

LEGISLATIVE BILL 414

Approved by the Governor March 7, 1994

Introduced by Transportation Committee: Kristensen, 37, Chairperson;
Byars, 30; Day, 19; Fisher, 35; Horgan, 4; Pedersen, 39;
Pirsch, 10; Schmitt, 41

AN ACT relating to state government; to amend sections 48-105, 74-307, 74-308, 74-424, 74-548, 74-549, 74-550, 74-593 to 74-596, 74-601 to 74-605, 74-608, 74-609, 74-609.01, 74-706, 74-916, 74-918, 74-919, 74-1310, 75-101, 75-104, 75-105, 75-108, 75-109, 75-112, 75-113, 75-116, 75-118, 75-119, 75-123, 75-125 to 75-127, 75-131, 75-132, 75-133, 75-135, 75-142, 75-145, 75-146, 75-148, 75-150 to 75-155, 75-304.01, 75-308.01, 75-309.01, 75-318, 75-350, 75-367, 75-370, 75-371, 75-401, 75-401.01, 75-402, 75-405, 75-411, 75-412, 75-413, 75-414, 75-415, 75-416, 75-418, 75-427 to 75-430, 75-501, 75-502, 75-503, 75-607 to 75-611, 75-613 to 75-616, 75-701 to 75-711, 75-714 to 75-718, 75-720, 75-722, 75-724, 84-901, and 84-914, Reissue Revised Statutes of Nebraska, 1943, sections 75-106, 75-121, 75-134, 75-136.01, 75-137, 75-138, and 75-143, Revised Statutes Supplement, 1992, and sections 74-592, 75-110, 75-128, 75-139.01, 75-140, 75-141, 75-144, 75-201, 75-304, 75-306, 75-309, 75-311, 75-348, 75-353, 75-605, 75-606, 75-612, 75-713, 75-721, and 75-723, Revised Statutes Supplement, 1993; to change provisions relating to powers, duties, liabilities, and regulation of and concerning railroads and common, contract, aircraft, motor, rail, telephone, telegraph, and other carriers; to redefine a term; to transfer provisions; to change and eliminate powers and duties of the Public Service Commission; to rename the secretary of the commission; to require the commission to enforce federal standards of railroad safety; to change provisions relating to transmission lines; to change and eliminate penalties; to change provisions relating to ex parte communications under the Administrative Procedure Act; to eliminate provisions relating to railroad incorporation, general offices, property acquisition, mortgages, bonds, station names, unclaimed property, tracks, facilities, cars, cabooses, equipment, lines, rate of speed, liability to and safety and employment of employees and others, weighing and handling of shipments, employees' wages, rates, fares, and claims against common carriers; to eliminate certain notice and hearing requirements; to eliminate provisions relating to itinerant merchants; to harmonize provisions; and to repeal the original sections, and also sections 74-101 to 74-111, 74-201 to 74-204, 74-301 to 74-306, 74-323, 74-327, 74-328, 74-401 to 74-423, 74-501 to 74-514, 74-538, 74-539, 74-557 to 74-569, 74-583 to 74-586, 74-598 to 74-5,103, 74-606, 74-607, 74-610, 74-611, 74-612, 74-702 to 74-705, 74-707 to 74-715, 74-801, 74-804 to 74-807, 74-815 to 74-823, 74-901 to 74-912, 74-920, 74-1001, 74-1004, 74-1005, 74-1006, 74-1008, 74-1010, 74-1011, 74-1012, 74-1201 to 74-1204, 75-147, 75-202, 75-324, 75-327, 75-329 to 75-335, 75-404, 75-409, 75-421, 75-424, 75-425, 75-431 to 75-440, 75-501.01, 75-601, 75-602, and 75-603, Reissue Revised Statutes of Nebraska, 1943, and sections 75-323 and 75-325, Revised Statutes Supplement, 1993.

Be it enacted by the people of the State of Nebraska,

Section 1. That section 48-105, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

48-105. The provisions of sections 48-101 to 48-103 shall apply to any claim for the death of an employee arising under sections 30-809, and 30-810, and 74-703 to 74-705 concerning death by wrongful act.

Sec. 2. That section 74-307, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

74-307. Any railroad company may construct and carry its railroad tracks across, over, or under any road, railroad, canal, stream, or watercourse, when it may be necessary in the construction thereof. In such cases, the railroad shall such corporation shall so construct its railroad crossings so as to not unnecessarily to impede the travel, transportation, or navigation upon the road, railroad, canal, stream, or watercourse so crossed. Such corporations shall have the right to The railroad may change the channel of any stream or watercourse from its present location or bed, whenever it may be necessary in the location, construction, or use of its road, if they do it

does not change its general course, the general course of the stream or watercourse or materially impair its former usefulness.

Sec. 3. That section 74-308, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

74-308. Any railroad ~~corporation~~ may purchase and use real estate for a price to be agreed upon with the owners thereof, and may acquire the same through the exercise of the power of eminent domain. The procedure to condemn property shall be exercised in the manner set forth in sections 76-704 to 76-724.

Sec. 4. That section 74-424, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

74-424. No agency of this state shall purchase, lease, or acquire real estate from any railroad ~~company or corporation owning or operating a railroad~~ over a right-of-way outside of incorporated cities and villages which has been permitted to be abandoned by a federal agency, without prior approval by the Legislature of such purchase, lease, or acquisition, except that the Department of Roads may acquire such real estate solely for the purpose of highway construction or improvements when such right-of-way is adjacent to an existing state highway or when such right-of-way is needed to maintain existing improvements that have previously been located upon such right-of-way through agreements, easements, or leases. Real estate acquired by the ~~Department of Roads~~ department pursuant to this section which is in excess of that needed, or is deemed no longer necessary, shall be disposed of as provided for in section 39-1325.

Sec. 5. That section 74-548, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

74-548. The owner, consignor, or consignee of any carload lots of grain, coal, merchandise, or other property in course of transportation over any railway railroad within the state, transporting the same for hire, may request in writing any agent of the operators of such ~~railway~~ railroad to weigh any such carloads of grain, coal, merchandise, or other property in course of transportation. Upon such a and, upon such request being received, it shall become the duty of the operators of such railroad to weigh the car or cars designated in such written request, together with their contents, upon such track scale as may be designated in such written request, over which such car or cars in the regular course of transit will thereafter pass, and deliver to the person making such request a written certificate showing the name and number of the car so weighed, the date of the taking of such weight, and the place where weighed, with the number of pounds of gross and net weights, after deducting the tare marked on the car from such gross weight. The certificate so executed and delivered shall be admissible evidence against such railway company railroad in any legal proceeding, thereafter instituted or then pending against any such carrier railroad weighing and transporting the property contained in such car or cars, of all the facts stated in such certificate.

Sec. 6. That section 74-549, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

74-549. Wherever any carload lot of merchandise, coal, grain, or other property ~~shall be~~ is delivered for transportation for hire to any carrier by railroad within this state, consigned to any person at a station on the line of the railroad of such carrier, or upon any other railroad within this state, where no track scale is located and maintained, and such car in the course of transit will not pass a track scale on the line of such connecting carrier railroad, it shall immediately become the duty of such initial carrier railroad to cause the same to be weighed in the manner required by section 74-548 on the track scale located nearest the station to which such car is consigned, and to stamp upon the waybill for such car all of the matters required to be set out in the certificate provided for in such section. Where coal, grain, merchandise, or other property in carload lots is consigned to stations where track scales are located and the consignee requests the same to be weighed, such the weights shall be taken, both gross and tare, with the car uncoupled, on such track scales at the point of destination.

Sec. 7. That section 74-550, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

74-550. Any railroad company operating in this state and violating any of the provisions of sections 74-548 and 74-549, by neglecting or refusing to furnish weights as provided in section 74-549, shall upon conviction thereof be fined in the sum of one hundred dollars for each and every such violation. The fine shall be recovered by the state in an action in its name upon complaint of any owner, consignor, or consignee of the property which such carrier may refuse railroad refuses to weigh, made before any court of

competent jurisdiction.

Sec. 8. That section 74-592, Revised Statutes Supplement, 1993, be amended to read as follows:

74-592. ~~Every person, firm, or corporation operating or controlling any railroad running through or within the State of Nebraska~~ Each railroad shall equip each of its track motor cars used during the period from sunset to sunrise with (1) an electric headlight of such construction either permanent or portable and with sufficient candlepower to render plainly visible at a distance of not less than three hundred feet in advance of such track motor car any track obstruction, landmark, warning sign, or grade crossing and (2) a red rear electric light of such construction and with sufficient candlepower as to be plainly visible at a distance of three hundred feet. Such track motor cars shall be equipped with a shield of sufficient width and height to afford reasonable protection to the employees transported by it, part of which shall be a windshield of transparent shatterproof material.

Sec. 9. That section 74-593, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

74-593. ~~Any person, firm, or corporation operating or controlling any railroad running through or within the State of Nebraska using or permitting railroad which uses or permits to be used on its line in this state a track motor car in violation of the provisions of section 74-592 shall be deemed guilty of a Class V misdemeanor.~~

Sec. 10. That section 74-594, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

74-594. No member of a train crew, yard crew, or engine crew of a railroad, ~~which is a common carrier,~~ shall be held personally responsible or found guilty of violating any state laws or any municipal ordinances regulating or intended to regulate the occupying or blocking of any street, road, or highway crossing-at-grade by trains or passenger or freight cars upon reasonable proof that the occupying or blocking of the street, road, or highway crossing-at-grade was necessary to comply with orders or instructions either written or oral of his or her employer or its officers or supervisory officials. ~~This~~ ~~PROVIDED,~~ that the provisions of this section shall not relieve the employer or railroad from any responsibility placed upon the employer or railroad by any such state laws or by such municipal ordinances. This section shall be supplemental to any other law.

Sec. 11. That section 74-595, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

74-595. Each railroad ~~company~~ shall be responsible for the removal of all litter, as defined in section 28-523, on property owned or leased by the railroad which is under a bridge, trestle, or similar structure.

Sec. 12. That section 74-596, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

74-596. No speed limitation ordinance, which would directly affect the operations of an interstate railroad, shall be valid or enforceable unless its adoption is in compliance with this section. Before the first reading of the proposed ordinance, ~~each the railroad whose the operations of which would be directly affected by the ordinance shall be given written notice by United States mail of the proposed ordinance and the date, time, and place of such reading. Such notice shall be given at least ten days prior to the reading. Each The affected railroad or railroads shall have an opportunity to be heard at the first reading. After enactment, each railroad the operations of which the railroad or railroads whose operations would be directly affected shall be provided a written or printed copy of the ordinance by United States mail.~~

Sec. 13. That section 74-601, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

74-601. ~~Every railroad corporation, within Within six months after the lines of such the railroad, or any part thereof, are open, is open, each railroad shall erect and thereafter maintain fences on the sides of its railroad right-of-way, or the part thereof so open for use, suitable and ample sufficient to prevent cattle, horses, sheep, and hogs from getting on such railroad right-of-way, except at the crossings of public roads and highways, and within the limits of towns, cities, and villages, with openings, gates, or bars at all the farm crossings of such railroads its tracks for the use of the proprietors of the lands adjoining such railroad. They right-of-way. Each railroad shall also construct and maintain, at all road crossings, cattle guards suitable and sufficient to prevent cattle, horses, sheep, and hogs from getting onto such railroad right-of-way.~~

Sec. 14. That section 74-602, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

74-602. So long as such fences and cattle guards ~~shall not be are not made after the time prescribed in section 74-601 shall have has elapsed,~~

and when such fences and guards, or any part thereof, are not in sufficiently good repair to accomplish the objects for which the same as herein prescribed they are intended, such railroad corporation and its agents shall be liable for any and all damages which shall be damage which is done by the agents, engines, or trains of any such corporation railroad, or by the locomotives, engines or trains of any other corporation railroad permitted and running to run over or upon their said railroad such tracks, to any cattle, horses, sheep, or hogs thereon. When such fences and guards have been fully and duly made, and shall be kept in good and are kept in sufficient repair, such railroad corporation shall not be liable for any such damages, unless negligently or willfully done the damage arises from negligent or willful acts of the railroad or its agents.

Sec. 15. That section 74-603, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

74-603. Any person, company, or corporation, owning who owns land adjoining the right-of-way of any railroad company in this state, and not within the limits of any town, village, or city, and intending to enclose his or their who intends to enclose the land, or any part thereof, that adjoins such right-of-way or railroad, with a fence, or the secretary of such company or corporation, by direction thereof, may notify the railroad in writing such railroad company of such intention, and request such railroad company the railroad to build a lawful fence as described in section 74-601 on the line between its railroad and the land intended to be enclosed. Such The notice shall definitely specify two points on such line between which points such the fence is requested to be erected, and shall describe the field land intended to be enclosed. The railroad company shall, within six months after receiving such notice, cause to be erected the fence required requested by such notice to be erected, and in case of a failure so to do, the party so giving notice as aforesaid may cause such fence to be erected at a reasonable cost, and collect the such amount thereof from the railroad, company so neglecting to erect the fence.

Sec. 16. That section 74-604, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

74-604. Any railroad company operating its road in this state, and failing which fails to fence on both sides thereof of its right-of-way against all livestock running at large at all points, shall be absolutely liable to the owner of any livestock injured, or killed or destroyed by its agents, employees or engines, or by the agents, employees or engines belonging to by the railroad's agents or the agents of any other railroad company running which runs over and upon such road, or there being right-of-way.

