

United States Court of Appeals for the sixth circuit

David Jonathan Tulis

Appellant

V.

Brandon Bennett et al

Appellees

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Case No. 25-5430

APPENDIX

2 of 2



THE
CODE OF TENNESSEE
1932

ENACTED BY
THE GENERAL ASSEMBLY OF 1931

PREPARED
BY
THE CODE COMMISSION

SAMUEL C. WILLIAMS, Chairman, Johnson City
ROBERT T. SHANNON, Nashville
GEORGE HARSH, Memphis

PUBLISHED BY AUTHORITY OF
THE LEGISLATURE

VOLUME ONE

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In each instance the payment to municipalities and/or counties shall be upon proper voucher drawn according to the law, and shall be made on or before June 30th of each year, covering collections hereunder of taxes levied for the preceding calendar year. In the case of delinquent taxes collected after June 30th of any year, returns shall be so made within ninety days after such delinquent taxes have been paid into the state treasury.

(2) The term "net tax or taxes," as used in this section, means and includes all taxes collected under the provisions of this law, exclusive of penalties and interest.

(3) The residence of any taxpayer, for the purpose of determining the return to any municipality and/or county of any taxes so collected is declared to be the actual residence of the taxpayer as of noon, December 31st, of the year for the receipt of income during which the return is filed and the tax collected. (1929, ex. ses., ch. 16, Modified.)

1122. Definition.—The word "person" as used in this statute shall be held to include every natural person, partnership, joint stock company, business trust or corporation in receipt of dividends from corporate stocks or interest on bonds as herein defined, regardless of the source from which such income is derived, save and except as herein otherwise expressly provided. (1929, ch. 86, sec. 10.)

1123. Penalties.—It is declared a misdemeanor punishable by a fine of not less than one hundred dollars nor more than five hundred dollars, or imprisonment for not less than thirty days nor more than ninety days, or both, for any person subject to pay an income tax under the terms and provisions of this statute to fail to make such returns each year, or knowingly to make a false return, or to fail to keep records of income received each year, or to decline to allow the commissioner of finance and taxation, or his duly authorized agent, representative or employee, access to such records when a demand for them has been seasonably made. (Ib., sec. 11.)

ARTICLE VI

PRIVILEGES TAXABLE

1124. 692 (550). Privileges.—The occupations, businesses and business transactions deemed privileges are to be taxed, and not pursued without license, and shall be such as are declared by this Code or by legislative acts which are not to be deemed repealed by the enactment of this Code.

1125 694. Assessor to report, to county court clerk, those pursuing privileges; duty of county judge or chairman.—It shall be the duty of the assessor to make a return, to the county court clerk, of the name of each person engaged in any business liable in any way to pay a privilege tax, in each district or ward under the provisions of the law. It shall be the duty of the judge or chairman of the county court and

of the county court clerk to examine the list of names so returned, and compare the same with the list of persons paying privileges, and he shall report the result to the quarterly court at the July term following the assessment, and the said report shall be read in full meeting of the county court and spread upon the minutes of the court. (1895, ch. 120, sec. 66; 1907, ch. 602, sec. 45.)

GASOLINE TAX

1126. Definitions.—As used in this statute the term “person” means and includes every individual, firm, association, joint-stock company, syndicate, and corporation.

The term “distributor” means and includes every person who engages in the business in the state of refining, manufacturing, producing, or compounding gasoline or distillate, and selling the same in this state; and also every person who engages in the business in this state of shipping, transporting, or importing any gasoline or distillate into, and making original sales of the same, in this state.

The term “original sales” as used in the definition of “distributor” shall mean the first sale made in this state after gasoline shall have been produced, refined and/or shipped or imported into this state, whether such sale shall be wholesale or retail, and/or to one for resale or use; and, no person shall be held to be a dealer, within the meaning of this statute, who sells or deals in gasoline purchased in the state only from “distributors.”

The term “dealer” means and includes every person, other than a distributor, who engages in the business in this state, of distributing or selling gasoline or distillate within this state.

The term “gasoline” means and includes (a) the volatile substance produced from petroleum, natural gas, oil shales, or coal heretofore sold under the name of gasoline, (b) any volatile substance or product less than 112 Fahrenheit flash test when tested in a manner approved by U. S. bureau of mines derived wholly or in part from petroleum, natural gas, oil shales, or coal, and (c) benzol and/or any other volatile substance used wholly or in combination with gasoline as a liquid fuel. (1923, ch. 58, sec. 1; 1925, ch. 20; 1929, ch. 124.)

1127. Privilege tax on gasoline and distillate; original packages excepted; distribution to service stations as sales.—Every distributor when engaged in such business in this state, shall pay to the state comptroller, for the exclusive use of the state, a special privilege tax, in addition to all other taxes, for engaging in and carrying on such business in this state, in an amount equal to five cents for each gallon of gasoline, and five cents for each gallon of distillate refined, manufactured, produced, or compounded by such distributor and sold by him in this state, or shipped, transported or imported by such distributor into, and distributed or sold by him within this state, during such year; provided, however, that no gasoline or distillate distributed or

(b) Whether individual, partnership, association or corporation, and, if partnership or association, the names and addresses of each member;

(c) Whether it is the purpose of applicant to engage as distributor, dealer, or storer, and

(d) Whether wholesale, retail, or both. (1929, ch. 124.)

1145. Bond required.—The application shall be accompanied by a bond, payable to the State of Tennessee, in such penalty as may be required by the commissioner, such penalty, however, not to be less than five thousand dollars, nor more than ten thousand dollars, signed by the applicant as principal, and by an authorized surety or bonding company, as surety, conditioned to be void if the applicant shall pay to the comptroller all gasoline taxes that accrue against the applicant under and in accord with the provisions of this statute. Upon the filing of the application and bond, it shall be the duty of the commissioner to issue the permit. (Ib.)

1146. Revocation of permit.—The permit of every distributor, dealer or storer who fails to keep the records, or fails to make and deliver the statements and reports required, or who fails to pay the taxes accrued before they become delinquent, shall be revoked, and the carrying on of such business thereafter shall be unlawful. (Ib.)

1147. Forms.—It shall be the duty of the commissioner of finance and taxation to provide all necessary and appropriate blank forms and stationery for carrying the provisions of this law into effect, the same to be provided and paid for as other supplies for his department are provided; to cancel permits of delinquents and promptly report them to the comptroller for such proceedings as by law and this statute authorized; provided, however, that the provisions of this section shall not apply to any retailer making no purchases in carload lots. (Ib.; 1929, ex. ses., ch. 28.)

1148. Rights in Great Smoky Mountain Park.—Under the terms of the cession of jurisdiction to the United States of America by this state, the right is reserved to this state to tax sales of, and privileges of dealing in, gasoline and other fuels, and oils, used in the operation of motor-vehicles, within the limits of the Great Smoky Mountain Park in the boundaries of the state. (1929, ch. 99.)

REGISTRATION OF AUTOMOBILES AND TAX FEES THEREFOR

1149. Registration of automobiles, etc., through county court clerk; fees therefor.—Before the owner of any automobile, motorcycle, auto truck, electric automobile, or truck or other vehicle of like character used for the purpose of conveying persons or freight or for any other purpose, whether such vehicle is propelled by steam, gasoline or electricity, or any other mechanical power, shall operate or be per-

mitted to operate upon any street, road, highway or any other public thoroughfare in Tennessee, such owner shall register such vehicle with the department of finance and taxation, through the county court clerk in the county in which the owner resides, giving the motor serial number, rated horsepower, tonnage capacity of motor trucks and make of same, together with the name and residence of such owner, and shall pay the following fees: For all motor trucks, freight or passenger, fifty cents per rated horsepower of motor so operated as rated by the Society of Automobile Engineers, and an additional fee for each ton or fraction thereof carrying capacity (factory rating) as follows: One-half to two tons, inclusive, fifteen dollars; two and one-half tons to three and one-half tons, inclusive, twenty dollars; four to four and one-half tons, inclusive, thirty dollars; five to five and one-half tons, inclusive, forty dollars; six tons and each ton in excess thereof, fifty dollars; for automobiles, motorcycles, or other vehicles of like character, fifty cents per rated horsepower of the motor so operated as rated by the Society of Automobile Engineers; and electric automobiles or trucks, twelve and one-half dollars each, and five dollars per ton carrying capacity (factory rating); and shall receive from the said department a certificate showing such registration on an automobile, motorcycle, auto truck, electric automobile or truck, or other vehicle of like character under this section. (1919, ch. 149, sec. 15; 1923, chs. 10 and 108.)

1150. Vehicles for hire and tractors.—In addition to the foregoing for all such passenger vehicles operating for hire the following fees: For a two passenger car, four dollars; for a five passenger car, ten dollars; for a seven passenger car, fourteen dollars; and for each additional seat above a seven passenger car, two dollars extra; for all tractors operating upon public roads, streets, or highways, whether propelled by steam, gasoline, or electricity, a fee of twenty-five dollars; for each trailer, whether attached to a tractor or truck, the following fees per ton or fraction thereof (carrying capacity): From one-half to two tons, inclusive, seven dollars and fifty cents; from two and one-half to three and one-half tons, inclusive, ten dollars; from four to four and one-half tons, inclusive, fifteen dollars; from five to five and one-half tons, inclusive, twenty dollars; for six tons and for each ton over six tons, twenty-five dollars. (1923, ch. 108.)

1151. Quarterly licenses.—If the purchase of license is made on or after April 1st and before July 1st, the applicant shall only be required to pay three-fourths of the fee provided; if the purchase is made on or after July 1st and before October 1st, the applicant shall be required to pay one-half of the fee provided; if the purchase is made on or after October 1st and before January 1st, the applicant shall be required to pay one-fourth of the fee provided; and if the purchase is made on or after January 1st, and before April 1st, the applicant shall pay for the entire year. (1929, ch. 14.)

1152. Vehicles from other states, Canada, or Mexico may operate free for thirty days.—Owners of regularly licensed vehicles registered in any state or territory of the United States, Canada, or Mexico, may have the privilege of operating upon the public roads for a period of not exceeding thirty days. (1919, ch. 149, sec. 15.)

1153. State, county, or city vehicles, but no fees except that of clerk.—Upon the sworn statement from the head of any department of the state government or the county judge or the chairman of the county court of any county, or the mayor of any town or city, that the vehicle for which application is made for registration, is owned by and operated exclusively for the state, county, city, or town, the state department of finance and taxation, through the county court clerk, shall issue a license and number plate as above provided, except that no charge shall be made for same by the state; but the county court clerk shall have the right to collect the fee of fifty cents for registration, but in all such cases the application must be accompanied by a sworn statement as above provided, and the county court clerk shall not issue any number plate until special authority is obtained from the said state department of finance and taxation. (Ib.; 1921, ch. 131.)

1154. Transfer certificate upon change of ownership; fee.—Whenever the ownership of such vehicle shall become changed by sale or otherwise, the registration number shall remain upon such vehicle as a part thereof until such registration expires by law; but the purchaser thereof shall be required to notify the said state department through the county court clerk of such transfer and receive a transfer certificate in his name, for which he shall pay a fee of one dollar. (1917, ch. 73, sec. 3.)

1155. Registration of certificate with county court clerk; his fee.—He shall be required to register such certificate with the county court clerk of the county in which he resides and pay therefor a fee of twenty-five cents, and registration shall not be considered completed until said registration with the county court clerk is made. (Ib.)

1156. Plate numbers to be furnished and displayed at both ends of automobile.—The owner of such vehicle is required to display, in a conspicuous manner at both front and rear of such vehicle, a number plate of size, color, dimension, and character as the state department of finance and taxation may designate; provided, that the size of the number plate shall be the same each year. The number plate shall show, in addition to the registration number of such machine, the year and the abbreviation of Tennessee; provided, further, that the said state department, through the county court clerk, shall furnish, without additional cost to the owner of such machine a set of two number plates, and owners are required to use these number plates on their machines, and no other number plates shall be used. (Ib., sec. 4.)

1157. Dealers' number plates cost what; clerk's registration fee; additional duplicate plates and price.—All dealers in or manufacturers of motor vehicles, motorcycles, auto trucks, electric automobiles, or trucks, or like vehicles shall instead of registering each such motor vehicle owned by him, make application to and receive from the state finance commissioner through the county court clerk a general distinguishing number or mark. This certificate and number shall be of a different color and number from that of any other owner of a motor vehicle, motorcycle, auto truck, electric automobile, or truck, or like vehicle as described above, and shall be known as a dealers' number, and said number may be used by said dealer or manufacturer upon any new or second-hand vehicle the property of the dealer held for the purpose of trade or resale, but said number shall not be used on vehicles used for other than strictly business purposes. Said dealer or manufacturer shall register with and pay to the said state commissioner through the county court clerk for such special dealers' number, the sum of fifty dollars. This registration shall be renewed annually as other registrations and the annual registration fee shall be fifty dollars, and the owner shall register same with the county court clerk and pay a fee of fifty cents. Duplicate dealers' number plates in series not to exceed twenty duplicate plates of any one number shall be issued by the county court clerk, upon payment, due to the state, of a license fee of one dollar for each such additional pair of plates; provided, that when not over four duplicate plates are issued the fee for same shall be thirty dollars. The county court clerk shall receive no additional fee for the issue of these duplicate dealers' number plates; provided, that any one using any duplicate plates other than those herein authorized shall be guilty of a misdemeanor, and on conviction thereof shall be fined not less than ten dollars nor more than fifty dollars. (1915, ch. 149, sec. 18; 1921, ch. 165; 1925, ch. 111.)

1158. Dealers to be furnished tag cards in pairs; record to be kept; payment for tags.—It shall be the duty of the state finance commissioner to provide for distribution to all dealers in motor propelled vehicles applying for the same, cards in pairs, which shall be uniform in size and character, bearing thereon in type large enough to be plainly seen the word "Dealer" and a serial number, together with the words "This tag expires," and it shall be the duty of said commissioner to keep or have kept a record of each pair of tags issued, showing a serial number, date issued and to whom issued; these tags shall be issued in pairs to dealers in such vehicles applying therefor, who shall pay for each pair of tags so issued one dollar. (1921, ch. 164, sec. 1.)

1159. Dealer to issue to every purchaser a pair of such tags; write expiration of such tag; record kept.—Every dealer in vehicles propelled by other than muscular power shall issue to the purchaser of each vehicle a pair of such tags, and it shall be the duty of each pur-

chaser to affix or have affixed one of said tags on the front, one on the rear of such vehicles in such manner as to be plainly seen before driving such vehicles on any highway of the state. The dealer selling such vehicles shall plainly write in ink on the blank left on each tag for the purpose, the day and hour such tag expires, and shall keep a record of each pair of tags issued, and to whom issued; the kind, name of manufacturers and factory, motor or manufacturer's number of such vehicle; date and hour when issued, by whom issued, and when said tag was marked to expire. In no case, shall the dealer mark such tag to expire more than forty-eight hours after issuance; and such tag shall be good only for the time marked thereon, but in no event more than forty-eight hours. (Ib., sec. 2.)

1160. License tags required; misdemeanor to operate without same; fine.—It shall be unlawful for any person who has not obtained the license, required by law for vehicles, to operate any vehicles propelled by other than muscular power on any highway of the state, without having affixed on front and rear of such vehicles the tags required by the preceding section hereof. Any violation of this section shall be a misdemeanor, and the person violating it shall be fined not less than five dollars nor more than fifty dollars. (Ib., sec. 3.)

1161. Duty of dealer as to issuing tags and keeping record; violation.—No dealer or his agent shall issue any tag described in sections 1158 et seq. hereof, except for a vehicle actually delivered to a purchaser or his agent or servant; nor shall he mark the time of expiration of such tag beyond forty-eight hours after the time of actual delivery of such vehicles; nor shall there be issued more than one pair of tags for each vehicle; nor shall he fail to keep an actual record of tags as herein above provided for; nor shall he use any such tags on any vehicle not actually delivered to purchaser or purchaser's agent; nor on any vehicle for which state or city licenses and numbers shall have been issued. Any violation of this section shall be a misdemeanor, and any person convicted shall be fined not less than five dollars, nor more than fifty dollars. (1921, ch. 164, sec. 4.)

1162. Annual registration and plate numbers; fees therefor.—Each owner of a motor vehicle, motorcycle, auto truck, or like vehicle, shall annually hereafter, on or before the first day of January of each year, make application to the said state department, through the county court clerk, for annual registration, giving the same information and paying the same fees as required in an original registration, including registration with the county court clerk; and, upon payment of such fees, shall receive from the said state department, through the county court clerk, a certificate showing such registration and shall also receive from the state department, through the county court clerk, a set of two number plates on which shall, in addition to the registration number, be the year and the abbreviation of Tennessee. (1917, ch. 73, sec. 6; 1919, ch. 149, sec. 19.)

1163. Duties of county court clerk to enforce; failure a misdemeanor.—It shall be the duty of the county court clerk of each county to enforce the provisions of this statute and in so doing he shall:

(a) **Distress warrants.**—Ascertain the names of the owners of all wheeled vehicles above described and included, in his county, and issue distress warrants against the owner operating any such vehicle in violation of the provisions of this law, after February 1 of the year for which the tax in question may be due. In case of the issuance of such distress warrant such clerk shall be entitled to collect the fees now provided by law for the issuance of distress warrants.

(b) **Take registration applications** from the owner of any vehicle designated in this law.

(c) **Collect the fees** provided for in this law.

(d) **Distribute plates and keep records.**—Distribute the number plates provided by the state finance commissioner and keep a complete record in his office, for the benefit of the general public, of all such vehicles registered in his county.

(e) **Collections reported and remitted.**—Remit and report on the first day of each month to the state highway department all moneys at that time on hand collected by him under the provisions of this law.

(f) **Plates accounted for.**—Account to the state highway commissioner for all number plates so consigned to him.

(g) **Fee.**—Collect from the owner making application for the registration of a vehicle required to be registered under the provisions of this law a fee of fifty cents, which shall be his compensation in full.

If any county court clerk shall be delinquent as much as ten days in making the report hereinabove required to be made he shall be guilty of a misdemeanor, and shall be fined not less than ten dollars nor more than fifty dollars. (1919, ch. 149, sec. 20.)

1164. Seller of automobile to notify county court.—Every dealer or other person selling an automobile, auto truck, motorcycle, electric automobile or truck, or other motor vehicle, either new or second-hand, to any person in the State of Tennessee, shall, within three days from date of sale, notify the county court clerk of said sale, giving the name and address of purchaser, make, horsepower and number of motor vehicle. (Ib., sec. 23.)

1165. Misdemeanor not to give notice; not transfer certificate; not give horsepower and motor number.—Any person who fails or refuses to notify the state department of highways and public works, through the county court clerk, of the sale of any motor vehicle or electric automobile or truck, as provided in the preceding section, or any person who fails or refuses to apply for registration or transfer of certificate as provided by this statute, or any person who fails or refuses to give the correct rated horsepower and motor number of any automobile, motor truck, motorcycle, electric automobile or truck, or any like vehicle, or who fails or refuses to give the correct rated tonnage capacity of any motor or electric truck, whether freight or

passenger, or who violates any provisions of this statute, shall be guilty of a misdemeanor, and be fined not less than five dollars nor more than fifty dollars, together with all costs of said prosecution, such fines to be turned over to the state treasurer to be placed to the credit of the state highway commissioner, to be expended as provided for other revenue obtained under this statute, and it shall be the duty of all peace officers of the state to arrest and prosecute violators of this law before any legal tribunal. (Ib., sec. 24.)

1166. Accounting.—The department of finance and taxation on or before the tenth day of the succeeding month shall report and remit to the state treasury all monies so received during a given month by the department from county court clerks or from any and all other sources, under this law, without any deductions on account of salaries, fees, costs, expenses or claims of any description whatsoever. (1919, ch. 149, sec. 21; 1923, ch. 7, sec. 15.)

LIQUID CARBONIC ACID GAS TAX

1167. Definitions.—As used in this statute:

The term "person" means and includes every individual, firm, corporation, joint stock company, syndicate and association.

The term "distributor" includes every person who engages in the business in the state of manufacturing, compounding or producing liquid carbonic acid gas and selling same in this state; and also every person who engages in the business in this state of shipping, transporting or importing any liquid carbonic acid gas into and making original sales of the same in this state.

The term "dealer" includes every person, other than a distributor, who, in the course or conduct of, or as an incident to, his business in this state, uses liquid carbonic acid gas in the preparation and/or mixing and/or sale of soft drinks or other beverages or for any other purpose. (1929, ch. 92, sec. 1.)

1168. Tax on distributor.—Every distributor shall each year, pay to the commissioner of finance and taxation, for the exclusive use of the state, a special privilege tax, in addition to all other taxes, for engaging in and carrying on such business in this state, the amount of such tax to be computed as follows: an amount equal to five cents per pound for each pound of sixteen ounces of all liquid carbonic acid gas manufactured, compounded or produced by such distributor and sold by him in this state during such year, or shipped, transported or imported by such distributor into this state and sold by him in this state during such year; provided, however, that no liquid carbonic acid gas sold by any such distributor without the limits of the state, nor any such liquid carbonic acid gas sold by any such distributor in the original packages in which the same were shipped, transported or imported into this state, unless such package or packages shall have previously come to rest in this state, shall be included

ARTICLE II

NON-MOTOR VEHICLES ON PUBLIC ROADS

2671 1600 (1172). Vehicles meeting, how to pass.—Every driver or person having charge of any vehicle, on any of the public roads in or of this state, on meeting and passing another vehicle, shall give one-half of the road by turning to the right, so as not to interfere in passing. (1837-38, ch. 114, sec. 1; 1911, ch. 33.)

2672 1601 (1173). Vehicles moving in same direction, how.—When vehicles on said roads are traveling in the same direction, and the driver of the hindmost desires to pass the foremost, each driver shall give one-half the road, the foremost by turning to the right, and the hindmost to the left. (1837-38, ch. 114, sec. 2.)

2673 1602 (1174). To pass quietly.—Drivers of vehicles on said roads shall pass each other in a quiet, orderly, and peaceable manner, and shall not make any noise intended to disturb or frighten the driver or the animals drawing the same. (Ib., Modified.)

2674 1603 (1175). Stopping in road.—No driver shall stop his vehicle on any of said roads, for any cause or pretense whatever, without turning so far to the right as to leave at least one-half the road free, open, and unobstructed for other travelers and vehicles. (Ib., sec. 3.)

2675 1604 (1176). Frightening animals on roads.—No person shall willfully, by noise, gesture, or by other means, on or near said roads, disturb or frighten the driver or rider or the animals ridden or drawing vehicles thereon. (Ib., sec. 4, Modified.)

2676 1605 (1177). Punishment.—The punishment of every person, violating any of the foregoing provisions, intentionally or through carelessness, shall be a fine of not less than ten nor more than fifty dollars, and, in the discretion of the court, imprisonment not longer than three months. (Ib., sec. 5.)

2677 6491 (4649). Violation causing death.—The punishment for a violation of any of the provisions of this article, willfully and maliciously, whereby the death of any person is occasioned, shall be confinement in the penitentiary not less than three nor more than ten years. (1837-38, ch. 114, sec. 6.)

2678 1606 (1179). Employer's liability.—The employer of any driver who shall violate said provisions, intentionally or through carelessness, shall be liable to an action for damages at the suit of any one who, in person or property, sustains an injury thereby. (Ib.)

2679 1608 (1181). Civil action.—The person so offending, as well as his employer, shall be liable to a civil action for all damages consequent on such violation. (Ib., sec. 6.)

2680. Other regulations.—Provisions of the next succeeding article pertinent to non-motor vehicles in the use of public roads and ways have application.

