

LEGISLATURE OF NEBRASKA

ONE HUNDRED FIRST LEGISLATURE

FIRST SESSION

LEGISLATIVE BILL 245

Introduced by Dubas, 34.

Read first time January 14, 2009

Committee: Transportation and Telecommunications

A BILL

1 FOR AN ACT relating to railroads; to amend sections 74-1310
2 and 74-1323, Reissue Revised Statutes of Nebraska,
3 and section 75-109.01, Revised Statutes Cumulative
4 Supplement, 2008; to provide a penalty and procedure for
5 unlawful obstruction of railroad crossings; to change and
6 provide powers and duties; to harmonize provisions; and
7 to repeal the original sections.
8 Be it enacted by the people of the State of Nebraska,

1 Section 1. Section 74-1310, Reissue Revised Statutes of
2 Nebraska, is amended to read:

3 74-1310 For purposes of sections 74-1310 to ~~74-1322,~~
4 74-1323 and sections 4 to 7 of this act, unless the context
5 otherwise requires, department ~~shall mean~~ means the Department of
6 Roads.

7 Sec. 2. Section 74-1323, Reissue Revised Statutes of
8 Nebraska, is amended to read:

9 74-1323 (1) Unless otherwise provided by city or
10 village ordinance, the ~~Public Service Commission,~~ department,
11 upon complaint or on its own motion, as to the crossing which
12 is the subject of the complaint or motion, may direct that at
13 such crossing any railroad car that is stored or parked on a
14 railroad track which may be obstructing or obscuring the traveling
15 public's view of any oncoming train be stored or parked at a
16 minimum distance from the crossing of such railroad and public
17 road. The minimum distance shall be that deemed by the commission
18 to be reasonable and necessary to provide a sight distance at the
19 crossing adequate to protect the safety of the traveling public,
20 but in no instance shall any person who is authorized to control
21 the movement of such railroad car or cars within such distance be
22 prevented from reasonably conducting his or her business.

23 (2) Any company, its officers, agents, or employees, or
24 any other person subject to subsection (1) of this section who
25 fails, neglects, or refuses to promptly comply with an order of

1 the ~~commission~~ department issued under this section shall be guilty
2 of a Class IV misdemeanor, but shall be fined not more than
3 two hundred dollars for each offense. Each day of such neglect,
4 refusal, or failure shall constitute a separate offense.

5 Sec. 3. Section 75-109.01, Revised Statutes Cumulative
6 Supplement, 2008, is amended to read:

7 75-109.01 Except as otherwise specifically provided by
8 law, the Public Service Commission shall have jurisdiction, as
9 prescribed, over the following subjects:

10 (1) Common carriers, generally, pursuant to sections
11 75-101 to 75-158;

12 (2) Grain pursuant to the Grain Dealer Act and the Grain
13 Warehouse Act and sections 89-1,104 to 89-1,108;

14 (3) Manufactured homes and recreational vehicles
15 pursuant to the Uniform Standard Code for Manufactured Homes and
16 Recreational Vehicles;

17 (4) Modular housing units pursuant to the Nebraska
18 Uniform Standards for Modular Housing Units Act;

19 (5) Motor carrier registration and safety pursuant to
20 sections 75-301 to 75-322, 75-369.03, 75-370, and 75-371;

21 (6) Pipeline carriers and rights-of-way pursuant to the
22 State Natural Gas Regulation Act and sections 75-501 to 75-503;

23 (7) Railroad carrier safety pursuant to sections 74-918,
24 74-919, ~~74-1323,~~ and 75-401 to 75-430;

25 (8) Telecommunications carriers pursuant to the

1 Automatic Dialing-Announcing Devices Act, the Emergency Telephone
2 Communications Systems Act, the Enhanced Wireless 911 Services
3 Act, the Intrastate Pay-Per-Call Regulation Act, the Nebraska
4 Telecommunications Regulation Act, the Nebraska Telecommunications
5 Universal Service Fund Act, the Telecommunications Relay System
6 Act, the Telephone Consumer Slamming Prevention Act, and sections
7 86-574 to 86-580;