Sec. 17. That section 74-605, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

74-605. Whenever any horse, cow, or other domestic animal is injured by a train or otherwise on the right-of-way of any railroad, company, it shall be the duty of the trackwalkers and section men of the company to personnel of the railroad shall care for the animal at once and report the facts to the nearest station agent. In case such animal shall be If the animal is injured by a train, it shall be the duty of such member of the train crew as is required by the railroad company shall, upon arriving at the first station at which such train is due to stop, to notify the agent of such station communications facility, notify the person in charge of the track of the fact, and such agent person shall at once cause to be notified the section foreman or other men notify the railroad employee having charge of the section upon which such the animal is injured, whose duty it shall be to who shall at once care for such the animal. If any such animal is maimed beyond hope of recovery, it shall be the duty of such persons to forthwith kill such animal such persons shall kill the animal at once. When such the animal is not killed, it shall be the duty of the agent to the section official shall give immediate notice, when possible, of the condition of such the animal to the owner or his or her agent, whose duty it shall be forthwith, upon receipt of notice, to have such animal properly cared for who shall have the animal cared for at once. When immediate notice to the owner is not possible, it shall be the duty of the station agent to the section official shall have the injured animal properly cared for without delay at once. No act of the railroad, its employees or agents, or the owner of an injured animal pursuant to this section shall be held to be an admission of liability or responsibility on the part of the railroad for the injury of the animal nor a waiver or relinquishment by the owner of any right or claim to damages from the railroad. Any person who violates any provision of this section shall be guilty of a Class V misdemeanor.

Sec. 18. That section 74-608, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

74-608. In order to provide cover for wildlife, the vegetation other than noxious weeds within the fenced right-of-way of all railroads outside the corporate limits of any city or village in Nebraska shall not be destroyed, except that (1) such vegetation shall be destroyed from the space between points a distance of seven feet from the outside of each outermost rail each year between May 1 and August 15, or at such places as may be deemed necessary by the railroad company for proper operation or maintenance; PROVIDED; and (2) the county board or board of supervisors of any county may, by written notice, direct any railroad to spray, mow, or otherwise treat specified portions of such fenced right-of-way to kill or destroy vegetation.

Sec. 19. That section 74-609, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

74-609. If any railroad company or corporation owning or operating a railroad over such right-of-way shall neglect or refuse neglects or refuses to cause its right-of-way to be mowed, sprayed, or otherwise treated as provided in section 74-608, it shall be the duty of the county board or board of supervisors in which county the right-of-way is located, to cause shall, after the time in which the railroad is required to act, cause the vegetation on the railroad right-of-way to be mowed, sprayed, or otherwise treated the vegetation on such railroad right-of-way, and the county may charge the railroad the reasonable cost thereof. PROVIDED, no county shall mow, spray, or otherwise treat the vegetation until after the time has passed in which the railroad company is required to mow, spray, or otherwise treat such vegetation. The county clerk shall include such amounts in making the county tax list as an assessment against such railroad, company, and the same assessment shall be collected in the same manner and at the same time as other taxes.

Sec. 20. That section 74-609.01, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

74-609.01. It shall be unlawful for anyone to hunt upon the fenced right-of-way of any railroad in Nebraska without permission of the owner, owners, or responsible authorities. Anyone violating authority. Any person who violates this section shall be guilty of a Class III misdemeanor.

Sec. 21. That section 74-706, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

74-706. Any person who is intoxicated if any person while in charge of a locomotive engine running upon the track of any railroad of any such corporation, or while acting as the conductor of a car or train of cars on any such railroad, shall be intoxicated, he shall be deemed railroad shall be guilty of a Class I misdemeanor.

Sec. 22. That section 74-916, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

74-916. An adequate supply of cool, sanitary water, for drinking purposes, shall be made available for use of all employees of railroads. Sanitary containers, equipped with a faucet or other dispenser, and individual paper drinking cups shall be furnished by the railroad, company.

Sec. 23. That section 74-918, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

74-918. Each railroad which operates Every railroad carrier operating in this state shall provide sanitary drinking water and toilet facilities on all road locomotives and waycars owned by such carrier, where it may be railroad when ordered, after investigation, notice, and hearing, by the Public Service Commission. The Public Service Commission shall also commission shall specify the type of facilities that shall be installed on each road locomotive and waycar placed in service after January 1, 1971. This PROVIDED, that nothing in this section shall not prevent any railroad carrier from operating equipment not in conformity with the provisions of this section over any main line for a distance of less than fifty miles and on any branch line of such carrier for a distance for less than fifty miles. Any railway carrier violating the provisions of railroad which violates this section shall be guilty of a misdemeanor and shall, upon conviction thereof, be punished by a fine of not less than one hundred dollars nor more than five hundred dollars.

Sec. 24. That section 74-919, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

74-919. Each railroad Any person, firm, or corporation doing a railroad business in this state shall keep and maintain those the margins alongside their its tracks, where railroad employees are required to walk in the course of their duties, reasonably free from debris and vegetation which affect the safety of such employees while working. The Public Service Commission shall enforce and prosecute any violation of this section.

Sec. 25. That section 74-1310, Reissue Revised Statutes of

Nebraska, 1943, be amended to read as follows:

74-1310. For purposes of sections As used in sections 74-595 and 74-1310 to 74-1322, unless the context otherwise requires, department shall mean the Department of Roads.

Sec. 26. That section 75-101, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

75-101. The members of the Public Service Commission shall (1) be resident citizens of this state, (2) be qualified voters under the Constitution and laws thereof, and (3) be, if members of or practitioners in any profession, in good standing according to the established standards of such profession. No person shall be eligible to the office of public service commissioner who is directly or indirectly interested in any common carrier in the state or out of it or who is in any way or manner pecuniarily interested in any common carrier subject to the provisions of ~~this chapter~~ Chapter 75. If any ~~such commissioner shall become~~ becomes so interested, after election or appointment, his or her office shall become vacant, ~~except that~~ and if any commissioner shall ~~become~~ becomes so interested, otherwise than voluntarily, he or she shall, within a reasonable time, divest himself or herself of such interest, and, failing to do so, his or her office shall become vacant.

A commissioner shall not hold any other office under the government of the United States, of this state, or of any other state and shall not, while such commissioner, engage in any other occupation.

For purposes of Chapter 75:

(a) Commission, when referring to a state agency, shall mean the Public Service Commission; and

(b) Commissioner shall mean a member of the commission.

Sec. 27. That section 75-104, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

75-104. The salary of each commissioner shall be ~~thirty-five thousand dollars~~. Commencing January 3, 1991, the annual salary of each commissioner shall be forty-two thousand dollars. In addition thereto, the commissioners, ~~secretary~~ executive director, clerks, and other employees of the commission shall be reimbursed for their actual and necessary expenses as provided in sections 81-1174 to 81-1177, entitled to receive from the state their actual necessary traveling expenses, which shall include the cost of transportation while traveling on the business of the commission; to be paid in the same manner as other requests for payment or reimbursement from the state; in computing the cost of transportation for the commissioners, ~~secretary; clerks; and other employees~~, no mileage or other traveling expense shall be requested or allowed unless sections 81-1174 to 81-1177 are strictly complied with.

Sec. 28. That section 75-105, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

75-105. The commissioners shall be known collectively as the Public Service Commission and shall have a seal, which may be either an engraved or ink stamp seal, similar to the seal of this state, with the words Public Service Commission of Nebraska included thereon. They shall be furnished with an office in the State Capitol offices and with necessary furniture, stationery, and supplies. Immediately after a newly elected member of the commission has taken the oath of office prescribed in section 75-102, the commission shall meet at Lincoln, and organize. The commission shall also appoint ~~(1)~~ clerks, at least one of whom shall be an expert stenographer and typist, and ~~(2)~~ such other employees as may be necessary, who shall be persons who are as expert employees as may be necessary to perform the duties which may be required of them the commission.

Sec. 29. That section 75-106, Revised Statutes Supplement, 1992, be amended to read as follows:

75-106. Any person who is eligible to hold the office of commissioner shall also be eligible to hold the office of ~~secretary~~ executive director. The salary of the ~~secretary~~ executive director shall be fixed by the commission, payable monthly. The ~~secretary~~ executive director shall take the same oath as the commissioners. The ~~secretary~~ executive director shall keep full and correct minutes of all transactions and proceedings of the commission, and it shall be his or her duty to, upon request and being paid the lawful fees therefor, to furnish a transcript, duly authenticated by ~~such~~ the commission, of any public record or records of the commission made on any hearing of any kind and to perform such duties as may be required by the commission. The ~~secretary~~ executive director shall charge such fees for furnishing a transcript as are allowed by law on appeal from the district court to the Court of Appeals and shall turn such fees into the fund provided for the expenses of the commission.

Sec. 30. That section 75-108, Reissue Revised Statutes of Nebraska,

1943, be amended to read as follows:

75-108. The commission may consult ~~and advise with~~ the Attorney General ~~from time to time with reference to any or all matters~~ matter upon which it may require advice, and it ~~shall be the duty of the Attorney General to shall~~ give such advice as the commission may require of him, ~~and to and~~ perform such other services within the line of his duty as the commission may require.

Sec. 31. That section 75-109, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

75-109. Except as provided in sections 19-4603, 86-803, and 86-808, the commission shall ~~have the power to regulate the rates and services of and to exercise a general control over all common carriers, which term is hereby defined as all carriers, including contract carriers, engaged in the transportation of freight or passengers for hire or furnishing communication services for hire in Nebraska intrastate commerce.~~

Sec. 32. That section 75-110, Revised Statutes Supplement, 1993, be amended to read as follows:

75-110. The Public Service Commission shall ~~adopt and promulgate rules and regulations for the government of its proceedings, including rules of procedure for notice and hearing. The commission shall also adopt and promulgate rules and regulations which the commission deems necessary to regulate persons within the commission's jurisdiction. The commission shall not take any action affecting persons subject to the commission's jurisdiction unless such action be is taken pursuant to a rule, regulation, or statute.~~

The commission shall adopt and promulgate all rules and regulations necessary to enable the State of Nebraska to participate in the single state insurance registration system for motor carriers authorized by Section 4005 of the Intermodal Surface Transportation Efficiency Act of 1991, 49 U.S.C., and by applicable rules and regulations of the Interstate Commerce Commission. ~~No later than December 1, 1993, the Public Service Commission shall report to the Transportation Committee of the Legislature on the final registration plan adopted by the Interstate Commerce Commission.~~

Sec. 33. That section 75-112, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

75-112. The commissioners and examiners, for the purposes mentioned in sections 75-101 to 75-801, ~~shall have power to administer all oaths, to may administer oaths,~~ compel the attendance of witnesses, to examine any of the books, papers, documents, and records of any motor carrier as defined in section 75-302 or common carrier subject to the ~~provisions of sections 75-101 to 75-801 or have such examination made by any person or persons that they that the commission may employ for that purpose, to compel the production of such books, papers, documents, and records, or to examine under oath, or otherwise, any officer, director, agent, or employee of any such carrier, or any other person. Any person or persons employed by the commission to examine such books, papers, documents, or records shall produce his or her authority, under the hand and seal of the commission, to make such examination. The commissioners shall have the power to may~~ certify to all official acts of the commission.

Sec. 34. That section 75-113, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

75-113. The commission may, ~~in its discretion,~~ prescribe the forms of any and all accounts and records to be kept by a motor carrier as defined in section 75-302 or common carriers subject to its jurisdiction, including the accounts, records, and memoranda of the movement of traffic as well as the receipts and expenditures of money. The commission shall not prohibit any such carrier from capitalizing on its balance sheet the value of any certificate or permit held by such carrier. The commission shall at all times have access to all accounts, records, and memoranda kept by such carriers, and it shall be unlawful for any such carrier to keep any other accounts, records, or memoranda than those prescribed or approved by the commission, except as provided in this section.

Sec. 35. That section 75-116, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

75-116. ~~Every Each~~ motor carrier as defined in section 75-302 or common carrier required to furnish an annual report with a federal regulatory agency shall file a copy of the ~~same report~~ with the commission on or before the date on which such report is filed with such agency. ~~Every Each~~ such carrier not required to file an annual report with a federal regulatory agency ~~shall be required to file an annual report with the commission in the form prescribed by the commission on or before April 30 of each year.~~

Sec. 36. That section 75-118, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

75-118. The commission shall have the power and duty to shall:

(1) Fix all necessary rates, charges, and regulations governing and regulating the transportation, storage, or handling of freight and passengers by any common carrier in Nebraska intrastate commerce;

(2) Make all necessary classifications of freight and property of whatsoever character that may be transported, stored, or handled by any common carrier in Nebraska intrastate commerce, such classifications applying to and being the same for all common carriers;

(3)(a) Investigate all through rates from points without the state to points within the state or from points within the state to points without the state, and (b) upon finding such through rates to be excessive or unreasonable, call that fact to the attention of the common carrier involved, and (c) if appropriate action is not taken within a reasonable period of time, present the facts to the federal governmental agency having jurisdiction over the same and appeal to such agency for relief;

(4) Prevent and correct the unjust discriminations set forth in section 75-126; and

(5) Enforce all statutes and commission regulations pertaining to rates and, if necessary, institute actions in the appropriate court of any county in which the common carrier involved operates except actions instituted pursuant to sections 75-140 and 75-322.02 to 75-322.04. All suits shall be brought and penalties recovered in the name of the state by or under the direction of the Attorney General.

Sec. 37. That section 75-119, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

75-119. When any common carrier or other interested person petitions the commission alleging that a rate, rule, or regulation should be prescribed where when none exists, or alleging that an existing rule, regulation, or rate is unreasonably high or low, unjust, or discriminatory, notice shall be given to the common carriers affected in accordance with the commission's rules for notice and hearing. The minimum notice to be given under this section shall be ten days. The order granting or denying the petition or application shall be mailed only to the parties of record. If a petition or application is not opposed after notice has been given, the commission may act upon such petition or application without a hearing.