ARTICLE III

THE REGULATION OF MOTOR AND OTHER VEHICLES

2681. Careless driving.—It shall be unlawful for any person to drive any vehicle upon a highway carelessly and heedlessly in willful or wanton disregard of the rights or safety of others, or without due caution and circumspection at a speed and in a manner to endanger or be likely to endanger any person or property. (1929, ch. 87, sec. 2, Modified.)

2682. Rates of speed.—No person shall drive a motor vehicle at such a speed as to endanger the lives or property of others; provided, that any municipality shall have the authority to prescribe a maximum rate of speed within its corporate limits of not less than fifteen miles per hour, except at school or hospital zones, or in turns at street intersections, where a lower maximum rate of speed may be prescribed. (Ib., sec. 3, Modified.)

2683. Stops and signs or signals.—The driver of every motor vehicle is required, when traveling any public road, street, or highway, to come to a full stop before crossing steam or interurban railroad tracks at grade, at a distance of not less than ten feet or more than fifty feet from the nearest rail of such track or tracks, whenever (1) a clearly visible and positive signal gives warning of the immediate approach of a car or railway train, or (2) whenever any such crossing is designated and signposted by the highway department of the state as a particularly dangerous crossing; and the highway department of the state is authorized to designate such particularly dangerous crossings. (Ib., sec. 4, Modified.)

2684. Construction.—None of the provisions of the preceding section shall be construed as abridging or in any way affecting the common law right of recovery of litigants in damage suits brought against any railroad company or other common carrier. (Ib., sec. 5.)

2685. Duty at intersections.—In crossing an intersection of highways or the intersection of a highway by a railroad right of way, the driver of a vehicle shall at all times cause such vehicle to travel on the right half of the highway unless such right half is obstructed or impassable. (Ib., sec. 6.)

2686. Duties on passing.—(a) The driver of a vehicle shall not drive to the left side of the center line of a highway in overtaking and passing another vehicle proceeding in the same direction unless such left side is clearly visible and is free of on-coming traffic for a sufficient distance ahead to permit such overtaking and passing to be made in safety.

(b) The driver of a vehicle shall not overtake and pass another vehicle proceeding in the same direction upon the crest of a grade or upon a curve in the highway where the driver's view along the highway is obstructed within a distance of three hundred feet.

(c) The driver of a vehicle shall not overtake and pass any other vehicle proceeding in the same direction at any steam or electric railway grade crossing nor at any intersection of highways unless permitted to do so by a traffic or police officer. (Ib., sec. 7.)

2687. Rights of way.—(a) When two vehicles approach or enter an intersection at approximately the same time, the driver of the vehicle on the left shall yield the right of way to the vehicle on the right, except as otherwise provided in the section next following. The driver of any vehicle traveling at an unlawful speed shall forfeit any right of way which he might otherwise have hereunder.

(b) The driver of a vehicle approaching but not having entered an intersection shall yield the right of way to a vehicle within such intersection and turning therein to the left across the line of travel of such first mentioned vehicle; provided, the driver of the vehicle turning to the left has given a plainly visible signal of intention to turn.

(c) The driver of any vehicle upon a highway within a business or residence district shall yield the right of way to a pedestrian crossing such highway within any clearly marked crosswalk or any regular pedestrian crossing included in the prolongation of the lateral boundary lines of the adjacent sidewalk at the end of a block, except at intersections where the movement of traffic is being regulated by traffic officers or traffic direction devices. Every pedestrian crossing a highway within a business or residence district at any point other than a pedestrian crossing, crosswalk, or intersection shall yield the right of way to vehicles upon the highway. (Ib., sec. 8.)

2688. Yielding of right of way.—(a) The driver of a vehicle entering a public highway from a private road or drive shall yield the right of way to all vehicles approaching from or on such public highway.

(b) The driver of a vehicle upon a highway shall yield the right of way to ambulances, police and fire department vehicles, when the latter are operated upon official business and the drivers thereof sound an audible signal by bell, siren, or exhaust whistle. (Ib., sec. 9, Modified.)

2689. Designations.—The state highway department with reference to state highways, and local authorities with reference to highways under their jurisdictions, are authorized to designate main traveled or through highways by erecting at the entrances thereto from intersection highways signs notifying drivers of vehicles to come to a full stop before entering or crossing such designated highway; and whenever such signs have been so erected it shall be unlawful for the driver of any vehicle to fail to stop in obedience thereto. All such signs shall be illuminated at night, or so placed as to be illuminated by the headlights of an approaching vehicle or by street lights. (Ib., sec. 10.)

2690. Parking and stopping.—(a) No person shall park or leave standing any vehicle, whether attended or unattended, upon the paved or improved or main traveled portion of any highway, outside of a business or residence district, when it is practicable to park or leave such vehicle standing off of the paved or improved or main traveled portion of such highway; provided, in no event shall any person park or leave standing any vehicle, whether attended or unattended, upon any highway unless a clear and unobstructed width of not less than fifteen feet upon the main traveled portion of said highway opposite such standing vehicle shall be left for free passage of other vehicles thereon, nor unless a clear view of such vehicle shall be obtained from a distance of two hundred feet in each direction upon such highway.

(b) Whenever any peace officer shall find a vehicle standing upon a highway in violation of the provisions of this section, he is authorized to move such vehicle or require the driver or person in charge of such vehicle to move such vehicle to a position permitted under this section.

(c) The provisions of this section shall not apply to the driver of any vehicle which is disabled while on the paved or improved or main traveled portion of a highway in such manner and to such extent that it is impossible to avoid stopping and temporarily leaving such vehicle in such position. (Ib., sec. 11.)

2691. On parking, what to be done.—No person having control or charge of a motor vehicle shall allow such vehicle to stand on any highway unattended without first effectively setting the brakes thereon and stopping the motor of said vehicle, and when standing upon any grade without turning the front wheels of such vehicle to the curb or side of the highway. (Ib., sec. 12.)

2692. Duty in case of accident.—(a) The driver of any vehicle involved in any accident resulting in injury or death to any person or damage to property of any character, shall immediately stop such vehicle at the scene of such accident.

(b) The driver of any vehicle involved in accident resulting in the injury or death of any person or damage to property shall also give his name, address, and the registration number of his vehicle and exhibit his operator's or chauffeur's license to the person struck or the driver or occupants of any vehicle collided with and shall render to any person injured in such accident reasonable assistance, including the carrying of such person to a physician or surgeon for medical or surgical treatment if it is apparent that such treatment is necessary or is requested by the injured person. (Ib., sec. 13.)

2693. Equipment of vehicles.—(a) Every motor vehicle when operated upon a highway shall be equipped with a horn in good working order, capable of emitting sound audible under normal conditions for a distance of not less than two hundred feet, and it shall be unlawful, except as otherwise provided in this section, for any vehicle

to be equipped with or for any person to use upon a vehicle any siren, exhaust, compression or spark plug whistle, or for any person at any time to use a horn otherwise than as a reasonable warning or to make any unnecessary or unreasonably loud or harsh sound by means of a horn or other warning device.

(b) Every police and fire department and fire patrol vehicle and every ambulance and emergency repair vehicle of public service companies used for emergency calls shall be equipped with a bell, siren, or exhaust whistle of a type approved by the said state department, or local police authorities in incorporated cities or towns. (Ib., sec. 14, Modified.)

2694. Muffler and cut-out.—(a) No person shall drive a motor vehicle on a highway unless such motor vehicle is equipped with a muffler in good working order and in constant operation to prevent excessive or unusual noise and annoying smoke.

(b) It shall be unlawful to use a "muffler cut-out" on any motor vehicle upon a highway. (Ib., sec. 15.)

2695. Lights.—(a) Every vehicle, except a motor vehicle, whenever traveling upon a road or highway designated by the state highway department as a "State Aid Road" or "State Highway," during the period from a half hour after sunset to a half hour before sunrise, and at any other time when there is not sufficient light to render clearly discernible any person on the highway at a distance of two hundred feet ahead, shall be equipped with a light visible from both the front and rear of such vehicle.

(b) Every motor vehicle other than a motorcycle, road roller, road machinery, or farm tractor, shall be equipped with two headlights, no more and no less, at the front of and on opposite sides of the motor vehicle; provided, that other lights or lamps are permissible if they do not reflect to the front so as to be visible a distance of five hundred feet to the front.

(c) Every motorcycle shall be equipped with at least one and not more than two head lamps.

(d) Every motor vehicle and every trailer or semi-trailer which is being drawn at the end of a train of vehicles, shall carry at the rear a lamp of a type which exhibits a yellow or red light plainly visible under normal atmospheric conditions from a distance of five hundred feet to the rear of such vehicle, and so constructed and placed that the number plate carried on the rear of such vehicle shall under like conditions be so illuminated by a white light as to be read from a distance of fifty feet to the rear of such vehicle.

(e) Every motor vehicle, other than any road roller, road machinery or farm tractor, having a width at any part in excess of eighty inches, shall carry two clearance lamps on the left side of such vehicles, one located at the front end and displaying a white light visible under normal atmospheric conditions from a distance of two hundred feet to the front of the vehicle, and the other located at the rear of the

vehicle and displaying a yellow or red light visible under like conditions from a distance of five hundred feet to the rear of such vehicle; provided, that a motor vehicle requiring clearance lights hereunder may in lieu of such clearance lights be equipped with adequate reflectors conforming as to color and marginal location to the requirements for clearance lights. No such reflector shall be deemed adequate unless it is so designed, located as to height and maintained as to be visible for at least two hundred feet when opposed by a motor vehicle displaying lawful undimmed headlights.

(f) The headlights of every motor vehicle shall be so constructed, equipped, arranged, focused, aimed and adjusted, that they will at all times mentioned in subsection (a) of this section, and under normal atmospheric conditions and on a level road produce a driving light sufficient to render clearly discernible a person two hundred feet ahead, but shall not project a glaring or dazzling light to persons in front of such headlights.

(g) Headlights shall be deemed to comply with the provisions of subsection (f) immediately preceding, prohibiting glaring and dazzling lights, if said headlights are of a type customarily employed by manufacturers of automobiles and in addition are equipped with some anti-glare device approved by the commissioner of highways and public works; provided, the commissioner of highways and public works shall not approve any anti-glare device, or any combination thereof, unless the same has been submitted to a laboratory test and has been found, when properly adjusted, to prevent any of the bright portion of the headlight beams from rising above a horizontal plane passing through the lamp centers parallel to a level road upon which the loaded vehicle stands, and in no case higher than forty-two inches, seventy-five feet ahead of the vehicle. (Ib., sec. 16.)

2696. Violations.—Any person violating any provision of this statute shall be guilty of a misdemeanor, and be fined not less than two dollars nor more than one hundred dollars, or shall be confined in the county jail for not more than thirty days, for each offense; or the court may, for each offense, impose both said fine and said imprisonment, in its discretion. (Ib., sec. 17.)

2697. Fines, etc.—All fines, penalties and forfeitures of bonds imposed or collected under any of the provisions of this statute shall be paid over within five days after receipt thereof to the commissioner of finance and taxation with a statement accompanying the same setting forth the action or proceedings, in which such moneys were collected, the name and residence of the defendant, the nature of the offense, and fine, penalty, forfeiture, or sentence if any imposed.

This section shall not be considered as repealed by the passage hereafter of any law providing for a different disposition of fines and penalties in any county or other division of this state unless the same contains an express repeal of this section by express reference thereto. (Ib., sec. 18.)

2698. Enforcement.—The state commissioner of finance and taxation is empowered in the name of the state to take all steps necessary to enforce the collection and prompt return of all such fines, penalties, and forfeitures of bonds; and the same when so collected shall be credited to the motor vehicle division of the department, and used to carry out the provisions of this statute. (Ib.)

2699. Justice of the peace, regulated.—No justice of the peace shall try any case except upon warrant duly prepared in the form required by law, which shall be preserved with the other papers pertaining to his office, and no such justice shall collect any fine or cost imposed in any case involving a violation of this law until he has completed the entries pertaining to such case in a docket kept for the making of his records; and all such dockets shall be preserved and shall be at all times subject to inspection upon demand of any person named therein, and by all state officials or their duly authorized representatives. All justices of the peace shall deliver upon request, without charge, to the accused a receipt showing in detail the amount of fine and cost imposed upon and paid by such accused. No justice of the peace shall divide the fees of his office with any constable, sheriff, or other state officer, or with any individual who may assist in making an arrest or furnish evidence in a case arising under this law. Nor shall any justice of the peace receive evidence of an alleged violation of this law over a measured course unless such evidence is obtained and offered by representatives of the commissioner of finance and taxation acting under his direction. Any justice of the peace violating any of the provisions of this section or failing or refusing to make returns of convictions and fines or penalties imposed in this statute shall be subject to removal for misdemeanor in office. (Ib., sec. 19.)

2700. Lien on vehicle.—Whenever any suit for damages is brought for injuries to person or property sustained while any motor vehicle was run in excess of twenty miles per hour, there shall be a lien on such motor vehicle in the event of, and for the satisfaction of such recovery, as the court may award, whether, at the time of injury, such motor vehicle was driven by the owner thereof, or by his chauffeur, agent, employee, servant or any other person using same by loan or hire. (1929, ch. 87, sec. 3.)

2701. Prima facie evidence of ownership of automobile and its use in the owner's business, when.—In all actions for injury to persons and/or to property caused by the negligent operation or use of any automobile, auto truck, motorcycle, or other motor propelled vehicle within this state, proof of ownership of such vehicle, shall be prima facie evidence that said vehicle at the time of the cause of action sued on was being operated and used with the authority, consent and knowledge of the owner in the very transaction out of which said injury or cause of action arose. (1921, ch. 162, sec. 1, Modified.)

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2702. Registration is prima facie evidence of ownership; and proof that the operation was for the owner's benefit.—Proof of the registration of said motor propelled vehicle in the name of any person, shall be prima facie evidence of ownership of said motor propelled vehicle by the person in whose name said vehicle is registered; and such proof of registration shall likewise be prima facie evidence that said vehicle was then and there being operated by the owner or by the owner's servant for the owner's use and benefit and within the course and scope of his employment. (1921, ch. 162, sec. 2; 1923, ch. 59, Modified.)

2703. Vehicles, trucks, engines, or tractors shall not be operated upon public highway without compliance with regulations.—No vehicle, truck, engine, or tractor of any kind, whether such vehicle be propelled by steam, gasoline, or otherwise, shall be permitted to operate upon any street, road, highway, or other public thoroughfare which, either by reason of its weight or the character of its wheels, will materially injure the surface or foundation of such street, road, highway, public thoroughfare, including the bridges thereon, unless and until the owner or operator of such vehicle of any kind, shall have complied with such rules and regulations as may be prescribed by the state highway department, relating to the use of such highways by such vehicles; provided, that the state highway department shall require that all such vehicles using the public thoroughfares shall have a maximum weight of ten tons, including the weight of the vehicle itself and the load thereon, and shall further require that the weight on each wheel of such vehicle, ascertained by weighing the wheel separately, shall not exceed a weight equal to six hundred and fifty pounds, multiplied by the number of inches of tire width, the tire width to be determined by the actual tire contact with the pavement. (1921, ch. 177, sec. 1; 1925, ch. 130, sec. 1.)

2704. Rules as to use of such vehicles on the highways to be made by whom.—The state highway department is empowered to make all reasonable rules and regulations respecting the use which any vehicle of the character described in the preceding section may make of the streets, roads, highways, or other thoroughfares, including the bridges thereon; such rules and regulations to prescribe the manner in which the wheels of such vehicles shall be equipped in order to protect the surface and foundation of such streets, roads, and highways; the maximum weight which such vehicles, including the load shall have, and all other matters which to the highway department, acting in conjunction with the county highway department of the territory affected, shall appear necessary and proper for the protection of such public thoroughfares, including the bridges thereon. (1921, ch. 177, sec. 2.)

2705. Maximum weight may be lowered, when; notices to be posted.—From January 15th to April 15th of each year, and at any other time when by reason of repairs, weather conditions, or recent

construction of the road, a weight of ten tons would damage the road, the state department may specify any lower maximum weight, which in the discretion of such department, is necessary in order to protect such streets, roads, highways, or other public thoroughfares from unnecessary injury or damage; provided, that notice of such reduction in weight of load shall be given by said department by posters posted at the termini of the road and all detours for one week before such reduction of load becomes effective. (1925, ch. 130, sec. 2.)

2706. Violation is a misdemeanor; fine.—Any one who shall drive or cause to be driven any vehicle of the character described in the above sections upon any public thoroughfare in violation of the provisions of this statute, shall be guilty of a **misdemeanor**, and be fined not less than fifty dollars, nor more than two hundred and fifty dollars. (1921, ch. 177, sec. 3; 1925, ch. 130, sec. 3.)

2707. Arrest and trial; overloaded vehicle not to be moved until load is reduced; violation is a misdemeanor; imprisonment.—It shall be the duty of any officer authorized by law to make arrests, when he detects any person engaged in the violation of any of the provisions of this statute immediately to place in custody and take such person at once before the nearest justice of the peace for trial, and it shall not be lawful for any person to move the vehicle overloaded in violation of the provisions of this statute until the load has been reduced so as to comply with its provisions, and the failure of the driver or the owner of such vehicle promptly to remove the load shall be a misdemeanor punishable by imprisonment in the county jail for a period of not less than thirty days. (1925, ch. 130, sec. 4.)

2708. Liability for damages to highways; suit by district attorney.—The owner of any vehicle driven upon the public thoroughfare, in violation of any of the provisions of this statute, shall also be liable in an action for damages caused to such public thoroughfares, such action to be prosecuted in the name of the state by the district attorney of the district in which the violation occurs. (1921, ch. 177, sec. 4; 1925, ch. 130, sec. 5.)

2709. Trucks to be equipped with a mirror so that the driver may see the approach of vehicles in the rear.—Any motor truck using the streets, roads, highways, and other public thoroughfares, which, by reason of their construction, either when loaded or unloaded, prevent the driver's view of the rear shall be equipped with a mirror arranged in such manner and maintained so that the driver or operator may view the roadway to the rear and note the approach of vehicles from the rear of such motor truck. (1923, ch. 53, sec. 1.)

2710. Violation is a misdemeanor; fine.—Any person driving any such motor truck and the owner of such motor truck, operated upon any public thoroughfare in Tennessee, in violation of the preceding section, shall be guilty of a misdemeanor, and be fined not less than five dollars, nor more than fifty dollars. (Ib., sec. 2.)

2711 1613. Watchman in front of traction engine.—It shall be the duty of any person using or operating a traction engine, on the public highway, for the purpose of drawing threshing or other machines, to keep a watchman at least two hundred yards in advance of said engine for the purpose of notifying any person traveling on the public highway of the approach of said engine. (1889, ch. 159, sec. 1.)

2712 1614. To be stopped.—It shall be the duty of said person running said engine to stop the same, and stop all unnecessary noise, on the approach of any animal-drawn vehicle, or horseman, until the same shall have passed. (Ib., sec. 2.)

2713 1615. Damages.—Any one violating the provisions of the two preceding sections shall be liable for all damages caused by such violation. (Ib., sec. 3.)

2714 1616. Misdemeanor.—Any violation of either of said sections is a misdemeanor. (Ib., sec. 4.)

2715 1616a1. What traction engines may be operated at any time, and what not at all.—It shall be lawful for traction engines, propelling threshing, or other machines, or road machines used in making or in the repair of highways to be used as above prescribed, over the highways at any hour of the day or night; provided, that no traction engines shall be used for the purpose of drawing wagons or other vehicles, for the purpose of carrying passengers, or for the transportation to market or other places of products or merchandise. (1905, ch. 460, Modified.)

ARTICLE IV

UNIFORM STATE LAW FOR AERONAUTICS

2716. "Aircraft," "hydroplane," "aëronaut," and "passenger" are defined.—In this statute "aircraft" includes balloon, airplane, hydroplane, and every other vehicle used for navigation through the air. A hydroplane, while at rest on water and while being operated on or immediately above water, shall be governed by the rules regarding water navigation; while being operated through the air otherwise than immediately above water, it shall be treated as an aircraft. "Aëronaut" includes aviator, pilot, balloonist, and every other person having any part in the operation of aircraft while in flight. "Passenger" includes any person riding in an aircraft but having no part in its operation. (1923, ch. 30, sec. 1.)

2717. Sovereignty in space.—Sovereignty in the space above the lands and waters of this state is declared to rest in the state, except where granted to and assumed by the United States pursuant to a constitutional grant from the people of this state. (Ib., sec. 2.)

2718. Ownership in space is in the surface owners beneath.—The ownership of the space above the lands and waters of this state

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THE
CODE OF TENNESSEE
1932

ENACTED BY
THE GENERAL ASSEMBLY OF 1931

PREPARED
BY
THE CODE COMMISSION

SAMUEL C. WILLIAMS, Chairman, Johnson City
ROBERT T. SHANNON, Nashville
GEORGE HARSH, Memphis

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hear, and, wherever possible, adjust any individual or general complaint made by any person against any such public utility, wherein its investment, property, service charges, or claims preferred against it, may be involved; and may hear and take proof, and, in the event he is unable to effect a satisfactory adjustment of any such complaint, then it shall be his duty, to certify the same, to the said commission, with his recommendations in the premises, whereupon said commission shall, after hearing, make its final order which shall be binding upon the parties to any such controversy. (Ib.)

5470. Penalty for failure to comply with order declared by commission; paid into utility account.—Any public utility, which violates or fails to comply with any lawful order, judgment, finding, rule, or requirement of said commission, shall in the discretion of the commission be subject to a penalty of fifty dollars for each day of any such violation or failure, which may be declared due and payable by said commission, upon complaint, and after hearing, and when paid, either voluntarily, or after suit, which may be brought by the commission, shall be placed to the credit of the public utility account. (1921, ch. 107, sec. 10.)

5471. Jurisdiction of motor vehicles of certain classes, permits.—No person, lessee, trustee or receiver (except when such requirement would be contrary to the Constitution or the laws of the United States or the Constitution of this state) shall operate any motor-propelled vehicle, not usually operated over rails, for the transportation of persons or property for compensation on any public highway in any town, city, or county, without first having obtained from the railroad and public utilities commission a certificate declaring that the public convenience and necessity warrant such operation; and all such operators, to the full extent allowed by the Constitution and laws of the United States and the Constitution of this state, shall be subject to control, supervision and regulation by said commission. (1929, ch. 58, sec. 1, Modified.)

5472. Exceptions.—However, nothing in this statute shall apply to motor vehicles while used exclusively (a) for transporting persons to or from school, Sunday school, church or religious services, of any kind, upon special prearranged trips or excursions under the auspices of any religious or charitable organization; (b) or in funerals or as ambulances; (c) or while used exclusively for carrying persons and/or their baggage between railroad depots and any points in any city, town, or suburb thereof, in or adjacent to which such depot is located; (d) or while used exclusively in ordinary taxicab or city transfer service. By "ordinary taxicab or city transfer service" is meant service performed by way of transporting any persons or property for hire between points in any one city, town, or the suburbs thereof, and which is not performed over or along any definite, fixed, announced or advertised routes between any points in any such one city, town, or the suburbs thereof. (Ib.)

5473. Further exemption.—This statute shall not apply to automobiles, taxicabs, or trucks for hire, operating on any public road over which the commission has not granted a certificate of public convenience and necessity to any person covering such road; provided, that this stipulation shall not prevent the commission's later issuing such a certificate over such road, and requiring compliance by operators thereon, as herein provided. (1929, ch. 58.)

5474. Inclusion.—But motor vehicles, for which passengers are solicited, and which are operated to and from points of interest in or near any city, and which, therefore, perform the same service as a sightseeing bus, are not excepted from the provisions of this statute and the provisions shall apply to such motor vehicles, whether the same be called "busses" or "for-hire cars" or by any other name. (Ib., sec. 1, Modified.)

