of any of the provisions required in this section. ('17 c. 399 § 2)

[4434—]3. **Form of bills—What terms may be inserted**—A carrier may insert in a bill, issued by him, any other terms and conditions, provided that such terms and conditions shall not:

- (a) Be contrary to law or public policy, or,
- (b) In anywise impair his obligation to exercise at least that degree of care in the transportation and safekeeping of the goods entrusted to him which a reasonably careful man would exercise in regard to similar goods of his own. ('17 c. 399 § 3)

[4434—]4. **Definition of non-negotiable or straight bill**—A bill in which it is stated that the goods are consigned or destined to a specified person, is a non-negotiable or straight bill. ('17 c. 399 § 4)

[4434—]5. **Definition of negotiable or order bill**—A bill in which it is stated that goods are consigned or destined to the order of any person named in such bill, is a negotiable or order bill.

Any provision in such a bill that is non-negotiable shall not affect its negotiability within the meaning of this act. ('17 c. 399 § 5)

[4434—]6. **Negotiable bills must not be issued in sets**—Negotiable bills issued in this state for the transportation of goods shall not be issued in parts or sets.

If so issued, the carrier issuing them shall be liable for failure to deliver the goods described therein to anyone who purchases a part for value in good faith, even though the purchase be after the delivery of the goods by the carrier to a holder of one of the other parts. ('17 c. 399 § 6)

[4434—]7. **Duplicate negotiable bills must be so marked**—When more than one negotiable bill is issued in this state for the same goods to be transported, the word "duplicate," or some other word or words indicating that the document is not an original bill, shall be placed plainly upon the face of every such bill, except the one first issued. A carrier shall be liable for the damage caused by his failure so to do to anyone who has purchased the bill for value in good faith as an original, even though the purchase be after the delivery of the goods by the carrier to the holder of the original bill. ('17 c. 399 § 7)

[4434—]8. **Non-negotiable bills shall be so marked**—A non-negotiable bill shall have placed plainly upon its face by the carrier issuing it “non-negotiable,” or “not negotiable.” This section shall not apply, however, to memoranda or acknowledgments of an informal character. ('17 c. 399 § 8)

[4434—]9. **Insertion of name of person to be notified**—The insertion in a negotiable bill of the name of a person to be notified of the arrival of the goods shall not limit the negotiability of the bill, or constitute notice to a purchaser thereof of any rights or equities of such person in the goods. ('17 c. 399 § 9)

[4434—]10. **Acceptance of bill is prima facie evidence of assent to its terms**—Except as otherwise provided in this act, where a consignor receives a bill and makes no objection to its terms or conditions at the time he receives it, *this shall be prima facie evidence that he assents to its terms in so far as they are in accordance with law and public policy.* ('17 c. 399 § 10)

PART II—OBLIGATIONS AND RIGHTS OF CARRIERS UPON THEIR BILLS OF LADING

[4434—]11. **Obligations of carrier to deliver**—A carrier, in the absence of some lawful excuse, is bound to deliver goods upon a demand made either by the consignee named in the bill for the goods, or if the bill is negotiable, by the holder thereof, if such demand is accompanied by:

- (a) An offer in good faith to satisfy the carrier's lawful lien upon the goods,
- (b) *Possession of the bill of lading* and an offer in good faith to surrender, properly indorsed, the bill which was issued for the goods, if the bill is negotiable, and,
- (c) A readiness and willingness to sign, when the goods are delivered, an acknowledgment that they have been delivered, if such signature is requested by the carrier.

In case the carrier refuses or fails to deliver the goods in compliance with a demand by the consignee or holder so accompanied, the burden shall be upon the carrier to establish the existence of a lawful excuse for such refusal or failure. ('17 c. 399 § 11)

[4434—]12. **Justification of carrier in delivering**—A carrier is justified, subject to the provisions of the three following sections, in delivering goods to one who is:

- (a) A person lawfully entitled to the possession of the goods, or,
- (b) The consignee named in a non-negotiable bill for the goods, or,
- (c) A person in possession of a negotiable bill for the goods by the terms of which the goods are deliverable to his order, or which has been indorsed to him or in blank by the consignee or by the mediate or immediate indorsee of the consignee. ('17 c. 399 § 12)

[4434—]13. **Carrier's liability for misdelivery**—Where a carrier delivers goods to one who is not lawfully entitled to the possession of them the carrier shall be liable to anyone having a right of property or possession in the goods if he delivered the goods otherwise than as authorized by subdivisions (b) and (c) of the preceding section; and, though he delivered the goods as authorized by either of said subdivisions, he shall be so liable if prior to such a delivery he:

- (a) Had been requested by or on behalf of a person having a right of property or possession in the goods, not to make such delivery, or,
- (b) Had information at the time of the delivery that it was to a person not lawfully entitled to the possession of the goods.

Such request or information to be effective within the meaning of this section must be given to an officer or agent of the carrier, the actual or apparent scope of whose duties includes action upon such a request or information, and must be given in time to enable the officer or agent to whom it is given, acting with reasonable diligence, to stop delivery of the goods. ('17 c. 399 § 13)

[4434—]14. **Negotiable bills must be cancelled when goods delivered**—Except as provided in section 27 [4434—27], and except when compelled by legal process, if a carrier delivers goods for which a negotiable bill had been issued, the negotiation of which would transfer the right to the possession of the goods, and fails to take up and cancel the bill, such carrier shall be liable for failure to deliver the goods to anyone who for value and in good faith purchases such bill, whether such purchaser acquired title to the bill before or after delivery of the goods by the carrier, and notwithstanding delivery was made to the person entitled thereto. ('17 c. 399 § 14)

[4434—]15. **Negotiable bills must be cancelled or marked when parts of goods delivered**—Except as provided in section 27 [4434—27], and except when compelled by legal process, if a carrier delivers part of the goods for which a negotiable bill had been issued and fails either:

(a) To take up and cancel the bill, or,

(b) To place plainly upon it a statement that a portion of the goods has been delivered, with a description, which may be in general terms, either of the goods or packages that have been so delivered or of the goods or packages which still remain in the carrier's possession.

He shall be liable for failure to deliver all the goods specified in the bill, to anyone who for value and in good faith purchases it, whether such purchaser acquired title to it before or after the delivery of any portion of the goods by the carrier, and notwithstanding such delivery was made to the person entitled thereto. ('17 c. 399 § 15)

[4434—]16. **Altered bills**—Any alteration, addition or erasure in a bill after its issue without authority from the carrier issuing the same either in writing or noted on the bill shall be void, whatever be the nature and purpose of the change, and the bill shall be enforceable according to its original tenor. ('17 c. 399 § 16)

[4434—]17. **Lost or destroyed bills**—Where a negotiable bill has been lost, *stolen* or destroyed, a court of competent jurisdiction may order the delivery of the goods upon satisfactory proof of such loss, *theft* or destruction and upon the giving of a bond with sufficient surety to be approved by the court to protect the carrier or any person injured by such delivery from any liability or loss, incurred by reason of the original bill remaining outstanding. The court may also in its discretion order the payment of the carrier's reasonable costs and counsel fees: *Provided, a voluntary indemnifying bond without order of court shall be binding on the parties thereto.*

The delivery of the goods under an order of the court, as provided in this section, shall not relieve the carrier from liability to a person to whom the negotiable bill has been or shall be negotiated for value without notice of the proceedings or of the delivery of the goods. ('17 c. 399 § 17)

[4434—]18. **Effect of duplicate bills**—A bill upon the face of which the word "duplicate" or some other word or words indicating that the document is not an original bill is placed plainly shall impose upon the carrier issuing the same the liability of one who represents and warrants that such bill is an accurate copy of an original bill properly issued, but no other liability. ('17 c. 399 § 18)