Sec. 38. That section 75-121, Revised Statutes Supplement, 1992, be amended to read as follows:

75-121. To prevent interstate rate wars and injury to any common carrier or other person or in case of any other emergency to be judged by the commission, ~~it shall be the duty of the commission to shall~~ temporarily alter, amend, or suspend any existing rates in force in respect to any common carrier or to fix any such rates if none exist. The order prescribing an emergency rate shall describe the emergency and may be entered and made effective immediately. Within five days after the effective date of such order, notice of ~~such the~~ rate shall be given to the common carriers affected in accordance with the commission's rules for notice. If an affected common carrier or other interested person files a protest to the granting of such rate within fifteen days after notice has been given, the commission shall notify the rate applicant and the protestant, and hold a hearing, and issue an order within thirty days after the expiration of the time to file a protest. Emergency rate orders shall be subject to the provisions of section 75-139 and subject to review as provided in sections 75-136 and 75-137.

Sec. 39. That section 75-123, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

75-123. The following criteria shall be among those considered by the commission in fixing, modifying, or annulling any rate:

(1) The lowest rates published or charged by any common carrier for substantially the same kind of service, whether in this state or another state, shall, when introduced into evidence, be accepted as prima facie evidence of a reasonable rate for the services inquired into; and

(2) If any common carrier involved in the proceedings operates outside of this state, the rate charged for substantially the same or greater service by it in the other state shall be considered in determining what is a reasonable rate.

Sec. 40. That section 75-125, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

75-125. Any common carrier ~~failing, refusing, or neglecting which fails, refuses, or neglects~~ to file or publish any schedule of rates, fares, and charges, or any part of the same, shall, in addition to other penalties prescribed in ~~this article sections 75-101 to 75-155,~~ be subject to a writ of mandamus to be issued by any district court of this state in the judicial district ~~wherein in which~~ its principal office is situated, ~~or wherein such or~~

in which the offense may be committed. If such the common carrier is a foreign corporation, then such the writ may be issued by any district court in the judicial district where it accepts traffic and has an agent to perform such service to compel compliance with the provisions of section 75-124. Such The writ shall issue in the name of the state, on the relation or upon the petition of the commission, and the failure to comply with the requirements shall be punishable as for contempt and shall make such common carrier liable to a penalty of one thousand dollars for each day's failure to comply therewith with the writ. Whenever any such writ of mandamus shall be is applied for, no bond shall be required.

Sec. 41. That section 75-126, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

75-126. (1) Except as otherwise provided in this section, no common carrier shall:

(a) Charge, demand, collect, or receive from any person a greater or lesser compensation for any services rendered than it charges, demands, collects, or receives from any other person for doing a like or contemporaneous service;

(b) Make or give any undue or unreasonable preference or advantage to any particular person;

(c) Subject any type of traffic to any undue or unreasonable prejudice, delay, or disadvantage in any respect whatsoever, except ~~7 PROVIDED~~, that all types of perishable freight and livestock shall have precedence in shipment;

(d) Charge or receive any greater compensation in the aggregate for the transportation of a like kind of property or passengers for a shorter than for a longer distance over the same line or route, except as the commission may prescribe in special cases to prevent manifest injuries, except ~~7 PROVIDED~~; that no manifest injustice shall be imposed upon any person at intermediate points. This section shall not ~~7 AND PROVIDED FURTHER, that nothing herein shall~~ prevent the commission from making group or emergency rates;

(e) Demand, charge, or collect, by any device whatsoever, a lesser or greater compensation for any service rendered than that filed with or prescribed by the commission; or

(f) Change any rate, schedule, or classification in any manner whatsoever before application has been made to the commission and permission granted for that purpose, except as otherwise provided in section 75-128.

(2) Nothing contained in this section shall This section shall not prohibit any common carrier from, and no a common carrier shall not be subject to any fine, penalty, or forfeiture for, performing services free or at reduced rates to:

(a) The United States, the State of Nebraska, or any governmental subdivision thereof;

(b) Any person transporting who transports property to and from fairs and expositions for exhibition thereat;

(c) The employees, both present and retired, of such common carrier;

(d) Any person wherein when the object is to provide relief in case of any calamitous visitation disaster;

(e) Any person transporting who transports property for charitable purposes; or

(f) Ministers and others giving their entire time to religious or charitable work.

Sec. 42. That section 75-127, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

75-127. Any common carrier, shipper, or consignee who willfully violates any provision willfully violating one or more of the provisions of section 75-126 shall be guilty of a Class I misdemeanor. Any officer, agent, or employee who for or on behalf of any common carrier, shipper, or consignee, willfully violates any provision shall willfully violate one or more of the provisions of section 75-126 shall be guilty of a Class II misdemeanor. Each day of such violation shall constitute a separate offense.

Sec. 43. That section 75-128, Revised Statutes Supplement, 1993, be amended to read as follows:

75-128. It is hereby declared to be the policy of the Legislature that all matters presented to the commission be heard and determined without delay. All matters requiring a hearing shall be set for hearing at the earliest practicable date and in no event, except for good cause shown, which showing shall be recited in the order, shall the time fixed for hearing be more than six months after the date of filing of the application, complaint, or petition on which such hearing is to be had. Except as otherwise provided in section 75-121 and except for good cause shown, a decision of the

commission shall be made and filed within thirty days after completion of the hearing or after submission of affidavits in nonhearing proceedings.

Applications for commission approval of specific new rates or charges or changes in existing rates or charges for telephone service which have not been heard and determined within six months and thirty days from the date the application was filed may be put into effect by the common carrier, in an amount not to exceed seventy-five percent of the total amount of the application, subject to refund of any amount collected in excess of the amount which would have been collected under the new or changed rates or charges as finally approved by the commission. The refund shall include an interest payment at a rate of interest determined by the commission, except that the rate of interest shall not exceed the overall rate of return which the common carrier is authorized to earn. When making its final determination on the application, the commission shall not consider the rates and charges of the company put into effect pending such final determination. This section shall not apply to rates or charges placed into effect under section 75-616.

In the case of any proceeding upon which a hearing is held, the transcript of testimony shall be prepared and submitted to the commission prior to entry of an order, except that it shall not be necessary to have prepared prior to commission decision the transcripts of testimony on hearings involving noncontested proceedings and hearings involving emergency rate applications under section 75-121.

For each application, complaint, or petition filed with the Public Service Commission, except those filed under sections 75-301 to 75-335 ~~75-322.04~~, there shall be charged a filing fee to be determined by the commission, but in an amount not to exceed the sum of fifty dollars payable at the time of such filing. There shall also be charged to persons regulated by the commission a hearing fee of fifty dollars for each half day of hearings if the person regulated by the commission files an application, complaint, or petition which necessitates a hearing.

Sec. 44. That section 75-131, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

75-131. Any person, ~~firm, corporation, association, society or body politic, or municipal organization,~~ complaining ~~who complains~~ of anything done or omitted to be done by any common carrier, ~~may apply to the commission by petition briefly stating or contract carrier may request that the commission investigate and impose sanctions on such carrier by filing a petition which briefly states the facts constituting the complaint.~~ A copy ~~Notice~~ of the complaint shall be served upon the common carrier, ~~which respondent carrier as in civil cases in district court, and the respondent shall be required to answer or satisfy the same complaint within a reasonable time fixed by the commission.~~ Nothing contained in ~~this~~ This section shall ~~not~~ prevent any of the ~~above-named persons or organizations person~~ from proceeding against any common or contract carrier under the laws of this state for such cases made and provided.

Sec. 45. That section 75-132, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

75-132. If a common carrier shall ~~carrier does not satisfy a complaint filed pursuant to section 75-131 within the time allowed and there shall appear appears~~ to be a reasonable ground for investigation of the complaint upon its merits, the commission shall ~~proceed to an inquiry and hearing of convene a hearing on the matters complained of, in such manner and by such means as it shall think proper, pursuant to its rules of procedure~~ and shall give the parties ~~thereto~~ written notice of the time and place for such hearing. ~~After and upon the hearing, the commission shall make such order or orders with respect to the complaint as may be deemed it deems just and reasonable.~~

Sec. 46. That section 75-133, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

75-133. Whenever the commission has reason to believe that any common carrier is violating any of the provisions ~~carrier has violated any provision~~ of sections 75-101 to 75-801, it shall at once institute an inquiry investigation and fix a time and place for hearing thereon, upon its own motion, and shall make any order or orders as may upon such hearing be deemed as it deems just and reasonable.

Sec. 47. That section 75-134, Revised Statutes Supplement, 1992, be amended to read as follows:

75-134. A commission order entered after a hearing shall be written and shall recite (1) a discussion of the facts of a basic or underlying nature, (2) the ultimate facts, and (3) the commission's reasoning or other authority relied upon by the commission. Except as otherwise provided in sections 75-121 and 75-139, all commission orders shall ~~go into effect become~~

operative ten days after the date of the mailing of a copy of the order to the parties of record unless the commission prescribes a later effective date. An order entered pursuant to section 75-319 shall be effective on the date of entry of the order by the commission. Except as to rate orders provided for in section 75-139, if one of the parties of record commences one of the appeal proceedings provided in section 75-137, the order appealed shall be in abeyance until the Court of Appeals or Supreme Court issues its mandate. Nothing in this section shall hold in abeyance an order authorizing the issuance of a certificate or permit, an order denying relief or authority, or an order entered pursuant to section 75-319.

Sec. 48. That section 75-135, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

75-135. When certified to be a true and correct copy of the original by the secretary executive director of the commission or a commissioner, a commission order shall be admitted in evidence in all courts and tribunals of this state, without further proof, as prima facie evidence of every fact found, and that such order is prima facie just and reasonable.

Sec. 49. That section 75-136.01, Revised Statutes Supplement, 1992, be amended to read as follows:

75-136.01. (1) Proceedings for review of an order entered under sections 75-322.02 to 75-322.04 shall be instituted by filing a petition in the district court of Lancaster County or in the district court of the county in which the party is domiciled within thirty days after the date of the mailing of a copy of the order by the commission to the party appealing. All parties of record shall be made parties to the proceedings for review. Summons shall be served within thirty days of the filing of the petition in the manner provided for service of a summons in a civil action. The court, in its discretion, may permit other interested persons to intervene. The filing of the petition or the service of the summons upon the commission shall not automatically stay enforcement of a decision. The commission may stay enforcement of a decision, or the court may order a stay after notice to the commission of application for a stay upon such terms as it deems proper and shall require the party requesting such stay to give bond in the amount specified in the order entered under sections 75-322.02 to 75-322.04 and conditioned as the court directs. Within fifteen days after service of the petition or within such further time as the court for good cause shown allows, the commission shall prepare and transmit to the court the verbatim testimony transcribed by the official stenographer, including all exhibits, which shall constitute the bill of exceptions. The pleadings, order appealed, and bill of exceptions duly certified to by the secretary executive director of the commission shall constitute the complete record. A copy of the original order appealed, certified to be a true and correct copy by the secretary executive director or a commissioner, shall be admitted in evidence as prima facie evidence of every fact found and that such order is prima facie just and reasonable.

(2) The review shall be conducted by the court without a jury on the record of the commission.

(3) The court may affirm the decision of the commission or remand the case for further proceedings or may reverse or modify the decision if the substantial rights of the petitioner may have been prejudiced because the decision is:

- (a) In violation of constitutional provisions;
- (b) In excess of the statutory authority or jurisdiction of the commission; or
- (c) Arbitrary or capricious.

(4) The commission or such party shall have the right to appeal the decision of the district court to the Court of Appeals under the rules provided by law for appeals to the Court of Appeals, except that in no case shall security for such appeal be required when the appeal is taken by the commission.

(5) The review provided by this section shall not be available in any case when other provisions of law prescribe the method of appeal.

Sec. 50. That section 75-137, Revised Statutes Supplement, 1992, be amended to read as follows:

75-137. The procedure to obtain reversal, modification, or vacation of an order entered by the commission shall be (1) by filing a notice of appeal with the commission within thirty days after the date of the mailing of a copy of the order by the commission to the party appealing or (2) by filing a motion for rehearing within ten days after the date of the mailing of a copy of the order by the commission to the party appealing. If the commission overrules the motion for rehearing, a notice of appeal must shall be filed with the commission within thirty days after the date of the mailing of a copy

of the order overruling the motion to the party appealing. When the commission fails to enter an order ruling on the motion for rehearing within thirty days after such motion is filed, the appeal may be perfected by filing a notice of appeal before the commission enters an order ruling on the motion for rehearing, and the review by the appellate court shall be the same as if the commission had overruled the motion for rehearing. Oral arguments on a motion for rehearing shall be granted when requested and such arguments ~~must~~ shall be heard by a majority of the commission. An appeal shall be deemed perfected and the appellate court shall have jurisdiction of the cause when a notice of appeal has been filed and the docket fee required by section 33-103 has been deposited in the office of the ~~secretary executive director~~ of the commission. After being perfected, no appeal shall be dismissed without notice, and no step other than the filing of such notice of appeal and the depositing of such docket fee shall be deemed jurisdictional.

Sec. 51. That section 75-138, Revised Statutes Supplement, 1992, be amended to read as follows:

75-138. The verbatim testimony transcribed by the official stenographer, including all exhibits or affidavits received in nonhearing proceedings, shall constitute the bill of exceptions. The pleadings, order appealed, and bill of exceptions duly certified to by the ~~secretary executive director~~ of the commission shall constitute the complete record on appeal, except that the pleadings, affidavits received, and order appealed shall constitute the complete record when the commission dismisses or denies without a hearing an application, petition, or complaint.

Sec. 52. That section 75-139.01, Revised Statutes Supplement, 1993, be amended to read as follows:

75-139.01. For purposes of sections 75-140 to 75-145, person shall mean any individual, corporation, governmental agency or subdivision, partnership, ~~limited liability company~~, company, or association and any other legal or commercial entity including any common or contract carrier and its owners, directors, officers, ~~limited liability company members~~, agents, and employees.