5475. Casual trips.—Nothing in this statute shall prohibit a motor vehicle from making casual trips on call or under contract, solicited by the party served, for the carrying of passengers; provided, that on said casual trips no operator shall be allowed to pick up any passenger along the route, nor be permitted on the return trip to carry any passenger other than those included in the original or outbound trip. (Ib.)

5476. Delivering products.—Nor shall any provisions of this statute apply to persons operating trucks or other motor vehicles for the sole purpose of transporting or delivering milk or milk products from the producer to the purchaser from the producer, nor shall any provisions apply to persons, not engaged in the business of transporting property or freight for compensation, who may be called upon as private carriers to transport freight or property when the regular carriers, holding certificates of convenience and necessity, cannot or will not furnish adequate means of transporting the same.

5477. Farm produce and live stock, etc.—Nothing in this statute shall apply to any motor vehicle used to convey perishable farm products, or live stock to market, the owner of which vehicle holds no certificate of public necessity and convenience and only operates such vehicle in cases of emergency; or apply to carriers of either freight or passengers who make only occasional trips. (Ib.)

5478. Application for permits.—Said railroad and public utilities commission is empowered and directed, upon the filing of an application for such certificate of public convenience and necessity, to ascertain and consider, after hearing, under such rules and regulations as it may promulgate: the service to be rendered and/or capable of being rendered by the applicant; the character of the highway or highways over which said applicant proposes to operate, and the effect thereon and upon the traveling public using the same. The commission shall, also, take into consideration the facilities already in existence for the transportation of passengers, freight, merchandise, or other property along the proposed route, and between the termini and intermediate

points upon said route, the public demand for, or need of the service proposed, and all other pertinent facts. (Ib., sec. 2.)

5479. Determination.—If said commission shall find that the convenience and necessity of the public warrant, or will be promoted by the granting of such certificate, the same shall be issued accordingly; otherwise, said commission may deny the same; and said commission may attach to the issuance of such certificate any and all such terms and conditions as may be for the public welfare, and which shall not be contrary to the said Constitutions.

5480. Rules and regulations.—Said certificate shall be subject to such rules and regulations as the commission may thereafter legally prescribe; provided, that it is not intended to give to said commission any right or power to impose upon or exact from any such applicant any general revenue tax or money charge of any nature. (Ib.)

5481. Assignability.—Such certificates of public convenience and necessity, when once issued, may be assigned or transferred, but only with the approval of said commission. (Ib., sec. 3.)

5482. Condition of.—When any motor carrier holding such a certificate of convenience and necessity sells his entire property and business, the operations to be continued by the purchaser, and the commission so approves the transfer of the seller's certificate, there shall be paid to the State of Tennessee twenty-five per cent. of the purchase price over and above the value of the physical properties and going-value so sold, the said value to be fixed by an appraisal to be made by the commission. (Ib.)

5483. Bond.—No motor vehicle shall be operated upon any such public highway in this state for the purpose of transporting passengers or property for hire by virtue of such certificate until there shall have been filed with the commission a bond, indemnity undertaking, or policy of insurance, executed by a company, mutual association or reciprocal exchange authorized to execute such instruments in the state and approved by said commission, in such reasonable amount and on such terms and conditions as said commission may prescribe; but such bond, indemnity undertaking or policy of insurance shall be conditioned to pay any judgment rendered against such certificate holder and/or operator (within the limits of said bond, policy or undertaking) as the result of damage due to personal injury or damage to property, arising out of the actual operation of such vehicles, or for damage to or loss of property while in the possession of or under the control of any such operator.

5484. Failure.—Failure upon the part of the operator and/or certificate holder continuously to maintain such bond, policy or undertaking in force, shall subject such certificate to revocation.

5485. Supervision.—The commission shall promulgate such rules and regulations as in its judgment may be necessary for the operation of such motor vehicles; and, also, shall supervise and control the service, rates, fares and charges, routes and safety of operation, of certifi-

cate holders and/or operators and their relationship with the traveling and shipping public, and determine, after notice and hearing, any complaints with respect thereto; all, to the end that just, reasonable and non-discriminatory rates, fares and charges, and proper practices and safe operation may prevail. (Ib., sec. 4.)

5486. Limitation on power.—However, nothing in this statute shall be construed to give to said commission the right to make any order, the effect of which would be to transmute a private carrier in fact into a public carrier; and the regulation, supervision and control exercised by the commission over any particular certificate holder or over any particular operator shall be only such as can be legally applied to the particular certificate holder or operator, whether such holder or operator be a private carrier or a common carrier, or whether such holder or operator be engaged exclusively in intrastate commerce or exclusively engaged in interstate commerce, or engaged in both intrastate and interstate commerce; and in each particular case the power and duty of the commission to regulate, supervise and control shall never be exercised contrary to the Constitution or laws of the United States or the Constitution of this state. (Ib.)

5487. Revocation of certificate.—At any time, after notice to the holder of any certificate and an opportunity given such holder to be heard, it has been proved to the satisfaction of the commission that such certificate holder has discontinued operation or has violated, or refused or neglected to observe any of its proper orders, rules or regulations, said commission may revoke, suspend, alter or amend any certificate issued by it; and said commission is empowered to do and to perform all proper or necessary things to carry out the purpose, and provisions, of this statute, whether herein specifically mentioned or not; and, to that end, after due notice, may hold hearings, or take or have taken the testimony of witnesses, at any place in the state which it may designate. (Ib., sec. 5.)

5488. Certificate not requisite, when.—No holder of any certificate of convenience and necessity prior to April, 1929, issued by said railroad and public utilities commission in respect of the operation of any such motor propelled vehicle or vehicles, and operating under such certificate, shall be required to apply for any new certificate in respect of such operations; and the right to conduct such operations under such certificate by any such holder is confirmed, subject to a continuing right and power of said commission to deal with certificates, and the operations of holders thereunder, in the same manner and to the same extent that said commission is empowered to deal in respect of certificates of public convenience and necessity thereafter to be issued. (Ib., sec. 6.)

5489. Inspection fees.—On or before the 31st day of December of each year, every operator of any such motor propelled vehicle shall pay to the state, at such times and in such installments as said commission may require, a fee for the inspection, control and supervision

of the business, service or acts of such operator; and such fee shall be paid by such operator in addition to any and all property, franchise, license and other taxes, fees and charges assessed or charged by law against such operator. The amount of such fee so to be paid by each such operator shall be the sum of two dollars and fifty cents per annum, per passenger seat provided for passengers in each such vehicle, and the sum of ten dollars per annum per ton of carrying capacity provided for property in each vehicle. (Ib., sec. 7.)

5490. Payment.—Said commission, under rules promulgated or orders made by it, may require the payment in advance of the above fee from each such operator, or bond and security, satisfactory to said commission, to secure such payment; and to apportion the payment of such fee by any operator for any proportionate part or parts of any year while such operation continues. In no case shall said fee be less than ten dollars, which shall be the minimum inspection, control and supervision fee to be paid by any operator. (Ib.)

5491. Collection and account of.—It shall be the duty of the comptroller to collect said fees from said operators, as required by the rules and orders of said commission, and to keep a separate account thereof, to be known as the "Motor Vehicle Account," the funds collected to be so segregated. Any funds remaining in said motor vehicle account at the end of the year shall be carried over from year to year and expended only for the purposes specified in this statute. In case of default in the payment of any such fee, or part thereof, when same shall become due, any such operator in default shall be liable to a penalty of ten per cent. per month, on the amount of the fee, which may be recovered by suit of the state, for every month it remains in default; and any such penalty, as well as all such fees, when collected, shall be covered into the state treasury as a part of said motor vehicle account; provided, that out of any such penalty the comptroller may pay counsel, who shall have power to institute suit in any court of competent jurisdiction for the recovery of any such delinquent fee and penalty; but, in no event, shall anything more than the penalty be allowed to such counsel for making such collections. (Ib.)

5492. Lien.—A lien is declared upon all the property so used by each such operator for the payment of the fees so prescribed, together with all penalties so accruing, which lien shall be superior to all other liens, except those for federal, state, county and municipal taxes. The inspection, control and supervision fee shall be the only fee and charge to be paid by and collected from such operators to cover the expense of inspection, control and supervision. (Ib.)

5493. Employment of experts, etc.—Said commission is empowered to employ such rate experts, attorneys, accountants, auditors, inspectors, examiners, clerks, agents or other employees, and assign to them such duties, as it may deem necessary to enable it fully to perform the duties, and to exercise the powers conferred by this law upon said commission. The compensation of any such person employed

shall be paid by order of the commission, and from the fund in the "Motor Vehicle Account," but not otherwise; and said commission shall not have the power to contract for any services, in connection with the administration of this law, for which payment shall be made in any other manner, by the state, or from any other source than the "Motor Vehicle Account." (Ib.)

5494. Complaint.—Any person employed by said commission under the authority herein given, may be assigned by said commission to investigate, hear and wherever possible, adjust, any individual or general complaint made by any person against any such operator, wherein the investment, property, service or charges of any operator or claims preferred against any operator may be involved; and may take and hear proof; and, in the event he is unable to effect a satisfactory adjustment of any such complaint, it shall be his duty to certify the same to said commission, with his recommendations in the premises, whereupon the commission shall, after hearing, make its final order. (Ib.)

5495. Further authority.—In so far as same may be consistent with the terms and provisions of this law, the commission, in respect of the regulation, supervision and control of the operators of motor vehicles dealt with under this law, shall have all the power and authority now possessed by said commission in regard to public utilities and carriers operating in this state, in addition to all the power and authority granted to said commission by the terms of this statute. (Ib., sec. 8.)

5496. Review by courts.—Any action of, or ruling or order made or entered by said commission in respect of the matters and things dealt with in this statute shall be subject to review by the courts of this state in the same manner, and subject to the same powers and conditions, as prevail in regard to the action, ruling and orders of said commission relating to other public utilities operating in this state. (Ib., sec. 9.)

5497. Penalties.—Every officer, agent or employee of any corporation, or any other person who wilfully violates or fails to comply with, or who procures, aids or abets in the violation of the provisions of this statute, shall be guilty of a misdemeanor, and for the first offense shall be punished by a fine of fifty dollars; for the second offense shall be punished by a fine of one hundred dollars; for the third offense shall be punished by a fine of five hundred dollars or by imprisonment for a period not exceeding one year, or both, in the discretion of the court. Each day any such provision is violated shall constitute a separate offense. (Ib., sec. 10.)

5498. Further penalties.—Every officer, agent or employee of any corporation and every other person who fails to obey, observe or comply with any order, decision, rule, regulation, direction, demand, or requirement of said commission, made in pursuance of the power and authority conferred by this law, shall be guilty of a misdemeanor,

and punished by a fine not exceeding five hundred dollars, or by imprisonment for not exceeding one year, or both, in the discretion of the court. Each day any such order, decision, rule or regulation, etc., of said commission is violated shall constitute a separate offense; and the fact that there may have been a prosecution for the violation of any such order, decision, rule or regulation, etc., of said commission under this section, shall not operate to prevent or limit the exercise of the authority of the commission to suspend, revoke, alter or amend certificates as provided in this statute. (Ib., sec. 11.)

5499. Enforcement.—Said commission or the attorney-general, in the name of the state and acting upon the request of said commission, is given the power and right by bill of complaint in any chancery court having jurisdiction of the parties, to seek injunctive relief, prohibitory or mandatory, or both, to compel compliance by any offending persons with any of the provisions of this statute, or with any order, decision, rule, regulation, direction, demand or requirement made by said commission in pursuance of this statute; and jurisdiction and power are conferred, and the duty is imposed upon the several chancery courts, in all proper cases, to declare, decree and award such injunctive relief. (Ib., sec. 12.)

5500. Construction.—Neither this statute nor any provisions thereof shall be construed to apply to commerce with foreign nations, or commerce among the several states of the United States, or to business conducted for the United States Government, except insofar as the same may be permitted under the Constitution of the United States and the Acts of Congress. (Ib., sec. 13.)

5501. Construction.—This statute shall not be construed as in derogation of the common law, but shall be given a liberal construction, and any doubt as to the existence or extent of a power conferred shall be resolved in favor of the existence of the power, to the end that the railroad and public utilities commission may effectively govern and control the operation of such motor vehicles. (Ib., sec. 5.)

ARTICLE II

PUBLIC UTILITIES

5502. Public utility not to operate a service already being furnished by another public utility, nor commence the construction of a plant or system without a certificate.—No public utility shall establish or begin the construction of, or operate any line, plant, or system, or route in or into a municipality or other territory already receiving a like service from another public utility, or establish service therein, without first having obtained from the railroad and public utilities commission, after written application and hearing, a certificate that the present or future public convenience and necessity require or will require such construction, establishment, and operation, and no person

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or corporation not at the time a public utility shall commence the construction of any plant, line, system, or route to be operated as a public utility, or the operation of which would constitute the same, or the owner or operator thereof, a public utility as defined by law, without having first obtained, in like manner, a similar certificate; provided, that this section shall not be construed to require any public utility to obtain a certificate for an extension in or about a municipality or territory where it shall theretofore have lawfully commenced operations, or for an extension into territory, whether within or without a municipality, contiguous to its route, plant, line, or system, and not theretofore receiving service of a like character from another public utility, or for substitute or additional facilities in or to territory already served by it. (1923, ch. 87, sec. 1.)

5503. Upon complaint of interference, commission may grant or refuse certificate; forfeiture of certificate.—If any public utility, in establishing, constructing, reconstructing, or extending its route, line, plant or system, shall interfere or be about to interfere with the existing route, line, plant, or system of any other public utility, the said commission, on complaint of the public utility claiming to be injuriously affected, may, after hearing, make such order and prescribe such terms and conditions in harmony with this statute as are just and reasonable. Such commission shall have power, after hearing involving the financial ability and good faith of the applicant, the necessity for additional service in the municipality or territory, and such other matters as it deems relevant, to issue a certificate of public necessity and convenience, or to refuse to issue the same or to issue it for the establishment or construction of a portion only of the contemplated plant, route, line, or system or extension thereof, or for the partial exercise only of such right or privilege, and may attach to the exercise of the rights granted by said certificate such terms and conditions as to time or otherwise as in its judgment the public convenience, necessity, and protection may require, and may forfeit such certificate after issuance, for noncompliance with its terms, or provide therein for an ipso facto forfeiture of the same for failure to exercise the rights granted within the time fixed by the commission; provided, that nothing in this law shall be construed as requiring such certificate for a municipally owned plant, project, or development. (Ib.)

5504. Certificate not to be granted unless the existing plant or system is inadequate; notice of hearing.—The said commission shall not grant a certificate for a proposed route, plant, line, or system, or extension thereof, which will be in competition with any other route, plant, line, or system, unless it shall first determine that the facilities of the existing route, plant, line, or system are inadequate to meet the reasonable needs of the public, or the public utility operating the same refuses or neglects or is unable to or has refused or neglected, after reasonable opportunity after notice, to make such additions and extensions as may reasonably be required under the provisions of this stat-

ute. In all proceedings under this section, the commission shall give at least ten days' notice to the authorities of, and the public utilities operating in, the municipality or territory affected. (1923, ch. 87, sec. 2.)

5505. Public hearing and notice thereof; plans and information required of applicant; certificate granted or refused.—The commission may, upon its own initiative, or shall upon written application of any party in interest, order a public hearing with due notice to all interested parties, at which hearing the person proposing to create such development of water power or other plant or equipment, or extension of the same, shall be required to file with the commission, under oath, engineering plans and other information fully descriptive of the proposed development or such thereof as in the opinion of the commission can reasonably be furnished by such applicant, together with such other reasonable information as may be called for at the said hearing or any adjournment of the same; and the said commission shall have full power to issue or refuse said certificate of public necessity and convenience, or to qualify or withdraw the same as provided in the preceding section. (Ib., sec. 3.)

5506. If certificate is granted, a fee required.—In the event of a decision by the commission to grant such certificate of public necessity and convenience, the same shall be issued by the commission, and a fee of fifty dollars shall be paid by the applicant to said commission at the time of issuance of said certificate, which said fee by the said commission shall be turned over to the state comptroller as revenue for general purposes. (Ib., sec. 4.)

5507. Evidence under oath, and treated as evidence in court.—All evidence taken by the commission in any such hearing or hearings shall be taken under oath and may be treated as evidence in any court. (Ib., sec. 5.)

5508. Provisions do not apply where city or county declares that public necessity requires competing company.—The provisions of this statute shall not apply where any municipality or county by resolution or ordinance declares that a public necessity requires a competing company in that municipality or county. (Ib., sec. 6.)

ARTICLE III

DUTIES AS TO PASSENGERS.

5509 3065. Waiting rooms.—Every railroad company shall provide, at or near every town containing as many as three hundred inhabitants, a waiting room for the use and accommodation of passengers or persons awaiting the arrival of trains. (1887, ch. 225, sec. 1.)

5510 3066. How provided and kept.—Said waiting room shall be amply commodious to accommodate the traveling public. It shall be

supplied with comfortable seats, and with ample heating facilities. It shall be well lighted and heated, and properly ventilated, and shall be kept clean and respectable. (Ib., sec. 2.)

5511 3067. When to be kept open.—The waiting room shall be open for the occupation of passengers at least one hour before the time for the arrival of each passenger train, or each train carrying passengers, that stops at such stations. (Ib., sec. 3.)

5512 3068. Failure is a misdemeanor; fine.—Every railroad company which shall not comply with the provisions of the three preceding sections shall be guilty of a misdemeanor, and fined for each offense, not less than ten dollars nor more than one hundred dollars. (Ib., sec. 4.)

5513 3069 (4927a). Ticket agents to keep office open one hour before departure of train.—It shall be the duty of every person who shall sell, or be authorized to sell, tickets to passengers to travel on any railroad, at any station or depot, to open his office for sale of said tickets, at least one hour before the time for the departure of each passenger train from said station or depot, and keep the same open during said space of one hour, and until the departure of each passenger train, and be always ready during said time to sell tickets to passengers as they may, during said hour, apply for them. Any failure to comply strictly with the provisions of this section shall subject the delinquent to indictment or presentment, and to be fined not less than twenty nor more than fifty dollars. (1865-66, ch. 15, sec. 1.)

5514 3070 (4927b). Trainmen to call names of stations and duration of halt.—It shall be the duty of each conductor, or other employee of any railroad, to announce in loud, distinct words, for each passenger car, the stopping place, station, or depot, or town at which each passenger train stops, or shall be detained for any purpose, and also the time such passenger train will stop or be detained. (Ib., sec. 2.)

5515 3071 (4927c). Cars to be provided with heat, water, and light.—Every railroad company shall cause each passenger car to be well supplied with pure and wholesome water, and, in cool weather, have each passenger car provided with a comfortable degree of heat, and at night furnished with sufficient light for the use, comfort, and convenience of the passengers. (Ib., sec. 3, Modified.)

5516 3072 (4927d). Violation of two preceding sections; penalty.—Upon the failure of any railroad company, during any trip of the passenger cars, to comply strictly with any of the provisions of the two preceding sections, such company shall forfeit and pay one hundred dollars, one-half to be paid to the person suing, and the other half to go to the common school fund of the state. (Ib., sec. 4.)

5517 3073 (4927e). Seating of passengers.—It shall be the duty of the conductor to see that no passenger occupies more room than he pays for, and that each passenger is provided with a seat as long as one remains vacant on his train. (Ib., sec. 5.)

5518 3074. Separate coaches or apartments for white and colored races.—All railroads carrying passengers in the state (other than street railroads) shall provide equal but separate accommodations for the white and colored races, by providing two or more passenger cars for each passenger train, or by dividing the passenger cars by a partition, so as to secure separate accommodations; but any person may be permitted to take a nurse in the car or compartment set aside for such persons. This law shall not apply to mixed and freight trains which only carry one passenger or combination passenger and baggage car, but, in such cases, the one passenger car so carried shall always be partitioned into apartments, one apartment for the whites and one for the colored. (1891, ch. 52, sec. 1.)

5519 3075. Conductors must separate passengers.—The conductors of such passenger trains shall have power, and are required, to assign passengers to the car or compartments of the car when it is divided by a partition, used for the race to which such passengers belong, and, should any passenger refuse to occupy the car to which he is assigned by such conductor, said conductor shall have power to refuse to carry such passenger on his train; and, for such refusal, neither he nor the railroad company shall be liable for any damages in any court. (Ib., sec. 2.)

5520 3076. Failure of companies and conductors to comply; penalties.—All railroad companies that shall fail, refuse, or neglect to comply with the requirements of section 5518 shall be guilty of a misdemeanor, and be fined not less than one hundred nor more than five hundred dollars; and any conductor who shall fail, neglect, or refuse to carry out the provisions of this law shall be fined not less than twenty-five nor more than fifty dollars for each offense. (Ib., sec. 3.)

5521 3076a1. Water-closets or privies to be attached to passenger depots, junctions, or waiting rooms, or as near thereto as practicable.—All railroad companies carrying on a general passenger business in the state shall be required to construct, maintain, and keep in repair according to modern sanitary principles or methods, privies or water-closets for the accommodation of their patrons in or attached to all passenger depots, railroad junctions, or waiting rooms located or situated in any town having waterworks and sewerage system; provided, that in towns or junctions where there are no waterworks and sewerage system, such railroad companies shall erect and maintain such water-closets or privies as near to such depots, junctions, or waiting rooms as practicable; provided, that the provisions of this law shall not apply to railroad stations where the railroad company has no station agent. (1899, ch. 211, sec. 1.)

5522 3076a2. Separate for males and females.—Such privies or water-closets shall be so constructed as to provide separate accommodations for males and females, and be kept in good sanitary condition. (Ib., sec. 2.)

5523 3076a3. Violation is a misdemeanor; fine.—Any violation of either of the two preceding sections shall be a misdemeanor, and punished by a fine of not less than twenty-five, nor more than one hundred dollars. (Ib., sec. 3.)

ARTICLE IV

COMBINATIONS BY CARRIERS TO CARRY COTTON

5524 3077. Combinations by carriers forbidden.—It shall be unlawful for any common carrier, doing business in this state, to become a party to any combination or monopoly, for the purpose of controlling the compression of cotton, in bales, in the interest of special individuals, firms, or companies. (1879, ch. 160, sec. 1.)

5525 3078. Discriminations forbidden.—All such common carriers shall be required to receive all compressed cotton, and transport the same as such at regular schedule rates of freight, without discrimination as to individuals, firms, or compresses offering the same for shipment. (Ib., sec. 2.)

5526 3079. Penalty.—Violation of any of the provisions of this article shall be a misdemeanor, punishable by a fine of not less than one hundred dollars, in the discretion of the court. (Ib., sec. 3.)

ARTICLE V

SEPARATION OF WHITE AND COLORED PASSENGERS ON STREET CARS

5527 3079a1. Portions of car to be set apart and designated for each race.—All persons, companies, or corporations operating any street car line in the state are required, where white and colored passengers are carried or transported in the same car or cars, to set apart and designate in each car or coach, so operated, a portion thereof or certain seats therein to be occupied by white passengers, and a portion thereof or certain seats therein to be occupied by colored passengers; but nothing in this article shall be construed to apply to nurses attending children or other helpless persons of the other race. (1905, ch. 150, sec. 1.)

5528 3079a2. Printed sign to indicate cars or parts of cars for each race.—Large printed or painted signs shall be kept in a conspicuous place in the car or cars, or the parts thereof set apart or designated for the different races, on which shall be printed or painted, if set apart or designated for the white people, and it being a car so designated or set apart, "This car for white people." If a part of a car is so designated, then this sign, "This part of car for white people." If set apart or designated for the colored race, this sign to be displayed in a conspicuous place as follows, "This car for the colored

race." If any part of a car is set apart or designated for said race, then this sign as follows, "This part of the car for the colored race." (Ib.)

