

perintendent of Public Instruction: *Provided*, That the entire expense of said Commission shall not exceed the sum of five hundred dollars (\$500). No appointive member shall be paid a per diem of more than three dollars per day for the time actually and necessarily spent in attending the meetings of the Commission.

SEC. 5. The completed code proposed by said Commission shall be printed in the form of a Legislative bill and distributed to the members-elect of the Legislature of 1909, on or before December 1st, 1908. All amendments shall be underscored in such draft of the proposed code.

Proposed Code to be distributed to members of Legislature.

SEC. 6. For the purpose of paying the necessary expenses of the Commission in this act provided for, the sum of five hundred dollars (\$500), or so much thereof as may be necessary, is hereby appropriated out of any money in the State treasury not otherwise appropriated.

Appropriation \$500.

Passed the House February 6th, 1907.

Passed the Senate March 5th, 1907.

Approved by the Governor March 12th, 1907.

CHAPTER 142.

[H. B. 285.]

PROVIDING FOR THE FURNISHING OF CARS TO SHIPPERS AND PRESCRIBING THE TIME OF LOADING, TRANSPORTING AND UNLOADING THE SAME.

AN ACT providing for the furnishing of cars to shippers and prescribing the time of loading, transporting and unloading the same, with storage and charges incidental thereto and providing charges and penalties for delay and for the violation of this act and authorizing the Railroad Commission of Washington to prescribe additional rules and to enforce the same and the provisions of this act.

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

SECTION 1. When a shipper makes written application to a railroad company for a car or cars not exceeding ten (10) cars in number during any one day, to be loaded with any kind of freight embraced in the tariff of said company,

Railroad shall furnish cars on application.

stating in said application the character of the freight, and its destination, the railroad company shall furnish same within six (6) days from seven o'clock A. M. the day following such application. Or when the shipper making such application specifies a future day on which he desires to make a shipment, giving not less than six (6) days' notice thereof, computing from seven o'clock A. M. the day following such application, the railroad company shall furnish such car or cars on the day specified in the application. For failure to comply with this section, the company so offending shall forfeit and pay to the shipper applying, the sum of one dollar (\$1.00) per car per day or fraction of a day's delay after expiration of free time, upon demand in writing, made within thirty (30) days thereafter by the shipper.

Penalty.

Freight must be received for shipment.

SEC. 2. Whenever freight of any character, proper for transportation, whether in carload lots or less than carload lots is tendered to a railroad company at its customary place for receiving shipments, and correct shipping instructions given, the railroad company's agent must immediately receive the same for shipment, and issue bills of lading or shipping receipt therefor, and whenever such shipments have been so received by any railroad company, they must be carried forward at the rate of not less than fifty (50) miles per day of twenty-four hours, computing time from seven o'clock A. M. the day following receipt of shipment, and for failure to receive or transport such shipments, within the time prescribed, the railroad company so offending shall forfeit and pay to the shipper the sum of one dollar (\$1.00) per day, per car, or fraction thereof, on all carload freight and one cent per hundred pounds per day or fraction thereof, on freight in less than carloads, with minimum charge of five cents (5 cts.) for any one package, upon demand in writing by the shipper, or some other party whose interest is affected by such delay: *Provided*, That in computing the time of freight in transit there shall be allowed twenty-four hours at such point where transferring from one railroad to another, or re-handling of freight, is necessary.

Freight must be moved fifty miles per day.

Penalty.

SEC. 3. The period during which the movement of cars or freight is suspended or delayed on account of accident, sudden congestion of traffic, unavoidable detention in other states or in other places within this State or any other cause not within the power of the railroad company to prevent, shall be added to the free time allowed in this act, and counted as additional free time.

Unavoidable
delays in
transport-
ing freight.

SEC. 4. Railroad companies shall, within twenty-four hours after the arrival of shipments, give notice, by mail or otherwise, to consignee of the arrival of shipments, together with the weight and amount of freight charges due thereon, and where goods or freight in carload quantities arrive, such notice shall contain, also identifying numbers, letters and initials of the car or cars, and, if transferred in transit the number and initials of the car in which originally shipped. Any railroad failing to give such notice shall forfeit and pay to the shipper, or other party whose interest is affected, the sum of one dollar (\$1.00) per car per day, or fraction thereof, of a day's delay, on all carload shipments, and one cent per hundred pounds per day or fraction thereof, on freight in less than carloads, with minimum charge of five cents (5c) for any one package, after the expiration of the said twenty-four hours: *Provided*, That not more than one dollar (\$1.00) per day be charged for any one consignment not in excess of a carload.