Sec. 53. That section 75-140, Revised Statutes Supplement, 1993, be amended to read as follows:

75-140. Whenever any person violates or disobeys an order issued by the commission which has been finally established, the commission or any ~~company~~ or person interested in such order may petition to the district court of Lancaster County alleging violation or disobedience thereof. The court ~~shall have power to~~ may determine the matter on such notice to the person complained of as the court deems reasonable. The notice may be served on such person as the court directs.

Sec. 54. That section 75-141, Revised Statutes Supplement, 1993, be amended to read as follows:

75-141. Whenever any ~~such petition is filed or presented, or petition authorized by section 75-140 is filed or is~~ prosecuted by the commission or by its direction, ~~it shall be the duty of the Attorney General of the state to~~ shall prosecute the ~~same~~ petition at the request of the commission, and the costs and expenses on the part of the commission of any such prosecution shall be paid out of the appropriations for the expenses of the commission.

Sec. 55. That section 75-142, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

75-142. The court shall proceed to determine the matter speedily as a court of equity, and without the formal pleadings and proceedings applicable to ordinary suits in equity; but in such manner as to do justice in the premises. To this end, ~~such court shall have power, if it deem proper, to the court may~~ direct and prosecute, in such manner and by such persons as it may appoint, all such inquiries as the court may think needful to enable it to form a just judgment in the matter of such petition.

Sec. 56. That section 75-143, Revised Statutes Supplement, 1992, be amended to read as follows:

75-143. The commission and any ~~other party or person interested therein shall have the right to in the court's decision may~~ appeal to the Court of Appeals under the rules provided by law as to security for an appeal to the Court of Appeals, except that in no case shall security for ~~such an~~ appeal be required when the ~~same~~ appeal is taken by the commission. An appeal to the Court of Appeals shall not operate to stay or supersede the order of the court or the issuance of execution thereon, and ~~such the~~ court may in every such matter order the payment of such costs and attorney's fees as ~~shall be deemed it deems~~ reasonable.

Sec. 57. That section 75-144, Revised Statutes Supplement, 1993, be amended to read as follows:

75-144. (1) If it appears to the court after such a hearing that the an order of the commission has been complained of was violated or disobeyed, the court may issue a writ of an injunction or other proper process, mandatory or otherwise, to restrain the person from further continuing such violation or disobedience of the order and enjoining disobedience thereto to the order.

(2) In case of any disobedience of any such writ or injunction or other proper process, mandatory or otherwise, the person to whom it was directed shall be guilty of contempt of court. The court may issue a writ of attachment or other process of the court incident or applicable to writs of an injunction or other proper process, mandatory or otherwise, against the person to pay any sum of money, not exceeding, for each such person, the sum of one thousand dollars for every day after a day to be named in the order that the person fails to obey such the injunction or other proper process, mandatory or otherwise.

(3) The money shall, when paid, be disposed of according to law. The payment thereof of the money may, without prejudice to any other motive covering the same, be enforced by attachment or order in the nature of a writ of execution, in like manner as if the same money had been recovered by final decree in personam in such court.

Sec. 58. That section 75-145, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

75-145. The owners, directors, officers, agents, employees, and any other persons upon whom the duty may devolve or through whose agency the order or orders are an order is to be carried out, upon failure to do so, shall be deemed guilty of a Class III misdemeanor, and upon conviction thereof, shall be imprisoned in the county jail not less than ten nor more than thirty days.

Sec. 59. That section 75-146, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

75-146. The capital stock of any common carrier other than a railroad shall not be increased for any purpose except after public notice for sixty days. No common carrier other than a railroad shall consolidate its stock, property, franchise, or earnings, in whole or in part, with any other competing common carrier without permission of the commission, and in no case shall any consolidation take place except on public notice of at least sixty thirty days to all stockholders as provided in the rules of the commission.

Sec. 60. That section 75-148, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

75-148. A common carrier may issue stock, bonds, notes, or other evidence of indebtedness, payable at periods of more than twelve months after the date thereof, when necessary for the acquisition of property, the construction, completion, extension, or improvement of facilities, or for the improvement or maintenance of its service, or for the discharge or lawful refunding of its obligations; PROVIDED, there shall first have been secured if the common carrier first secures from the commission an order authorizing such issue and the amount thereof, and stating that in the opinion of the commission the use of the capital to be secured by the issue of such stock, bonds, notes, or other evidence of indebtedness is reasonably required for said the purposes of the corporation carrier. A common carrier may issue notes or other evidence of indebtedness for proper corporate purposes and not in violation of any provision of law, payable in periods of not more than twelve months, without such consent, PROVIDED, that if no such note shall is, in whole or in part, directly or indirectly, be refunded by any issue of such stock or bonds, or by any evidence of indebtedness running more than twelve months, without the consent of the commission. The provisions of this section shall not apply to the security issuances of common carriers who are under the control of a federal regulatory agency.

Sec. 61. That section 75-150, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

75-150. No order authorizing the issuance of securities shall become operative until the applicant pays to the commission fees as follows: Upon applications totaling not more than twenty-five thousand dollars, the fee shall be twenty-five dollars; and upon applications totaling more than twenty-five thousand dollars, the fee shall be twenty-five dollars for the first twenty-five thousand dollars, one dollar per one thousand dollars for the next seventy-five thousand dollars, and twenty-five cents per one thousand dollars for all amounts in excess of one hundred thousand dollars, except and PROVIDED, that the total fee shall in no case exceed the sum of two thousand five hundred dollars. The fee shall be computed on the par value principal amount of the stock, or in the case of no par stock, on the declared or

offering price, whichever is greater. Such fees when received by the commission shall be paid by them into the state treasury and by the State Treasurer placed in The commission shall remit the fees received to the State Treasurer for credit to the General Fund. The actual and necessary expenses of the commission incurred in investigating the application to sell securities shall be paid by the applicant, who may be required by the commission to deposit in advance a sum sufficient therefor. Any unexpended balance thereof shall be returned to the applicant.

Sec. 62. That section 75-151, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

75-151. Any common carrier which ~~shall violate~~ violates any of the provisions of sections 75-146 to 75-150, or which fails, omits, or neglects to obey, observe, or comply with any order, direction, or requirement of the commission under the provisions of such sections, shall forfeit to the State of Nebraska a sum not to exceed five thousand dollars for each and every offense. ~~Every~~ Each violation of any such order or direction or requirement of such sections shall be a separate and distinct offense, and, in case of a continuing violation, ~~every~~ each day's continuance thereof shall be a separate and distinct offense. ~~Every~~ Each officer and agent of any common carrier which ~~shall violate~~, or who ~~who violates~~ or procures, aids, or abets any violation by any such common carrier of any of the provisions of sections 75-146 to 75-150, ~~or who shall fail~~ who fails to obey, observe, and comply with any order of the commission or any provision of an order of the commission under the terms of such sections, or who procures, aids, or abets any such common carrier in its failure to obey, observe, and comply with any such order or provision, shall be guilty of a Class III felony.

Sec. 63. That section 75-152, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

75-152. Where ~~When~~ transportation is involved in connection with the sale of personal property and the price at which such personal property is sold is a delivered price at destination, the consignor ~~shall have the right to~~ may determine the means of transportation to be used and the routing of the shipment.

Sec. 64. That section 75-153, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

75-153. Where transportation is involved in the sale of personal property and the price at which such property is sold is determined f.o.b. shipping point, the consignee ~~shall have the right to~~ may determine the means of transportation to be used and the routing of the shipment, except that if the consignor ~~shall not have~~ has not received written shipping instructions from the consignee designating a specific carrier a reasonable time prior to the making of the shipment, the consignor may determine the means of transportation to be used and the routing of the shipment.

Sec. 65. That section 75-154, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

75-154. If, under section 75-153, a consignor of personal property ~~shall violate~~ violates written shipping instructions given by the consignee to the consignor a reasonable time prior to the making of the shipment, the consignor shall be liable for actual damages to the consignee or any public carrier ~~who shall have been injured~~ by the failure of the consignor to comply with the written shipping instructions given the consignor by the consignee.

Sec. 66. That section 75-155, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

75-155. Unless a more specific criminal penalty is provided, any person ~~who knowingly and willfully violating~~ violates any provision of Chapter 75, any rule, regulation, or order of the commission, or any term or condition of any permit or certificate issued by the commission shall be guilty of a Class IV misdemeanor. Each day of such violation shall constitute a separate offense.

Sec. 67. That section 75-201, Revised Statutes Supplement, 1993, be amended to read as follows:

75-201. Any person, ~~firm, partnership, limited liability company,~~ corporation, company, or association which undertakes to transport ~~who~~ transports passengers or property for the general public in intrastate commerce by any airborne vehicle ~~is hereby declared to shall not~~ be a common carrier and subject to commission regulation.

Sec. 68. That section 75-304, Revised Statutes Supplement, 1993, be amended to read as follows:

75-304. The commission may, ~~from time to time,~~ establish such just and reasonable classifications of groups of carriers, included in the terms common carrier ~~or~~ and contract carrier, as the special nature of the services performed by such carriers require and adopt and promulgate such just and

reasonable rules, regulations, and requirements, to be observed by the carrier so classified or grouped, as the commission deems necessary or desirable in the public interest and as are consistent with the provisions of sections 75-301 to 75-322.04. All certificates and permits issued by the commission shall be construed and interpreted, and the operations authorized thereunder shall be tested and determined, in accordance with such classification so established and any rule, regulation, or requirement prescribed by the commission relating to such carrier so classified.

Sec. 69. That section 75-304.01, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

75-304.01. The commission shall prescribe minimum rates, fares, and charges for contract carriers. No reduction shall be made in any such charge, either directly or by means of any change in any rule, regulation, or practice affecting such charge or the value of service thereunder, except after ten days' notice of the proposed change filed in the form and manner provided for common carrier rate changes. ~~Such~~ The notice shall plainly state the change proposed to be made and the time when ~~such~~ the change will take effect. No ~~such~~ contract carrier shall demand, charge, or collect less compensation for such transportation than the charges to be made by common carriers for the same transportation in accordance with ~~Chapter 75, article 3 sections 75-118 to 75-155 and 75-301 to 75-322.04~~, as affected by any rule, regulation, or practice so filed, or as may be prescribed by the commission, and it shall be unlawful for any such carrier to charge less than the rates, fares, and charges approved by the Public Service Commission; ~~PROVIDED, that nothing commission. Nothing~~ in this section shall require common or contract carriers by motor vehicle of bullion, currency, jewels, checks, and valuables to file tariffs or contracts identifying the security provisions which are required for the protection of such valuables. ~~The~~ AND PROVIDED FURTHER, that the rates charged by common carriers and contract carriers of audit and accounting media, business records, cash letters, checks, data processing media, and microfilm for financial institutions shall not be governed or controlled by any of the provisions of Chapter 75 prescribing or establishing rates and charges, and contract carriers of such products shall not be required to maintain contracts on file with the commission.

Sec. 70. That section 75-306, Revised Statutes Supplement, 1993, be amended to read as follows:

75-306. Receipt for the payment of annual fees shall be issued by the commission in triplicate. ~~The original shall be delivered to the motor carrier and two copies retained by the commission. The commission shall issue a sufficient license plate or plates and renewal tab or tabs to any motor carrier who is in compliance with the provisions of sections 75-301 to 75-322.04 and the rules and regulations of the commission, except contract carriers operating pursuant to section 75-303.01, for the purpose of identification of motor carriers subject to such sections and to distinguish them those motor carriers from other commercial motor carriers not subject to such sections. The Director of Motor Vehicles shall prepare a form of license plates plate and renewal tabs tab for such motor carriers and furnish a sufficient supply of such license plates and renewal tabs them to the commission.~~

Sec. 71. That section 75-308.01, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

75-308.01. Any two or more motor carriers authorized to operate under a common tariff approved by the Public Service Commission ~~under the provisions of Chapter 75, article 1 or 3, commission under section 75-118 or 75-304.01~~ shall be permitted to meet and review operational conditions of affected motor carriers for the following purposes: (1) To study the ratio of expenses to income and general financial condition of the motor carrier industry in Nebraska; (2) to determine if whether any change or changes should be made in any commission-approved tariff, or tariffs; (3) to consider the joint employment of technical assistance to accomplish the purposes set forth in this section; (4) to determine if whether it is necessary to file an application to make tariff changes; and (5) to do all other acts necessary to accomplish the filing of a rate application with the commission.

Sec. 72. That section 75-309, Revised Statutes Supplement, 1993, be amended to read as follows:

75-309. Except for operations pursuant to a contract authorized by sections 75-303.01 and 75-303.02, it shall be unlawful for any common or contract carrier by motor vehicle subject to the provisions of ~~Chapter 75, articles 1 and 2, and sections 75-101 to 75-155 and 75-301 to 75-322.04~~ to engage in any intrastate operations on any public highway in Nebraska unless there is in force with respect to such common carrier a certificate of public convenience and necessity, or a permit to such contract carrier, issued by the

commission ~~authorizing~~ which authorizes such operations.

Sec. 73. That section 75-309.01, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

75-309.01. Each ~~Every~~ motor vehicle owned, used, or attempted to be used by any person as a common or contract carrier to transport passengers for hire in violation of section 75-309, is hereby declared to be a public nuisance, and subject to seizure and confiscation by any person charged with the enforcement of this section. All motor vehicles while being so used in violation thereof shall Any motor vehicle which is used in violation of section 75-309 may be seized upon the arrest of the person so using or owning such who uses or owns the motor vehicle, and upon the conviction of such the person for the violation of such section, the such motor vehicle shall, as a part of the element of such the violation, at the discretion of the court, be forfeited to the state, and delivered to the Public Service Commission commission to be disposed of as provided by law. The ~~7~~ PROVIDED, that such sale shall be subject to any liens of record. The proceeds from such sale shall be paid into the state treasury and by the State Treasurer placed in commission shall remit the proceeds of the sale to the State Treasurer for credit to the General Fund.