[4434—]19. **Carrier cannot set up title in himself**—No title to goods or right to their possession asserted by a carrier for his own benefit, shall excuse him from liability for refusing to deliver the goods according to the terms of a bill issued for them, unless such title or right is derived directly or indirectly from a transfer made by the consignor or consignee after the shipment, or from the carrier's lien. ('17 c. 399 § 19)

[4434—]20. **Interpleader of adverse claimants**—If more than one person claims the title or possession of goods, the carrier may require all known claimants to interplead, either as a defense to an action brought against him for non-delivery of the goods, or as an original suit, whichever is appropriate. ('17 c. 399 § 20)

[4434—]21. **Carrier has reasonable time to determine validity of claims**—If someone other than the consignee or person in possession of the bill has a claim

to the title or possession of the goods, and the carrier has information of such claim, the carrier shall be excused from liability for refusing to deliver the goods either to the consignee or person in possession of the bill, or to the adverse claimant, until the carrier has had a reasonable time to ascertain the validity of the adverse claim or to bring legal proceedings to compel all claimants to interplead. ('17 c. 399 § 21)

[4434—]22. **Adverse title is no defense, except as above provided**—Except as provided in the two preceding sections and in section 12 [4434—12], no right or title of a third person unless enforced by legal process shall be a defense to an action brought by the consignee of a non-negotiable bill or by the holder of a negotiable bill against the carrier for failure to deliver the goods on demand. ('17 c. 399 § 22)

[4434—]23. **Liability for non-receipt or misdescription of goods**—If a bill of lading has been issued by a carrier or on his behalf by an agent or employee the scope of whose actual or apparent authority includes the issuing of bills of lading, the carrier shall be liable to:

(a) *The owner of goods covered by a non-negotiable bill subject to existing right of stoppage in transitu,* or,

(b) The holder of a negotiable bill,

Who has given value in good faith relying upon the description therein of the goods, for damages caused by the non-receipt by the carrier of all or part of the goods or their failure to correspond with the description thereof in the bill at the time of its issue.

*When package freight or bulk freight is loaded by a shipper and the goods are described in a bill merely by a statement of marks or labels upon them or upon packages containing them, or by a statement that the goods are said to be goods of a certain kind or quantity, or in a certain condition, or it is stated in the bill that packages are said to contain goods of a certain kind or quantity or in a certain condition, or that the contents or condition of the contents of packages are unknown, or words of like purport are contained in the bill, such statements, if true, shall not make liable the carrier issuing the bill, although the goods are not of the kind or quantity or in the condition which the marks or labels upon them indicate, or of the kind or quantity or in the condition they were said to be by the consignor. The carrier may, also, by inserting in the bill the words "shipper's weight, load and count" or other words of like purport indicate that the goods were loaded by the shipper and the description of them made by him; and if such statement be true, the carrier shall not be liable for damages caused by the improper loading or by the non-receipt or by the misdescription of the goods described in the bill: *Provided, however, where the shipper of bulk freight installs and maintains adequate facilities for weighing such freight, and the same are available to the carrier, then the carrier upon written request of such shipper and when given a reasonable opportunity so to do, shall ascertain the kind and quantity of bulk freight within a reasonable time after such written request, and the carriers shall not in such cases insert in the bill of lading the words "shipper's weight," or other words of like purport, and if so inserted contrary to the provisions of this section, said words shall be treated as null and void and as if not inserted therein.* ('17 c. 399 § 23)*

[4434—]23A. **Certain duties of carrier when goods are loaded by him**—*When goods are loaded by a carrier such carrier shall count the packages of goods, if package freight, and ascertain the kind and quantity if bulk freight, and such carrier shall not, in such cases, insert in the bill of lading or in any notice, receipt, contract, rule, regulation or tariff, "shipper's weight, load and count," or other words of like purport, indicating that the goods were loaded by the shipper and the description of them made by him or in case of bulk freight and freight not concealed by packages the description made by him. If so inserted, contrary to the provisions of this section, said words shall be treated as null and void and as if not inserted therein.* ('17 c. 399 § 23A)

[4434—]24. **Attachment or levy upon goods for which a negotiable bill has been issued**—If goods are delivered to a carrier by the owner or by a person whose act in conveying the title to them to a purchaser for value in good

faith would bind the owner and a negotiable bill is issued for them, they cannot thereafter, while in the possession of the carrier, be attached by garnishment or otherwise, or be levied upon under an execution, unless the bill be first surrendered to the carrier or its negotiation enjoined. The carrier shall in no such case be compelled to deliver the actual possession of the goods until the bill is surrendered to him or impounded by the court. ('17 c. 399 § 24)

[4434—]25. **Creditor's remedies to reach negotiable bills**—A creditor whose debtor is the owner of a negotiable bill shall be entitled to such aid from courts of appropriate jurisdiction by injunction and otherwise in attaching such bill, or in satisfying the claim by means thereof as is allowed at law or in equity in regard to property which cannot readily be attached or levied upon by ordinary legal process. ('17 c. 399 § 25)

[4434—]26. **Negotiable bill must state charges for which lien is claimed**—If a negotiable bill is issued the carrier shall have no lien on the goods therein mentioned, except for charges on those goods for freight, storage, demurrage and terminal charges, and expenses necessary for the preservation of the goods or incident to their transportation subsequent to the date of the bill, unless the bill expressly enumerates other charges for which a lien is claimed. In such case there shall also be a lien for the charges enumerated so far as they are allowed by law and the contract between the consignor and the carrier. ('17 c. 399 § 26)

[4434—]27. **Effect of sale**—After goods have been lawfully sold to satisfy a carrier's lien, or because they have not been claimed, or because they are perishable or hazardous, the carrier shall not thereafter be liable for failure to deliver the goods *themselves* to the consignee or owner of the goods, or to a holder of the bill given for the goods when they were shipped, even if such bill be negotiable. ('17 c. 399 § 27)

#### PART III—NEGOTIATION AND TRANSFER OF BILLS

[4434—]28. **Negotiation of negotiable bills by delivery**—A negotiable bill may be negotiated by delivery where, by the terms of the bill, the carrier undertakes to deliver the goods to the order of a specified person and such person or a subsequent indorsee of the bill has indorsed it in blank. ('17 c. 399 § 28)

[4434—]29. **Negotiation of negotiable bills by indorsement**—A negotiable bill may be negotiated by the indorsement of the person to whose order the goods are deliverable by the tenor of the bill. Such indorsement may be in blank or to a specified person. If indorsed to a specified person, it may be negotiated again by the indorsement of such person in blank or to another specified person. Subsequent negotiation may be made in like manner. ('17 c. 399 § 29)

[4434—]30. **Transfer of bills**—A bill may be transferred by the holder by delivery, accompanied with an agreement, express or implied, to transfer the title to the bill or to the goods represented thereby.

A non-negotiable bill cannot be negotiated *free from existing equities* and the indorsement of such a bill gives the transferee no additional right. ('17 c. 399 § 30)

[4434—]31. **Who may negotiate a bill**—A negotiable bill may be negotiated by any person in possession of the same, however such possession may have been acquired if, by the terms of the bill, the carrier undertakes to deliver the goods to the order of such person, or if at the time of negotiation the bill is in such form that it may be negotiated by delivery. ('17 c. 399 § 31)

[4434—]32. **Rights of person to whom a bill has been negotiated**—A person to whom a negotiable bill has been duly negotiated acquires thereby:

(a) Such title to the goods as the person negotiating the bill to him had or had ability to convey to a purchaser in good faith for value, and also such title to the goods as the consignee and consignor had or had power to convey to a purchaser in good faith for value, and,

(b) The direct obligation of the carrier to hold possession of the goods for him according to the terms of the bill as fully as if the carrier had contracted directly with him. ('17 c. 399 § 32)

[4434—]33. **Rights of person to whom a bill has been transferred**—A person to whom a bill has been transferred but not negotiated acquires thereby as against the transferor, the title to the goods, subject to the terms of any agreement with the transferor. If the bill is non-negotiable, such person also acquires the right to notify the carrier of the transfer to him of such bill, and thereby to become the direct obligee of whatever obligations the carrier owed to the transferor of the bill immediately before the notification.