Company
shall give
notice of
arrival.

Penalty.

SEC. 5. Railroad companies shall deliver freight at their depots or warehouses, or, in case of shipment for track delivery, shall place loaded cars at an accessible place for unloading within twenty-four hours after arrival, computing time from seven o'clock A. M. the day following the arrival of freight. Except that carload shipments for track delivery at local stations having not more than one team track, shall be placed at an accessible point for unloading by the conductor of trains on which the car arrives. The shipper or consignee shall be paid one dollar (\$1.00) per car per day for each day, or fraction of a day, such delivery is so delayed.

Delivery
of freight.

Penalty
for delay.

Freight
subject to
demurrage.

SEC. 6. All carload freight or freight carried at carload rates and all freight in cars, whether full carload or not, taking track delivery shall be subject to the demurrage or car service charges prescribed in this act.

Time for
loading
cars.

SEC. 7. A shipper, on whose order a car or cars have been placed, for loading, shall be allowed forty-eight hours (48) for the loading of such car or cars, computing the time from seven o'clock A. M. the day after such car or cars have been placed, subject to the order of the shipper, and thereafter a demurrage of not more than one dollar (\$1.00) per car per day, or fraction of a day, may be assessed and collected on all such cars as have not been tendered to the railroad company with shipping instructions within the said forty-eight (48) hours. Railroad companies shall not be compelled to furnish cars for future shipments to parties in default as to the payment of the demurrage charges herein last provided for, until such demurrage charges have been paid, provided the same has been demanded prior to the commencement of the transportation of the car. If, after placing the car or cars required by this section, the railroad company shall, during or after free time, temporarily remove all or any of them, or in any way prevent, obstruct or delay the loading of same, the shipper shall not be chargeable with the delay caused thereby. When by reason of delay or irregularity on the part of the railroad in filling orders, cars are bunched in excess of the ability of the shipper to load in the order indicated in his applications, the shipper shall be allowed separate and distinct periods of free time within which to load the car or cars specified in each separate application.

Cars
delayed
through
neglect of
shipper—
demurrage
charge.

SEC. 8. A car or cars detained or held at point of shipment for want of proper shipping instructions, or by reason of imperfect or excessive loading, where loading is done by shipper, shall be subject to a demurrage charge of one dollar (\$1.00) per car per day, or fraction of a day, the said car or cars are so detained or held. In case of imperfect or excessive loading by shipper, the shipper shall be notified thereof as early as practicable after said

car or cars have been received from him, in which case car demurrage charges at above rate shall begin from time of notification.

SEC. 9. Legal notice, as referred to in this act, may Notice. be either actual or constructive. Where the consignee or his agent is personally served with notice of the arrival of freight at or before six o'clock P. M. of any day, free time begins at seven o'clock A. M. on the day after such notice has been given. Constructive notice referred to shall consist of posting notice by mail to consignee; where this mode of giving notice is adopted there shall be 24 hours additional free time: *Provided, however,* That when, in any case where notice of arrival is given by mail, the consignee shall make oath that neither he, his agents, nor employes, have received such notice, then he will be held not to have received legal notice by reason of posting of said notice by mail.

SEC. 10. All packages unloaded by railroad companies Storage charges. in their depots or warehouses, and freight which, in order to release cars, is unloaded in the yard space of a railroad company, which is not removed by the owners thereof from the custody of the railroad company within forty-eight hours computing time from seven o'clock A. M. of the day following legal notice of arrival, may be subject to a charge of storage for each day, or fraction of a day, it may remain in the custody of the railroad company: *Provided,* Such company shall allow means of ingress and egress for such removal. Said charges shall be as follows: In less than carloads, not more than one cent per hundred pounds per day or fraction thereof; in carload quantities not more than ten cents per ton of 2,000 pounds per day or fraction thereof, but not exceeding one dollar (\$1.00) per car per day, or fraction of a day: *Provided,* That in no case shall the amount so collected for storage of a less than carload shipment exceed the amount authorized to be charged as storage or demurrage on a carload of similar freight for the same length of time when not unloaded from car, as provided by the demurrage rates of this act.