Sec. 74. That section 75-311, Revised Statutes Supplement, 1993, be amended to read as follows:

75-311. (1) A certificate shall be issued to any qualified applicant, authorizing the whole or any part of the operations covered by the application, if it is found after notice and hearing that (a) the applicant is fit, willing, and able properly to perform the service proposed and to conform to the provisions of sections 75-301 to 75-322.04 and the requirements, rules, and regulations of the commission under such sections and (b) the proposed service, to the extent to be authorized by the certificate, whether regular or irregular, passenger or property, is or will be required by the present or future public convenience and necessity. Otherwise ~~such~~ the application shall be denied.

(2) A permit shall be issued to any qualified applicant therefor, authorizing in whole or in part the operations covered by the application, if it appears after notice and hearing from the application or from any hearing held on the application that (a) the applicant is fit, willing, and able properly to perform the service of a contract carrier by motor vehicle and to conform to the provisions of such sections and the lawful requirements, rules, and regulations of the commission under such sections and (b) the proposed operation, to the extent authorized by the permit, will be consistent with the public interest by providing services designed to meet the distinct needs of each individual customer or a specifically designated class of customers as defined in subdivision (11) of section 75-302. Otherwise ~~such~~ the application shall be denied.

(3) No person shall at the same time hold a certificate as a common carrier and a permit as a contract carrier ~~authorizing operation for the for~~ transportation of property by motor vehicles over the same route or within the same territory unless the commission finds that it is consistent with the public interest and with the policy declared in section 75-301.

(4) After the issuance of a certificate or permit, the commission shall review the ~~annual reports operations~~ of all common or contract carriers ~~filed with who hold authority from the commission to determine if whether~~ there are insufficient operations in the transportation of regulated commodities to justify the commission's finding that such common or contract carrier has willfully failed to perform transportation under sections 75-301 to 75-322.04 and rules and regulations promulgated under such sections. If the commission determines that there ~~is such insufficiency of are insufficient~~ operations, then the commission shall commence proceedings under section 75-315 to revoke the certificate or permit involved.

(5) This section shall not apply to operations pursuant to a contract authorized by sections 75-303.01 and 75-303.02.

Sec. 75. That section 75-318, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

75-318. It shall be lawful, only under the conditions specified in this section, for any motor carrier or nonmotor carrier, or for two or more motor carriers to:

(1) Consolidate or merge their properties or any part thereof, or certificates of public convenience and necessity, or permits, or any part thereof, into one ownership, management, or operation of the properties, certificates, or permits theretofore in separate ownership;

(2) Purchase, lease, or contract to operate the properties, or any part thereof, or the certificates, or permits, or any part thereof, of another motor carrier; or

(3) Acquire control of another motor carrier or carriers through purchase of stock.

Whenever a consolidation, merger, purchase, lease, operating contract, or acquisition of control of the properties, certificates, or permits is proposed, the carrier or carriers or person seeking authority therefor shall present an application to the commission, and thereupon the commission shall notify such carriers and other parties known to have an interest of the time and place for a public hearing in accordance with such rules as the commission shall adopt the rules of the commission. If, after such hearing, the commission finds that the transaction proposed will be consistent with the public interest and does not unduly restrict competition and that the applicant is fit, willing, and able to properly perform the proposed service, it may enter an order approving and authorizing such consolidation, merger, purchase, lease, operating contract, or acquisition of control of the properties, or any part thereof, or certificates or permits of the whole, or any part thereof, upon such terms and conditions as it shall find to be ~~deems~~ just and reasonable. ~~If~~ PROVIDED, that if any of the certificates or permits proposed to be merged, consolidated, transferred, or leased are dormant, the commission may approve an application for consolidation, merger, transfer, or lease only upon proof of and a finding that such merger, consolidation, transfer, or lease is or will be required by the present and future public convenience and necessity, in the same manner as provided in section 75-311. ~~If~~ AND PROVIDED FURTHER, that if the proposed merger, consolidation, transfer, or lease of the certificates or permits will permit or result in a new or different service or operation as to territorial scope than that which is or may be rendered or engaged in by the respective parties, or, as to passenger motor carriers, will tend to enlarge competition over that then existing, the commission may approve such an application for merger, consolidation, transfer, or lease only upon the basis of proof of and a finding that the proposed merger, consolidation, transfer, or lease is or will be required by the present and future public convenience and necessity, in the same manner as provided in section 75-311. Any restrictions, qualifications, or conditions applicable to and contained in a particular certificate of public convenience and necessity or a permit at the time of the issuance thereof or thereafter made a part of such certificate or permit, excluding hereby any restrictions, qualifications, or conditions of general application, applicable to all motor carriers or a segment thereof as a class, and imposed by regulation of the commission, proposed to be merged, consolidated, transferred, or leased shall not be changed, altered, or removed without the proof required in section 75-311 for certificates and permits.

When authority is transferred as provided in this section, the commission shall simultaneously cancel the authority of the transferor which is transferred.

Sec. 76. That section 75-348, Revised Statutes Supplement, 1993, be amended to read as follows:

75-348. Except as otherwise provided, it shall be unlawful for any common, contract, or private carrier of property by motor vehicle in interstate commerce to operate any motor vehicle within this state without first having registered with the ~~Public Service Commission~~ commission in accordance with sections 75-348 to 75-358, except that it shall not be necessary for such common, contract, or private carrier to prove public convenience and necessity as a condition for such registration. ~~Sections 75-348 to 75-358~~ Such sections shall not apply to motor vehicles leased for thirty days or less and shall not apply to motor vehicles on which annual fees are paid under section 75-305 and which are owned and operated by common carriers or contract carriers which presently hold or which in the future may hold certificates of public convenience and necessity or permits issued by the ~~Public Service Commission~~ commission pursuant to sections 75-301 to 75-322.04.

Sec. 77. That section 75-350, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

75-350. ~~Each~~ Every motor common or contract carrier shall be required to file and maintain with the commission a current record of its operating authority issued to it by the Interstate Commerce Commission permitting operation within the state, and it shall be unlawful for any motor common or contract carrier to exercise such interstate operating authority within the state until there ~~shall have~~ has been filed with and approved by the commission an application for the registration of such interstate operating authority as provided for in sections 75-348 to 75-358 and there ~~shall have~~ has been a compliance with all other requirements of sections 75-348 to 75-358; PROVIDED, that a such sections. A motor common or contract carrier shall only be required to file with the commission that portion of its interstate operating authority ~~permitting which permits~~ operation within the

state. ~~A 7 AND PROVIDED FURTHER, that a motor common or contract carrier shall not be required to file with the commission an emergency temporary authority having a duration of thirty consecutive days or less if such carrier has (1) registered its other interstate operating authority, if any, under the provisions of such sections 75-348 to 75-358, and (2) furnished to the commission a telegram or other written communication describing such emergency or temporary operating authority and stating that the operation thereunder shall will be in full compliance with the provisions of sections 75-348 to 75-358 such sections.~~

Sec. 78. That section 75-353, Revised Statutes Supplement, 1993, be amended to read as follows:

75-353. ~~Every~~ Each common, contract, or private carrier of property by motor vehicle ~~operating which operates~~ a motor vehicle under the registration required by sections 75-348 to 75-358 shall make such filing as required by the rules and regulations of the Public Service Commission when such carrier initiates the operation of newly acquired motor vehicles or discontinues operation of any motor vehicle within the state.

Sec. 79. That section 75-367, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

75-367. Any person ~~violating who violates any of~~ the provisions adopted under section 75-363 or 75-364 shall be guilty of a Class III misdemeanor.

Sec. 80. That section 75-370, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

75-370. Enforcement of sections 75-307 and 75-352 shall be carried out by the ~~Public Service Commission~~ commission and by the carrier enforcement division of the Nebraska State Patrol or the Nebraska State Patrol pursuant to the rules and regulations adopted and promulgated by the commission to enforce such sections.

Sec. 81. That section 75-371, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

75-371. Any person, private carrier, common carrier, or contract carrier ~~operating which operates~~ any motor vehicle in violation of the ~~provisions of~~ section 75-307 or 75-352 or any rule, regulation, or order of the ~~Public Service Commission~~ commission pertaining to either such section shall be guilty of a Class IV misdemeanor. Each day of such violation shall constitute a separate offense.

Sec. 82. That section 75-401, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

75-401. The commission shall ~~have and~~ exercise jurisdiction over the service, facilities, and equipment of all railroad carriers in this state. This jurisdiction shall extend and apply to the general public, as well as those having business relations with the railroad carrier. ~~Sections 75-401 to 75-440~~ Sections 75-401 to 75-430 shall not be construed as giving the commission jurisdiction or control over the relations between any railroad carrier ~~or and~~ its employees, or its employees' order, union, or other bargaining agent, either contractual or otherwise, except as provided in sections 75-419 to 75-426.

The commission shall enforce the standards of railroad safety set forth in 49 C.F.R. parts 213, 215, 223, 229, 231, and 232.

Sec. 83. That section 75-401.01, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

75-401.01. In all applications before the ~~Public Service Commission~~ commission to discontinue agency service ~~and or to~~ close a railroad station or the substitution thereof of other methods of transacting business with patrons of the carrier, which ~~applications~~ applications have been protested, the commission shall be required to conduct a hearing within the city or village served by the station sought to be affected at a suitable place meeting the convenience of the public to appear at such hearing, or at the county seat of the county in which the station sought to be affected is located. ~~In the event if~~ more than one city or village is included in the application, ~~such a the~~ hearing shall be held at as centrally located a meeting place as practicable to the cities or villages involved or at the county seat of the most centrally located city or village involved. ~~In the event if~~ the stations involved are situated in more than one county and where ~~such when the~~ stations involved are more than thirty miles from the point where ~~such the~~ hearing is initially held, a hearing shall be held in the seat of each such county unless waived by the affected protestants. When more than one hearing is required under this section, the commission shall designate the first hearing for the taking of testimony of the applicant and such evidence as any protestant may wish to offer. Subsequent hearings shall be for the purpose of taking the testimony of other protestants.

Sec. 84. That section 75-402, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

75-402. As used in sections 75-401 to ~~75-440~~ 75-430, and in all rules and regulations prescribed by the commission, unless the context otherwise requires:

(1) Railroad carrier shall mean any common carrier engaged in the carrying of freight or passengers over any line or lines of railroad, or part or parts thereof, within the State of Nebraska; and

(2) Railroad shall mean any line or lines of railroad track, or part or parts thereof, located within the State of Nebraska.

Sec. 85. That section 75-405, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

75-405. Every railroad carrier operating which operates lines within this state shall make an annual contract agreement with each shipper receiving or sending that receives or sends ten or more cars annually, in which agreement shall be stipulated which provides the terms under which reciprocal demurrage charges shall be made on the part of the railroad carrier or shipper. Such terms shall be equal for all shippers. Any agreement made under this section shall control the relation between the parties thereto, the provisions of sections 75-401 to ~~75-440~~ 75-430 to the contrary notwithstanding. Monthly settlements may be entered into, but all credits due a shipper for the current month shall be carried to his the shipper's credit for the succeeding month, except that at the termination of the 7 PROVIDED, that at the end of the terms of said agreement, any credits due the shipper shall be eliminated.

Sec. 86. That section 75-411, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

75-411. It is hereby made the duty of every person or corporation, owning or operating any railroad The owner of any railroad tracks which are crossed by a public road, to shall make, and keep in good repair, good and sufficient crossings for such road over its tracks, including all the grading, bridges, ditches, and culverts that may be necessary within their its right-of-way. Such crossings shall be not less than twenty feet in width; wide and shall be solidly constructed of the same material throughout, with no openings or filled spaces therein except such as are necessary for the track. The railroad crossings shall be made of durable material rails of the railroad; and, for railroad crossings, such material shall be of wood, gravel, crushed rock, burnt clay or slag, and of a permanent thickness equal to the height of the railroad rails track. The commission is hereby authorized may, upon proper investigation and hearing, to amend these requirements in particular instances, or to impose additional reasonable requirements, as the circumstances may warrant.

Sec. 87. That section 75-412, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

75-412. Wherever any railroad track shall cross any such way crosses any public road in a cut, or on a curve, or side hill, or in timber lands, or near buildings, or near any obstruction of view from the way road. the commission shall direct such precautions to be taken as it shall deem deems necessary for the safety of the traveling public, the facts having been developed either on the motion of the commission or upon complaint of interested parties. Each and every railroad carrier shall also provide and maintain such gates, crossings, signs, alarm bells, and flagmen warning personnel as the commission shall direct directs. The commission may adopt some a uniform crossing sign design, which shall be placed used at any crossing and at such other places as the commission may direct. The commission may direct the placement of special signs where the physical conditions of any crossing warrant such action, except as to automatic grade crossing protection devices.

Sec. 88. That section 75-413, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

75-413. Whenever any person owns land on both sides of the right-of-way of any railroad, such railroad shall provide and keep in repair at least one adequate means for such landowner to cross the right-of-way. Any interested landowner with land on both sides of the right-of-way of any railroad, may file written complaint with the commission against any such railroad that the crossing is not adequate or is unsafe and dangerous to the life and property of those who use the same it, and the commission thereupon shall make such investigation, hold such hearing, as may be necessary, and shall issue such orders as it shall deem deems necessary, proper, and adequate. If circumstances warrant, the commission may require overhead, underground, or grade crossings, and require wing fences at underground crossings, or may require existing crossings to be relocated so as to be safe

to those who use them, but where such when a special crossing involves an expenditure of more than seven one thousand five hundred dollars, the landowner shall bear one-half the expenses in excess of seven one thousand five hundred dollars.