Prior to the notification of the carrier by the transferor or transferee of a non-negotiable bill, the title of the transferee to the goods and the right to acquire the obligation of the carrier may be defeated by garnishment or by attachment or execution upon the goods by a creditor of the transferor, or by a notification to the carrier by the transferor or a subsequent purchaser from the transferor of a subsequent sale of the goods by the transferor.

A carrier has not received notification within the meaning of this section unless an officer or agent of the carrier, the actual or apparent scope of whose duties includes action upon such a notification, has been notified; and no notification shall be effective until the officer or agent to whom it is given has had time with the exercise of reasonable diligence to communicate with the agent or agents having actual possession or control of the goods. ('17 c. 399 § 33)

[4434—]34. **Transfer of negotiable bill without indorsement**—Where a negotiable bill is transferred for value by delivery, and the indorsement of the transferor is essential for negotiation, the transferee acquires a right against the transferor to compel him to indorse the bill, unless a contrary intention appears. The negotiation shall take effect as of the time when the indorsement is actually made. This obligation may be specifically enforced. ('17 c. 399 § 34)

[4434—]35. **Warranties on sale of bill**—A person who negotiates or transfers for value a bill by indorsement or delivery, including one who assigns for value a claim secured by a bill, unless a contrary intention appears, warrants:

- (a) That the bill is genuine,
- (b) That he has a legal right to transfer it,
- (c) That he has knowledge of no fact which would impair the validity or worth of the bill, and,
- (d) That he has a right to transfer the title to the goods, and that the goods are merchantable or fit for a particular purpose whenever such warranties would have been implied, if the contract of the parties had been to transfer without a bill the goods represented thereby.

In case of an assignment of a claim secured by a bill, the liability of the assignor shall not exceed the amount of the claim. ('17 c. 399 § 35)

[4434—]36. **Indorser not a guarantor**—The indorsement of a bill shall not make the indorser liable for any failure on the part of the carrier or previous indorsers of the bill to fulfill their respective obligations. ('17 c. 399 § 36)

[4434—]37. **No warranty implied from accepting payment of a debt**—A mortgagee or pledgee, or other holder of a bill for security who in good faith demands or receives payment of the debt for which such bill is security, whether from a party to a draft drawn for such debt or from any other person, shall not be deemed by so doing to represent or to warrant the genuineness of such bill or the quantity or quality of the goods therein described. ('17 c. 399 § 37)

[4434—]38. **When negotiation not impaired by fraud, accident, mistake, duress or conversion**—The validity of the negotiation of a bill is not impaired by the fact that such negotiation was a breach of duty on the part of the person making the negotiation, or by the fact that the owner of the bill was deprived of the possession of the same by fraud, accident, mistake, duress, loss, theft or conversion, if the person to whom the bill was negotiated, or a person to whom the bill was subsequently negotiated, gave value therefor

in good faith, without notice of the breach of duty, or fraud, accident, mistake, duress, loss, theft or conversion. ('17 c. 399 § 38)

[4434—]39. **Subsequent negotiation**—Where a person having sold, mortgaged, or pledged goods which are in a carrier's possession and for which a negotiable bill has been issued, or having sold, mortgaged or pledged the negotiable bill representing such goods, continues in possession of the negotiable bill, the subsequent negotiation thereof by that person under any sale, pledge or other disposition thereof to any person receiving the same in good faith, for value and without notice of the previous sale, shall have the same effect as if the first purchaser of the goods or bill had expressly authorized the subsequent negotiation. ('17 c. 399 § 39)

[4434—]40. **Form of the bill as indicating rights of buyer and seller**—Where goods are shipped by the consignor in accordance with a contract or order for their purchase, the form in which the bill is taken by the consignor shall indicate the transfer or retention of the property or right to the possession of the goods as follows:

(a) Where by the bill the goods are deliverable to the buyer or to his agent, or to the order of the buyer or of his agent, the consignor thereby transfers the property in the goods to the buyer.

(b) Where by the bill the goods are deliverable to the seller or to his agent, or to the order of the seller or of his agent, the seller thereby reserves the property in the goods. But if, except for the form of the bill, the property would have passed to the buyer on shipment of the goods, the seller's property in the goods shall be deemed to be only for the purpose of securing performance by the buyer of his obligations under the contract.

(c) Where by the bill the goods are deliverable to the order of the buyer or of his agent, but possession of the bill is retained by the seller or his agent, the seller thereby reserves a right to the possession of the goods, as against the buyer.

(d) Where the seller draws on the buyer for the price and transmits the draft and bill together to the buyer to secure acceptance or payment of the draft, the buyer is bound to return the bill if he does not honor the draft, and if he wrongfully retains the bill he acquires no added right thereby. If, however, the bill provides that the goods are deliverable to the buyer or to the order of the buyer, or is indorsed in blank or to the buyer by the consignee named therein, one who purchases in good faith for value, the bill or goods from the buyer, shall obtain the title to the goods, although the draft has not been honored, if such purchaser has received delivery of the bill indorsed by the consignee named therein, or of the goods, without notice of the facts making the transfer wrongful. ('17 c. 399 § 40)

[4434—]41. **Demand, presentation or sight draft must be paid, but draft on more than three days' time merely accepted before buyer is entitled to the accompanying bill**—Where the seller of goods draws on the buyer for the price of the goods and transmits the draft and a bill of lading for the goods either directly to the buyer or through a bank or other agency unless a different intention on the part of the seller appears, the buyer and all other parties interested shall be justified in assuming:

(a) If the draft is by its terms or legal effect payable on demand or presentation or at sight, or not more than three days thereafter (whether such three days be termed days of grace or not), that the seller intended to require payment of the draft before the buyer should be entitled to receive or retain the bill.

(b) If the draft is by its terms payable on time extending beyond three days after demand, presentation or sight (whether such three days be termed days of grace or not), that the seller intended to require acceptance, but not payment of the draft before the buyer should be entitled to receive or retain the bill.

The provisions of this section are applicable whether by the terms of the bill the goods are consigned to the seller, or to his order, or to the buyer, or to his order, or to a third person, or to his order. ('17 c. 399 § 41)



[4434—]42. **Negotiation defeats vendor's lien**—Where a negotiable bill has been issued for goods, no seller's lien or right of stoppage in transitu shall defeat the rights of any purchaser for value in good faith to whom such bill has been negotiated, whether such negotiation be prior or subsequent to the notification to the carrier who issued such bill of the seller's claim to a lien or right of stoppage in transitu. Nor shall the carrier be obliged to deliver or justified in delivering the goods to an unpaid seller unless such bill is first surrendered for cancellation. ('17 c. 399 § 42)

[4434—]43. **When rights and remedies under mortgages and liens are not limited**—Except as provided in Section 42 [4434—42], nothing in this act shall limit the rights and remedies of a mortgagee or lienholder whose mortgage or lien on goods would be valid, apart from this act, as against one who for value and in good faith purchased from the owner, immediately prior to the time of their delivery to the carrier, the goods which are subject to the mortgage or lien and obtained possession of them. ('17 c. 399 § 43)

## PART IV—CRIMINAL OFFENCES

[4434—]44. **Issue of bill for goods not received**—Any officer, agent, or servant of a carrier, who with intent to defraud issues or aids in issuing a bill knowing that all or any part of the goods for which such bill is issued have not been received by such carrier, or by any agent of such carrier, or by a connecting carrier, or are not under the carrier's control at the time of issuing such bill, shall be guilty of a crime, and upon conviction shall be punished for each offence by imprisonment not exceeding five years, or by a fine not exceeding five thousand dollars, or by both. ('17 c. 399 § 44)