5529 3079a3. Conductor may increase or diminish space for either race, or require change of seats.—The conductor or other person in charge of any car or coach so operated upon any street car line shall have the right at any time, when in his judgment it may be necessary or proper for the comfort or convenience of passengers so to do, to change the said designation so as to increase or decrease the amount of space or seats set apart for either race, or he may require any passenger to change his seat when or so often as the change in the passengers may make such change necessary. (Ib., sec. 2.)

5530 3079a4. Passengers to take seats assigned by conductor and designated for their race; refusal and remaining on car is a misdemeanor.—All passengers on any street car line shall be required to take the seats assigned to them, and any person refusing to do shall leave the car or remaining upon the car shall be guilty of a misdemeanor, and upon conviction shall be fined in any sum not to exceed twenty-five dollars; provided, no conductor shall assign any person or passenger to a seat except those designated or set apart for the race to which said passenger belongs. (Ib., sec. 3.)

5531 3079a5. Failure to set apart portions of car for each race is a misdemeanor.—Any person, company, or corporation failing to set apart or designate separate portion of the cars operated for the separate accommodation of the white and colored passengers, as provided by this article, shall be guilty of a misdemeanor and fined in any sum not to exceed twenty-five dollars. (Ib., sec. 4.)

5532 3079a6. Special cars for exclusive accommodation of either race.—Nothing in this article shall be construed to prevent the running of extra or special cars for the exclusive accommodation of either white or colored passengers, if the regular cars are operated as required by this article. (Ib., sec. 5.)

ARTICLE VI

REGULATION OF "JITNEY SERVICE"

5533 3079a199. Common carrier, a privilege, when.—Any person operating for hire any public conveyance propelled by steam, gasoline, electricity, or other motive power, for the purpose of affording a means of street transportation similar to that ordinarily afforded by street railways (but not operated upon fixed tracks) by indiscriminately accepting and discharging such persons as may offer themselves for transportation along the course of operation, is declared to be a common carrier, and the business of all such common carriers is declared to be a privilege. (1915, ch. 60, sec. 1.)

5534 3079a200. Unlawful to operate without permit and bond.—It shall be unlawful for any such common carrier, to use or occupy

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any street, alley or other public place in any incorporated city or town, without first obtaining from such city or town a permit or license by ordinance giving the right to so use or occupy such public place, such permit or license to embody such routes, terms and conditions as such city or town may elect to impose; provided, that no such permit or license shall be granted which does not require the execution and filing of a bond as provided for in the section next following. (Ib., sec. 2.)

5535 3079a201. Must give bond against injuries to person or property.—Any such common carrier, before operating any public conveyance as aforesaid, in addition to obtaining such a permit or license, shall execute to the State of Tennessee and file with the clerk of the county court of the county in which the business is to be carried on, and renew or increase from time to time as may be required by such city or town, a bond with good and sufficient surety or sureties, to be approved by the mayor of such incorporated city or town, in such sum as such city or town may reasonably demand (in no case, however, in a sum less than five thousand dollars for each car operated), conditioned that such common carrier will pay any damage that may be adjudged finally against such carrier as compensation for loss of life or injury to person or property inflicted by such carrier or caused by his negligence. (Ib., sec. 3.)

5536 3079a202. Misdemeanor to use streets, without.—Any such common carrier, which shall use or occupy any such public place in any incorporated city or town without first obtaining such a permit or license, or shall operate any such conveyance, without first executing and filing such bond, shall be guilty of a misdemeanor and fined not less than fifty dollars nor more than one hundred dollars for each offense; and each day upon which such common carrier shall so unlawfully use or occupy any such public place in any incorporated city or town of this state, shall constitute a separate offense. (Ib., sec. 4.)

5537 3079a203. Cities may grant permits but not without bond.—All incorporated cities and towns are empowered to grant such permits or licenses to such common carriers, and to fix in such licenses and permits the routes, terms, and conditions upon which such common carriers may operate, subject to the above limitations; provided that no license or permit shall be granted to any such common carrier, without the execution and filing of the above recited bond being required. (Ib., sec. 5.)

5538 3079a204. Cities may impose a tax for such privilege.—All such incorporated cities and towns are empowered to impose upon all such common carriers a tax for the exercise of the privilege herein allowed to be granted. (Ib., Modified.)

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to the secretary of state an annual account of receipts and disbursements on the 31st day of December of each year; and, from such receipts, the board shall pay its compensation and expenses, and any excess of receipts over disbursements shall be paid over to the state treasurer for use of the state; it being the purpose that the board and its administration shall not be a charge upon, or expense to the state; that compensation and expenses shall come only from the board's income, and that any excess of income over compensation and expenses, shall go into the state treasury. (1903, ch. 247, sec. 4; 1919, ch. 154, sec. 2, Modified.)

7115 5777a5. Applicants to be certified to supreme court, and license granted by that court; revocation for fraud in procuring license; license to be sent to faculty of law school, when.—Such board shall certify to the supreme court the names of all applicants who shall have passed the required examination; provided, such person shall in other respects comply with the rules regulating the admission to practice as attorneys, solicitors and counselors, which compliance shall be determined by said board before examination. Upon such certificate, if the supreme court shall find that such person is of full age and good moral character, and otherwise qualified, it shall enter an order licensing and admitting him to practice as attorney, solicitor and counselor in all the courts of the state, which license if procured by fraud, may be revoked at any time within two years. (1903, ch. 247, sec. 5.)

7116 5777a6. Rules for admission of licensed attorneys of other states or countries.—The supreme court may make such provisions, rules, and regulations as it may deem proper for the admission of persons who have been licensed to practice law in other states or countries. (1903, ch. 247, sec. 6.)

CHAPTER 14

BOARD OF BARBER EXAMINERS

7117. Registration of barbers and apprentices.—No person shall practice or attempt to practice in the state barbering without a certificate of registration issued pursuant to the provisions of this chapter by the board of barber examiners; and no person shall serve or attempt to serve as an apprentice under a registered barber without a certificate of registration as an apprentice. (1929, ch. 118, Modified.)

7118. Operation of shop.—It shall be unlawful to operate a barber shop unless it is, at all times, under the direct supervision and management of a registered barber. (Ib.)

7119. Definitions.—Any one or any combination of the following practices, when done for a consideration in a barber shop regularly conducted for that purpose, shall constitute the practice of barbering:

Shaving or trimming the beard or cutting the hair; giving facial and scalp massages or treatments with oil, creams, lotions or other preparations either by hand or mechanical appliances; singeing, shampooing or dyeing the hair or applying hair tonics. (Ib., sec. 2.)

7120. Apprentices.—No registered apprentice may independently practice barbering, but he may, as an apprentice, do any or all of the acts constituting the practice of barbering under the immediate personal supervision of a registered barber, but only two such apprentices shall be employed in any licensed shop. (Ib., sec. 3, Modified.)

7121. Exemptions.—The following persons are exempt from the provisions of this chapter while in the proper discharge of their professional duties:

1. Persons authorized by the law of this state to practice medicine and surgery;
2. Commissioned medical or surgical officers of the United States army, navy or marine hospital service;
3. Registered nurses;
4. Persons engaged in the practice of beauty culture, including a ladies' beauty parlor. (Ib., sec. 4, Modified.)

7122. Who qualified.—A person is qualified to receive a certificate of registration to practice barbering:

1. Who is qualified under section 7123;
2. Who is at least eighteen years of age;
3. Who is of good moral character and temperate habits;
4. Who has practiced as a registered apprentice for a period of twelve months under the immediate supervision of a registered barber; and
5. Who has passed a satisfactory examination conducted by the board to determine his fitness to practice barbering. An applicant for a certificate of registration to practice as a registered barber, who fails to pass a satisfactory examination conducted by the board, must continue to practice as an apprentice for an additional six months before he is again entitled to take the examination for a registered barber. (Ib., sec. 5.)

7123. Apprentice.—A person is qualified to receive a certificate of registration as a registered apprentice:

1. Who is at least sixteen and one-half years of age;
2. Who is of good moral character and temperate habits;
3. Who has passed a satisfactory examination conducted by the board to determine his fitness to practice as a registered apprentice. (Ib., sec. 6.)

7124. Requirements of applicants.—Each applicant for an examination shall:

1. Make application to the board on a blank form prepared and furnished by the board, such application to contain proof under the applicant's oath or affirmation of the particular qualifications of the applicant;

2. Furnish the board two five inch by three inch photographs of the applicant; one to accompany the application and one to be returned to the applicant to be presented to the board when the applicant appears for examination;

3. Pay to the board the required fee. (Ib., sec. 7, Modified.)

7125. Examinations.—The board shall conduct examinations of applicants for certificates of registration not less than four times each year, at such time and places as the board may determine. The examination of applicants for certificates of registration as registered barbers and registered apprentices shall consist of a practical demonstration before the board. (Ib., sec. 8, Modified.)

7126. Issuance.—Whenever the provisions of this chapter have been complied with, the board shall issue a certificate of registration as a registered barber or registered apprentice. (Ib., sec. 9.)

7127. Non-residents.—Persons having practiced barbering in another state or country:

A person who is at least eighteen years of age and of good moral character and temperate habits, and

1. Has a license or certificate of registration as a practicing barber from another state or country, which has substantially the same requirements for the licensing or registering barbers as this chapter, or

2. Who can prove by affidavits that he has practiced as a barber in another state or country for at least three years immediately prior to making application in this state,

Shall, upon payment of the required fee, be issued a permit to practice as a journeyman barber until he is called by the board for examination to determine his fitness to receive a certificate of registration to practice barbering. Should he fail to pass the required examination, he shall be allowed to practice as a journeyman barber until he is called by the board for the next term of examination. Should he fail at the third examination, he must cease to practice barbering in this state.

1. A person who is at least sixteen and one-half years of age;

2. Who is of good moral character and temperate habits, and

3. Has a certificate of registration as an apprentice in a state or country which has substantially the same requirements for registration as an apprentice as is provided by this chapter, shall, upon payment of the required fee, be issued a permit to work as an apprentice until called by the board for examination to determine his fitness to receive a certificate of registration as an apprentice. Being able to pass the required examination, he shall be issued such certificate of registration, and the time spent in such other state or country shall be credited upon the period of apprenticeship required as a qualification to take the examination for a certificate of registration as a registered barber.

A person who has practiced as an apprentice in another state or country which does not have substantially the same requirements for

registration as an apprentice as this chapter, and who has the qualifications required in section 7123 shall be credited with the time so spent as an apprentice in such other state or country upon the period of apprenticeship required as a qualification to take the examination of his fitness to receive a certificate of registration as a registered barber. (Ib., sec. 10, Modified.)

7128. Certificate displayed.—Every holder of a certificate of registration shall display it in a conspicuous place adjacent to or near his work chair. (Ib., sec. 12.)

7129. Renewals.—Every registered barber and every registered apprentice who continues in active practice or service, shall annually, on or before July 1st, of such year, renew his certificate of registration and pay the required fee. Every certificate of registration which has not been renewed shall expire on the first day of July in that year. A registered barber or a registered apprentice whose certificate of registration has expired may have his certificate renewed immediately upon payment of the required fee. Any registered barber who retires from the practice of barbering for not more than five years, may renew his certificate of registration upon payment of the fee. (Ib., sec. 13, Modified.)

7130. Suspensions and refusals.—The board may either refuse to issue or renew or may suspend or revoke any certificate of registration for any one or combination of the following causes:

1. Conviction of a felony shown by a certified copy of the record of the court of conviction;
2. Gross malpractice or gross incompetency;
3. Continued practice by a person knowingly having an infectious or contagious disease.
4. Advertising practicing or attempting to practice under a trade name or other than one's own name;
5. Advertising by means of knowingly false or deceptive statements;
6. Habitual drunkenness or habitual addiction to the use of morphine, cocaine or other habit-forming drug;
7. Immoral or unprofessional conduct; and
8. The commission of any of the offenses described in section 7133, subdivisions 3, 4 and 6. (Ib., sec. 14.)

7131. Further of same.—The board may neither refuse to issue nor refuse to renew, nor suspend nor revoke any certificate of registration, however, for any of said causes, unless the person accused has been given at least twenty days' notice in writing of the charge against him and a public hearing by the board. Upon hearing of any such proceeding, the board may administer oaths and may procure by its subpoena the attendance of witnesses and the production of relevant books and papers. Any circuit court, or any judge of the circuit court, either in term time or in vacation, upon application either of the accused or of the board, may, by order duly entered, require the

attendance of witnesses and the production of relevant books and papers used before the board in any hearing relating to the refusal, suspension or revocation of certificates of registration. (Ib., sec. 15, Modified.)

7132. Fees.—The fee to be paid by an applicant for an examination to determine his fitness to receive a certificate of registration to practice barbering is ten dollars, and for issuance of the certificate three dollars. The fee to be paid by the applicant for an examination to determine his fitness to receive a certificate of registration to practice as an apprentice is five dollars, and for the issuance of the certificate two dollars; for the renewal of the certificate of registration to practice barbering three dollars, and for the restoration of an expired certificate, five dollars; for the renewal of a certificate of registration to practice as an apprentice, two dollars, and for the restoration of an expired certificate, three dollars. (Ib., sec. 16.)

7133. Misdemeanors.—Each of the following constitutes a misdemeanor, punishable by a fine of not less than twenty-five dollars nor more than two hundred dollars:

1. The violation of any of the provisions of the first section of this chapter.

2. Permitting any person in one's employ, supervision or control, to practice as an apprentice unless that person has a certificate of registration as a registered apprentice.

3. Obtaining or attempting to obtain a certificate of registration for money other than the required fee or any other thing of value, or by fraudulent misrepresentations.

4. Practicing or attempting to practice by fraudulent misrepresentations.

5. The willful failure to display a certificate of registration as required by section 7128. (Ib., sec. 17.)

7134. Board of examiners.—A board to be known as the board of barber examiners is established, to consist of three members appointed by the governor, one from each grand division of the state. Each member shall be a practicing barber who has followed the occupation of barber in this state for at least five years immediately prior to his appointment. Members shall serve for three years. The governor may remove a member for cause. Members appointed to fill vacancies caused by death, resignation or removal shall serve during the unexpired term of their predecessors. (Ib., sec. 18, Modified.)

7135. Officers.—The board shall elect a president and a secretary. It shall be furnished with suitable quarters; and shall adopt and use a common seal for the authentication of its orders and records. The secretary shall keep a record of all proceedings, and shall turn over to the treasurer of the state all moneys collected, at least once a month. The secretary shall give to the state a bond in the sum of ten thousand dollars, with sufficient securities, to be approved by the governor, for the faithful performance of his duties. A majority of the board in

meeting duly assembled may perform and exercise all the duties and powers devolving upon the board. (Ib., sec. 19.)

7136. Fees and expenses.—All fees, assessments or penalties provided shall be paid to the treasurer of the state as aforesaid, and he shall pay out the same, or such necessary parts of the same, only on order of the board, signed by the president, for the legitimate expenses incurred by the board or its members in carrying out the provisions of this chapter. (Ib.)

7137. Surplus.—All surplus money received and on hand in excess of one thousand dollars, to be kept as a reserve fund to meet emergencies, at the end of each fiscal year shall go into and become a part of the general state fund. Out of the funds so received for the use of the board, each member shall be entitled to receive ten dollars per day for each day actually spent in attendance on said board's business, together with all necessary traveling expenses; provided, that said member files with the secretary at the time an itemized statement of said expense. (Ib.)

7138. Inspectors.—The board shall have authority to make reasonable rules and regulations for the administration of the provisions of this chapter, and prescribe sanitary requirements for barber shops and barber schools, subject to the approval of the state department of health. Any member of the board or its agents or assistants shall have authority to enter and to inspect any barber shop or barber school at any time during business hours. A copy of the rules and regulations adopted by the board shall be furnished by it to the owner or manager of each barber shop and barber school, and such copy shall be posted in a conspicuous place in each such barber shop or barber school. (Ib., sec. 20, Modified.)

7139. Records.—The board shall keep a record of its proceedings relating to the issuance, refusal, renewal, suspension and revocation of certificates of registration. This record shall also contain the name, place of business and residence of each registered barber and registered apprentice and the date and number of his certificate of registration. This record shall be open to public inspection at all reasonable times. (Ib.)

CHAPTER 15

BOARD OF EMBALMERS

7140 3052a64. Members; appointment; terms; qualifications.—There is created and established a board to be known as the "State Board of Embalmers." Said board shall consist of five members, four of whom shall be practical and practicing embalmers, and shall be selected one from each grand division. The members of said board shall be appointed by the governor. All appointments shall be for

a term of four years. Appointments to fill vacancies caused by death, resignation, or removal before expiration of the term shall be made by the governor in same manner for the residue of such term. The members of said board shall be residents of the state, four of whom shall have at least five years of experience in the practice of embalming and the preparation and disposition of the dead. The governor shall have the power to remove from office any member for neglect of duty, incompetency, or improper conduct. (1909, ch. 159, sec. 1, Modified.)

7141 3052a65. Annual meeting for examination of applicants for license to embalm.—Said board shall meet once a year, and oftener if its duties require, at such time and place as the board may decide, for the examination of applicants for license to practice the science of embalming the dead. At least thirty days' notice of the time and place of meeting shall be given. (Ib., sec. 2.)

7142 3052a66. Salaries and expenses of board and secretary to be paid out of fees.—The members of said board, except the secretary, shall receive five dollars per diem for each day of actual service during the meetings of said board and actual railroad fare incurred in traveling to and from the meeting; which per diem and mileage, together with the actual traveling and necessary expenses of the secretary, and all other expenses of said board, shall be paid from the fees received under the provisions of this chapter, and shall be in no manner an expense to the state. (Ib., sec. 3; 1925, ch. 115, sec. 32.)

7143 3052a69. License upon examination.—Said board shall be empowered, at the time and place specified in the notice provided for, to examine all applicants for license to practice embalming and to determine whether or not such applicants possess the necessary qualifications to properly embalm dead human bodies; and if, upon such examination, said board shall determine that such applicant is properly so qualified, it shall grant a license to such persons to embalm dead bodies. (Ib., sec. 6, Modified.)

7144 3052a70. License to be recorded and admitted in evidence; presumptive evidence of facts; card and seal.—All licenses when issued shall be recorded by the board, and such record shall be open to public inspection, and such license shall be admitted in evidence in any of the courts, and shall be presumptive evidence of the facts therein contained. It shall be the duty of said board to issue with each license a card bearing applicant's name and a corresponding number and seal, and the fact that he has been licensed as an embalmer. (Ib., sec. 7.)

7145 3052a71. License and number registered with board of health; license displayed.—Any person obtaining a license under this chapter shall register the fact, together with his license number, at the office of the board of health of the city, town, or place in which it is proposed to carry on said business, and shall also display said license in a conspicuous place in the office of his business place. (Ib., sec. 8.)

7146 3052a72. License may be revoked upon violation.—The board shall have power to revoke any license granted under this chap-

ter upon conviction by it of violation of any of the provisions of this chapter, or any of the rules and regulations, or upon conviction of continued improper conduct, said conviction being subject to review by the courts. (Ib., sec. 9, Modified.)

7147 3052a73. License specify licensee's name, and not assignable.—No license granted or issued shall be assignable, and every such license shall specify by name the person to whom it is issued, and not more than one person shall carry on the practice of embalming dead human bodies under one license. (Ib., sec. 10.)

7148 3052a74. A misdemeanor.—Upon conviction of a violation of any provision of this chapter, said embalmer shall be guilty of a misdemeanor, and fined not less than twenty-five dollars, nor more than fifty dollars, and imprisoned in the discretion of the court. (Ib., sec. 11, Modified.)

7149 3052a75. Annual renewal of license, and fee; licenses of other states recognized.—Every registered embalmer who desires to continue the practice of his profession shall annually during the time he shall continue in such practice, on such date as said board may determine, pay to the secretary a fee of two dollars for the renewal of said license. The state board of embalmers is directed to recognize licenses issued to embalmers by authorities of other states having practically equivalent requirements. (Ib., sec. 12.)

7150 3052a76. Rules, regulations, and by-laws; fees for embalming.—The board is empowered to make such rules, regulations, and by-laws from time to time as it may deem necessary to properly carry out the provisions of this chapter. Said board shall establish a price of not more than, and no person engaged in embalming shall make a charge of more than, fifteen dollars for embalming a body in any incorporated town or city, and not more than twenty dollars for embalming any body outside of any incorporated town or city. (Ib., sec. 13.)

7151 3052a77. Fees above expenses to be paid into state treasury.—All money received as fees by the state board over and above said expenses of said board shall be paid into the state treasury and added to the school fund. (Ib., sec. 14.)

CHAPTER 16

REGULATION AND LICENSING OF PLUMBERS

7152 3079a224. Board of plumbing examiners.—The mayor shall appoint in each city in the state of more than 25,000 inhabitants, according to the federal census of 1930, or any subsequent census, a board to be known as the "Board of Plumbing Examiners," consisting of three persons for the purpose of examining into the qualifications and capabilities of master plumbers, journeymen plumbers and plumbers' apprentices as below defined. (1915, ch. 59, sec. 1.)

7153 3079a225. Qualifications of members; term; vacancy; removal.—Two members of said board so appointed shall be practical plumbers, one of whom shall be a master plumber with at least five years' experience publicly engaged in such business; one shall be a journeyman plumber with five years' experience as such; and the third shall be a member of the board of health. The term of such members shall be one year from the date of appointment. Should any vacancy occur from any cause during the term the mayor shall appoint some one to fill such vacancy. The mayor shall have power to remove any member for incompetency or improper conduct. (Ib.)

7154 3079a226. Residence; oath; officers.—The members of said board shall reside in the cities of their appointment and shall take and subscribe an oath of office. They shall have power to select one of their number as president and one of their number as secretary and treasurer, and to adopt such rules and regulations for the transaction of the business of the board as they may deem expedient, not inconsistent with general law and the provisions of this chapter. (Ib., sec. 2, Modified.)

7155 3079a227. Bond of secretary and treasurer.—The secretary and treasurer shall execute a bond in the penalty of one thousand dollars, payable to the State of Tennessee, conditioned for the faithful performance of his duties and for the proper accounting of all moneys coming into his hands as such. (Ib.)

7156 3079a228. Compensation.—Each member of said board shall receive a compensation of five dollars per day for actual services in attending meeting of the board, which compensation shall be paid out of the moneys in the hands of the secretary and treasurer of the board; provided, that the secretary and treasurer may receive such additional compensation as the board may deem just and reasonable and for which the by-laws of said board shall provide. In no event, however, shall the compensation of the members of said boards, or their secretaries and treasurers be paid out of the funds in the state treasury, or in any manner to become a charge against the state, but such compensation and all expense shall be paid out of the fees collected by said boards under the provisions of this chapter. (Ib., sec. 3.)

7157 3079a229. Meetings; rules and regulations; reports.—Said boards shall meet at least once each month and shall hold special meeting as frequently as the proper and efficient discharge of their business shall require, and each board shall adopt rules and regulations for the examination of master plumbers, journeymen plumbers and apprentices as herein defined; but said rules and regulations shall not be inconsistent with the provisions of this chapter or with the laws of the land, and such rules shall provide for the giving of timely notice of the regular meetings of the board to all those who shall have made application for a license as herein provided. Said boards shall give in writing to the respective cities a detailed statement of all licenses issued, renewed, or revoked at any meeting of said board. A majority

of the board's members shall constitute a quorum for the transaction of business. (1915, ch. 59, sec. 4.)

7158 3079a230. Definition of master plumber, journeyman and apprentice.—The term "master plumber" as used in this chapter is defined to include any and all persons, firms and corporations engaged in the business of, or holding themselves out to the public as engaged in the business of installing, erecting, or repairing, contracting to install, erect, or repair sanitary plumbing fixtures, soil pipes, vent pipes and all connections to any device or apparatus used in connection with sanitary plumbing, and skilled in the planning, superintending, and the practical installation of plumbing, and familiar with the laws, rules, and regulations governing the same. A journeyman plumber is defined to be any person other than a master plumber, who as his principal occupation is engaged in the practical installation of plumbing; provided, further, a journeyman plumber shall not enter into or contract to erect or install sanitary plumbing but shall work under the supervision of a master plumber. An apprentice is any person working under the direct supervision of a master plumber or a journeyman plumber. (Ib., sec. 5.)