Sec. 89. That section 75-414, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

75-414. Whenever a complaint is filed in writing with the commission by the duly authorized officers of any incorporated village or city, relative to any crossing or crossings within such village or city, praying for relief from the matters complained of, the commission shall hold a hearing in the manner provided by section 75-132 and shall make such order as the facts warrant. The findings of the commission, subject to the right of appeal, shall be binding on the parties to the suit.

Sec. 90. That section 75-415, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

75-415. Whenever a railroad crosses or shall hereafter railroad tracks cross a public highway at grade, outside of incorporated cities and villages, the railroad carrier owner of the railroad tracks and the county board of the county in which such crossing is located may agree upon such changes, alterations, or constructions of any such any change, alteration, or construction of any crossing as will promote the public convenience or safety, and they may also agree upon the relocation of any highway so as to eliminate such crossings entirely, or so as to carry them over or under such railroad, and upon the apportionment of the expenses incident to any such changes, alterations, relocations, change, alteration, relocation, or construction between the railroad carrier, owner of the railroad tracks and the county or other public authority in interest.

Sec. 91. That section 75-416, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

75-416. If the railroad carrier owner of the railroad track and the county board or other public authority in interest fail to agree upon any of the matters or things mentioned in section 75-415, either the railroad carrier, owner or the county board, or other public authority in interest, in the name of the county, or other public authority in interest, may file an application with the commission, setting forth such fact, together with a statement of the changes, alterations, relocations, or constructions desired change, alteration, relocation, or construction it wants, the estimated cost thereof, and such other facts as may be relevant, and asking the commission to make enter an order directing that the desired changes, relocations, or constructions change, alteration, relocation, or construction be made. The commission shall proceed to hear such applications the application in the manner provided by law, and if it finds that the application should be granted, it shall make enter an order accordingly, designating therein in the order what portion of the expense of complying with the order shall be paid by the railroad carrier and what portion shall be paid by the county or other public authority in interest, if any.

Sec. 92. That section 75-418, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

75-418. When such railroad carrier shall fail, neglect or refuse the owner of railroad tracks fails, neglects, or refuses promptly to comply with orders any order of the commission issued under the provisions of sections 75-410 to 75-417, or shall fail, neglect, or refuse or fails, refuses, or neglects to comply with the provisions of such sections after the commission shall have has issued an order, it the owner shall be guilty of a misdemeanor, and shall be fined in any sum not more than one hundred dollars for each and every such offense, and each week of such neglect, refusal, or failure shall constitute a separate offense.

Sec. 93. That section 75-427, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

75-427. It is the duty of every person, company or corporation operating Any person who operates a railroad in the State of Nebraska to so shall construct all bridges on its line of railway so that every each bridge over a running stream in this state shall have has an opening below high water line whose the area of which is sufficient to allow the free and unobstructed passage of the water of such running stream at extreme high water state. If PROVIDED, if in the case of any given bridge, satisfactory proof is made to the commission that the dimensions prescribed in this section are greater than are necessary to permit the unimpeded passage of the water under such bridge at high water, the commission may by order authorize the construction of such the bridge with dimensions less than those prescribed in this section. Each railroad shall maintain and keep in good repair all bridges and abutments which the railroad constructs to enable its tracks to pass over or under any

turnpike, road, canal, watercourse, or other way. Any person who fails any railroad carrier failing to comply with the provisions of this section shall be fined in the sum of ten dollars for each day that any bridge is maintained in violation of this section.

Sec. 94. That section 75-428, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

75-428. Every railroad carrier shall have power to Each owner of a railroad may cross, intersect, join, and unite its railroad with any other railroad before constructed, at any point on its route and upon the grounds of the owner of such other railroad carrier, with the necessary turnouts, sidings, and switches, and other conveniences, in furtherance of the objects of its connection. Every carrier whose railroad is or shall hereafter be Each owner of a railroad which is intersected by any new railroad shall unite with the owners of such new railroad in forming to form such intersections and connections, and grant the facilities aforesaid specified in this section. If the two carriers owners cannot agree upon the amount of compensation to be made therefor or the points and manner of such crossings and connections, it they shall be ascertained and determined by the commission.

All railroad carriers owners of railroads in this state, at all points of connection, intersection, or crossing at grade of different railroads, where it is practicable, shall provide reasonable, ample, and equal facilities by track connection, passenger platforms, and otherwise, for transferring cars, passengers, and property between their respective roads without unreasonable delay. At any place where the tracks of the two railroad carriers owners are within five hundred feet apart, whether on the same grade or not, where when it is practicable and deemed reasonably necessary, the commission, upon application of any interested person, may require such track connection. No railroad carrier owner shall discriminate in its rates or charges between such connecting lines or on freight coming over them, but no such carrier owner shall be required to furnish to another railroad carrier owner its tracks, equipment, or terminal facilities without reasonable compensation. Each of the connecting lines shall pay its proportionate share for the building and maintenance of such track and switches as may be necessary to furnish the transfer facilities required by this section. In case they cannot agree on the amount which each line shall pay, then the amount shall, upon application by either party, be determined and adjusted by the commission. When PROVIDED, that in all cases where the commission has refused to require track connection as required requested by the applicant, in such case where if the applicant agrees in writing to pay the cost of making such and maintaining the track connection, and costs of maintenance of same, and offers adequate security, therefor, then the commission shall order such track connection to be made by such railroad carriers owners whether the commission deems such the track connection practicable or reasonably necessary, or not. The AND PROVIDED FURTHER, that such railroad tracks, at the point where such the connection is to be made, shall run within one mile of the corporate limits of any city or village.

Any railroad carrier failing or neglecting owner of a railroad who fails or neglects to comply with such the order within the time fixed, shall be guilty of a Class II misdemeanor.

Sec. 95. That section 75-429, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

75-429. Every person, firm, corporation, lessee or receiver Each operator of any railroad, engaged in the business of transportation in this state, shall equip with proper lights all switch stands to each and every switch leading from all main tracks of such road, on which trains are generally operated at night, except lines fully equipped with automatic block signals. Lights or other signals may be ordered by the commission to be installed on switch stands to other switches, including crossover switches and lead track switches in yards adjacent to main tracks, where when they are found reasonably necessary to safe operation, after hearing held upon complaint or upon the commission's own motion. The lights upon such switch stands shall be in good condition constantly, and shall be lighted and kept burning between the time of sundown and sunrise, and at such other times when, by reason of excessively foggy weather, the condition of such lights or signals would render it operations unsafe both for the employees of such railroad and for the general public. Signals PROVIDED, that signals with reflex lenses may be substituted for lighted lamps under regulations prescribed by the commission, and subject to the jurisdiction of such the commission to order the removal of the same them, after complaint and hearing, if such the signals with reflex lenses are found to be unsafe.

Any person, firm, corporation, lessee or receiver of any railroad carrier operator of a railroad in this state who shall violate violates any of

the provisions of this section, or who shall ~~permit~~ permits any such violation on the part of any employee, shall be guilty of a Class V misdemeanor.

Sec. 96. That section 75-430, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

75-430. It shall be unlawful to locate, maintain, or allow to remain any light ~~or lights~~, at any place within this state, in such a place or manner that ~~such light or lights interfere~~ the light interferes with the view of any railroad signal to an extent which causes danger in the operation of trains.

Whenever any light ~~or lights have~~ has been located, maintained, or allowed to remain in such a place or manner that it ~~or they interfere~~ interferes with the view of any railroad signal to an extent which causes danger in the operation of trains, the commission shall, upon its own motion or upon the complaint of an affected ~~railroad carrier~~ railroad carrier owner of a railroad or other interested party, ~~or parties~~, set the complaint for hearing and issue a formal order to enforce compliance with the ~~provisions of this section~~, if it finds that ~~such light or lights do so~~ the light does interfere to such an extent.

Sec. 97. That section 75-501, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

75-501. Any person, ~~company, corporation, or association~~ transporting, transmitting, conveying, or storing any who transports, transmits, conveys, or stores liquid or gas by pipeline for hire in Nebraska intrastate commerce, ~~is hereby declared to~~ shall be a common carrier and subject to commission regulation. The commission shall ~~adopt, promulgate, adopt and enforce~~ adopt, promulgate, and enforce reasonable rules and regulations establishing minimum state safety standards for the design, construction, maintenance, ~~and or~~ operation of ~~all pipelines transporting pipelines which transport~~ liquefied petroleum gas or anhydrous ammonia operated in intrastate commerce by common carriers. Such rules and regulations, and the interpretations thereof, shall conform to ~~with the rules, regulations, and interpretations of the appropriate federal agencies with authority to regulate pipeline common carriers in interstate commerce. Any person may determine the validity of any such rule or regulation in such manner as provided by law.~~

Sec. 98. That section 75-502, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

75-502. ~~Such pipeline carriers shall have power to~~ Pipeline carriers may store, transport, or convey any liquid or gas, or the products thereof, and to make reasonable charges therefor, may ~~to~~ lay down, construct, maintain, and operate pipelines, tanks, pump stations, connections, fixtures, storage plants, and such machinery, apparatus, devices, and arrangement as may be necessary to operate such pipes or pipelines between different points in this state, ~~and may~~ and to use and occupy such lands, rights-of-way, easements, franchises, buildings, and structures as may be necessary to construct and maintain ~~same~~ them.

Sec. 99. That section 75-503, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

75-503. Upon written application of any person, ~~firm, or corporation operating or proposing~~ who operates or proposes to operate any refinery in this state, after hearing, if in the judgment of the commission the public good shall require, the commission shall enter an order authorizing the tapping of any pipeline at or near any point where the refinery is established or is proposed to be established, In the order, ~~PROVIDED,~~ that in such order the commission shall provide for the reimbursement of the ~~persons, firms, or corporations owning such owner of the pipeline for any expense incident to the tapping thereof for the purposes provided in this section.~~

Sec. 100. That section 75-605, Revised Statutes Supplement, 1993, be amended to read as follows:

75-605. Any person, ~~firm, partnership, limited liability company, corporation, cooperative, association, or mutual company operating an exchange offering who operates~~ telephone service in Nebraska shall file with the commission maps of the territory in Nebraska in which it is offering offers local exchange telephone service and shall file amended maps from time to time to continuously keep current the information shown on such maps. The style, size, and kind of maps, together with the information to be shown on such maps, shall be ~~as that~~ as required by rules and regulations to be prescribed by of the commission. The for necessary administration of the commission's functions pertaining to telephone service. Such rules and regulations shall indicate the time and place for filing such the maps and shall require that such the maps be kept current.

Sec. 101. That section 75-606, Revised Statutes Supplement, 1993,

be amended to read as follows:

75-606. The commission may revoke or suspend the certificate of convenience of any violator of section 75-605. Any person who violates any provision of such section and any person, firm, partnership, limited liability company, corporation, cooperative, association, or mutual company violating such section shall be guilty of a Class V misdemeanor, and shall, upon conviction thereof, be punished by a fine of not less than ten dollars nor more than one hundred dollars, by imprisonment for not less than thirty days nor more than six months, or by both such fine and imprisonment. The commission shall enforce sections 75-605 and 75-606 and it shall be the duty of such section, and the Attorney General, or of any county attorney shall, upon request of the commission, to assist in the prosecution of any violations of ~~section 75-605~~ such section.

Sec. 102. That section 75-607, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

75-607. Any telephone carrier company, corporation, association, person or persons doing a public telephone business in the State of Nebraska shall take the calls or messages coming from any other telephone carrier company, corporation, association, person or persons, and so switch and connect its wires that such equipment so that any telephone message from any point in Nebraska may be delivered to any subscriber served by its telephone exchange or switched through, and so that any message may be passed on to another exchange over such trunk or toll lines as may be available and designated by the exchange or switching station where the call originated, regardless of the ownership of such lines. Such telephone carrier company, corporation, person or persons shall also take calls from its subscribers and public pay stations, and pass such calls through its exchange toward destination, and over the lines and the route designated by the person making such telephone call if there be are competing lines existing between such points. If ~~PROVIDED~~, in case the person making such telephone call does not designate a route for such message, or that no competing lines exist between points of origination and destination, ~~then the company the carrier may,~~ by its operator at originating point, make such designation of route, but calls or messages must shall be switched through to destination if the point can be reached by any connecting wires equipment.

Sec. 103. That section 75-608, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

75-608. Whenever in this state any competing telephone plant or exchange has plants or exchanges have, for any reason, been consolidated or one exchange with or absorbed by another so that the remaining plant or exchange has a monopoly of or exclusive telephone business of any city or village, the company, corporation, association, person or persons operating such operator of the exclusive exchange or plant shall cause all toll or trunk lines formerly terminating in the eliminated exchange, to be placed on or connected to its exclusive exchange, and shall make and keep such connection in a good and efficient manner, and shall maintain an interchange of business with such trunk or toll lines the same as its own, in a fair and impartial manner, upon the terms set forth in sections 75-607 to 75-609. During ~~PROVIDED~~, during the period intervening between the time when the first subscribers are taken from the eliminated exchange until the time all have been removed, if such period be is more than thirty days, a temporary trunk line shall be established between the two exchanges so that calls may come into both exchanges from the trunk or toll lines of the exchange so absorbed or eliminated, and that calls from both exchanges may go out over the same lines.

Sec. 104. That section 75-609, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

75-609. (1) Where ~~When~~ two or more telephone companies carriers jointly furnish interexchange service or extended area service, the revenue from such jointly furnished service shall be divided in such manner as may be agreed upon by the companies carriers furnishing such service. In the event of inability to agree, any one of the companies carriers jointly furnishing such service may file an application with the commission requesting that the commission enter an order prescribing an equitable division of revenue from such jointly furnished service. The order entered pursuant to such application may be appealed from by any party to the proceeding in the same manner as from other orders of the commission.