[4434—]45. **Issue of bill containing false statement**—Any officer, agent, or servant of a carrier, who with intent to defraud issues or aids in issuing a bill for goods knowing that it contains any false statement, shall be guilty of a crime, and upon conviction shall be punished for each offence by imprisonment not exceeding one year, or by a fine not exceeding one thousand dollars, or by both. ('17 c. 399 § 45)

[4434—]46. **Issues of duplicate bills not so marked**—Any officer, agent, or servant of a carrier, who with intent to defraud issues or aids in issuing a duplicate or additional negotiable bill for goods in violation of the provisions of section 7 [4434—7], knowing that a former negotiable bill for the same goods or any part of them is outstanding and uncanceled, shall be guilty of a crime, and upon conviction shall be punished for each offence by imprisonment not exceeding five years, or by a fine not exceeding five thousand dollars, or by both. ('17 c. 399 § 46)

[4434—]47. **Negotiation of bill for mortgaged goods**—Any person who ships goods to which he has not title, or upon which there is a lien or mortgage, and who takes for such goods a negotiable bill which he afterwards negotiates for value with intent to deceive and without disclosing his want of title or the existence of the lien or mortgage, shall be guilty of a crime, and upon conviction shall be punished for each offence by imprisonment not exceeding one year, or by a fine not exceeding one thousand dollars, or by both. ('17 c. 399 § 47)

[4434—]48. **Negotiation of bill when goods are not in carrier's possession**—Any person who with intent to deceive negotiates or transfers for value a bill knowing that any or all of the goods which by the terms of such bill appear to have been received for transportation by the carrier which issued the bill, are not in the possession or control of such carrier, or of a connecting carrier, without disclosing this fact, shall be guilty of a crime, and upon conviction shall be punished for each offence by imprisonment not exceeding five years, or by a fine not exceeding five thousand dollars, or by both. ('17 c. 399 § 48)

[4434—]49. **Inducing carrier to issue bill when goods have not been received**—Any person who with intent to defraud secures the issue by a carrier of a bill knowing that at the time of such issue, any or all of the goods

described in such bill as received for transportation have not been received by such carrier, or an agent of such carrier or a connecting carrier, or are not under the carrier's control, by inducing an officer, agent, or servant of such carrier falsely to believe that such goods have been received by such carrier, or under its control, shall be guilty of a crime, and upon conviction shall be punished for each offense by imprisonment not exceeding five years, or by a fine not exceeding five thousand dollars, or by both. ('17 c. 399 § 49)

[4434—]50. **Issue of non-negotiable bill not so marked**—Any person who with intent to defraud issues or aids in issuing a non-negotiable bill without the words "not negotiable" placed plainly upon the face thereof, shall be guilty of a crime, and upon conviction shall be punished for each offense by imprisonment not exceeding five years or by a fine not exceeding five thousand dollars, or by both. ('17 c. 399 § 50)

## PART V—INTERPRETATION

[4434—]51. **Rule for cases not provided for in this act**—In any case not provided for in this act, the rules of law and equity, including the law merchant, and in particular the rules relating to the law of principal and agent, executors, administrators and trustees, and to the effect of fraud, misrepresentation, duress or coercion, accident, mistake, bankruptcy or other invalidating cause, shall govern. ('17 c. 399 § 51)

[4434—]52. **Interpretation shall give effect to purpose of uniformity**—This act shall be so interpreted and construed as to effectuate its general purpose to make uniform the law of those states which enact it, *and also of the United States*. ('17 c. 399 § 52)

[4434—]53. **Definitions**—(1) In this act, unless the context or subject matter otherwise requires:

"Action" includes counter claim, set-off, and suit in equity.

"Bill" means bill of lading.

"Consignee" means the person named in the bill as the person to whom delivery of the goods is to be made.

"Consignor" means the person named in the bill as the person from whom the goods have been received for shipment.

"Goods" means merchandise or chattels in course of transportation, or which have been or are about to be transported.

"Holder" of a bill means a person who has both actual possession of such bill and a right of property therein.

"Order" means an order by indorsement on the bill.

"Owner" does not include mortgagee or pledgee.

"Person" includes a corporation or partnership or two or more persons having a joint or common interest.

To "purchase" includes to take as mortgagee and to take as pledgee.

"Purchaser" includes mortgagee and pledgee.

"Value" is any consideration sufficient to support a simple contract. An antecedent or pre-existing obligation whether for money or not, constitutes value where a bill is taken either in satisfaction thereof or as security therefor.

(2) A thing is done "in good faith" within the meaning of this act, when it is in fact done honestly, whether it be done negligently or not. ('17 c. 399 § 53)

[4434—]54. **Act does not apply to existing bills**—The provisions of this act do not apply to bills made and delivered prior to the taking effect thereof. ('17 c. 399 § 54)

[4434—]55. **Inconsistent legislation repealed**—Section 4495 of General Statutes, 1913, and chapter 414 of the Session Laws of 1909, the same being sections 4322 to 4329, inclusive, of General Statutes, 1913, are hereby repealed, and all acts or parts of acts inconsistent with this act are hereby repealed. ('17 c. 399 § 55)

[4434—]56. **Time when the act takes effect**—This act shall take effect and be in force from and after the 1st day of June, 1917. ('17 c. 399 § 56)

[4434—]57. **Name of act**—This act may be cited as the uniform bills of lading act. ('17 c. 399 § 57)

## STORAGE AND SHIPMENT OF GRAIN

### TERMINAL WAREHOUSES

4435. **Defined**—All elevators or warehouses located within the switching limits of 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 the identity of the different lots or parcels is not preserved, shall be public warehouses known as "terminal warehouses," provided that the storage space in any elevator or warehouse built by any state may be used exclusively by the citizens of such state, unless the state so building and owning the same shall otherwise provide. (Amended '15 c. 349 § 1)

4452. **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 the "Minnesota Grades." Such grades as are thereby established and 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. In establishing the grades, in addition to the physical qualities of the grain, there shall be taken into consideration the milling and bread producing quality of all grain products used as human food. Each of said boards shall determine the grade and dockage, if any, of all grain in all cases where appeals from the decisions of the chief inspector have been taken and for such purpose they may request fresh samples of such grain to be furnished direct to the board having the case under consideration. Dockage shall be considered as being of two classes: first; that having value and, second, that having no value. The former to be considered and allowed for as such, and any foreign content of the grain shall not be considered in establishing the grade. They shall also render assistance and advice to the chief inspector of grain so as to enable him to instruct the deputy inspectors of grain under his jurisdiction in accordance with the decisions and work of the board. (Amended '17 c. 284 § 1)

4458. **Duty of inspectors**—Such inspector shall inspect and grade all grain received at or shipped from any terminal warehouse in car-load lots or boat-load lots, and give a certificate of the inspection to the persons entitled thereto. Their decision shall be conclusive as to the grade and dockage of such grain, and the certificate shall be evidence thereof, unless changed upon re-inspection and appeal. Every certificate of inspection so issued shall in addition to other facts, set forth the test weight per bushel of the grain so inspected. (Amended '17 c. 280 § 1)

### 4463. Weighmaster's records and certificates—

In view of § 4497, this section does not limit the record to be kept to a record of the certificates issued, and hence the weighers may be required by the state railroad and warehouse commission to make notation in their records of the bad condition of cars inspected by them. Such records are competent evidence of the facts so noted, under the general rule that, where a statute requires a record to be kept by a public officer, the record so kept is competent evidence of the facts recited therein. The statute makes the certificates prima facie evidence, without other authentication than the signature of the weigher; but this provision applies only to the certificate, and not to other papers which are merely transcripts from the records (127-299, 149+471). Evidence,  $\text{\textcircled{C}}$ 333(1).

## MISCELLANEOUS PROVISIONS

4495. [Repealed.]

See § [4434—]55.

4497. **General supervision by commission—Rules—**  
127-299, 149+471; note under § 4463.