7159 3079a231. License of master plumber.—A license of master plumber, issued or granted, shall entitle any such person so licensed to engage in the business of installing, erecting, or repairing, and of contracting to install, erect, or repair any sanitary plumbing fixtures, soil pipes, vent pipes, and all connections to any device or apparatus used in connection with sanitary plumbing. (Ib.)

7160 3079a232. License of journeyman plumber entitles him to do what.—A license of "journeyman plumber," issued or granted, shall entitle any such person to install, erect, or repair any sanitary plumbing fixtures, soil pipes, vent pipes, and all connections to any device or apparatus used in connection with sanitary plumbing, under the instruction of a master plumber. (Ib.)

7161 3079a236. Examination and license of master plumbers; fee and bond.—Before any person, firm, or corporation shall engage in the business of master plumber or journeymen, as defined, he shall apply to said board for a license to practice as master plumber, and the applicant, if a person, or if a corporation, one of the officers or a representative and agent thereof to be designated by said corporation, or if a firm, one of the members thereof shall present himself before the board, at a time and place fixed by the said board. If the board shall find, upon due examination, that the applicant presenting himself is of a good moral character and has a satisfactory knowledge of plumbing and the natural laws pertaining thereto and governing the same, and the use and function of fixtures, soil pipes, vent pipes and devices in connection with sanitary plumbing and is possessed of skill and knowledge in all matters pertaining to the business of a master plumber, the said board, upon payment of the fee, and upon the execution of a bond herein provided for, shall issue to the person, firm, or

corporation a license as master plumber to practice said business for a term of one year and shall register such person, firm, or corporation as a duly licensed master plumber. (Ib.)

7162 3079a237. Oath of experience is prerequisite.—No master plumber's license shall be granted to any person who has not first taken and subscribed to an oath that he, or in case of a corporation, one of the principal officers or the representative and agent thereof, and in case of a firm, one of the members thereof has had at least three years actual experience as a master plumber within the term of this chapter, or as a journeyman plumber with four years actual experience as a journeyman plumber before the board shall issue to the applicant a license as master plumber. (Ib.)

7163 3079a238. Fee and bond before master plumber's license; condition and object of bond.—Each applicant for master plumber's license at the time of filing his, their, or its application, shall pay to the secretary and treasurer of the board the sum of twenty-five dollars, as a license fee; and every person, firm, or corporation, before receiving a license, shall execute and deliver to the board a bond payable to the State of Tennessee, in the penal sum of twenty-five hundred dollars, with solvent surety or sureties, to be approved by the board, conditioned to save harmless the owner or real party in interest in the property for which such plumbing material is furnished or service performed against loss or damage which shall arise by reason of work done or material furnished, being violation of plumbing rules, regulations, or ordinance covering sanitary plumbing in cities above mentioned, but action can only be maintained thereon in the name of such owner or real party in interest, if commenced within one year from and after the date of the installation of the materials furnished or the performance of such work or service. When, however, the material furnished or work done or service performed shall have been inspected and a written or printed certificate of approval issued by a legally authorized city plumbing inspector, then the said master plumber shall be considered as having fulfilled the requirements of this chapter, and his responsibility shall cease under the above bond for materials furnished and work or services performed. (Ib.)

7164 3079a239. Fee for journeyman license; no fee for apprentice's license.—Each applicant for a journeyman plumber's license, at the time of filing his application, shall pay to the secretary and treasurer of said board the sum of two dollars, before receiving a license. No fee will be charged for an apprentice's permit or license. (Ib.)

7165 3079a240. Temporary permits.—In order to prevent delays and inconveniences, the board may issue temporary permits to any applicant upon satisfactory evidence to them that such applicant possesses the qualifications required to engage in the work of a master plumber, or journeyman plumber, upon payment of the fees prescribed in this chapter, but such permit shall not extend beyond the first regu-

lar meeting of the board, and if on examination a license is granted the fee paid for the permit shall run for the same period as though paid for a license. (Ib.)

7166 3079a241. Temporary permit to journeyman plumber.—Any person as an apprentice at the business or practice of plumbing for a reasonable time, desiring to take an examination for a license as journeyman plumber, the board may grant a temporary permit, upon satisfactory evidence that such applicant possesses the qualifications herein required to pursue said work in the capacity of journeyman plumber upon payment of the fees prescribed in this chapter, but this permit shall not extend beyond the next regular meeting of said board, at which time he shall pass the examination, and if upon examination a license is granted the fee paid for the permit shall run for the same period as though paid for a license. (Ib.)

7167 3079a242. Failure to comply a misdemeanor.—If any person, firm, or corporation, who engages in the business of master plumber or journeyman plumber shall fail to comply with any of the provisions of the preceding sections, and shall either do work described as that of master plumber or journeyman plumber, he or it shall be guilty of a misdemeanor, and be subject to a fine of not less than ten dollars nor more than fifty dollars, or imprisonment in the county jail not exceeding thirty days, for each and every violation thereof, each day of such violation shall constitute a separate offense. (Ib., sec. 7.)

7168 3079a243. Licenses to be signed and sealed; evidence; expiration.—Each license, issued under the provision of this chapter, shall be signed by the president and secretary of the board and attested with its seal, and said license so signed and attested for a period of one year shall be evidence in any court of the business for which the license is issued. The license and renewals of same shall expire on the first day of each year. (Ib., sec. 8.)

7169 3079a244. Plumbing not to be continued after expiration of license, unless renewed.—No person, firm, or corporation, granted a license shall continue in the business of installing, contracting for or repairing sanitary plumbing, after the expiration of said license, unless said license or extension shall have been renewed as hereinafter provided. (Ib., sec. 9.)

7170 3079a245. Renewals, without examination; effect of renewals.—Upon payment of a fee of ten dollars, any person, firm, or corporation, granted a license (unless the same shall have been revoked), shall be granted a renewal of same, without an examination, if application therefor is made either in person or in writing to the said board, by the holder of said license within three months preceding the expiration of such license, and the said renewal of said license shall be made for a period of one year and shall be signed and attested as required for original license, and such renewal of such license signed and attested shall have the same weight as evidence in any court of the state as accorded said original license. (Ib.)

7171 3079a246. Renewals to journeyman plumbers, without examination; effect of renewals.—No journeyman plumber granted a license shall continue in the business after the expiration of said license, unless the same has been extended or renewed upon the payment of a fee of one dollar. Any person granted a license as journeyman plumber, unless said license shall have been revoked, shall be granted a renewal of said license without examination of the applicant. If the application therefor is made either in person or in writing to the board by the holder of said license within the three months preceding the expiration of said license, upon the payment of one dollar the renewal of said license shall be made for a period of one year, and shall be signed and attested as required for an original license, and said renewal license shall have the same weight as evidence in any court of this state as accorded said original license. (Ib.)

7172 3079a247. Renewals upon expiration of any renewal.—One year renewals shall be granted in like manner, upon the expiration of any renewal of license, upon making application and paying a like fee, within three months next preceding the expiration of such renewal in the same manner as provided for the first renewal. (Ib.)

7172a 3079a248. Revocation of licenses.—After a full hearing of all parties in interest, said board shall have power to revoke for proper cause any license or renewal of same granted by the said board. (Ib., sec. 10.)

7173 3079a249. Master plumber's license to be in force only while bond is in force.—Each and every master plumber's license and renewal of same shall be in force and effect only as long as an approved bond, filed with the said board shall remain in force, and every such license or renewal of same shall become void by the termination of said bond, regardless of the regular date of expiration of said license or renewal. (Ib., sec. 11.)

7174 3079a250. License to be displayed where.—All persons, firms, or corporations, so granted a license or renewal thereof, shall display the same in a conspicuous place in the office or place of business of the person, firm, or corporation to which it was issued. (Ib., sec. 12.)

7175 3079a251. Journeyman to produce license.—Journeyman plumbers, when requested to do so, either by a master plumber or an officer invested with police power, must produce his license. (Ib.)

7176 3079a252. Any person may make repairs under a master plumber.—Nothing in this chapter shall be construed to prevent any person from doing minor repairs for the maintenance of established work, under the direction and supervision of a duly licensed master plumber, and the said licensed master plumber shall be responsible for any and all work so done under his direction or supervision. (Ib., sec. 13.)

7177 3079a253. Any violation a misdemeanor.—Any person, firm, or corporation who shall violate any of the provisions of this chapter

shall be guilty of a misdemeanor, and be sentenced to pay a fine of not less than ten nor more than fifty dollars, or to be imprisoned not exceeding thirty days for each offense, and each day of such violation shall constitute a separate offense. (Ib., sec. 14.)

7178 3079a254. No license assignable or transferable.—No license, or renewal of same, so granted or issued, shall be assignable or transferable, and every such shall specify the name of person, firm, or corporation to whom it is issued, and in case of a firm, the member of said firm, and in case of a corporation the principal officer or the designated representative of said corporation through whom the application for the said license was made. (Ib., sec. 15.)

7179 3079a255. License operative throughout the state.—A license so granted shall entitle the holder of same to engage in the business for which he is licensed in any place in this state. (Ib., sec. 16.)

7180 3079a256. All fees to defray expenses.—All fees collected under the provisions of this chapter shall be for the use of said board to defray its necessary expenses. (Ib., sec. 17.)

7181 3079a257. Cities to provide regulations, and for plumbing inspector.—It shall be the duty of any such city government to provide by ordinance rules and regulations for the construction of all plumbing and sewerage placed in or on any building or the premises thereof in such city or town, and no work of this character shall be done unless a permit be issued therefor, except that leaks may be repaired without securing such permit. It shall be the further duty of said cities to provide for the appointment or election of a plumbing inspector and such assistants as are necessary, but said inspector or inspectors must be practical plumbers, whose duty it shall be to see that all rules and regulations touching such sanitary plumbing are faithfully and diligently executed. (Ib., sec. 18.)

7182 3079a258. Report of receipts and expenditures; balance to be deposited in state treasury.—It shall be the duty of each of said boards, upon the first day of January of each and every year, to make a report in writing to the mayor of the city, containing a detailed statement of the nature and receipts and manner of expenditures, and any balance of moneys at the end of the year, after the payment of expenses, including the compensation of members of said board and other necessary expenses incurred by them in the discharge of their duties, shall be deposited in the state treasury. (Ib., sec. 19.)

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ALL ACTS OF A GENERAL AND PUBLIC NATURE
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INCLUDING ALSO

THE STATE AND FEDERAL CONSTITUTIONS
AND RULES OF APPELLATE COURTS

COMPILED AND ANNOTATED BY

SAMUEL C WILLIAMS LL.D.

Former Justice Tennessee Supreme Court and
Chairman Tennessee Code Commission

IN EIGHT VOLUMES

VOLUME IV

INDIANAPOLIS

THE BOBBS-MERRILL COMPANY
PUBLISHERS



requirement of said commission, shall in the discretion of the commission be subject to a penalty of fifty dollars for each day of any such violation or failure, which may be declared due and payable by said commission, upon complaint, and after hearing, and when paid, either voluntarily, or after suit, which may be brought by the commission, shall be placed to the credit of the public utility account. (1921, ch. 107, sec. 10.)

5471-5501. [Repealed.]

Compiler's Note. Sections 5471-5501 (section 5501.22, herein). For new act, see were repealed by Acts 1933, ch. 119, § 22 §§ 5501.1-5501.23.

ARTICLE IA

MOTOR CARRIERS

| SECTION. | | SECTION. | |
|----------|---|----------|---|
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| 5501.2. | Exceptions from act; sight-seeing busses included. | 5501.13. | Motor transportation agents and freight brokers; license regulations; bond and insurance requirements; application for license. |
| 5501.3. | Rates required to be reasonable; contract haulers. | 5501.14. | Inspection and supervision fee; lien of fees; employment of agents or attorneys. |
| 5501.4. | Powers of railroad and utility commission. | 5501.15. | Extent of powers of railroad and utilities commission. |
| 5501.5. | Certificates of convenience and necessity; intrastate and interstate permits. | 5501.16. | Orders of commission; review by courts. |
| 5501.6. | Contract haulers; powers and duties of commission. | 5501.17. | Violation of act; penalty. |
| 5501.7. | Contract haulers; permit required; hearing. | 5501.18. | Injunction to compel compliance with law. |
| 5501.8. | Application for permit or certificate; contents; advance fee. | 5501.19. | Interstate commerce and government business excepted. |
| 5501.9. | Liability insurance requirements; foreign corporation, admission to do business in state. | 5501.20. | Liberal construction of act. |
| 5501.10. | Abandonment of service; restrictions; revocation or amendment of certificates or permits. | 5501.21. | Purpose in enacting law. |
| 5501.11. | Safety rules and regulations; adoption. | 5501.22. | Repeal of laws. |
| | | 5501.23. | Provisions of act separable. |

5501.1. Definition of terms used.—(a) The term “motor vehicle,” when used in this act, means any automobile, automobile truck, motor bus, truck bus or any other self-propelled vehicle not operated or driven upon fixed rails or tracks.

(b) The term “motor carrier,” when used in this act, means any person, firm, partnership, association, joint stock company, corporation, lessee, trustee, or receiver appointed by any court whatsoever, operating any motor vehicle with or without semi-trailers attached, upon any public highway for the transportation of persons or property or both or of [for] providing or furnishing such transportation service, for hire as a common carrier.

(c) The term “contract hauler,” when used in this act, means any person, firm or corporation engaged in the transportation for compensation or hire of persons and/or property for a particular person or corporation to or from a particular place or places under special or individual agreement or agreements and not operating as a common

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; utility account. (1921, ch.

5501.22, herein). For new act, see
1-5501.23.

IRS

Existing certificates and permits
recognized.

Motor transportation agents and
freight brokers; license regula-
tions; bond and insurance re-
quirements; application for
license.

Inspection and supervision fee;
lien of fees; employment of
agents or attorneys.

Extent of powers of railroad and
utilities commission.

Orders of commission; review by
courts.

Violation of act; penalty.

Injunction to compel compliance
with law.

Interstate commerce and govern-
ment business excepted.

Liberal construction of act.

Purpose in enacting law.

Repeal of laws.

Provisions of act separable.

The term "motor vehicle,"
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or places under special or
ot operating as a common

carrier and not operating exclusively within the corporate limits of an
incorporated city or town, or exclusively within the corporate limits
of such city or town and the suburban territory adjacent thereto.

(d) The term "taxicab," when used in this act, shall mean every
motor vehicle designed and/or constructed to accommodate and trans-
port passengers, not more than five in number, exclusive of the driver,
and fitted with taxi-meters and/or using or having some other device,
method or system, to indicate and determine the passenger fare
charged for distance traveled, and the principal operations of which
taxicabs are confined to the area within the corporate limits of cities
and suburban territory adjacent thereto.

(e) The term "public highway," when used in this act, means
every public street, alley, road, highway, or thoroughfare of every
kind in this state used by the public, whether actually dedicated to
the public and accepted by the proper authorities or otherwise.

(f) The term "motor transportation agent," when used in this
act, means any person, firm, partnership, association or corporation en-
gaged, as principal or agent, in the selling, offering for sale, negotiat-
ing for, soliciting by advertisement or otherwise, arranging as inter-
mediary or otherwise, or who holds himself or itself out as one who
sells, provides, furnishes or arranges for, transportation for any person
or persons over the highways of this state upon a share-expense plan or
for fixed compensation, either in the private motor vehicles of persons
not motor carriers or contract haulers not holding certificates of con-
venience and necessity, interstate permit, for [or] contract hauler's
permit permitting the transportation of passengers over such high-
ways between the points for which such transportation is sold or pro-
vided.

The term "motor transportation agent" shall not apply to the
transportation of children to and from school.

(g) The term "motor freight broker," when used in this act,
means any person, firm, partnership, association or corporation en-
gaged in contracting for the transportation of property through the
agency of any motor carrier, contract hauler, or other carrier by motor
vehicle, where the person so contracting with the shipper or consignor,
for such transportation, is not himself or itself owner or operator of
the agency of motor vehicle transportation used in the actual trans-
portation, but who arranges for such actual transportation by others,
pursuant to regular or special contract had with such actual trans-
porting agent.

(h) The term "railroad and public utilities commission" and/or
"commission," when used in this act, means the railroad and public
utilities commission of the State of Tennessee. (1933, ch. 119, sec. 1.)

Compiler's Notes. Bracketed word "or"
added by compiler as the correct word to
be used in lieu of "for."

Bracketed word "for" added by com-
piler as the correct word to be used in lieu
of "of."

Comparative Legislation. Operation of
commercial busses and trucks:

Cal. Deering's Gen. Laws 1931, vol. 2,
Act 5129.

Idaho. Code 1932, §§ 59-801-59-817.
Iowa. Code 1931, §§ 5105-a1-5105-a26.
Ky. Carroll's Stat. 1930, § 2739j-1.
Nebr. Comp. Stat. 1929, §§ 60-101-60-105.
N. Car. Code 1931, §§ 2613(j)-2613(ee).
Ohio. Page's Gen. Code, §§ 614-84-614-102a.
Ore. Code 1930, §§ 55-1301-55-1340.
Utah. Rev. Stat. 1933, tit. 76, ch. 5.

Constitutionality.

The former law, section 5471 et seq. of the Code of 1932, was held constitutional in so far as it regulated common carriers. *East Tennessee &c. Carolina Motor Transp. Co. v. Carden*, 164 Tenn. (11 Smith) 416, 50 S. W. (2d) 230.

5501.2. Exceptions from act; sight-seeing busses included.—The provisions of this act shall not apply to any motor vehicles while used exclusively (a) for transporting persons to or from school, Sunday school, church or religious services of any kind, upon special prearranged trips or excursions under the auspices of any religious or charitable organizations; (b) or in funerals or as ambulances; (c) or while used exclusively in taxicab service; (d) or while used exclusively for carrying persons and/or property between railroad depots and any point in any city, town or suburb thereof, in or adjacent to which such depot is located; (e) or while used exclusively in city transfer service by way of transporting property for hire between points in any one city, town or suburb thereof, not over or along any definite, fixed, announced, or advertised route between any points in such one city, town or the suburbs thereof; (f) or to motor vehicles operated for the sole purpose of transporting or delivering milk or milk products from the producer thereof to the purchaser from the producer, or to any motor vehicle used casually, by the owner, to convey perishable farm products or live stock to market; (g) or to any motor vehicle making casual trips on call or under contract, solicited by the party served, for the carrying of passengers; provided, however, that on said casual trips no operator shall be allowed to pick up any passengers along the route, nor be permitted on the return trip to carry any passengers other than those included in the original or outbound trip. But motor vehicles, for which passengers are solicited, and which are operated to and from points of interest in or near any city, and which, therefore, perform the same service as a sight-seeing bus, are not excepted from the provisions of this statute, and the provision shall apply to such motor vehicles, whether the same be called "busses" or "for hire cars" or by any other name. (1933, ch. 119, sec. 2.)

Constitutionality.

The exemption of transporters of milk or milk products and farm produce and live stock is not shown to be arbitrary or un-

reasonable. *East Tennessee &c. Carolina Motor Transp. Co. v. Carden*, 164 Tenn. (11 Smith) 416, 50 S. W. (2d) 230.

5501.3. Rates required to be reasonable; contract haulers.—All charges made by any motor carrier or contract hauler for any service rendered, or to be rendered, in the transportation of persons or property, or both, shall be just and reasonable and every unjust and unreasonable charge for such service, or any part thereof is prohibited and declared unlawful, but the minimum rates established by the commission for contract haulers shall not be less than the rates prescribed

onality.

mer law, section 5471 et seq. of 1932, was held constitutional in it regulated common carriers. *East Tennessee &c. Carolina Motor Transp. Co. v. Carden*, 164 Tenn. (11 Smith) 416, (2d) 230.

ing busses included.—The motor vehicles while used, or from school, Sunday kind, upon special prearrangements of any religious or charitable organizations; (c) or while used exclusively for railroad depots and any other places adjacent to which such service is rendered in city transfer service between points in any one county; (d) or for carrying any definite, fixed, amount of freight in such one city, town or village; (e) or for the sole purpose of transporting milk products from the producer, or to any motor vehicle making casual trips for the purpose of serving passengers along the route, or for the purpose of carrying passengers other than the driver. But motor vehicles, when operated to and from such places, are operated to and from which, therefore, perform the same service as that provided by the motor vehicle excepted from the provisions of this act. The provisions of this act shall apply to such motor vehicles as "for hire cars" or

East Tennessee &c. Carolina Motor Transp. Co. v. Carden, 164 Tenn. (11 Smith) 416, (2d) 230.

e; contract haulers.—All motor vehicles used as contract haulers for any service other than the transportation of persons or property, and every unjust and unreasonable rate thereof is prohibited and is established by the commission. The rates shall not be less than the rates prescribed

for common carriers for substantially the same service. (1933, ch. 119, sec. 3.)

5501.4. Powers of railroad and utility commission.—The railroad and public utilities commission is hereby vested with power and authority, and it shall be its duty to license, supervise and regulate every motor carrier in this state, to fix or approve the rates, fares, charges, classifications and rules and regulations pertaining thereto; to regulate and supervise the schedules, service and method of operation of same; to require the filing of annual and other reports and any other data; to require that the accounts and records of such motor carriers be kept and maintained in a manner consistent with good accounting practice; and to supervise and regulate motor carriers in all matters affecting the relationship between such motor carriers and the public. (1933, ch. 119, sec. 4.)

5501.5. Certificates of convenience and necessity; intrastate and interstate permits.—(a) It is hereby declared unlawful for any motor carrier to operate or furnish service as a common carrier between points within this state without first having obtained from the railroad and public utilities commission a certificate declaring that public convenience and necessity will be promoted by such operation. The commission, upon the filing of a petition for a certificate of convenience and necessity, shall within a reasonable time, fix a time and place for hearing thereon. The commission shall cause notice of such hearing to be served, at least ten days before the hearing, upon the officers or owners of every common carrier that is operating, or has applied for a certificate of convenience and necessity to operate, in the territory proposed to be served by the applicant, and any such common carrier is hereby declared to be an interested party to said proceedings and may offer testimony for or against the granting of such certificate; and any other person or persons who might, in the opinion of the commission, be properly interested in or affected by issuance of said certificate, may be by the commission made a party and may offer testimony for or against the granting of such certificate. If the commission shall find from the evidence that public convenience and necessity will be promoted by the creation of the proposed service, as the commission shall determine, a certificate of convenience and necessity therefor shall be issued. In determining whether or not a certificate of convenience and necessity should be issued, the commission shall give reasonable consideration to the transportation service being furnished by any railroad, street railroad or motor carrier on the route or in the territory in which the applicant proposes to operate, the service to be rendered and/or capable of being rendered by the applicant, the financial condition and character of the applicant, the character of the highways over which said applicant proposes to operate and the effect thereon and upon the traveling public using said highways, the public demand or need for the service proposed, the likelihood of the proposed service being permanent and continuous, the effect which

such proposed transportation service may have upon other transportation service being rendered, and all other pertinent facts.

(b) It is hereby declared unlawful for any motor carrier to use any of the public highways of this state for the transportation of persons or property, or both, in interstate commerce, without first having obtained from the commission a permit to so do. The commission, upon the filing of a petition for an interstate permit, shall within a reasonable time, fix a time and place for a hearing thereon. The commission shall cause notice of such hearing to be served, at least ten days before the hearing, upon the officers or owners of every common carrier that is operating in the territory or upon the highway over which the interstate permit is desired, and each party so notified is hereby declared to be an interested party to said proceeding and may offer testimony as to the use of said highways and/or as to any pertinent fact with respect to the proposed operation by the applicant. In determining whether or not a permit should be issued, the commission shall give reasonable consideration to the nature of the highways over which the permit is applied for, to the effect of such operation thereon and upon the traveling public using said highway, and to the nature and character and probable condition of the vehicles to be used on said highway.