Delay in unloading cars—demurrage charges.

SEC. 11. Loaded cars containing hay, coal, coke, brick, lumber and shingles in covered cars, and the following articles in bulk: Meat, potatoes, grain and grain products, taking track delivery, which are to be unloaded by consignee, but are not unloaded within forty-eight (48) hours computing time from seven (7) o'clock A. M. the day following the day legal notice of arrival is given, having been placed at an accessible point for unloading, shall be subject thereafter to a charge for demurrage of one dollar (\$1.00) per car for each day, or fraction of a day, that they may remain loaded in possession of the railroad company. All loaded cars, taking track delivery, to be unloaded by consignee, shall be limited to forty-eight (48) hours of free time: *Provided, however,* That if after placing a car or cars, as required in this section, the railroad company shall, during or after free time, temporarily remove all or any of them, or in any way obstruct the unloading of same, the consignee shall not be chargeable with the delay caused thereby: *Provided,* That when on account of delay or irregularity in transportation, cars are bunched in transit and delivered to the consignee in numbers beyond ascertained ability to unload within the free time prescribed in this act, he shall be allowed by the carrier such additional time as may be necessary to unload cars so in excess by the exercise of due and usual diligence on the part of consignee, who shall also increase his unloading facilities co-extensively with the increase of his business.

Unavoidable delay in-unloading freight.

SEC. 12. Whenever the weather, during the period of free time, is so severe, inclement or rainy that it is impossible or impracticable to secure means of loading or unloading freight, or when, from the nature of the goods or freight, loading or unloading would cause injury or damage thereto, such time shall be added to the free period, and no demurrage charges shall be allowed for such additional free time. This section applies to the state of the weather during business hours.

Carload freight, when may be stored in depots.

SEC. 13. Incoming carload freight, coming under the provisions of section 11 of this act, may be stored by rail-

road companies in depots or warehouses at the expense of the owner, if same is not removed before demurrage charges attach: *Provided*, That daily storage charge on such freight shall not exceed the demurrage allowed under this act.

SEC. 14. If the consignee shall refuse to accept freight tendered in pursuance of the bill of lading, the carrier charged with the duty of delivery shall give legal notice to the consignor of such refusal; and if he shall not, within three days thereafter, give directions for the re-shipment or unloading, or other disposition of such goods, he shall thenceforth become liable to such carrier for storage on such goods, or demurrage upon the car or cars in which they are stored, to the same extent, and at the same rate as such charges are under like circumstances, by the provisions of this act imposed upon consignees who neglect or refuse, after notice of arrival, to remove freight of like character from the depots or cars of a carrier. A consignee who has once refused to accept a consignment of goods shall not thereafter be entitled to receive the same, except upon payment of all charges for storage or demurrage which have accrued; and if the consignee of freight in carloads, or less than carloads, shall fail or neglect to remove such freight within three (3) days after the expiration of free time, then the carrier shall, through the agent at point of shipment, so notify the shipper, unless the consignee has signified his acceptance of the property. Said notice may either be served personally or given by mail.

Refusal to accept freight.

Liability of consignor.

SEC. 15. When consignors ship goods consigned to order, but express in their bills of lading or shipping instructions, the name of a person at destination to notify, it shall be the duty of the railroad or other transportation company, to give legal notice to such party in the same way, and under the same rules, as if the shipment had been made direct to him. But when consignors do not comply with this condition, the railroad or other transportation company, shall give notice only to such consignors; except that in shipments of grain or hay, notice shall also

Goods consigned to order—duty of company to give notice.

be given to the local exchanges: *Provided*, That at the expiration of free time the carrier shall give notice thereof to the consignor.

Discrimination prohibited.

SEC. 16. Railroad companies shall not discriminate between persons, places, or commodities, in storage or demurrage charges. No rebate, refund, drawback, average plan or other similar device shall be lawful: *Provided*, That this section shall not apply to package freight received in less than carload lots and unloaded in depots or warehouses, and upon proof of the violation of this section, either and each party to such discrimination, rebate, refund, drawback, average plan or other similar device shall be fined in any sum not less than one hundred and not exceeding one thousand dollars for each offense to be found by the jury in an action brought therefor.

Penalty.

Private cars and tracks.