4498. **Shipper to affix tags—**

This section has reference to shipments within the state, and does not apply to interstate transactions (131-152, 154+954). Commerce, ⚡61(1).

[4505—]1. **Unlawful discrimination between localities in sale, or purchase of grain prohibited—Penalty—**Any person, firm, copartnership or corporation engaged in the business of buying grain, either for himself or others, who shall with the intention of creating a monopoly or destroying the business of a competitor, discriminate between different sections, localities, communities or cities of this state, by purchasing such grain at a higher price or rate in one locality than is paid for grain of same grade and condition by said purchaser in another locality after making due allowance for the difference, if any, in actual cost of transportation from the locality of purchase, to the locality of manufacture, use, or distribution, shall be deemed guilty of unfair discrimination and upon conviction thereof shall be punished by a fine not exceeding \$500.00, or by imprisonment in the county jail not to exceed six months. ('17 c. 377 § 1)

[4505—]2. **Same—Commission to enforce—**The state railroad and warehouse commission shall enforce the provisions of this act, and in so doing shall have and exercise all the powers heretofore conferred upon them by law. ('17 c. 377 § 2)

## PART II. OBLIGATIONS AND RIGHTS OF WAREHOUSEMEN UPON THEIR RECEIPTS

4534. **Liability for care of goods—**

Liability of carrier as warehouseman determined (122-453, 142+727). Carriers, ⚡138-145.

Where loss of goods is shown, the burden of proving absence of negligence is on the warehouseman. Freedom from negligence must be shown by a preponderance of the evidence (122-453, 142+727). Warehousemen, ⚡34(5).

## [WAREHOUSEMEN OTHER THAN GRAIN AND COLD STORAGE IN CITIES OF FIRST CLASS]

[4575—]1. **Powers and duties of commission—**That the Railroad and Warehouse Commission shall have general supervision of all warehousemen doing business in cities of the first class in this state, as warehousemen are defined in this Act, and shall keep itself informed as to the manner and method in which their business is conducted. It shall examine such business and keep itself informed as to its general condition, capitalization, rates and other charges, its rules and regulations, and the manner in which the plants, equipments, and other property, owned, leased, controlled or operated, are constructed, managed, conducted and operated, not only with reference to the adequacy, security and accommodation afforded to the public by their service, but also in respect to the compliance with the provisions of this Act or with the orders of the commission. ('15 c. 210 § 1)

By § 39 this act shall take effect October 1, 1915.

[4575—]2. **Terms defined—**(a) The word "Commission" when used in this act, shall mean the Minnesota State Railroad and Warehouse Commission.

(b) The term "Commissioner" when used in this Act, means one of the members of the commission.

(c) The term "Warehouseman" when used in this Act, means and includes every corporation, company, association, joint stock company or as-

sociation, firm, partnership or individual, their trustees, assignees or receivers appointed by any court whatsoever, controlling, operating or managing in any city of the first class in this state, directly or indirectly, any building or structure or any part thereof, or any buildings or structures, or any other property whatsoever and using the same for the storage or warehousing of goods, wares, or merchandise for hire, but shall not include persons, corporations or other parties operating grain or cold-storage warehouses.

(d) The term "Corporation" when used in this Act, includes any corporation, company, association, joint stock company or association.

(e) The term "Person" when used in this Act, includes any individual, firm or copartnership.

(f) The term "Service" when used in this Act, is used in its broadest sense and includes not only the use and occupancy of space for storage purposes, but also any labor expended and the use of any equipment, apparatus and appliances or of any drayage or other facilities, employed, furnished or used in connection with the storage of goods, wares and merchandise, subject to the provisions of this act.

(g) The term "Rate" when used in this Act, includes every individual or joint rate, charge or other compensation of any warehouseman, either for storage or for any other service furnished in connection therewith, or any two or more such individual or joint rates, charges, or other compensations of any warehouseman, or any schedule or tariff thereof, and any rule, regulation, charge, practice or contract relating thereto. ('15 c. 210 § 2)

[4575—]3. **Duties of warehousemen**—Every warehouseman shall furnish all information required by the commission to carry into effect the provisions of this act and make specific answers to all questions submitted by the commission, under oath; and if such warehouseman is a corporation then it shall answer under oath of one of its duly authorized officers.

Every warehouseman shall obey and comply with each and every requirement of every order, decision, direction, rule or regulation, made or prescribed by the commission, in the matters specified in this act, and shall do everything necessary or proper to secure the compliance with and the observance of the same, by all its officers, agents and employees.

Nothing in this act shall be construed as limiting the rights of any warehouseman to lease or let for any storage purpose any floor of his building or any portion thereof, provided, however, that any warehouseman who so leases any portion or portions of his warehouse shall first file with the commission a schedule showing his rates for such spaces and the monthly rental per square foot or per cubic foot. ('15 c. 210 § 3)

[4575—]4. **Powers of commission—Inspection of books, property, etc.—Oaths—Record of testimony**—The commission, each commissioner and each officer and person employed by the commission, has the right, at any and at all times, to inspect the papers, books, accounts and documents, plant, equipments or other property, of any warehouseman; and the commission, each commissioner and any officer of the commission authorized to administer oath, shall have the power to examine under oath, any officer, agent or employee of such warehouseman, in relation to any matter within the jurisdiction of the commission, provided that any person other than a commissioner demanding such inspection shall produce, under the seal of the commission, his authority to make such inspection, and, provided further that a written record of the testimony or statement so given under oath, shall be made and filed with the commission. Information so obtained shall be not admitted in evidence or used in any proceedings except in proceedings provided for in this act. ('15 c. 210 § 4)

[4575—]5. **Duties of the commission**—It is hereby made a duty of the Railroad and Warehouse Commission, to see that the provisions of the constitution and the statutes of this state affecting warehousemen, the enforcement of which is not specifically vested in some other officer or tribunal, are enforced.

ed and obeyed, and that violations thereof are promptly prosecuted, and penalties due the state therefor recovered and collected, and to this end it may sue in the name of the state. ('15 c. 210 § 5)

[4575—]6. **Accounts of warehousemen—Powers of Commission—Apportionment of capitalization, etc.**—The commission shall have the power to compel every warehouseman to keep and maintain accurate, complete and comprehensive accounts, including records of service furnished and commissions paid, as well as accounts of earnings and expenses, and it may examine and audit such accounts from time to time. Such accounts shall provide for forms showing all sources of income, the amounts due and received from each source, and the amounts expended and for each purpose, distinguishing clearly all payments for operating expenses from those for new construction, extensions, additions, repairs or replacements, and for balance sheets showing assets and liabilities.

The commission may require every warehouseman engaged directly or indirectly, in any business other than the warehouse business, as defined by this law, to keep separately, in like manner and form, the accounts of all such other business, and the commission may provide for the examination and inspection of the books, accounts, papers and records of such other business, in so far as may be necessary to enforce any provisions of this act. The commission shall have the power to inquire as to, and prescribe the apportionment of capitalization, earnings, debts and expenses, fairly and justly to be awarded or borne by, the ownership, operation, management or control of such warehouse as distinguished from such other business. ('15 c. 210 § 6)

[4575—]7. **Appreciation and depreciation accounts, etc.**—The commission shall have the power, after a hearing, to require all warehousemen to keep such accounts as will adequately reflect appreciation, depreciation, or obsolescence. The commission may from time to time ascertain and determine, and by order fix, the proper and adequate rate of appreciation or depreciation of the property of each warehouseman, and each warehouseman shall conform his appreciation and depreciation accounts to the rate so ascertained, determined and fixed. ('15 c. 210 § 7)

[4575—]8. **Office—Accounts, where kept, etc.**—Each warehouseman shall have and maintain an office in the city in which it has its principal place of business, and shall keep in said office, all such books, accounts, papers, records and memoranda as shall be ordered by the commission to be kept within the state. The address of such office shall be filed with the commission. No books, accounts, papers, records or memoranda ordered to be kept within the state, shall be at any time removed from the state, except on such conditions as may be prescribed by the commission: ('15 c. 210 § 8)