(c) Said certificates of convenience and necessity, or interstate permits, when issued, shall be subject to such rules and regulations as the commission may thereafter legally prescribe, provided, that it is not intended to give said commission any right or power to impose upon or exact from any such applicant any general revenue tax or money charge of any nature.

(d) When any certificate or [of] convenience and necessity, or intrastate permit, such as provided in subsections (a) and (b) of this section shall have been issued, and thereafter the motor carrier holding such certificates shall sell, transfer, assign or lease the same or part thereof, then in that event, upon application to the commission, and if the commission shall be of the opinion that the purchaser thereof is in all respects qualified under the provisions of this act to conduct the business of a motor carrier within the meaning of this act, the said certificate or permit originally issued to such motor carrier, or part thereof, shall be by the commission transferred to the purchaser, and be effective in like manner as though originally issued to such purchaser. (1933, ch. 119, sec. 5.)

Compiler's Note. Bracketed word "of" added by compiler as the correct word to be used in lieu of "or."

5501.6. Contract haulers; powers and duties of commission.—The railroad and public utilities commission is hereby vested with power and authority, and it shall be its duty to license, supervise and regulate every contract hauler in this state, to fix or approve the rates, fares, charges, classifications, and to prescribe minimum scales of rates

upon other transportation facts.

any motor carrier to use a transportation of persons, without first having a permit, shall within a reasonable time, be served, at least ten days before the hearing thereon. The commission, upon the filing of a petition for a contract hauler's permit, shall within a reasonable time, fix a time and place for hearing thereon. The commission shall cause notice of such hearing to be served, at least ten days before the hearing, upon the officers or owners of every common carrier or contract hauler that is operating under a certificate, interstate permit or contract hauler's permit, or has applied for a certificate, interstate permit, or contract hauler's permit to operate, in the territory proposed to be served by the applicant, and any such carrier or contract hauler is hereby declared to be an interested party to said proceedings and may offer testimony for or against the granting of such permit; and any other person or persons who may, in the opinion of the commission, be properly interested in or affected by the issuance of said permit, shall be by the commission made a party and may offer testimony for or against the granting of such permit. If the commission shall find from the evidence that the public will be benefited by the creation of the proposed service, as the commission shall determine, a contract hauler's permit therefor shall be issued. In determining whether or not a permit should be issued, the commission shall give reasonable consideration to the transportation service being furnished by any railroad, street railroad, motor carrier, or contract hauler on the route or in the territory in which the applicant proposes to operate, the character of the highways over which said applicant proposes to operate and the effect thereon and upon the traveling public using said highways, the effect which such proposed transportation service may have upon other transportation service being rendered, and to all pertinent facts; and, if it shall appear to the commission, from the evidence, that the proposed operation of the applying contract hauler will impair the efficient public service of any authorized common carrier or common carriers then adequately serving the same route or territory such application may be refused.

necessity, or interstate rules and regulations as may be, provided, that it is not the power to impose a general revenue tax or

and necessity, or in (a) and (b) of this section, a motor carrier holding a lease the same or part of the commission, and if the purchaser thereof is in his act to conduct the business of this act, the said motor carrier, or part of the purchaser, and any issued to such pur-

ties of commission.—The commission is hereby vested with the power to issue a license, supervise and control or approve the rates, and minimum scales of rates

and rules and regulations pertaining thereto, to regulate and supervise the schedules, service and methods of operation of same; to require the filing of annual and other reports and any other data; to require that the accounts and records of such contract haulers be kept and maintained in a manner consistent with good accounting practice; and to supervise and regulate contract haulers in all matters affecting the relationship between such contract haulers, their customers, and the public. (1933, ch. 119, sec. 6.)

5501.7. Contract haulers, permit required, hearing.—(a) It is hereby declared unlawful for any contract hauler, except as provided in section 2 of this act [§ 5501.2], to operate or furnish transportation for persons or property, or both for hire over the highways of this state, without first having obtained from the railroad and public utilities commission a contract hauler's permit. The commission, upon the filing of a petition for a contract hauler's permit, shall within a reasonable time, fix a time and place for hearing thereon. The commission shall cause notice of such hearing to be served, at least ten days before the hearing, upon the officers or owners of every common carrier or contract hauler that is operating under a certificate, interstate permit or contract hauler's permit, or has applied for a certificate, interstate permit, or contract hauler's permit to operate, in the territory proposed to be served by the applicant, and any such carrier or contract hauler is hereby declared to be an interested party to said proceedings and may offer testimony for or against the granting of such permit; and any other person or persons who may, in the opinion of the commission, be properly interested in or affected by the issuance of said permit, shall be by the commission made a party and may offer testimony for or against the granting of such permit. If the commission shall find from the evidence that the public will be benefited by the creation of the proposed service, as the commission shall determine, a contract hauler's permit therefor shall be issued. In determining whether or not a permit should be issued, the commission shall give reasonable consideration to the transportation service being furnished by any railroad, street railroad, motor carrier, or contract hauler on the route or in the territory in which the applicant proposes to operate, the character of the highways over which said applicant proposes to operate and the effect thereon and upon the traveling public using said highways, the effect which such proposed transportation service may have upon other transportation service being rendered, and to all pertinent facts; and, if it shall appear to the commission, from the evidence, that the proposed operation of the applying contract hauler will impair the efficient public service of any authorized common carrier or common carriers then adequately serving the same route or territory such application may be refused. (1933, ch. 119, sec. 7.)

5501.8. Application for permit or certificate; contents; advance fee.—The commission shall adopt rules prescribing the manner and form in which motor carriers and/or contract haulers shall apply for

certificates of convenience and necessity, and/or interstate permits and/or contract hauler's permits required by this act. Among other rules adopted, there shall be rules as follows: That every application shall be in writing and accompanied by the payment of \$25.00 which shall be applied to the payment of the cost of the hearing thereon, and must contain, among other things (1) full information concerning the ownership and financial condition of the applicant, and designation and description of the equipment proposed to be used, (2) the complete route or routes with designation of highways over which applicant desires to operate, and the territory which the applicant desires to serve, (3) the proposed rates, schedule or schedules, or time cards of the applicant, and (4) in the case of the proposed contract haulers, a copy of the contract or contracts under which applicant proposes to operate. (1933, ch. 119, sec. 8.)

5501.9. Liability insurance requirements; foreign corporation, admission to do business in state.—(a) No certificate of convenience and necessity, interstate permit, or contract hauler's permit shall be issued by the railroad and public utilities commission until and after such carrier shall have filed with said commission, and the commission shall have approved, a policy of liability insurance or bond and also (in the case of intrastate common carriers) a policy of cargo or passenger insurance in some reliable insurance company or association or other insurer satisfactory to the commission and authorized to transact insurance business in this state, in such amount and such forms and upon such conditions as the commission may deem necessary to adequately protect the interests of the public in the use of the public highway and with due regard to the number of persons and the amount of property to be transported which liability or cargo insurance shall bind the obligors thereunder to make compensation for injury to persons, and loss of or damage to property resulting from the negligent operation of [by] such motor carrier or contract hauler. No other or additional policies of insurance, bonds, or licenses than those prescribed in this act shall be required of any motor carrier or contract hauler to which this act applies by any city, town or other subdivision of this state; provided, that this section shall not be so construed as to interfere with the right of any county, city or other civil subdivision of this state, to levy and collect any lawful tax to which such motor carrier or contract hauler is liable under the general revenue laws of this state within such county, state or other civil subdivision.

(b) No certificate of convenience and necessity, interstate permit, or contract hauler's permit shall be issued by the railroad and public utilities commission to any foreign corporation, whereby such foreign corporation is to do business in this state, unless and until it shall have been made to appear, to the satisfaction of the commission, that such foreign corporation has duly qualified, in the manner prescribed by law, to do business in this state. (1933, ch. 119, sec 9.)

Compiler's Note. Bracketed word "by" added by compiler as the correct word to be used in lieu of "of."

Construction of Policy.

A policy insuring carrier against loss of freight construed as having regard to the purpose for which given, and liability adjudged. *Earhart v. Hazlewood*, 15 Tenn. App. 454.

Beneficiary of Insurance Policy.

The beneficiary of the policy referred to is the State of Tennessee for the use of the public sought to be protected. *United States Fidelity & Co. v. Allen*, 158 Tenn. (5 Smith) 504, 14 S. W. (2d) 724; *Holland v. Morrison*, 14 Tenn. App. 77.

New Trial.

In suit for personal injuries from automobile collision, new trial is warranted by jurors' consideration in jury room, as of their own knowledge, that defendant carried liability insurance, though the lower court contended that reversal could not rest on juror's statement to fellow jurors of fact they were all presumed to know. *Marshall v. North Branch Transfer Co.*, 166 Tenn. (2 Beeler) —, 59 S. W. (2d) 520.

In an action for personal injuries the fact that one of the jurors knew that the law required bus companies to carry liability insurance is not ground for a new trial. *Union Transfer Co. v. Finch*, — Tenn. App. —, 64 S. W. (2d) 222, distinguishing *Marshall v. North Branch Transfer Co.*, 166 Tenn. (2 Beeler) —, 59 S. W. (2d) 520.

5501.10. Abandonment of service; restrictions; revocation or amendment of certificates or permits.—No motor carrier authorized under the provisions of this act to operate between points within this state shall abandon or discontinue any service established under the provisions of this act without an order of the commission therefor, which said order shall be granted by the commission only after hearing upon due notice; providing, however, the commission may, as an emergency measure and without hearing, authorize the abandonment or discontinuance of any service for periods of not more than fifteen days, by reason of physical condition of the highways or other sufficient reason.

The commission may at any time, for good cause, suspend any certificate of convenience and necessity, interstate permit or contract hauler's permit; and upon ten days' notice to the holder of any certificate of convenience and necessity, interstate permit or contract hauler's permit and after an opportunity to be heard, said commission may for proper cause revoke, alter or amend any certificate of convenience and necessity, interstate permit or contract hauler's permit issued under the provisions of this act. Provided, that on finding of the commission that any motor carrier operating between points within this state does not give convenient efficient service in accordance with the orders of the commission, such motor carrier shall be given a reasonable time, not more than sixty days, to provide such service before any existing certificate is canceled or revoked or a new certificate granted to some other motor carrier over the same route or routes. (1933, ch. 119, sec. 10.)

5501.11. Safety rules and regulations; adoption.—The commission, in the exercise of the authority by this act vested in it, to license, supervise and regulate all motor carriers or contract haulers, shall from time to time promulgate and deliver to each holder of a certificate of convenience and necessity, interstate permit or contract hauler's permit hereunder, such safety rules and regulations as the commission may deem necessary to govern and control the operation

interstate permits
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of motor carriers or contract haulers over and along the public highways of this state, and the equipment used. (1933, ch. 119, sec. 11.)

5501.12. Existing certificates and permits recognized.—It shall not be necessary for the holder of any certificate of convenience and necessity, or certificate of convenience and necessity for interstate operation, or interstate permit, at the time of the effective date of this act, to make application for a new certificate of convenience and necessity or interstate permit over the same route under the provisions of this act, but any such certificate or permit shall stand as if issued under this act. Any person, firm or corporation, which may fall within the classification of contract haulers, as defined in this act, and which may, at the time of the effective date of this act, have been granted by the commission rights by way of permit or permission to operate in the manner prescribed for such contract haulers, shall not be required to apply for a further or new contract hauler's permit over the same route or routes under the provisions of this act; provided, said contract haulers shall within fifteen days after the effective date of this act do and perform every act and duty which would be required of such contract hauler by this act, and which has not theretofore been fully performed and complied with. Provided further, however, nothing in this act shall be construed as in any manner restricting or abridging the power of said commission over said certificates of convenience and necessity, interstate permits, and contract hauler's permits and the operations conducted pursuant thereto, which said commission would have if such certificate of convenience and necessity, interstate permits, and/or contract hauler's permits had been granted pursuant to this act. (1933, ch. 119, sec. 12.)

5501.13. Motor transportation agents and freight brokers; license regulations; bond and insurance requirements; application for license.

—(a) The railroad and public utilities commission is hereby vested with power and authority, and it shall be its duty to license and supervise motor transportation agents and motor freight brokers in this state, in all matters affecting the relationships between such motor transportation agents and/or motor freight brokers, their customers, and the public.

(b) It is hereby declared unlawful for any motor transportation agent and/or motor freight brokers, as defined in this act, to carry on such business or act in such capacity, unless and until he or it shall have first procured a license from the commission as herein provided and shall have complied with all the requirements of this act.

(c) All persons who, on the effective date of this act, shall in good faith be acting as motor transportation agents, shall within sixty days after such effective date apply to the commission, in writing, for a license to operate as such under this act, and shall accompany such application with a remittance in the sum of fifty dollars. Upon the filing of such application, the commission shall set a date for a hearing thereon, and shall give at least ten days' notice thereof to the officers or

along the public highway (333, ch. 119, sec. 11.)

§ recognized.—It shall be the duty of the commission to determine the necessity for interstate commerce and the effective date of this act of convenience and necessity under the provisions of this act, and which may fall within the provisions of this act, and which have been granted permission to operate under the provisions of this act; provided, said commission shall not be required to determine the effective date of this act, which would be required by the commission, provided further, however, in no manner restricting or limiting the commission's power to grant certificates of convenience and necessity, provided that said certificates had been granted

Freight brokers; license application for license. The commission is hereby vested with the power to license and superintend freight brokers in this state, and between such motor carriers, their customers,

and motor transportation in this act, to carry on and until he or it shall determine as herein provided in this act.

If this act, shall in good faith, shall within sixty days of the commission, in writing, for a license, shall accompany such application, fifty dollars. Upon the commission set a date for a hearing hereof to the officers or

owners of any common carriers of passengers operating in the territory in which the applicant proposes to operate, and to any other person who, in the opinion of the commission, may be properly interested in such application; and such common carriers of passengers or other persons are hereby declared to be interested parties, and may offer testimony for or against the issuing of such license. In determining whether such license shall be issued, the commission shall give reasonable consideration to the financial responsibility and character of the applicant, the nature and safety of the actual agencies of transportation employed or customarily procured by applicant, the financial responsibility and character of the owners of such agencies of transportation, the nature of the highways over which such agencies of transportation are procured to be employed and the effect thereon and upon the traveling public using such highways, the effect such transportation may have upon other transportation service being rendered, and all other pertinent facts. If, upon hearing, the commission shall determine that the applicant is a fit and proper person to act as motor transportation agent and that any motor carriers through which the applicant proposes to sell transportation have complied and are then and there complying with all laws and with all proper rules and regulations applicable to their respective cases, the license shall be issued. Provided, however, that before such license shall be issued, the applicant for license (1) shall deliver to the commission and maintain continuously in force and effect a bond in the sum of one thousand dollars executed by the applicant, as principal, and as surety by a bonding or insurance company satisfactory to the commission and authorized to do business in this state, in such form as the commission may prescribe, for the protection, use and benefit of any person or persons who shall suffer loss or damage by reason of the failure of any person or motor carrier, through whom transportation may be arranged or over which tickets may be sold by the applicant, to properly fulfill any contract or agreement for such transportation which may have been negotiated by the applicant, and (2) shall also deliver to the commission and maintain continuously in force and effect a policy of liability insurance in an insurance company satisfactory to the commission and authorized to do business in this state, in an amount and in form satisfactory to the commission, undertaking to pay for injuries or damage to persons or property by reason of the negligent operation of [by] any person or motor carrier, actually furnishing transportation which may have been negotiated for or procured, or for which tickets may have been sold by the applicant. In the event of the lapse of such bond or policy of liability insurance, any license which may have been issued to the applicant shall be forthwith revoked. In the event that a license is issued pursuant to such application, the deposit of fifty dollars required to accompany such application, shall be turned over by the commission to and become a part of that "motor vehicle account" hereinafter provided for; but if such application for license be

denied, such deposit shall be returned to the applicant. Any license, or renewal license, issued pursuant to this subsection (c) shall expire on the 31st day of December of the calendar year in which issued, and shall thereafter be of no further force or effect; provided, however, that on or before such expiration, an application, accompanied by a further deposit of twenty-five dollars by way of license fee, may be made for the renewal thereof, and said license may thereupon be renewed by the commission; but the commission may, in its discretion, order a hearing upon such application for renewal and for proper reason may refuse to renew same. The license of each motor carrier transportation agent shall be conspicuously displayed in the office of such motor carrier transportation agent. No license issued hereunder shall authorize the licensee to do business except from the location stipulated in the license; notice in writing shall be given to the commission of any change of business location by any licensee, whereupon the commission shall issue a new license for the unexpired period for the new location without additional charge; but any changes of business location, without notice to the commission, and the issuance of a new license, shall automatically cancel the license theretofore issued. The commission may suspend or revoke any license theretofore issued if it shall determine, upon notice to the licensee, and after hearing, that such motor carrier transportation agent is not a fit person, firm or corporation to hold such license or has violated the laws of the land or the proper rules and regulations of the commission, or has sold, offered for sale, or negotiated for sale, transportation by any carrier that has violated or is not complying with the laws of this state or the proper rules and regulations of the commission. It shall be the duty of all motor carrier transportation agents to maintain and keep for a period of one year an exact and permanent record of all transactions had by them as such agents, including the name and address of the person transported, the amount paid, the point of destination, the name of the person, firm or corporation acting as carrier, and the name and address of the insurance company carrying liability insurance for such carrier, the records so required to be kept being at all times open to inspection by any representative of the commission.

(d) All persons who, on the effective date of this act, shall in good faith be acting as motor freight agents, shall within 60 days after such effective date apply to the commission, in writing, for a license to operate as such under this act, and shall accompany such application by a remittance in the sum of fifty (\$50.00) dollars. Upon the filing of such application, the commission shall set a date for a hearing thereon, and shall give at least ten days' notice thereof to the officers or owners of any common carriers of property operating in the territory in which the applicant proposes to operate, and to any other person, who, in the opinion of the commission, may be properly interested in such application; and such common carriers of property or other persons are hereby declared to be interested parties, and may

applicant. Any license, section (c) shall expire as in which issued, and act; provided, however, tion, accompanied by a of license fee, may be may thereupon be re- may, in its discretion, wal and for proper rea- of each motor carrier splayed in the office of cense issued hereunder cept from the location ll be given to the com- ny licensee, whereupon e unexpired period for t any changes of busi- n, and the issuance of ense theretofore issued. ense theretofore issued ee, and after hearing, s not a fit person, firm ed the laws of the land nmission, or has sold, rtation by any carrier aws of this state or the . It shall be the duty aintain and keep for a ord of all transactions ne and address of the nt of destination, the s carrier, and the name liability insurance for eing at all times open ission.

f this act, shall in good within 60 days after writing, for a license ompany such applica- 0) dollars. Upon the et a date for a hearing thereof to the officers operating in the ter- ate, and to any other ay be properly inter- rriers of property or sted parties, and may

offer testimony for or against the issuing of such license. In determining whether such license shall be issued, the commission shall give reasonable consideration to the financial responsibility and character of the applicant, the nature and safety of the actual agencies of transportation employed or customarily procured by applicant, the financial responsibility and character of the owners of such agencies of transportation, the nature of the highways over which such agencies of transportation are proposed to be employed and the effect thereon and upon the traveling public using such highways, the effect such transportation may have upon other transportation service being rendered, and all other pertinent facts. If, upon hearing, the commission shall determine that the applicant is a fit and proper person to act as motor freight broker and that any motor carriers, through which the applicant proposes to effect the actual transportation of property, have complied and are then and there complying with all laws and with all proper rules and regulations applicable to their respective cases, the licenses shall be issued. Provided, however, that before such license shall be issued, the applicant for license (1) shall deliver to the commission and maintain continuously in force and effect a bond in the sum of one thousand dollars executed by the applicant, as principal, and as surety by a bonding or insurance company satisfactory to the commission and authorized to do business in this state, in such form as the commission may prescribe, for the protection, use and benefit of any person or persons who shall suffer loss or damage by reason of the failure of any person or motor carrier, through whom actual transportation of the property of the shipper or consignor may have been arranged by the applicant, to properly fulfill and carry out according to its terms any agreement for such transportation which may have been made by the applicant with the shipper or consignor, and (2) shall also deliver to the commission and maintain continuously in force and effect a policy of liability insurance, and a policy of cargo insurance, in insurance companies satisfactory to the commission, and authorized to do business in this state, in amounts and in form satisfactory to the commission, undertaking to pay for injuries or damage to persons and to the property of the shipper or consignor, and/or the property of others, by reason of the negligent operation of [by] any person or motor carrier while actually engaged in supplying that transportation of property which the applicant has contracted with the shipper or consignor to supply. In the event of the lapse of said bond and/or either of said policies of insurance, any license which may have issued to the applicant shall be forthwith revoked. In the event that a license is issued pursuant to such application, the deposit of fifty dollars, required to accompany such application, shall be turned over by the commission to and become a part of that "motor vehicle account" hereinafter provided for; but if such application for license be denied, such deposit shall be returned to the applicant. Any license, or renewal license, issued pursuant to this subsection (d) shall

expire on the 31st day of December of the calendar year in which issued, and shall thereafter be of no further force or effect, provided, however, that on or before the date of such expiration, an application, accompanied by a further deposit of \$25.00 by way of license fees, may be made for the renewal thereof, and said license may thereupon be renewed by the commission; but the commission may, in its discretion, order a hearing upon such application for renewal, and for proper reasons may refuse to renew same. The license of every motor freight broker shall be conspicuously displayed in the office of such motor freight broker. No license issued hereunder shall authorize the licensee to do business except from the location stipulated in the license; notice in writing shall be given to the commission of any change in business location by any licensee, whereupon the commission shall issue a new license for the unexpired period for the new location without additional charge; but any changes of business location, without notice to the commission and the issuance of a new license, shall automatically cancel the license theretofore issued. The commission may suspend or revoke any license theretofore issued if it shall determine, upon notice of [to] the licensee and after hearing, that such motor freight broker is not a fit person, firm or corporation to hold such license or has violated the laws of the land or the proper rules or regulations of the commission, or has contracted with, for the transportation of property, any carrier that has violated or is not complying with the laws of this state or the proper rules or regulations of the commission. It shall be the duty of all motor freight brokers to maintain and keep, for a period of one year, and [an] exact and permanent record of all transactions had by them as such motor freight brokers, including the name and address of all shippers or consignors with whom they have contracted for transportation of property, the amounts agreed to be paid by said shipper or consignor, the nature and point of destination of said shipment, the name and address of the person, firm [or] corporation with whom said motor freight broker has contracted for the actual transportation of said property, the sum agreed to be paid by said motor freight broker to such actual transporting party for such transportation, the type of equipment used in such actual transportation, and the name and address of the insurance company carrying liability insurance for such actual transporter of the property; the record so required to be kept being at all times open to inspection by any representative of the commission. (1933, ch. 119, sec. 13.)

Compiler's Notes. Bracketed words "by" added by compiler as the correct words to be used in lieu of "of."

Bracketed word "to" added by compiler as the correct word to be used in lieu of "of."

Bracketed word "or" added by compiler.