SEC. 17. No demurrage shall be charged on private cars standing on private tracks, when both cars and tracks are owned by the same person or persons.

Cars for perishable freight.

SEC. 18. Nothing in this act shall be held to relieve any railroad company from furnishing cars for transportation of live stock and perishable freight within a reasonable time after demand therefor even if such time is less than the free time prescribed in this act.

Computation of time

SEC. 19. In all computation of time under this act, Sundays and legal holidays shall be excluded.

Venue of actions.

SEC. 20. Actions to enforce the provisions of this act may be brought in any court of competent jurisdiction in the county in which the cause of action arose or in which the shipment was tendered to or received or delivered by the railroad company and in case plaintiff recovers judgment, in such action a reasonable attorney's fee shall be allowed as a part thereof.

Attorney's fee.

Payment of penalty satisfies claim.

SEC. 21. If any complainant rightly entitled thereto received payment of the charges or penalties imposed in this act for failure to comply therewith, such payment shall be in full of any and all claims for damages growing out of such failure: *Provided, however*, That such complainant may at his election, waive said charges and penal-

Damages.

ties, and claim such actual damage as he may have sustained.

SEC. 22. Full power and authority is hereby given The Railroad Commission of Washington to enforce the provisions of this act either upon or without complaint made, and to prescribe and enforce, when not in conflict with this act, all such additional reasonable rules, regulations and orders as may be necessary, and charges or penalties for the violation thereof, and to modify or suspend the same, in order to compel and require the several railroad companies in this State promptly to receive, receipt for, and forward and deliver to destination all lawful freight, and to make prompt delivery thereof at destination to the consignee; and to require and compel railroad companies doing business in this State to provide and supply cars and other railroad equipment sufficient to transport within a reasonable time after demand therefor all lawful freight properly tendered thereto for shipment within or without this State, and to proceed against any railroad company for failure or refusal to provide and supply such sufficient cars and other equipment; and in case of conviction, such railroad company shall be fined for each such failure or refusal in any sum not less than one hundred dollars and not exceeding five thousand dollars to be found by the jury in an action brought therefor: *Provided*, That upon proof of public calamity, accident, unprecedented increase of business or any other cause of delay not within the power of the railroad company to prevent, no conviction shall be found.

Powers of
Railroad
Commis-
sion.

SEC. 23. In case any railroad company shall fail to furnish a car or cars to transport and deliver freight as herein provided, by reason whereof demurrage charges and penalties become due and payable to shipper or consignee as herein provided, such railroad company shall pay to such shipper or consignee such charges within thirty days from and after demand therefor, and in case of the refusal or neglect of such railroad company to pay such charges and penalties so accrued without good and sufficient cause therefor, it shall be subject to a penalty of two hundred

Penalty for
failure of
company
to pay
charges.

and fifty dollars for each failure or refusal to make such payment, which, together with the costs of suit, shall be recoverable by the Railroad Commission of Washington in the superior court of the State of Washington in any county in this State in or through which said railroad runs or does business.

Actions.

SEC. 24. When any action against any railroad is brought under the provisions of this act for failure to furnish cars, it shall be shown on the trial by competent testimony that the person applying therefor had on hand at the time it became the duty of the railroad under any application so made to furnish the car or cars required, the kind of freight specified in the application ready for shipment in the said car or cars, to the point of destination in the said application stated.

Act may be enforced by injunction.

SEC. 25. The provisions of this act may also be enforced by mandamus or mandatory injunction on the relation or suit of any party affected by the violation thereof or at the instance of said Commission.

Unconstitutionality of part of act not to affect remainder.

SEC. 26. If any section, subdivision, sentence, clause or purpose of this act is for any reason held to be unconstitutional, such decision shall not affect the validity of the remaining portions of the act.

Passed the House February 25th, 1907.

Passed the Senate March 6th, 1907.

Approved by the Governor March 12th, 1907.

CHAPTER 143.

[H. B. 108.]

SALE OF SCHOOL PROPERTY IN CITIES HAVING A POPULATION OF TEN THOUSAND OR OVER.

AN ACT relating to the sale of school property in cities having a population of ten thousand or over, and amending section 95 of chapter CXVIII of the Laws of 1897.

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

SECTION 1. That section 95 of the Code of Public Instruction of the State of Washington, being chapter