[4575—]9. **Falsification or destruction of accounts, etc.—Penalty**—Any person who shall willfully make any false entry in the account or in any record or memorandum kept by a warehouseman, or who shall willfully destroy, mutilate, alter or by any other means or device, falsify a record of any such account, record or memorandum, or who shall willfully neglect or fail to make full, true and correct entries in such accounts, records or memoranda, of all facts and transactions appertaining to the business of the warehouseman, or shall keep any accounts or records with the intent to evade the provisions of this act, shall be guilty of a misdemeanor and upon conviction shall be subject to imprisonment not exceeding one year, or to a fine not exceeding \$1,000 or both. ('15 c. 210 § 9)

[4575—]10. **Divulging information—Penalty**—Any officer or employee of the commission, who divulges to any person other than a member of the commission, any fact or information coming to his knowledge during the course of an inspection, examination or investigation of any accounts, records, memoranda, books or papers of a warehouseman, except in so far as he may be authorized by the commission, or by a court of competent jurisdiction, or a judge thereof, shall be guilty of a misdemeanor, and upon conviction

tion shall be subject to imprisonment not exceeding one year or to a fine not exceeding \$1,000 or to both. ('15 c. 210 § 10)

[4575—]11. **Uniform receipts**—Every warehouseman receiving goods in store shall issue for all such a receipt embodying the terms of such receipts as authorized by the Uniform Warehouse Receipts Act of the State of Minnesota. ('15 c. 210 § 11)

[4575—]12. **Just and reasonable rates**—All rates made, demanded or received by any warehouseman for any service rendered or to be rendered shall be just and reasonable. Every unjust or unreasonable rate demanded or received for such service is hereby prohibited and declared unlawful.

Every warehouseman licensed under this act shall receive, store and forward all property offered for storage by any person, persons, or corporation, impartially and at as low a rate of charge, and in a manner and on terms, and in quantities as favorable to the party offering such property as he at the same place receives, stores and forwards in the ordinary course of business, property of like description and in similar quantities offered by any other person, persons or corporations. ('15 c. 210 § 12)

[4575—]13. **Schedule of rates—Form—Filing and publishing**—Every warehouseman shall file with the commission and shall print and keep open for public inspection a schedule of rates. The commission may determine and prescribe the form in which the schedules required by this act to be filed with the commission and to be kept open for public inspection, shall be prepared and arranged, and may change the form from time to time if it shall be found expedient; and no warehouseman shall undertake to perform any service, or store any goods, wares or merchandise, unless or until such schedule of rates has been filed and published in accordance with the provisions of this act; provided that in case of emergency, a service or storage not specifically covered by the schedules filed, may be performed or furnished at a reasonable rate, which rate shall forthwith be filed and shall be subject to review in accordance with the provisions of this act. ('15 c. 210 § 13)

[4575—]14. **Change of rates**—Unless the commission otherwise orders, no change shall be made by any warehouseman, in any rate except after thirty days' notice to the commission and to the public as herein provided. Such notice shall be given by filing with the commission and keeping open for public inspection, new schedules or supplements stating plainly the change or changes to be made in the schedule or schedules then in force and the time when the change or changes will go into effect. The commission for good cause shown, may, after hearing, allow changes without requiring the thirty days' notice herein provided for by an order specifying the changes so to be made and the time when they shall take effect and the manner in which they shall be filed and published. ('15 c. 210 § 14)

[4575—]15. **Charging more or less than the published rate, etc.**—Except as specified in Sections 13 [4575—13] and 14 [4575—14], no warehouseman shall have, demand, collect, or receive, a greater or less or different compensation for any service rendered or for storing any goods, or wares or merchandise, than the rate or rates applicable to such service or storage, as specified in the schedules on file and in effect at the time.

Provided, nevertheless, that when a warehouseman shall have had goods in store for such a period that the storage charges thereon accumulated are more than such goods would bring at a forced sale, the commission, upon written application and proof thereof, may authorize such warehouseman to compromise such charges for a sum not less than the amount which such goods would bring at such forced sale. ('15 c. 210 § 15)

[4575—]16. **Discrimination in rates, etc.—Penalty**—Except as herein otherwise specified, no warehouseman, or any officer, agent or employé thereof, shall directly or indirectly by remittance, rebate, or any device, inducement or other means whatsoever, suffer or permit any corporation or person to obtain any service, or the storage of any goods, wares or merchandise, at less than the rate or rates then established and in force as shown by the

schedule filed and in effect at the time. No person or corporation shall directly or indirectly by any device, inducement or means whatsoever, either with or without the consent or connivance of a warehouseman or any of the officers, agents or employees thereof, obtain or seek to obtain, any service, or the storage of any goods, wares or merchandise, at less than the rate or rates then established and in force therefor. Any warehouseman or the officers, agents or employes thereof, or any person acting for or employed by it, or transacting business with it, or any other person who shall violate any provision of this section, shall be guilty of a misdemeanor and upon conviction shall be subject to imprisonment not exceeding one year, or to a fine not exceeding \$1,000 or both. ('15 c. 210 § 16)

[4575—]17. **Commission to fix rates and regulations, when**—Whenever the commission, after a hearing upon its own motion, or upon complaint, shall find that the rate or rates demanded, observed, charged or collected, by any warehouseman, for any service or storage of goods, wares, merchandise, or in connection with such service or storage, are unjust, unreasonable, discriminatory, preferential, or in any wise in violation of any provision of law, the commission shall determine the just and reasonable rate or rates to be thereafter effective and in force, in such warehouse, and shall fix the same by an order, which shall also determine when such rate or rates shall go into effect. Before making any order under the provisions of this section, the warehouseman shall have an opportunity to be heard upon reasonable notice to be determined by the commission. ('15 c. 210 § 17)

[4575—]18. **License — Application — Notice — Fees — Renewal — Revocation, etc.**—Every warehouseman shall be licensed annually by and shall be under the supervision and subject to the inspection of the commission. Written application, under oath in such form as shall be prescribed by the commission, shall be made to the commission for license, specifying the city in which it is proposed to carry on the business of warehousing, the location, size, character and equipment of the building or buildings or premises to be used by the said warehouseman, the kind of goods, wares and merchandise intended to be stored therein, the name of the person or corporation operating the same, and of each member of the firm or officer of the corporation, and any other facts necessary to satisfy the commission that the property proposed to be used is suitable for warehouse purposes, and that the warehouseman making the application is qualified to carry on the business of warehousing. Should the commission decide that the building or other property proposed to be used as a warehouse is suitable for the proposed purpose, and that the applicant or applicants are entitled to a license, notice of such decision shall be given the interested parties, and upon the applicant or applicants filing with the commission the necessary bond, as provided for in this act, the commission shall issue the license provided for, upon payment of the license fee, as in this section provided. A warehouseman to whom a license is issued shall pay for such license a fee of one hundred dollars (\$100.00). Such license may be renewed from year to year, but shall never be valid for a period of more than one year, and always upon payment of the full license fee, as provided for in this section for such renewal; provided that no license shall be issued for any portion of a year for less than the full amount of the license fee, as provided for in this section. Each license obtained under this act shall be publicly displayed in the main office of the place of business of the warehouseman to whom it is issued. Such license shall authorize the warehouseman to carry on the business of warehousing only in the one city named in said application, and in the buildings therein described. But the commission without requiring an additional bond and license, may issue permits from time to time to any warehouseman already duly licensed under the provisions of this act, to operate an additional warehouse or warehouses in the same city for which his original license was issued during the term thereof, upon his filing an application for such permit, and in such form as shall be prescribed by the commission.