8 (9) Transmission lines and rights-of-way pursuant to
9 sections 70-301 and 75-702 to 75-724;

10 (10) Water service pursuant to the Water Service
11 Regulation Act; and

12 (11) Jurisdictional utilities governed by the State
13 Natural Gas Regulation Act. If the provisions of Chapter 75
14 are inconsistent with the provisions of the State Natural Gas
15 Regulation Act, the provisions of the State Natural Gas Regulation
16 Act control.

17 Sec. 4. The department shall investigate as it deems
18 necessary, or as requested by state, county, or municipal
19 officials, matters pertaining to the operation and movement of
20 railroad trains within this state, including the obstruction of
21 any public highway, road, street, or other railroad crossing or
22 public property by a standing train. The department shall adopt and
23 promulgate all necessary rules and regulations and issue orders
24 concerning permissible standing time for trains. The investigation
25 of crossings shall include the reasonable availability or use of

1 other crossings by vehicular or pedestrian traffic, the frequency
2 and necessity of use of emergency and law enforcement vehicles
3 using the crossing, and the hours of frequent use of the crossing.
4 In the investigation, the department shall seek the advice of
5 counties, municipalities, railroads operating within this state,
6 and unions representing railroad employees.

7 Sec. 5. Unless provided otherwise by rule or regulation
8 or order of the department, it is unlawful for any person owning
9 or operating a railroad train to permit a standing train to
10 obstruct a public highway, road, street, or other railroad crossing
11 for more than ten minutes without good cause. After the initial
12 ten-minute period or such other period of time proscribed by
13 rule or regulation or order of the department, each additional
14 proscribed period of time that the crossing is obstructed by a
15 standing train without good cause constitutes a separate offense
16 and penalties may be imposed accordingly.

17 Sec. 6. Prior to a request by a state, county, or
18 municipal official to the department for sanctions against a
19 railroad for violation of section 5 of this act, such official
20 shall state the complaint in writing and mail a copy of the
21 complaint, by certified mail, to the registered agent of the
22 railroad in question. Within forty-five days after the receipt
23 of the written complaint by the railroad registered agent, the
24 railroad shall respond to the complaint stating with specificity
25 any reasons for obstruction of the crossing for an unlawful period

1 of time. The response of the railroad shall be in writing and shall
2 be mailed, by certified mail, to the complaining official.

3 Sec. 7. (1) If the complaint is not resolved to the
4 satisfaction of the complaining official under section 6 of this
5 act, the official shall notify the department in writing and shall
6 enclose a copy of the complaint and response. Within sixty days
7 after receipt of the complaint and response, the department shall
8 hold a hearing on the complaint. The department shall treat the
9 complaint and response as a contested case under the Administrative
10 Procedure Act and shall proceed accordingly.

11 (2) If the department determines that the obstruction was
12 for an unlawful period or periods of time without good cause, the
13 railroad charged with the violation is subject to an administrative
14 fine imposed by the department of not less than five hundred
15 dollars nor more than one thousand dollars per violation of the
16 proscribed time period as provided in section 5 of this act.
17 Good cause includes extenuating circumstances such as a blocked
18 crossing due to an emergency condition caused by a serious rail
19 accident, derailment, critical mechanical failure, track or bridge
20 washout, storm, flood, or other emergency. The department shall
21 remit administrative fines collected under this section to the
22 State Treasurer for distribution in accordance with Article VII,
23 section 5, of the Constitution of Nebraska.

24 (3) The decision of the department may be appealed, and
25 the appeal shall be in accordance with the Administrative Procedure

1 Act.

2 Sec. 8. Original sections 74-1310 and 74-1323, Reissue
3 Revised Statutes of Nebraska, and section 75-109.01, Revised
4 Statutes Cumulative Supplement, 2008, are repealed.