(2) Access charges imposed by telecommunications companies telephone carriers for access to a local exchange network for the purposes of provision of interexchange services shall be as agreed to negotiated by the telecommunications companies carriers involved. Any affected telecommunications company may, by application, cause carrier may apply for

review of such charges by the commission. Upon such application and unless otherwise agreed to by all parties thereto, the commission shall, upon proper notice, hold and complete a hearing thereon within sixty days of the filing. The commission may, within sixty days after the close of the hearing, enter an order setting access charges which are fair and reasonable. The commission shall set an access charge structure for each local exchange telecommunications company carrier but may order discounts where there is not available access of equal type and quality for all interexchange telecommunications companies carriers, except that the commission shall not order access charges which would cause the annual revenue to be realized by the local exchange telecommunications company carrier from all interexchange carriers to be less than the annual costs, as determined by the commission based upon evidence received at hearing, incurred or which will be incurred by the local exchange carrier telecommunications company in providing such access services.

Sec. 105. That section 75-609.01, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

75-609.01. (1) Telephone companies carriers which serve less than five thousand subscribers within the state shall not be subject to rate regulation by the Public Service Commission commission pursuant to section 75-609 unless (a) the company carrier elects by action of its board of directors to be subject to such rate regulation by the commission, (b) the proposed increase exceeds thirty percent in any one year, (c) five percent of the subscribers petition the commission to regulate rates pursuant to subsections (2) to (4) of this section, or (d) the commission declares that the company carrier shall be subject to rate regulation by the commission pursuant to subsection (5) of this section.

(2) Each such telephone company carrier not subject to rate regulation shall, at least sixty days before the effective date of any proposed rate change, notify the commission and each of the company's carrier's subscribers of the proposed rate change. Notice to the commission shall include a list of the company's carrier's published subscribers. Notice by the company carrier to all subscribers shall be in a form prescribed by the commission, shall be by first-class mail, and shall include a schedule of the proposed rates, the effective date of the rates, and the procedure necessary for the subscribers to petition the commission to determine rates in lieu of the proposed rates. If the telephone directory published by the company carrier for its subscribers sets forth the procedure for petitioning the commission, a reference to the location in the directory shall be adequate notice of the procedure.

(3) The subscribers of a telephone company carrier not subject to the commission's rate regulation may petition the commission to determine rates in lieu of any rate change proposed by the company carrier pursuant to subsection (2) of this section. The commission shall adopt and promulgate rules and regulations governing the form of such petitions and a petition substantially in compliance with such the rules and regulations of the commission shall not be deemed invalid due to minor errors in its form.

(4) If, by the effective date of the company's carrier's proposed rate change, the commission has received petitions from fewer than five percent of the subscribers requesting that the commission determine rates, the commission shall certify such fact to the company carrier and the company's carrier's proposed rates shall become effective as published in the notice to subscribers. If, on or before the effective date of the proposed rate change, the commission has received petitions from five percent or more of the subscribers requesting that the commission determine rates, the commission shall notify the company carrier that it will determine rates for the company carrier in lieu of the company's carrier's proposed rate change. Rates established by the commission or by a telephone company carrier pursuant to subsections (2) to (4) of this section shall be in force for not less than at least one year.

(5) In addition to the procedure for petition prior to any proposed rate change pursuant to subsections (2) to (4) of this section, the subscribers of a telephone company carrier not subject to the commission's rate regulation may at any time petition the commission to declare that the company carrier shall be subject to such rate regulation. If the commission determines that at least fifty-one percent of a company's carrier's subscribers have properly petitioned that the company carrier be subject to the commission's rate regulation, the commission shall certify such fact to the company carrier and thereafter the company carrier shall be subject to rate regulation by the commission until at least fifty-one percent of the company's carrier's subscribers properly petition that the company carrier no longer shall be subject to the commission's rate regulation. The commission

shall adopt and promulgate rules and regulations governing the petition procedure and the form of such petitions and a petition substantially in compliance with such rules and regulations shall not be deemed invalid due to minor errors in its form.

Sec. 106. That section 75-610, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

75-610. Any telephone carrier or its agent who fails or neglects company, or manager thereof, failing or neglecting to comply with the provisions of sections 75-607 to 75-609 or section 75-609.01, or who shall violate violates any of the provisions of such sections, shall be guilty of a Class IV misdemeanor.

Sec. 107. That section 75-611, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

75-611. A telephone exchange, central office, and switchboard shall be maintained where there is an existing exchange by one or more telephone companies operating more than ten exchanges, in every incorporated city or village in the State of Nebraska, and no existing An existing telephone exchange or central office shall not be abandoned or discontinued by any company or removed to another city or village, except by the written consent of at least sixty percent of the subscribers or patrons who had rental or exchange service contracts with said company at a date the carrier which seeks to change service six months before an application to change service is filed with the commission. The commission shall hold a hearing and issue an order before the change is effected. the circulation of any such petition, and until said petition has been presented to the commission with the proper number of signers and upon a hearing the said commission issues a report, finding, decision or order permitting such discontinuance or abandonment.

Sec. 108. That section 75-612, Revised Statutes Supplement, 1993, be amended to read as follows:

75-612. Any one or more persons individuals, firms, partnerships, limited liability companies, corporations, cooperatives, or associations may file an application with the Public Service Commission commission to obtain the telephone service furnished in the exchange service area adjacent to the territory in which the applicant or applicants reside or operate. The commission shall serve upon each telephone company carrier directly affected a copy of the application and written notice of the hearing at least thirty days prior to the hearing on the application, which shall be held if all of the telephone companies carriers involved do not consent to the application.

Sec. 109. That section 75-613, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

75-613. Upon the completion of the hearing on such an application made pursuant to section 75-612, if a hearing is required, the Public Service Commission commission may grant the application, in whole or in part, if the evidence establishes all of the following:

(1) That such applicant or applicants are not receiving, and will not within a reasonable time receive, reasonably adequate exchange telephone service from the company furnishing carrier which furnishes such service in the exchange service area in which the applicant or applicants reside or operate. The fact that an applicant is required to pay toll charges for long-distance telephone calls to an exchange service area adjacent to the territory in which the applicant resides or operates shall not be deemed to constitute inadequate exchange telephone service from the company furnishing carrier which furnishes such service;

(2) The revision of the exchange service area or areas required to grant the application will not create a duplication of facilities, is economically sound, and will not impair the capability of the telephone company or companies any telephone carrier affected to serve the remaining subscribers in any affected exchanges;

(3) The community of interest in the general territory is such that the public offering of each telephone company carrier in its own exchange service area involved should include all the territory in its service area as revised by the commission's order; and

(4) The applicant or applicants are willing and will be required to pay such construction and other costs and rates as are fair and equitable and will reimburse the affected company carrier for any necessary loss of investment in existing property as determined by the Public Service Commission commission.

Sec. 110. That section 75-614, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

75-614. After the Public Service Commission commission has lawfully granted an application pursuant to section 75-613, the telephone company carrier ordered to provide the service shall be issued a certificate of

convenience and necessity to serve that portion of the territory added to its exchange area by the commission. The commission shall set the date when the service granted shall take effect and, in doing so, shall take into consideration any construction or major repair which will be required of the ~~companies~~ carriers involved.

Sec. 111. That section 75-615, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

75-615. When the Public Service Commission commission refuses to grant an application made pursuant to section 75-612, no new application for the same service shall be filed, or shall be considered by the commission, until one year has elapsed after the date of mailing of the commission order.

Sec. 112. That section 75-616, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

75-616. Whenever any telephone company carrier files a specific tariff for any new equipment, new service feature of existing equipment, or rate not previously offered, and the Public Service Commission commission has not finally determined such the tariff within sixty days thereafter, it shall become effective as filed. Such The tariff shall remain in effect until the commission determines an appropriate interim tariff or finally determines the matter. This section shall not apply to services of a type offered only by regulated telephone companies carriers.

Sec. 113. That section 75-701, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

75-701. The Public Service Commission commission shall have no jurisdiction over the rates, tolls, rents, and charges of districts organized under sections 70-601 to 70-672.

Sec. 114. That section 75-702, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

75-702. The commission shall have general supervision over any and all wires for transmitting electric current, or any other wire whatsoever, crossing which crosses under or over any track of a railroad track in this state at public highway crossings.

Sec. 115. That section 75-703, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

75-703. The commission shall make adopt and promulgate rules and regulations prescribing the manner in which said wires shall the wires specified in section 75-702 will cross such railroad tracks in this state at public highway crossings.

Sec. 116. That section 75-704, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

75-704. It shall be unlawful for any person to place any wire across any railroad track corporation, person, or association of persons to place or string any such wire for transmitting electric current, or any wire whatsoever, across any track of a railroad in this state at public highway crossings, except in such manner as may be prescribed by the commission as provided in section 75-703.

Sec. 117. That section 75-705, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

75-705. The commission shall, either by personal examination or otherwise, obtain information where the track or tracks of railroads railroad track at public highway crossings are is crossed by wires strung over said tracks the track contrary to or not in compliance with the rules prescribed by the commission, as contemplated by section 75-703, and shall order such change or changes to be made by the person who owns or operates persons or corporations, or association of persons, owning or operating such wires, as it may deem necessary to make the same wires comply with such rules, and within such reasonable time as it may prescribe. In case the railroad companies and if the owner of the railroad and the other interested person persons, companies, or corporations affected are unable to agree as to which party shall pay or bear the cost, or of any part thereof, of any such changes, the commission shall decide and determine which party shall pay or bear the cost of such changes at public highway crossings.

Sec. 118. That section 75-706, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

75-706. In case such wire or wires cross over if any wire crosses over railroad track, in no case shall the commission prescribe a less clearance than twenty-five feet above the rails under the most unfavorable conditions of temperature and loading for all wires except electric wires for trolley cars, and such wires shall not be placed at a height of less than twenty-two feet from the top of the rails.

Sec. 119. That section 75-707, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

75-707. The commission shall ~~is hereby authorized to provide for and regulate the crossing of wires over, under and across railroad rights-of-way at public highways within the state, except~~ ~~7~~ PROVIDED, that when the crossing ~~entity is a railroad operator, the owners desired is between steam and electric railways, the respective companies owning or operating steam or electric lines shall attempt to agree upon the terms and conditions of such crossing, and, if such agreement cannot be concluded, then the commission shall have jurisdiction to determine the terms and conditions, subject to the provisions of sections 75-702 to 75-708.~~

Sec. 120. That section 75-708, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

75-708. Any person who ~~strings or maintains any wire across any railroad right-of-way or corporation, or association of persons, who shall string or maintain any wire over, under or across any railroad track in this state at a different height or in a different manner than that prescribed by the commission, shall forfeit and pay to the State of Nebraska the sum of one hundred dollars for each separate period of ten days during which such wire is so maintained, such forfeiture to be recovered in a civil action brought in any court of competent jurisdiction in the name of the State of Nebraska, by the Attorney General, or by the county attorney of the county in which such wire is situated, at the request of the commission. The 7 and it is hereby made the duty of the Attorney General and of the respective county attorneys to shall bring such action forthwith upon being so requested.~~

Sec. 121. That section 75-709, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

75-709. All lines constructed for the transmission of electric current, including telephone and telegraph lines, on the public highways or in other places in this state, except as provided in section 75-724, shall provide sufficient clearance between such lines and existing properly constructed transmission, telephone, and telegraph lines so that ~~they do not interfere with the reasonable safety, operation, and efficiency of existing lines, shall not be interfered with.~~

Sec. 122. That section 75-710, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

75-710. If the voltage of any ~~such electric line exceeds electric line described in section 75-709 will exceed fifteen thousand volts, and such line is will be~~ within one-quarter mile of any existing electrical or communication line of any other person ~~or corporation, or signal line of any railroad, or if the voltage of such electric line exceeds will exceed~~ seven hundred volts and such line ~~is will be~~ within five hundred feet of the electrical or communication line of any other person ~~or corporation or signal line of any railroad, application to construct the same line shall be made to the commission, except that no application shall be required for any line not exceeding which will not exceed~~ fifteen thousand volts, which ~~does will~~ not exceed six hundred sixty feet in length, and which ~~is will be~~ more than seventy-five feet from any existing electrical or communication line of any other person ~~or corporation or signal line of any railroad. The projectors of such line shall file with their application (1) a map or drawing showing the route of the proposed line and any existing electrical or communication lines or railroad signal lines within the respective distances described in this section, which drawing shall identify and give the names of the owners of such other lines, (2) specifications showing the manner of the construction of the proposed line, and (3) such other information as the commission may prescribe. Application shall be made to increase the voltage of an existing line in the manner stated for new construction as provided in this section.~~

Sec. 123. That section 75-711, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

75-711. Upon ~~such application being filed pursuant to section 71-710, the commission shall notify all parties who own or operate electrical or communication lines or railroad signal lines and who are likely to be affected by the construction of such the electrical lines, to appear at a public hearing at a time and place to be fixed by the commission for hearing of such the application. Any such party may appear, file objections, and offer evidence in support thereof; PROVIDED, that the as provided in the rules of procedure of the commission. The commission shall take into consideration the fact of the prior occupancy of the senior company space by existing lines.~~

Sec. 124. That section 75-713, Revised Statutes Supplement, 1993, be amended to read as follows:

75-713. Any public utility, public power district, or other governmental subdivision or any person ~~in this state, corporation, partnership, or limited liability company in the State of Nebraska before engaging in the construction or alteration of any overhead wire, cable, or~~

pipeline, the height of which is greater than five feet above the elevation of an airport which has been approved and licensed by the Department of Aeronautics, for each five hundred feet of the distance that such construction is or will be situated from the nearest boundary of such airport, shall file with the commission, an original application for permission to enter upon and complete such construction or alteration, and shall also file a copy thereof with the Department of Aeronautics. No application need be made where such when the construction or alteration is within the corporate limits of a city or village and is adjacent to other structures of a permanent character which are of equal or greater height than the construction or alteration proposed. No such overhead wire, cable, or pipeline for which application must is required to be filed under sections 75-713 to 75-717 shall be constructed or altered without specific permission granted by order of the commission.