Licenses and permits 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 during the preceding year. ('15 c. 210 § 18)

[4575—]19. **Bond**—Every warehouseman applying for and receiving a license from the commission as provided for in this act, shall file with the commission, and acceptable to the commission, a surety bond to the State of Minnesota. Such bonds shall be in the amount of \$50,000.00 and be conditioned for the faithful discharge of all duties as a warehouseman operating under this act, and full compliance with the laws of the state and rules, regulations and orders of the commission relative thereto. ('15 c. 210 § 19)

[4575—]20. **Transacting business without license—Penalty**—Any person or persons who shall transact the business of a warehouseman as defined in this act, except for the purpose of winding up the same under the supervision of the commission, without first procuring a license and giving a bond as provided for in this act, and any licensed warehouseman who shall operate any warehouse without obtaining the permit herein provided for, or who shall continue to transact such business after such license has expired, or such bond may have become void or found insufficient security for the penal sum in which it is executed, by the commission approving the same, shall be guilty of a misdemeanor, and upon conviction be fined in a sum not less than \$100 nor more than \$500 for each and every day such business is carried on before said license or permit, as the case may be, is issued or after the expiration of such license or permit, or after receiving notice from the commission that such bond has become void or has been found insufficient security; and the operation of such warehouseman may be enjoined upon complaint of the commission before a court of competent jurisdiction. ('15 c. 210 § 20)

[4575—]21. **Proceedings against warehouseman before commission, how commenced**—Proceedings before the commission against any warehouseman, shall be instituted by complaint, verified as pleadings in a civil action, stating in ordinary language the facts constituting the alleged omission or offenses. The parties to such proceedings shall be termed, respectively, "Complainant" and "Respondent." ('15 c. 210 § 21)

[4575—]22. **Order—Service on respondent**—Upon filing such complaint, if there appear reasonable grounds for investigating such matter, the commission shall issue an order, directed to such warehouseman, requiring him to grant the relief demanded, or show cause by answer within 20 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. ('15 c. 210 § 22)

[4575—]23. **Answer**—The respondent may file and serve by mail, upon the complainant within 20 days after the service of the order, an answer alleging that it has already granted the relief demanded, or setting up any matter of defense. If the answer alleges the granting of the relief, the complainant shall within 20 days reply, admitting or denying such allegation. If he fails to reply, or admits the allegation, the proceeding shall be dismissed. ('15 c. 210 § 23)

[4575—]24. **Hearing—Findings and order**—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 shall 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. ('15 c. 210 § 24)

[4575—]25. **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 or other papers provided for in this act, 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. ('15 c. 210 § 25)

[4575—]26. **Witnesses**—The commission in any hearing or investigation, may require the attendance of any witnesses and the production of any books, papers or records. Witnesses shall receive the same fees and mileage as in civil actions. The disobedience of any subpoena in such proceedings, or contumacy of any witness, may upon application of the commission, be punished by any district court in the same manner as if the proceedings were pending in such court. ('15 c. 210 § 26)

[4575—]27. **Complaint that rates are unreasonable, etc.—Hearing—Substituted rates, etc.**—Upon verified complaint of any person or of any corporation that any rates are unjust, unreasonable, discriminatory, preferential or in any way in violation of law, 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 rates are found to be unjust, unreasonable, discriminatory, preferential or in any way in violation of law the commissioner shall make an order, stating wherein the same are so unjust, unreasonable, discriminatory, preferential or in any way in violation of law, and shall make a rate or rates which shall be substituted for that or those so complained of. Rates 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. ('15 c. 210 § 27)

[4575—]28. **Investigation without complaint—Notice—New schedules**—The commission shall also upon its own motion, investigate any matter relating to the management by any warehouseman of his business, or the reasonableness of all rates whenever in its judgment the public interest so requires. If any such rates are found unreasonable or discriminatory, the commission shall find what is reasonable under the circumstances, and may make new schedules of any or all rates under consideration in such investigation, and its own order shall fix the date when such rates shall go into effect. Before making any order under the provisions of this section, the warehouseman shall have an opportunity to be heard upon such notice as the commission shall deem reasonable. The rates established under the proceedings instituted under this section, shall be in force during the pendency of any appeal or other proceedings to review the action of the commission. ('15 c. 210 § 28)

[4575—]29. **Appeals to district court**—Any party to a proceeding before the commission, or any party affected by any order thereof, may appeal therefrom to the district court of the county in which the principal place of business of the respondent is located, or in case the order is made in a proceeding commenced by the commission on its own motion without complaint, to the district court of any county in which the warehouseman has his principal place of business, at any time within thirty days after service of a copy of such order on the parties of record, as in this act provided, by service of a written notice of appeal, on said commission, or on its secretary. Upon service of said notice of appeal, said commission, by its secretary, shall forthwith file with the clerk of said district court, to which said appeal is taken, a certified copy of the order appealed from, together with the findings of fact on which the same is based. ('15 c. 210 § 29)

[4575—]30. **Proceedings on appeal—Orders not appealed from**—The appellant serving such notice of appeal shall, within five days after service thereof, file the same with proof of service, with a clerk of the court to which said appeal is taken, and thereupon said district court shall have jurisdiction over said appeal, and the same shall be tried therein, according to the rules relating to a trial of civil actions, so far as the same are applicable. The complainant before the commission, if there is one (otherwise the State of Minnesota), shall be designated as the complainant in the district court, and the ware-

houseman as the defendant. No further pleadings than those filed before the commission shall be necessary. Such findings of fact shall be prima facie evidence of the matters therein stated, and the order shall be prima facie reasonable, and the burden of proof upon all issues raised by the appeal shall be on the appellant. If said court shall determine that the order appealed from, is lawful and reasonable, it shall be affirmed, and the order enforced as provided by law. If it shall be determined that the order is unlawful or unreasonable, it shall be vacated and set aside. Such appeal shall not supersede the order appealed from, unless the court, upon an examination of said order and the return made on said appeal, and after giving the respondent notice and opportunity to be heard, shall so direct. If such appeal is not taken, such order shall be final, and it shall thereupon be the duty of the warehouseman affected, to adopt and publish the rates therein prescribed, and abide the order of the commission. When no appeal is taken from an order, as herein provided, the parties affected by such order shall be deemed to have waived the right to have the merits of such controversy reviewed by a court, and there shall be no trial of the merits or re-examination of the facts of any controversy in which said order was made, by any district court to which application may be made for the writ to enforce the same. ('15 c. 210 § 30)

**[4575—]31. Failure to obey law or order—Application by commission to district court and proceedings therein—**Whenever any warehouseman shall fail to obey any law of this state, or any order of the commission, the commission may, upon verified petition alleging such failure, apply to the district court of the county in which said warehouseman has his principal place of business, 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 merits therein stated, and the court may grant any provisional or other relief, ordinary or extraordinary, legal and equitable, which the nature of the case may require, and may impose a fine of not more than \$50 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 proceedings, notwithstanding any undetermined issue of fact, upon such terms as to security as the court may direct. ('15 c. 210 § 31)

**[4575—]32. Trial—**The district court shall be deemed always open for all civil proceedings under this act, and any such proceedings may be brought to trial in any county in the judicial district where the same are pending, and shall take precedence over 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. ('15 c. 210 § 32)

**[4575—]33. Incriminating questions—Counsel fees and disbursements—**In any proceedings under this act or any law relating to warehousemen, the court, at 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.

In any proceedings in district court under the provisions of this act, or any law relating to warehousemen, either by appeal or otherwise, the court may order the payment by either party of such counsel fees and disbursements, as it deems just and reasonable. ('15 c. 210 § 33)

**[4575—]34. Proceedings in name of state—Appeal to supreme court—**All acts or proceedings instituted by the Railroad and Warehouse Commission under this act shall be brought in the name of the state, and shall be prosecuted by the attorney general.