5501.14. Inspection and supervision fee; lien of fees; employment of agents or attorneys.—On or before the 31st day of December of each year, every holder of a certificate of convenience and necessity, inter-

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state permit, or contract hauler's permit, shall pay to the state, at such time and in such instalments as the commission may require, a fee for the inspection, control and supervision of the business, equipment, service or act of such certificate or permit holder; and such fee shall be paid by such holder in addition to any and all property, franchise, licenses or other taxes, fees and charges assessed or charged by law against such holder. The amount of such fee so to be paid by each such holder shall be the sum of \$2.50 per annum, per passenger seat provided for passengers in each vehicle operated by the holder upon the public highways of this state, and the sum of \$10.00 per annum, per ton of carrying capacity provided for property in each vehicle operated by the holder upon the public highways of this state. The commission, under rules promulgated or orders made by it, may require the payment in advance of the above fee by each such holder of or applicant for any certificate of convenience and necessity, interstate permit or contract hauler's permit, or it may require bond with corporate surety, satisfactory to said commission, to secure such payment when and as due: and the commission may apportion the payment of such fee by any certificate or permit holder for any proportionate part or parts of any year while operation under such certificate or permit continues. In no case shall such fee be less than \$10.00, which shall be the minimum annual inspection, control and supervision fee to be paid by any holder of any certificate, interstate permit or contract hauler's permit. It shall be the duty of the comptroller to collect said fees from said certificate and permit holders, as required by the rules and orders of said commission, and to keep a separate account of the fees so collected, to be known as the "motor vehicle account," the fund so raised to be segregated. Any fund remaining in said motor vehicle account at the end of the year shall be carried over from year to year and expended only for the purposes specified in this act. In case of default in the payment of any such fees, or part thereof, when same shall become due, any such certificate or permit holder in default shall be liable to a penalty of ten per cent per month, for every month it remains in default, on the amount of the fee, which penalty may be recovered by suit of the state; and any such penalty, as well as all such fees, when collected, shall be conveyed into the state treasury as a part of said motor vehicle account, provided that out of any such penalty the comptroller may employ and pay counsel, who shall have the power to institute suit in any court of competent jurisdiction in this or other states for the recovery of any such delinquent fee and penalty, but in no event, shall anything more than the penalty be allowed to such counsel for making such collection. A lien is hereby declared, and shall exist, upon all the property of each such certificate or permit holder, which shall be used upon the highways of this state, and upon which such fees shall be properly payable, for the payment of the fees prescribed by this act, together with all penalties accruing hereunder, which lien shall be superior to all other liens, except fed-

eral, state, county and municipal taxes. The inspection, control and supervision fee provided to be paid by this act shall be the only fee and charge to be paid and collected from such certificate and permit holders to cover the expense of inspection, control and supervision.

Said railroad and public utilities commission is hereby empowered to employ such attorneys, agents or other employees, and assign to them such duties as it may deem necessary to enable it to fully perform the duties, and to exercise the powers conferred by this act upon said commission. The compensation of any person employed under the authority of this act shall be paid by the commission, and paid from the funds in the "motor vehicle account," but not otherwise, and said commission shall not have the power to contract for any services, in connection with the administration of this act, for which payment shall be made in any other way or manner, by the state, or derived from any other source than the "motor vehicle account," herein provided for.

Any person or persons employed by said commission under the authority herein given may be assigned by said commission to investigate, hear, and wherever possible, adjust, any individual or general complaint which is made by any person against any certificate or permit holder, wherein the investment, property, service or charges of any such certificate or permit holder or claims preferred against any certificate or permit holder may be involved; and such person may hear and take proof, and in the event he is unable to effect a satisfactory adjustment of any such complaint, then it shall be his duty to certify the same to said commission, with his recommendations in the premises, whereupon said commission shall, after hearing, make its final order which shall be binding upon the parties in any such controversy. (1933, ch. 119, sec. 14.)

5501.15. Extent of powers of railroad and utilities commission.—Except as inconsistent with the express terms and provisions of this act, the railroad and public utilities commission of the State of Tennessee shall have the same power as to and over rates, practices, regulation, control and operation of motor vehicles, to which this act is applicable, as said commission now has under present law, with reference to railroads and utilities; provided, however, nothing in this section is intended to impose regulations upon contract carriers except in so far as the nature and character of their business so justify under the constitutions of Tennessee and the United States and the valid laws made pursuant thereto. (1933, ch. 119, sec. 15.)

5501.16. Orders of commission; review by courts.—Any action, ruling or order taken, made or entered by said commission in respect of the matters and things dealt with in this act, shall be subject to review by the courts of this state in the same way and manner, and subject to the same powers and conditions, as now prevail in regard to the actions, rulings and orders of said commission relating to other public utilities operating in this state. (1933, ch. 119, sec. 16.)

spection, control and shall be the only fee certificate and permit and supervision. n is hereby empow- employees, and assign to enable it to fully onferred by this act ny person employed the commission, and ant," but not other- r to contract for any f this act, for which ner, by the state, or r vehicle account,"

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lities commission.— d provisions of this f the State of Ten- tes, practices, regu- o which this act is sent law, with refer- nothing in this sec- tract carriers except ess so justify under tates and the valid 5.)

courts.—Any action, mmission in respect all be subject to re- id manner, and sub- revail in regard to n relating to other (19, sec. 16.)

5501.17. Violation of act; penalty.—Every officer, agent or employee of any corporation, or any other person who wilfully and deliberately violates or fails to comply with, or who procures, aids or abets in the violation of any provision of this act, shall be guilty of a misdemeanor, and upon conviction thereof for the first offense shall be punished by a fine of \$25.00; for the second offense shall be punished by a fine of \$50.00; and for the third offense shall be punished by a fine of \$100.00 or by imprisonment for a period not exceeding one (1) year, or both, in the discretion of the court. Each day any such provision is violated shall constitute a separate offense.

Every officer, agent or employee of any corporation and every other person who fails to obey, observe or comply with any order, decision, rule, regulation, direction, demand or requirement of said commission made in pursuance of the power and authority conferred by this law, shall be guilty of a misdemeanor, and upon conviction thereof shall be punished by a fine not exceeding \$500.00, or by imprisonment for not exceeding one (1) year, or both, in the discretion of the court. Each day any such order, decision, rule or regulation, etc., of said commission is violated, shall constitute a separate offense; and the fact that there may have been a prosecution for the violation of any such order, decision, rule or regulation, etc., of said commission under this section, shall not operate to prevent or limit the exercise of the authority of the commission to suspend, revoke, alter or amend certificates of convenience and necessity, interstate permits, and/or contract haulers' permits as provided in this act. (1933, ch. 119, sec. 17.)

5501.18. Injunction to compel compliance with law.—Said commission or the attorney-general, in the name of the state and acting upon the request of said commission, or any interested party in his or its own name, is given the power and right by bill of complaint in any chancery court having jurisdiction of the parties, to seek injunctive relief, prohibitory or mandatory, or both, to compel compliance by any offending parties with any of the provisions of this act, or with any order, decision, rule, regulation, direction, demand or requirement made by said commission in pursuance of this act; and jurisdiction and power are conferred and duty is imposed upon the several chancery courts, in all proper cases, to declare, decree and award such injunctive relief. (1933, ch. 119, sec. 18.)

5501.19. Interstate commerce and government business excepted.—Neither this act nor any provision thereof, shall be construed to regulate or apply to commerce with foreign nations, or commerce among the several states of the United States, or to business conducted for the government of the United States, except in so far as the same may be permitted under the Constitution of the United States and the acts of congress. (1933, ch. 119, sec. 19.)

5501.20. Liberal construction of act.—This act shall not be construed as in derogation of the common law, but shall be given a liberal construction, and any doubt as to the existence or extent of a power

conferred shall be resolved in favor of the existence of the power, to the end that the railroad and public utilities commission may effectively govern and control operations of motor carriers in the public interest. (1933, ch. 119, sec. 20.)

5501.21. Purpose in enacting law.—It is hereby declared that the legislation herein contained is enacted for the sole purpose of promoting and conserving the interest and convenience of the public by conferring upon the railroad and public utilities commission the power and authority, and making it the duty of such commission, to supervise and regulate the transportation of persons and property by motor vehicle over or upon the public highways of this state, and to supervise and regulate certain businesses closely allied with such motor transportation, so as to (1) regulate, foster, promote and preserve proper and economically sound transportation and authorize and permit proper co-ordination of all transportation facilities, (2) relieve existing and future undue burdens upon the highways arising by reason of their use by motor vehicles, (3) protect the welfare and safety of the traveling and shipping public in their use of the highways, and in their contact with the agencies of motor transportation and allied occupations, and (4) protect the property of the state in its highways from unreasonable, improper, or excessive use. (1933, ch. 119, sec. 21.)

5501.22. Repeal of laws.—Chapter 58 of the Public Acts of Tennessee of 1929 entitled:

“An Act to provide for the regulation, supervision and control of persons, firms, corporations and associations, owning, controlling, operating or managing motor vehicles used for transporting persons or property for compensation on the public highways of this state; to provide for inspection, control and supervision fees; and to provide appropriate penalties and punishment.”

the same having heretofore been enacted as sections 5471 to 5501, both inclusive, of the Code of Tennessee of 1932, and said sections 5471 to 5501, both inclusive, of said Code of Tennessee of 1932, and all laws or parts of laws in conflict with this act be, and the same are, hereby repealed. (1933, ch. 119, sec. 22.)

5501.23. Provisions of act separable.—The holding of any section or part thereof, or of any subsection, sentence, clause or phrase of this act, to be void or ineffective for any cause, shall not affect any other section or part thereof of this act. It is hereby declared, and shall be conclusively presumed, that this act and each section, subsection, sentence, clause and phrase thereof would have been passed and enacted, irrespective of the fact that any one or more sections, subsections, sentences, clauses or phrases thereof be declared unconstitutional or void or ineffective for any cause. (1933, ch. 119, sec. 23.)

Emergency Clause. Section 24 of Acts 1933, ch. 119 provided that the act should take effect from and after its passage.

onment for debt, because the imprisonment authorized to be inflicted is for the debtor's intentional fraud and misdemeanor, nor as abridging trial by jury in declaring what shall constitute a prima facie case. *State v. Yardley*, 95 Tenn. (11 Pick.) 546, 32 S. W. 481, 34 L. R. A. 656.

Jurisdiction of Recorder.

A city recorder has no jurisdiction to fine and commit a person for violating

this statute, where the power, but not the jurisdiction, of justice of the peace is conferred upon such recorder, and where there is no ordinance of the city making the violation of such statute an offense against the city. *State ex rel. v. Haynes*, 104 Tenn. (20 Pick.) 406, 58 S. W. 120; *McMinnville v. Stroud*, 109 Tenn. (1 Cates) 569, 72 S. W. 949.

CHAPTER 29

COMMON CARRIERS

SECTION.

- 6685. Carriers to notify consignees.
- 6686. Nonperishable goods refused by consignee sold at public auction.
- 6687. Notice of refusal and sale; description of property; advertisement.
- 6688. Disposition of proceeds of sale.
- 6689. Claims for lost or damaged freight and for overcharges to be settled within what time.

SECTION.

- 6690. Penalty may be avoided by sufficient tender.
- 6691. Traffic in nontransferable signature passenger tickets issued by common carriers is prohibited.
- 6692. Unused or partly used passenger tickets must be redeemed by common carriers, when.
- 6693. Violation is a misdemeanor; fine.

6685 3597. Carriers to notify consignees.—All common carriers, including express companies, doing business within this state, shall, after the receipt of freight or merchandise for delivery at their warehouse, depot, or station, notify the consignee, by written or printed notice, to be delivered to the consignee in person, at his place of business, if in the city or town where received; or, if not residing or doing business in the city or town, then through the postoffice, within three days after the arrival of said goods. (1870-71, ch. 17, sec. 1.)

Comparative Legislation. Disposition of unclaimed articles, notice of sale:

Fla. Comp. Gen. Laws 1927, §§ 6660-6668.
Ind. Burns' Stat. 1933, §§ 55-801—55-804.

Ky. Carroll's Stat. 1930, § 201a-1.

N. Car. Code, 1931, § 3582 et seq.

Specifying Mode of Notice, Effect on Liability.

The statutory designation of a particular form and mode of notice will not, by any fair intendment, change the character of the common carrier's liability for the severity of the common-law rule as to the liability of common carriers forbids its extension by the courts, in the absence of positive legislation. *Butler v. East Tennessee & V. R. Co.*, 8 Lea (76 Tenn.) 32.

Sufficiency of Notice.

Liability for loss can not be avoided by verbal notice to the drayman of the owner; and a written authority to deliver express matter to such drayman does not authorize him to receive notice from the express com-

pany. *Fisher v. Southern Exp. Co.*, 3 Tenn. Civ. App. 245.

"Prompt Notice," Meaning of Term.

The meaning of the term "prompt notice" can not be settled with precision, as applicable to every case. While a failure to comply with the rule indicated by this expression would be sufficient to charge a carrier with negligence, yet the rule itself, within the three days' limit, is subject to modification by custom or usage. *Pennsylvania R. Co. v. Naive*, 112 Tenn. (4 Cates) 239, 79 S. W. 124, 64 L. R. A. 443.

Time for Notice, Rule before and after Statute.

Under the judicial rule established before the enactment of this statute, common carriers were required to give the consignee prompt notice of the arrival of freight or merchandise, according to the nature of the goods; and the same rule exists under this statute, with the additional provision and limitation that the notice must not be later than three days in any case. *Dean v. A.*

Vaccaro & Am. Dec. 7 V. R. Co., sylvania F Cates) 239 Fisher v. App. 245.

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where the power, but not the of justice of the peace in a such recorder, and where ordinance of the city making of such statute an offense ty. State ex rel. v. Haynes, Pick.) 406, 58 S. W. 120; Me-Stroud, 109 Tenn. (1 Cates) 949.

Vaccaro & Co., 2 Head (39 Tenn.) 488, 75 Am. Dec. 744; Butler v. East Tennessee & V. R. Co., 8 Lea (76 Tenn.) 32; Pennsylvania R. Co. v. Naive, 112 Tenn. (4 Cates) 239, 79 S. W. 124, 64 L. R. A. 443; Fisher v. Southern Exp. Co., 3 Tenn. Civ. App. 245.

Holidays Excepted.

Negligence can not be predicated on the conduct of a common carrier in failing to give the consignee notice of the arrival of goods on the fourth day of July, where there prevails an established, certain, notorious, and uniform custom to suspend all business on that day, as a holiday. Pennsylvania R. Co. v. Naive, 112 Tenn. (4 Cates) 239, 79 S. W. 124, 64 L. R. A. 443.

Ignorance of Address as Excuse.

Where the consignee has no fixed residence, and the common carrier has no knowledge of his post office or temporary stopping place, it is excused from giving the prescribed notice, and is not liable for the loss of the goods burned, without its fault, while stored in its depot warehouse at its destination. Butler v. East Tennessee & V. R. Co., 8 Lea (76 Tenn.) 32; Pennsylvania R. Co. v. Naive, 112 Tenn. (4 Cates) 239, 79 S. W. 124, 64 L. R. A. 443.

Custom, Effect on Notice Requirement.

The rule can not be wholly dispensed with by a custom or usage at the place of

destination to disregard such law altogether. Dean v. A. Vaccaro & Co., 2 Head (39 Tenn.) 488, 75 Am. Dec. 744; Pennsylvania R. Co. v. Naive, 112 Tenn. (4 Cates) 239, 79 S. W. 124, 64 L. R. A. 443.

Inquiry by Consignee.

The consignee of perishable freight, as the agent of the consignor, is not bound to make inquiry therefor at the office of the common carrier, in the absence of notice of arrival, though he has reason to believe that the consignment is overdue. The common carrier can not in this manner shift its absolute duty to give the consignee prompt notice of the arrival of the goods. Pennsylvania R. Co. v. Naive, 112 Tenn. (4 Cates) 239, 79 S. W. 124, 64 L. R. A. 443.

Nonacceptance, Notice to Consignor.

In ordinary cases, it is not required of the common carrier to give notice to the consignor of the consignee's nonacceptance of the consignment; but the nature of the property might be such as to require such notice. However, the liability of the carrier for a failure to give such notice can only arise where such failure would be evidence of gross negligence, on its part, in the discharge of the duty, thrown upon it by the law through an unforeseen contingency, of protecting the property in its custody. Kremer v. Southern Exp. Co., 6 Cold. (46 Tenn.) 356.

6686 3598. Nonperishable goods refused by consignee sold at public auction.—Where nonperishable property which has been transported to destination is refused by the consignee or the party entitled to receive it or said consignee or party entitled to receive it fails to receive it within thirty days after notice of arrival shall have been duly sent or given, the carrier may sell the same at public auction to the highest bidder at such place as may be designated by the carrier. (1870-71, ch. 17, sec. 2; 1923, ch. 92, sec. 1.)

Cost of Carriage to Place of Sale, Liability For.

Where consignee refused shipment, and it became necessary for carrier to ship to

another place to be sold as provided by law, consignee was liable for such extra carriage. Nashville, C. & C. R. Co. v. Murphree, 2 Tenn. App. 482.

6687 3599. Notice of refusal and sale; description of property; advertisement.—The carrier shall have first mailed, sent, or given to the consignor notice that the property has been refused or remains unclaimed, as the case may be, and that it will be subject to sale if disposition be not arranged for, and shall have published notice containing description of the property, the name of the party to whom consigned, or, if shipper's order notify, the name of the party to be notified, and the time and place of sale, once a week for two successive weeks in a newspaper of general circulation at the place of sale or nearest place where such newspaper is published; provided, that thirty days shall have elapsed before publication of notice of sale after said

may be avoided by sufficient in nontransferable signature passenger tickets issued by carriers is prohibited.

or partly used passenger must be redeemed by carriers, when. is a misdemeanor; fine.

—All common carriers, within this state, shall, on delivery at their warehouse by written or printed notice, at his place of business, not residing or doing business at postoffice, within three days (ch. 17, sec. 1.)

Southern Exp. Co., 3 Tenn.

Meaning of Term.

of the term "prompt notice" settled with precision, as in every case. While a failure to give the rule indicated by this notice would be sufficient to charge a carrier with negligence, yet the rule itself, as to the days' limit, is subject to the custom or usage. Pennsylvania R. Co. v. Naive, 112 Tenn. (4 Cates) 239, 79 S. W. 124, 64 L. R. A. 443.

Rule before and after

the special rule established before the passage of this statute, common carriers are required to give the consignee notice of the arrival of freight or goods according to the nature of the same rule exists under this statute. The additional provision and the notice must not be later than the time in any case. Dean v. A.

notice that the property was refused or remains unclaimed was mailed, sent, or given. (Ib.)

6688 3600. Disposition of proceeds of sale.—The proceeds of any sale made under the above provisions shall be applied by the carrier to the payment of freight, demurrage, storage, and any other lawful charges and the expense of notice, advertisement, sale and other necessary expense and of caring for and maintaining the property, if proper care of the same requires special expense, and should there be a balance it shall be paid to the owner of the property sold hereunder. (Ib.)

6689 3600a4. Claims for lost or damaged freight and for overcharges to be settled within what time.—All common carriers operating in this state are required to settle all claims for lost or damaged freight and overcharges on freight for which they are liable within a reasonable time—to wit: Freight lost or damaged and overcharges on freight between two given points on same line or system shall be paid within sixty days from the filing of written notice with the agent of the company at the point of destination of said freight of the loss or damage thereof; and where freight is handled by two or more carriers, roads or systems of roads, and the same is lost or damaged or an overcharge made, said claim shall be paid within ninety days from the filing of written notice with the agent of the railroad company at the point of shipment or destination of said freight, by the consignor or consignee, of the loss or damage thereof or overcharge thereon; provided, that this section shall only apply to claims against such common carriers where the amount claimed is fifty dollars or less. (1907, ch. 235, sec. 1.)

Comparative Legislation. Time limit for adjustment of claims:
Fla. Comp. Gen. Laws 1927, §§ 6646, 6647.

Iowa. Code 1931, §§ 8150, 8151.
N. Car. Code 1931, § 3524.

6690 3600a5. Penalty may be avoided by sufficient tender.—Persons engaged as common carriers, in all cases where they fail to pay the claim mentioned in the last section within sixty or ninety days, as the case may be, after notice filed as specified in the last section, shall be required to pay the owner of said freight, in addition to the loss and interest thereon, twenty-five per cent. of the amount recovered for said loss; provided, that said penalty shall not apply when it shall appear to the court trying the case that said common carrier has tendered within the time specified to the claimant an amount of money sufficient to cover the loss for which said common carrier is held to be liable. (Ib., sec. 2.)

6691 3600a6. Traffic in nontransferable signature passenger tickets issued by common carriers is prohibited.—It shall be unlawful for any person, other than the authorized agent of the common carrier issuing the same, to sell or otherwise deal in or offer to sell any railroad, railway, steamship, or steamboat passenger ticket which shows that it was issued and sold below the standard schedule rate under

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contract with the original purchaser entered upon such ticket and signed by the original purchaser, to the effect that such ticket is non-transferable and void in the hands of any person other than the original purchaser thereof; provided, however, that nothing in this section nor in the two succeeding sections shall be construed as depriving the original purchaser of a transferable ticket of the right to sell same to a person who will in good faith personally use it in the prosecution of a journey. (1905, ch. 410, sec. 1.)

Constitutionality.

The statute is not unconstitutional as depriving the original purchaser of a property right without due process of law. *Samuelson v. State*, 116 Tenn. (8 Cates) 470, 95 S. W. 1012, 115 Am. St. 805.

The statute, in its application to non-transferable signature passenger tickets for passage from Tennessee into another state, is not invalid as an unwarranted interference with interstate commerce or interstate

passenger travel. *Samuelson v. State*, 116 Tenn. (8 Cates) 470, 95 S. W. 1012, 115 Am. St. 805.

The statute is not unconstitutional as class legislation suspending a general law for the benefit of particular individuals, because it is in the proper exercise of the police power. *Samuelson v. State*, 116 Tenn. (8 Cates) 470, 95 S. W. 1012, 115 Am. St. 805; *Motlow v. State*, 125 Tenn. (17 Cates) 547, 145 S. W. 177.

6692 3600a7. Unused or partly used passenger tickets must be redeemed by common carriers, when.—It shall be the duty of every common carrier that shall have sold any ticket or other evidence of the purchaser's right to travel on its line, or any line of which it forms a part, to, if the whole of such ticket be unused, redeem the same, paying the original purchaser thereof, the actual amount for which said ticket was sold; or, if any part of such ticket be unused, to redeem such unused part, paying the original purchaser thereof at a rate which shall be equal to the difference between the price paid for the whole ticket and the price of a ticket between the points for which said ticket was actually used; provided, such purchaser shall present such unused or partly used ticket for redemption within six months after the date of its issuance, to the officer or agent who shall be authorized or designated by such common carrier to redeem unused or partly used tickets, and the said officer shall within fifteen days after the receipt of such ticket redeem the same as hereinbefore provided for. Such redemption shall be made without cost of exchange or other expense to the purchaser of the ticket. (Ib., sec. 2.)

Cross-Reference. See notes to § 6691.
Comparative Legislation. Redemption of unused tickets:
 Fla. Comp. Gen. Laws 1927, § 6691.

Ind. Burns' Stat. 1933, § 55-1003.
Iowa. Code 1931, § 8133.
N. Car. Code 1931, § 3503.

6693 3600a8. Violation is a misdemeanor; fine.—Any person or corporation violating any of the provisions of the last two sections shall be guilty of a misdemeanor, and punished by fine in the sum of not less than fifty dollars, nor more than one hundred dollars. (Ib., sec. 3.)

Cross-Reference. See notes to § 6691.

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vided for by section 264 of this chapter, within twenty days after June 16, 1935, \$2 for every mile of road operated by it on December 31, 1934, as reported to the Commission, and it shall be the duty of the Secretary of the Treasury to collect such assessments. (Act June 14, 1935, c. 247, § 2, 49 Stat. 376.)