Sec. 125. That section 75-714, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

75-714. Upon the filing of an application by any applicant for permission to construct or alter any overhead wire, cable, or pipeline as provided in section 75-713, the commission shall notify the Director of Aeronautics of the filing of such the application and the date that ~~the same shall it will be heard before the commission, except that~~ PROVIDED, if the application ~~shall be is~~ accompanied by approval in writing of the Director of Aeronautics, the hearing ~~herein required~~ may be waived and the permission granted without such hearing, unless otherwise required by law. The Director of Aeronautics shall establish and publish rules and regulations consistent with the rules of the United States Department of Commerce, Division of Aeronautics, and the National Electrical Safety Code covering the requirements that ~~must be met by the applicant is required to meet in order~~ to obtain approval for the construction or alteration of any overhead wire, cable, or pipeline which is not exempt from the requirements of section 75-713.

Sec. 126. That section 75-715, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

75-715. The Director of Aeronautics shall notify the owners of and persons operating upon any licensed airport affected by any such application, filed pursuant to section 75-713 and in such the notice shall state the time and place of such the hearing. The director is authorized to may appear at such the hearing and to make objections therein to the granting of permission for the construction of any overhead wires, cable, or pipelines when, in his or her opinion, ~~such the~~ construction would result in danger to the life, limb, or property of any person carried by and operating aircraft in the vicinity of such the licensed airport.

Sec. 127. That section 75-716, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

75-716. The Department of Aeronautics shall at all times maintain on file in the office of the Public Service Commission ~~commission~~ a list of the airports currently licensed by the department setting forth the legal description of the real property thus used.

Sec. 128. That section 75-717, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

75-717. ~~Upon the hearing the~~ The commission shall determine upon from the evidence presented at the hearing held pursuant to section 75-714 whether the applicant has made due adequate allowance for the proper glide angles for the landing of aircraft upon at the airport concerned and shall determine, in conformity ~~to with~~ the provisions of section 75-721, what order should be entered in the premises.

Sec. 129. That section 75-718, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

75-718. ~~in the event that~~ If a transmission, telephone, or telegraph company desires carrier proposes to construct a line under the provisions of sections 75-709 to 75-724, on a highway both sides of which are occupied by telephone and telegraph lines or transmission lines, the commission shall order one side of the highway vacated, shall and designate the side to be vacated, and shall assess the expense thereof to the parties interested in such proportions as in its judgment would best protect the rights of all parties interested and those of the general public.

Sec. 130. That section 75-720, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

75-720. Provisions of law requiring filing of applications with the commission and other procedures for proposed construction of any electrical line pursuant to section 75-711 need not be complied with when the electric transmission company carrier has given written notice by certified mail, with a copy to the commission by certified mail, of such proposed construction providing full information, including location drawing, electrical

characteristics, physical configuration, and length of parallel of, and proposed separation from other electrical, telephone, communication, or railroad signal lines, to any person who owns or operates electrical, persons or corporations owning or operating electrical, telephone, or other communication, lines, or railroad signal lines located within the respective distances described in section 75-710, and such person has persons or corporations have failed to file with such electric transmission company carrier, within sixty days of receipt of such the notice, a written protest, together with the reasons for objecting to the proposed construction. The sixty-day notice period for objections protest may be waived by signed agreement between such persons or corporations person and the electric transmission company carrier. Receipt of a waiver shall be evidence that the sixty-day notice period is also waived. When the electric transmission company carrier proposing the construction is required by section 75-713 to file an application with the commission, or desires to do so for purposes of receiving or wants to receive a commission ruling, it shall file with its application, copies of the notices sent by certified mail or signed copies of agreements with any person who owns or operates electrical, communication, and persons or corporations owning or operating electrical or communication lines or railroad signal lines located within the respective distances described in section 75-710 and a signed copy of the agreement of the Director of Aeronautics if required by law, indicating their concurrence in the proposed construction. Upon receipt of such filing, the commission may then approve the application to construct and may grant a permit without notice or a public hearing.

Sec. 131. That section 75-721, Revised Statutes Supplement, 1993, be amended to read as follows:

75-721. The commission shall have full power and authority to may prohibit the construction of any line or lines found to be in violation of the terms of section 75-709. After the hearing provided for in section 75-711, ~~it~~ the commission shall make such order and prescribe such terms and conditions for the location, construction, and operation of the proposed line or lines as it may deem just and reasonable. It may make such orders in the premises as in its judgment would best protect the rights of all parties interested and those of the general public. It is hereby made unlawful for any person, partnership, limited liability company, company, association, or corporation, not specifically exempt, to begin or carry on the construction of any line or lines designed to carry electric current for which application is required under section 75-710 or to increase the voltage of any existing line which would require such application without having first secured the necessary authority from the commission as set forth in section 75-710.

Sec. 132. That section 75-722, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

75-722. The provisions of the law with regard to law and rules of procedure before the commission, and with regard to and for appeal from its findings, shall apply to electric transmission, telephone, and telegraph lines.

Sec. 133. That section 75-723, Revised Statutes Supplement, 1993, be amended to read as follows:

75-723. Any person, partnership, limited liability company, company, association, or corporation who shall violate who violates any of the provisions of sections 75-709 to 75-724 shall be guilty of a Class II misdemeanor.

Sec. 134. That section 75-724, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

75-724. The provisions of sections 75-709 to 75-724 shall not apply to any line or lines within the limits of any incorporated city or village.

Sec. 135. That section 84-901, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

84-901. As used in For purposes of the Administrative Procedure Act:

(1) Agency shall mean each board, commission, department, officer, division, or other administrative office or unit of the state government authorized by law to make rules and regulations, except the Adjutant General's office as provided in Chapter 55, the courts including the Nebraska Workers' Compensation Court, the Commission of Industrial Relations, the Legislature, and the Secretary of State with respect to the duties imposed by the Administrative Procedure Act;

(2) Rule or regulation shall mean any rule, regulation, or standard issued by an agency, including the amendment or repeal thereof whether with or without prior hearing and designed to implement, interpret, or make specific the law enforced or administered by it or governing its organization or

procedure. Rule or regulation shall not include (a) but not including rules and regulations concerning the internal management of the agency not affecting private rights, private interests, or procedures available to the public or (b) and not including permits, certificates of public convenience and necessity, franchises, rate orders, and rate tariffs; and any rules of interpretation thereof. For purposes and for the purpose of the Administrative Procedure Act, every rule and regulation which shall prescribe a penalty shall be presumed to have general applicability or to affect private rights and interests; and

(3) Contested case shall mean a proceeding before an agency in which the legal rights, duties, or privileges of specific parties are required by law or constitutional right to be determined after an agency hearing; and

(4) Ex parte communication shall mean an oral or written communication which is not on the record in a contested case with respect to which reasonable notice to all parties was not given. Filing and notice of filing provided under subdivision (6)(d) of section 84-914 shall not be considered on the record and reasonable notice for purposes of this subdivision. Ex parte communication shall not include:

(a) Communications which do not pertain to the merits of a contested case;

(b) Communications required for the disposition of ex parte matters as authorized by law; and

(c) Communications in a ratemaking or rulemaking proceeding.

Sec. 136. That section 84-914, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

84-914. In contested cases:

(1) An agency may admit and give probative effect to evidence which possesses probative value commonly accepted by reasonably prudent persons in the conduct of their affairs; ~~it shall give effect to the rules of privilege recognized by law. It may and exclude incompetent, irrelevant, immaterial, and unduly repetitious evidence. An agency shall give effect to the rules of privilege recognized by law.~~ Any party to a formal hearing before such an agency, from which a decision may be appealed to the courts of this state, may request that such the agency be bound by the rules of evidence applicable in district court by delivering to such the agency at least three days prior to the holding of such the hearing a written request therefor. Such request shall include the requesting party's agreement to be liable for the payment of costs incurred thereby and upon any appeal or review thereof, including the cost of court reporting services which the requesting party shall procure for the hearing. All costs of a formal hearing shall be paid by the party or parties against whom a final decision is rendered;

(2) An agency may administer oaths, issue subpoenas, compel the attendance of witnesses and the production of any papers, books, accounts, documents, and testimony, and cause ~~the depositions to be taken~~ of witnesses residing either within or without the state ~~to be taken~~ in the manner prescribed by law for taking depositions in civil actions in ~~the~~ district court;

(3) All evidence including records and documents in the possession of the agency of which it desires to avail itself shall be offered and made a part of the record in the case. ~~No other~~ factual information or evidence other than the record shall be considered in the determination of the case. Documentary evidence may be received in the form of copies or excerpts or ~~by incorporation incorporated~~ by reference;

(4) Every party shall have the right of cross-examination of witnesses who testify and shall have the right to submit rebuttal evidence; ~~and~~

(5) An agency may take notice of ~~judicially eognizable fact~~ official notice of cognizable facts and in addition may take official notice of general, technical, or scientific facts within its specialized knowledge ~~and the rules and regulations adopted and promulgated by such agency.~~ Parties shall be notified either before or during the hearing or by reference in preliminary reports or otherwise of ~~the~~ material so noticed. ~~They Parties~~ shall be afforded an opportunity to contest the facts so noticed. The record shall contain a written record of everything officially noticed. An agency may utilize its experience, technical competence, and specialized knowledge in the evaluation of the evidence presented to it; ~~and~~

(6)(a) No party in a contested case or other person outside the agency having an interest in the contested case shall make or knowingly cause to be made an ex parte communication to the hearing officer or to an agency head or employee who is or may reasonably be expected to be involved in the decisionmaking process of the contested case.

(b) No hearing officer or agency head or employee who is or may

reasonably be expected to be involved in the decisionmaking process of the contested case shall make or knowingly cause to be made an ex parte communication to any party in a contested case or other person outside the agency having an interest in the contested case.

(c) No agency head or employee engaged in the investigation or enforcement of a contested case shall make or knowingly cause to be made an ex parte communication to a hearing officer or agency head or employee who is or may reasonably be expected to be involved in the decisionmaking process of the contested case.

(d) The hearing officer or agency head or employee who is or may reasonably be expected to be involved in the decisionmaking process of the contested case who receives or who makes or knowingly causes to be made an ex parte communication set forth in subdivisions (6)(a) through (c) of this section shall file in the record of the contested case (i) all such written communications, (ii) memoranda stating the substance of all such oral communications, and (iii) all written responses and memoranda stating the substance of all oral responses to all the ex parte communications. The filing shall be made within two working days of the receipt or making of the ex parte communication. Notice of the filing, with an opportunity to respond, shall be given to all parties of record.

(e) The prohibitions of subdivision (6) of this section shall apply beginning at the time notice for hearing is given. An agency may designate an earlier time, but such earlier time shall be required to be set forth in the agency's rules of procedure.

(f) The prohibitions contained in subdivisions (6)(a) and (b) of this section shall not apply to ex parte communications to or from an elected official. However, the disclosure requirements contained in subdivision (6)(d) of this section shall apply to ex parte communications to or from an elected official.

Sec. 137. That original sections 48-105, 74-307, 74-308, 74-424, 74-548, 74-549, 74-550, 74-593 to 74-596, 74-601 to 74-605, 74-608, 74-609, 74-609.01, 74-706, 74-916, 74-918, 74-919, 74-1310, 75-101, 75-104, 75-105, 75-108, 75-109, 75-112, 75-113, 75-116, 75-118, 75-119, 75-123, 75-125 to 75-127, 75-131, 75-132, 75-133, 75-135, 75-142, 75-145, 75-146, 75-148, 75-150 to 75-155, 75-304.01, 75-308.01, 75-309.01, 75-318, 75-350, 75-367, 75-370, 75-371, 75-401, 75-401.01, 75-402, 75-405, 75-411, 75-412, 75-413, 75-414, 75-415, 75-416, 75-418, 75-427 to 75-430, 75-501, 75-502, 75-503, 75-607 to 75-611, 75-613 to 75-616, 75-701 to 75-711, 75-714 to 75-718, 75-720, 75-722, 75-724, 84-901, and 84-914, Reissue Revised Statutes of Nebraska, 1943, sections 75-106, 75-121, 75-134, 75-136.01, 75-137, 75-138, and 75-143, Revised Statutes Supplement, 1992, and sections 74-592, 75-110, 75-128, 75-139.01, 75-140, 75-141, 75-144, 75-201, 75-304, 75-306, 75-309, 75-311, 75-348, 75-353, 75-605, 75-606, 75-612, 75-713, 75-721, and 75-723, Revised Statutes Supplement, 1993, and also sections 74-101 to 74-111, 74-201 to 74-204, 74-301 to 74-306, 74-323, 74-327, 74-328, 74-401 to 74-423, 74-501 to 74-514, 74-538, 74-539, 74-557 to 74-569, 74-583 to 74-586, 74-598 to 74-5103, 74-606, 74-607, 74-610, 74-611, 74-612, 74-702 to 74-705, 74-707 to 74-715, 74-801, 74-804 to 74-807, 74-815 to 74-823, 74-901 to 74-912, 74-920, 74-1001, 74-1004, 74-1005, 74-1006, 74-1008, 74-1010, 74-1011, 74-1012, 74-1201 to 74-1204, 75-147, 75-202, 75-324, 75-327, 75-329 to 75-335, 75-404, 75-409, 75-421, 75-424, 75-425, 75-431 to 75-440, 75-501.01, 75-601, 75-602, and 75-603, Reissue Revised Statutes of Nebraska, 1943, and sections 75-323 and 75-325, Revised Statutes Supplement, 1993, are repealed.