Any party to an appeal or other proceeding in district court, under the provisions of this act, may appeal from the final judgment or from any final order therein, in the same cases and manner as in civil actions. 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. ('15 c. 210 § 34)

[4575—]35. **Action on warehouseman's bond**—When any one licensed to do business as a public warehouseman fails to perform his duty, or violates any of the provisions of this act, any person, persons or corporations injured by such failure or violation may, with the consent of the commission, and the attorney general, bring an action in the name of the state, but to his or their own use, in any court of competent jurisdiction on the bond of such warehouseman. In such action the person, persons or corporation in whose behalf the action is brought shall file with the court a satisfactory bond for costs, and the state shall not be liable for any costs. ('15 c. 210 § 35)

[4575—]36. **Violation of act or order—Penalty**—Any warehouseman and each person, who, either individually, or acting as an officer, agent or employé of a warehouseman, violates or fails to comply with any provisions of this act, or fails to observe, obey or comply with any order, decision, rule, regulation, direction or requirement, or any part or portion thereof of the commission, made or issued under authority of this act, or who procures, aids or abets any warehouseman in his violation of this act, or in his failure to observe, obey or comply with this act, or any such order, decision, rule, regulation, direction or requirement, or any part or portion thereof, in a case in which a penalty is not otherwise provided for in this act, is guilty of a misdemeanor, and upon conviction shall be punished by a fine not exceeding \$1,000 or by imprisonment not exceeding one year, or by both such fine and imprisonment.

Each violation of the provisions of this act, or of any order, decision, rule, regulation, direction or requirement of the commission, or any part or portion thereof, by any warehouseman, is a separate and distinct offense.

In construing and enforcing the provisions of this act, relating to penalties, the act, omission or failure of any officer, agent or employé of any warehouseman, acting within the scope of his official duties or employment, shall in each case be and be deemed to be the act, omission or failure of such warehouseman. ('15 c. 210 § 36)

[4575—]37. **Partial invalidity of act**—If any section, subdivision, sentence or clause of this act is for any reason held invalid or to be unconstitutional, such decision shall not affect the validity of the remaining portion of this act. ('15 c. 210 § 37)

[4575—]38. **Technical omissions not to invalidate acts of commission**—A substantial compliance with the requirements of this act shall be sufficient to give effect to all the acts, orders, decisions, rules and regulations of the commission, and they shall not be declared inoperative, illegal or void, for any omission of a technical nature in respect thereto. ('15 c. 210 § 38)

### COMMISSION MERCHANTS

4598. **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 shipments of such commodities for sale, 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 such consignors; if the license authorizes the sale of grain the bond shall be not less than four thousand dollars (\$4,000.00). If the license only authorizes the sale of products other than grain the bond shall be not less than two thousand dollars. In either case the Railroad and Warehouse Commission may at any time require such an additional amount of bond as it may deem necessary to protect the consignor. (Amended '15 c. 370 § 1)

An agreement between plaintiff, a country grain dealer, and a commission merchant, pursuant to which their business was conducted, and their course of dealings thereunder, held not to relieve defendant surety company from liability on its bond given under this and the following sections, where such merchant failed to account for proceeds of sales of grain consigned to him by plaintiff (126-485, 148+465). Factors, ~~2~~<sup>2</sup>/<sub>1</sub>, New, vol. 17 Key-No. Series.

**4599. Application for license—Conditions of bonds—Separate licenses**—The application for license shall be in writing, state the commodities for which license to sell is wanted, also the cities or other locations in the state where applicant intends to do business, 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 charges and actual disbursements; otherwise, the bond shall be conditioned for the faithful performance of his duties as commission merchant. Separate licenses and bonds shall be required for each city or location at which consignments are received and disposed of by such commission merchant, and said licenses shall be kept posted in each office of licensee. All licenses shall expire May 31st of each year. The fee for each license shall be two dollars (\$2.00). Such license may be revoked by the commission for cause, upon notice and hearing. (Amended '15 c. 370 § 2)

**4600. 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. (Amended '15 c. 370 § 3)

**4601. Statement to consignor**—Whenever a licensee sells any grain he shall render a true statement in writing to the consignor within twenty-four (24) hours of the amount sold, price received, name and address of purchaser, and the day, hour, and minutes of the sale, and shall forward vouchers for all charges and expenses. Whenever consignments of commodities other than grain are sold, the licensee shall render a true statement in writing to the consignor within such reasonable time and in such manner and form as may be prescribed by the commission. (Amended '15 c. 370 § 4)

**4602. 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, 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. (Amended '15 c. 370 § 5)

See note under § 4603.

**4603. 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 monies due on such consignment, the consignor, or his agent, may file with the commission an affidavit setting forth the matters complained of. Thereafter, such consignor 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. (Amended '15 c. 370 § 6)

The provision for filing the affidavit is merely directory, and failure to file is not fatal to the right of action on the bond (122-316, 142+328). Factors,  $\text{c.}2\frac{1}{2}$ .

**4604. Violations—Penalty, etc.**—Any person, persons, firm or corporation engaged in selling any property as herein specified, who fails or neglects to comply with any of the provisions of this act, or any of the rules of the commission therein provided for, shall be guilty of a misdemeanor and on conviction thereof in any court having competent jurisdiction, shall be punished by a fine of not less than twenty-five (\$25) dollars nor more than one hundred (\$100.00) dollars, and the Railroad and Warehouse Commission is hereby

authorized, either upon such conviction or upon its own findings after investigation, if the facts warrant it, to cancel the license of any person, persons, firm or corporation guilty of any violation of law or conduct prejudicial to the interest of those making consignments for sale, to such person, persons, firm or corporation. Where a license has been cancelled, the Railroad and Warehouse Commission may refuse to issue any license to such person, persons, firm or corporation for a term of one year.

Whenever requested to do so by any interested shipper, the Railroad and Warehouse Commission shall have power to investigate any sale or transaction carried on by any person, persons, firm or corporation licensed under this act and for that purpose, shall have the right to examine any and all books, records and accounts of any licensed commission merchant. Any licensed commission merchant or any agent in charge of such books, records or accounts who shall fail or refuse to submit such books, records, or accounts for the examination of said Railroad and Warehouse Commission shall be guilty of a misdemeanor.

It shall be unlawful to use the word commission, commission merchant or commission company on any advertising matter, letter or bill heads of any person not having a license from the commission. Any person who shall hold himself out or claim to be a licensed or bonded commission merchant, either by written, printed, or verbal representation or by the use of any letter head, statement or advertisement, without having a license from the commission, shall be guilty of a misdemeanor. (Amended '15 c. 370 § 7)

[4604—]1. **Commission merchants prohibited from being interested in sales, etc.**—No person, persons, firm or corporation whether doing business in a Chamber of Commerce, Board of Trade, or elsewhere in this state engaged in selling grain, corn or other farm products or live stock as commission merchant, or for others for a compensation in any manner, who shall hereafter receive and accept for sale for account of the consignor or owner thereof, any such property, or who shall sell or attempt to sell or dispose of such property for account of such consignor or owner, shall hereafter be interested directly or indirectly, as purchaser or otherwise than solely as the agent of such consignor or owner and according to the contract of agency in the sale, purchase or disposition of such property; and no such person, persons, firm or corporation engaged as aforesaid shall hereafter in any transaction involving such sale, purchase or disposition of such property in any manner, directly or indirectly, represent or promote in any respect whatever the interest of any other person, persons, firm or corporation than said consignor or owner of such property. ('17 c. 19 § 1)

[4604—]2. **Same—Penalty for violation**—Whoever shall violate any provision of this act shall upon conviction thereof be punished by imprisonment in the county jail not to exceed one year, or by a fine not to exceed one thousand dollars, and any license issued to such party under section 4599 of the General Statutes of Minnesota for the year 1913, shall thereupon become void and such party shall be disqualified from obtaining a new license under said law for a period of two years from and after such conviction. ('17 c. 19 § 2)