§ 267a. Same; extension of duration of chapter. This chapter shall continue in full force and effect until June 17, 1936, but orders of the Coordinator or of the Commission made thereunder shall continue in effect until vacated by the Commission or set aside by other lawful authority, but notwithstanding the provisions of section 260, no such order shall operate to relieve any carrier from the effect of any State law or of any order of a State commission enacted or made after this title ceases to have effect. (June 14, 1935, c. 247, § 1, 49 Stat. 376.)

Chapter 8.—MOTOR CARRIER ACT

Sec.

- 301. Short title.
- 302. Declaration of policy and delegation of jurisdiction to Interstate Commerce Commission.
- 303. Definitions and exceptions.
- 304. Powers and duties of commission.
- 305. Administration.
- 306. Certificate of convenience and necessity.
- 307. Issuance of certificate.
- 308. Terms and conditions of certificate.
- 309. Contract carriers by motor vehicle.
- 310. Dual operation.
- 311. Motor transportation brokers.
- 312. Suspension, change, revocation, and transfer of certificates, permits, and licenses.
- 313. Consolidation, merger, acquisition, and control.
- 314. Issuance of securities.
- 315. Security for protection of public.
- 316. Rates, fares, and charges.
- 317. Tariffs of common carriers by motor vehicle.
- 318. Schedules of contract carriers by motor vehicles.
- 319. Receipts or bills of lading; application of section 20 (11).
- 320. Accounts, records, and reports.
- 321. Orders, notices, and service of process.
- 322. Unlawful operation.
- 323. Collection of rates and charges; extension of credit; liability of agent of beneficial owner.
- 324. Identification plates for interstate motor carriers.
- 325. Investigation of motor vehicle sizes and weights and qualifications and hours of service of employees.
- 326. Separability clause.
- 327. Effective date of chapter.

§ 301. Short title. This chapter may be cited as the "Motor Carrier Act, 1935". (Feb. 4, 1937, c. 104, Part II, § 201, as added Aug. 9, 1935, c. 498, § 1, 49 Stat. 543.)

§ 302. Declaration of policy and delegation of jurisdiction to Interstate Commerce Commission. (a) It is hereby declared to be the policy of Congress to regulate transportation by motor carriers in such manner as to recognize and preserve the inherent advantages of, and foster sound economic conditions in, such transportation and among such carriers in the public interest; promote adequate, economical, and efficient service by motor carriers, and reasonable charges therefor, without unjust discriminations, undue preferences or advantages, and unfair or destructive competitive practices; improve the relations between, and coordinate transportation by and regulation of, motor carriers and other carriers; develop and preserve a highway transportation system properly adapted to the needs of the commerce of the United States and of the national defense; and cooperate with the several States and the duly authorized officials thereof and with any organization of motor carriers in the administration and enforcement of this chapter.

(b) The provisions of this chapter apply to the transportation of passengers or property by motor carriers engaged in interstate or foreign commerce and to the procurement of and the provision of facilities for such transportation, and the regulation of such transportation, and of the procurement thereof, and the provision of facilities therefor, is hereby vested in the Interstate Commerce Commission.

(c) Nothing in this chapter shall be construed to affect the powers of taxation of the several States or to authorize a motor carrier to do an intrastate business on the highways of any State, or to inter-

fere with the exclusive exercise by each State of the power of regulation of intrastate commerce carriers on the highways thereof. (Feb. 4, 1937, c. 104, Part II, § 202, as added Aug. 9, 1935, c. 498, § 1, 49 Stat. 543.)

§ 303. Definitions and exceptions—(a) Definitions. As used in this chapter—

(1) The term "person" means any individual, firm, copartnership, corporation, company, association, or joint-stock association; and includes any trustee, receiver, assignee, or personal representative thereof.

(2) The term "board" or "State board" means the commission, board, or official (by whatever name designated in the laws of a State) which, under the laws of any State in which any part of the service in interstate or foreign commerce regulated by this part is performed, has or may hereafter have jurisdiction to grant or approve certificates of public convenience and necessity or permits to motor carriers, or otherwise to regulate the business of transportation by motor vehicles, in intrastate commerce over the highways of such State.

(3) The term "Commission" means the Interstate Commerce Commission.

(4) The term "joint board" means any special board constituted as provided in section 305 of this chapter.

(5) The term "certificate" means a certificate of public convenience and necessity issued under this part to common carriers by motor vehicle.

(6) The term "permit" means a permit issued under this chapter to contract carriers by motor vehicle.

(7) The term "license" means a license issued under this chapter to a broker.

(8) The term "State" means any of the several States and the District of Columbia.

(9) The term "express company" means any common carrier by express subject to the provisions of chapter 1 of this title.

(10) The term "interstate commerce" means commerce between any place in a State and any place in another State or between places in the same State through another State, whether such commerce moves wholly by motor vehicle or partly by motor vehicle and partly by rail, express, or water.

(11) The term "foreign commerce" means commerce between any place in the United States and any place in a foreign country, or between places in the United States through any foreign country, whether such commerce moves wholly by motor vehicle or partly by motor vehicle and partly by rail, express, or water.

(12) The term "highway" means the roads, highways, streets, and ways in any State.

(13) The term "motor vehicle" means any vehicle, machine, tractor, trailer, or semitrailer propelled or drawn by mechanical power and used upon the highways in the transportation of passengers or property, but does not include any vehicle, locomotive, or car operated exclusively on a rail or rails.

(14) The term "common carrier by motor vehicle" means any person who or which undertakes, whether directly or by a lease or any other arrangement, to transport passengers or property, or any class or classes of property, for the general public in interstate or foreign commerce by motor vehicle for compensation, whether over regular or irregular routes, including such motor vehicle operations of carriers by rail or water, and of express or forwarding companies, except to the extent that these operations are subject to the provisions of chapter 1 of this title.

(15) The term "contract carrier by motor vehicle" means any person, not included under paragraph (14) of this section, who or which, under special and individual contracts or agreements, and whether directly or by a lease or any other arrangement, transports passengers or property in interstate or foreign commerce by motor vehicle for compensation.

(16) The term "motor carrier" includes both a common carrier by motor vehicle and a contract carrier by motor vehicle.

(17) The term "private carrier of property by motor vehicle" means any person not included in the terms "common carrier by motor vehicle" or "contract carrier by motor vehicle", who or which transports in interstate or foreign commerce by motor vehicle property of which such person is the owner, lessee, or bailee, when such transportation is for the purpose of sale, lease, rent, or bailment, or in furtherance of any commercial enterprise.

(18) The term "broker" means any person not included in the term "motor carrier" and not a bona fide employee or agent of any such carrier, who or which, as principal or agent, sells or offers for sale any transportation subject to this chapter, or negotiates for, or holds himself or itself out by solicitation, advertisement, or otherwise as one who sells, provides, furnishes, contracts, or arranges for such transportation.

(19) The "services" and "transportation" to which this chapter applies include all vehicles operated by, for, or in the interest of any motor carrier irrespective of ownership or of contract, express or implied, together with all facilities and property operated or controlled by any such carrier or carriers, and used in the transportation of passengers or property in interstate or foreign commerce or in the performance of any service in connection therewith.

(20) The term "interstate operation" means any operation in interstate commerce.

(21) The term "foreign operation" means any operation in foreign commerce.

(b) Vehicles excepted from operation of law. Nothing in this chapter, except the provisions of section 304 of this chapter relative to qualifications and maximum hours of service of employees and safety of operation or standards of equipment shall be construed to include (1) motor vehicles employed solely in transporting school children and teachers to or from school; or (2) taxicabs, or other motor vehicles performing a bona fide taxicab service, having a capacity of not more than six passengers and not operated on a regular route or between fixed termini; or (3) motor vehicles owned or operated by or on behalf of hotels and used exclusively for the transportation of hotel patrons between hotels and local railroad or other common carrier stations; or (4) motor vehicles operated, under authorization, regulation, and control of the Secretary of the Interior, principally for the purpose of transporting persons in and about the national parks and national monuments; or (4a) motor vehicles controlled and operated by any farmer, and used in the transportation of his agricultural commodities and products thereof, or in the transportation of supplies to his farm; or (4b) motor vehicles controlled and operated by a co-operative association as defined in section 1141j of Title 12; or (5) trolley busses operated by electric power derived from a fixed overhead wire, furnishing local passenger transportation similar to street-railway service; or (6) motor vehicles used exclusively in carrying livestock, fish (including shell fish), or agricultural commodities (not including manufactured products thereof); or (7) motor vehicles used exclusively in the distribution of newspapers; nor, unless and to the extent that the Commission shall from time to time find that such application is necessary to carry out the policy of Congress enunciated in section 302 of this chapter, shall the provisions of this chapter, except the provisions of section 304 of this chapter relative to qualifications and maximum hours of service of employees and safety of operation or standards of equipment apply to: (8) The transportation of passengers or property in interstate or foreign commerce wholly within a municipality or between contiguous municipalities or within a zone adjacent to and commercially a part of any such municipality or municipalities, except when such transportation is under a common control, management, or arrangement for a continuous carriage or shipment to or from a point without such municipality, municipalities, or zone, and provided that the motor carrier engaged in such transportation of pas-

sengers over regular or irregular route or routes in interstate commerce is also lawfully engaged in the intrastate transportation of passengers over the entire length of such interstate route or routes in accordance with the laws of each State having jurisdiction; or (9) the casual, occasional, or reciprocal transportation of passengers or property in interstate or foreign commerce for compensation by any person not engaged in transportation by motor vehicle as a regular occupation or business. (Feb. 4, 1837, c. 104, Part II, § 203, as added Aug. 9, 1935, c. 493, § 1, 49 Stat. 544.)

§ 304. Powers and duties of commission—(a) Powers and duties generally. It shall be the duty of the Commission—

(1) To regulate common carriers by motor vehicle as provided in this chapter, and to that end the Commission may establish reasonable requirements with respect to continuous and adequate service, transportation of baggage and express, uniform systems of accounts, records, and reports, preservation of records, qualifications and maximum hours of service of employees, and safety of operation and equipment.

(2) To regulate contract carriers by motor vehicle as provided in this chapter, and to that end the Commission may establish reasonable requirements with respect to uniform systems of accounts, records, and reports, preservation of records, qualifications and maximum hours of service of employees, and safety of operation and equipment.

(3) To establish for private carriers of property by motor vehicle, if need therefor is found, reasonable requirements to promote safety of operation, and to that end prescribe qualifications and maximum hours of service of employees, and standards of equipment. In the event such requirements are established, the term "motor carrier" shall be construed to include private carriers of property by motor vehicle in the administration of sections 304 (d) and (e); 305; 320; 321; 322 (a), (b), (d), (f), and (g); and 324 of this chapter.

(4) To regulate brokers as provided in this chapter, and to that end the Commission may establish reasonable requirements with respect to licensing, financial responsibility, accounts, records, reports, operations, and practices of any such person or persons.

(5) For the purpose of carrying out the provisions pertaining to safety, the Commission may avail itself of the assistance of any of the several research agencies of the Federal Government having special knowledge of any such matter, to conduct such scientific and technical researches, investigations, and tests as may be necessary to promote the safety of operation and equipment of motor vehicles as provided in this chapter; the Commission may transfer to such agency or agencies such funds as may be necessary and available to make this provision effective.

(6) To administer, execute, and enforce all other provisions of this chapter, to make all necessary orders in connection therewith, and to prescribe rules, regulations, and procedure for such administration; and

(7) To inquire into the organization of motor carriers and brokers and into the management of their business, to keep itself informed as to the manner and method in which the same is conducted, and to transmit to Congress, from time to time, such recommendations as to additional legislation relating to such carriers or brokers as the Commission may deem necessary.

(b) Application of codes of fair competition. The provisions of any code of fair competition for any industry embracing motor carriers or for any subdivision thereof approved pursuant to chapter 15 of Title 15 or any present or future Act amendatory thereof, or supplementary thereto, or in substitution therefor, which is in conflict or inconsistent with any action under the provisions of this chapter, shall have no force or effect after this section becomes effective.

(c) Classification of motor carriers. The Commission may from time to time establish such just and reasonable classifications of brokers or of groups

of carriers included in the term "common carrier by motor vehicle", or "contract carrier by motor vehicle", as the special nature of the services performed by such carriers or brokers shall require; and such just and reasonable rules, regulations, and requirements, consistent with the provisions of this chapter, to be observed by the carriers or brokers so classified or grouped, as the Commission deems necessary or desirable in the public interest.

(d) **Investigation of complaints; orders.** Upon complaint in writing to the Commission by any person, State board, organization, or body politic, or upon its own initiative without complaint, the Commission may investigate whether any motor carrier or broker has failed to comply with any provision of this chapter, or with any requirement established pursuant thereto. If the Commission, after notice and hearing, finds upon any such investigation that the motor carrier or broker has failed to comply with any such provision or requirement, the Commission shall issue an appropriate order to compel the carrier or broker to comply therewith. Whenever the Commission is of opinion that any complaint does not state reasonable grounds for investigation and action on its part, it may dismiss such complaint.

(e) **Rehearings.** After a decision, order, or requirement has been made by the Commission in any proceeding under this chapter, any party thereto may make application to the Commission for reconsideration or rehearing of the same, or of any matter determined therein, and it shall be lawful for the Commission in its discretion to grant such reconsideration or a rehearing if sufficient reason therefor be made to appear. Applications for reconsideration or rehearing shall be governed by such general rules as the Commission may prescribe. No such application shall excuse any motor carrier or broker from complying with or obeying any decision, order, or requirement of the Commission, or operate in any manner to stay or postpone the enforcement thereof, without the special order of the Commission. If, after such reconsideration or rehearing, it shall appear that the original decision, order, or requirement is in any respect unjust or unwarranted, the Commission may reverse, change, or modify the same accordingly. Any decision, order, or requirement made after such reconsideration or rehearing shall be subject to the same provisions as an original decision, order, or requirement.

(f) **Application of sections 14 and 16 (13) of this title.** The provisions of sections 14 and 16 (13) of this title, relating to reports, decisions, schedules, contracts, and other public records, shall apply in the administration of this chapter. (Feb. 4, 1887, c. 104, Part II, § 204, as added Aug. 9, 1935, c. 498, § 1, 49 Stat. 546.)

§ 305. **Administration—(a) Hearings by Commission or examiner.** Excepting a matter which is referred to a joint board as hereinafter provided, any matter arising in the administration of this chapter requiring a hearing shall be heard and decided by the Commission, or shall, by order of the Commission, be referred to a member or examiner of the Commission for hearing and the recommendation of an appropriate order thereon. With respect to such matter the member or examiner shall have all the rights, duties, powers, and jurisdiction conferred by this chapter upon the Commission, except that the order recommended by such member or examiner shall be subject to the following provisions of this paragraph. Any order recommended by the member or examiner with respect to such matter shall be in writing and be accompanied by the reasons therefor, and shall be filed with the Commission. Copies of such recommended order shall be served upon the persons specified in paragraph (f), who may file exceptions thereto, but if no exceptions are filed within 20 days after service upon such persons, or within such further period as the Commission may authorize, such recommended order shall become the order of the Commission and become effective, unless

within such period the order is stayed or postponed by the Commission. Where exceptions are filed as herein provided it shall be the duty of the Commission to consider the same and, if sufficient reason appears therefor, the Commission shall grant such review or make such orders or hold or authorize such further hearings or proceedings in the premises as may be necessary or proper to carry out the purposes of this chapter, or the Commission may, on its own motion, review any such matter and take action thereon as if exceptions thereto had been filed. The Commission, after review upon the same record or as supplemented by a further hearing, shall decide the matter and make appropriate order thereon.

(b) **Joint boards; composition; references of matters to boards.** The Commission shall, when operations of motor carriers or brokers conducted or proposed to be conducted involve not more than three States, and the Commission may, in its discretion, when operations of motor carriers or brokers conducted or proposed to be conducted involve more than three States, refer to a joint board for appropriate proceedings thereon, any of the following matters arising in the administration of this chapter with respect to such operations: Applications for certificates, permits, or licenses; the suspension, change, or revocation of such certificates, permits, or licenses; applications for the approval and authorization of consolidations, mergers, and acquisitions of control or operating contracts; complaints as to violations by motor carriers or brokers of the requirements established under section 304 (a); and complaints as to rates, fares, and charges of motor carriers or the practices of brokers: *Provided, however,* That if the Commission is prevented by legal proceedings from referring a matter to a joint board, it may determine such matter as provided in paragraph (a) of this section. The Commission, in its discretion, may also refer to a joint board any investigation and suspension proceeding or other matter not specifically mentioned above which may arise under this chapter. The joint board to which any such matter is referred shall be composed solely of one member from each State within which the motor-carrier or brokerage operations involved in such matter are or are proposed to be conducted: *Provided,* That the Commission may designate an examiner or examiners to advise with and assist the joint board under such rules and regulations as it may prescribe. In acting upon matters so referred joint boards shall be vested with the same rights, duties, powers, and jurisdiction as are hereinbefore vested in members or examiners of the Commission while acting under its orders in the administration of this chapter. Orders recommended by joint boards shall be filed with the Commission, and shall become orders of the Commission and become effective in the same manner, and shall be subject to the same procedure, as provided in the case of orders recommended by members or examiners under this section.

(c) **Creation of joint board; rules and procedure; nominations for membership; procedure on failure of board to act.** Whenever there arises in the administration of this chapter any matter that the Commission is required to refer to a joint board, or that the Commission determines, in its discretion, to refer to a joint board, the Commission shall, if no joint board eligible to consider said matter is in existence, create a joint board to consider the matter when referred, and to recommend appropriate order thereon. The Commission shall prescribe rules governing meetings and procedure of joint boards and may, in the event of legal proceedings preventing reference to a joint board, determine the matter as provided in paragraph (a) of this section. Except as hereinafter provided, a joint board shall consist of a member from each State in which the motor carrier or brokerage operations involved are or are proposed to be conducted. The member from any such State shall be nominated by the board of such State from its own membership or otherwise; or if there is no board in such State or if the board of such State

falls to make a nomination when requested by the Commission, then the Governor of such State may nominate such member. The Commission is authorized to appoint as a member upon the joint board any such nominee approved by it. If both the Board and the Governor of any State shall fail to nominate a joint board member when requested, then the joint board shall be constituted without a member from such State, if members for two or more States shall have been nominated and approved by the Commission. All decisions and recommendations by joint boards shall be by majority vote. If the board of each State from which a member of a joint board is entitled to be appointed shall waive action on any matter referred to such joint board, or if any joint board fails or refuses to act, or is unable to agree upon any matter submitted to it within forty-five days after the matter is referred to it or such other period as the Commission may authorize, or if a member shall not be nominated for more than one State (except only when the operations proposed shall be into or through territory foreign to the United States), then such matter shall be decided as in the case of any matter not required to be referred to a joint board. When any proceeding required to be referred to a joint board shall involve operations of a motor carrier conducted or proposed to be conducted into or through territory foreign to the United States, if a single State shall be involved, or if only one State shall make nomination of a joint board member through its Governor or State board, then the Commission, in such case, may receive from that State the nomination of not more than three members and may appoint such nominees to constitute the joint board. Members of joint boards when administering the provisions of this chapter shall receive such allowances for travel and subsistence expenses as the Commission shall provide. A joint board shall continue in existence for the consideration of matters referred to it by the Commission until such time as its existence may be terminated by the Commission. A substitution of membership upon a joint board from any State may be made at any time by nomination and appointment in the same manner as an original nomination and appointment.

(d) **Place of holding hearings.** Where practicable and as the Commission may by rule or order direct, hearings by any member, examiner, or joint board upon any matter referred to him or to such board shall be held at such places within the United States as are convenient to the parties.

(e) **Oaths; attendance of witnesses and production of documents.** So far as may be necessary for the purposes of this chapter, the Commission and the members and examiners thereof and joint boards shall have the same power to administer oaths, and require by subpoena the attendance and testimony of witnesses and the production of books, papers, tariffs, contracts, agreements, and documents, and to take testimony by deposition, relating to any matter under investigation, as the Commission has in a matter arising under chapter 1 of this title; and any person subpoenaed or testifying in connection with any matter under investigation under this chapter shall have the same rights, privileges, and immunities and be subject to the same duties, liabilities, and penalties as though such matter arose under chapter 1 of this title, unless otherwise provided in this chapter.

(f) **Notice of proceedings and opportunity for hearing.** In accordance with rules prescribed by the Commission, reasonable notice shall be afforded, in connection with any proceeding under this chapter, to interested parties and to the board of any State, or to the governor if there be no board, in which the motor-carrier operations involved in the proceeding are or are proposed to be conducted, and opportunity for hearing and for intervention in connection

with any such proceeding shall be afforded to all interested parties.

(g) **Joint hearings with state authorities; offices for boards and state commissions.** The Commission is authorized to confer with or to hold joint hearings with any authorities of any State in connection with any matter arising in any proceedings under this chapter. The Commission is also authorized to avail itself of the cooperation, services, records, and facilities of such State authorities as fully as may be practicable, in the enforcement or administration of any provision of this chapter. From any space in the Interstate Commerce Commission Building not required by the Commission, the Government authority controlling the allocation of space in public buildings shall assign for the use of the national organization of the State commissions and of their representatives suitable office space and facilities which shall be at all times available for the use of joint boards created under this chapter and for members and representatives of such boards cooperating with the Commission or with any other Federal commission or department under this or any other Act; and if there be no such suitable space in the Interstate Commerce Commission Building, the same shall be assigned in some other building in convenient proximity thereto.

(h) **Court review of Commission's orders; compelling Commission to take jurisdiction.** Any final order made under this chapter shall be subject to the same right of relief in court by any party in interest as is now provided in respect to orders of the Commission made under chapter 1 of this title: *Provided*, That, where the Commission, in respect of any matter arising under this chapter, shall have issued a negative order solely because of a supposed lack of power, any such party in interest may file a bill of complaint with the appropriate District Court of the United States, convened under section 43 of Title 28, and such court, if it determines that the Commission has such power, may enforce by writ of mandatory injunction the Commission's taking of jurisdiction.

(i) **Application of section 17 of this title.** All the provisions of section 17 of chapter 1 of this title shall apply to all proceedings under this chapter.

(j) **Pecuniary interest in motor carrier under investigation forbidden.** No member or examiner of the Commission or member of a joint board shall hold any official relation to, or own any securities of, or be in any manner pecuniarily interested in, any motor carrier or in any carrier by railroad, water, or other form of transportation.

(k) **Employees, examiners, attorneys, etc.; authority to employ.** The Commission is authorized to employ, and to fix the compensation of, such experts, assistants, special agents, examiners, attorneys, and other employees as in its judgment may be necessary or advisable for the convenience of the public and for the effective administration of this chapter. (Feb. 4, 1887, c. 104, Part II, § 205, as added Aug. 9, 1935, c. 498, § 1, 49 Stat. 548.)

§ 306. **Certificate of convenience and necessity—(a) Necessity for; motor carriers in bona fide operation on June 1, 1935.** No common carrier by motor vehicle subject to the provisions of this chapter shall engage in any interstate or foreign operation on any public highway, or within any reservation under the exclusive jurisdiction of the United States, unless there is in force with respect to such carrier a certificate of public convenience and necessity issued by the Commission authorizing such operations: *Provided, however*, That, subject to section 310, if any such carrier or predecessor in interest was in bona fide operation as a common carrier by motor vehicle on June 1, 1935, over the route or routes or within the territory for which application is made and has so operated since

that time, or if engaged in furnishing seasonal service only, was in bona fide operation on June 1, 1935, during the season ordinarily covered by its operation, except in either instance as to interruptions of service over which the applicant or its predecessor in interest had no control, the Commission shall issue such certificate without requiring further proof that public convenience and necessity will be served by such operation, and without further proceedings, if application for such certificate is made to the Commission as provided in paragraph (b) of this section and within one hundred and twenty days after this section shall take effect, and if such carrier was registered on June 1, 1935, under any code of fair competition requiring registration, the fact of registration shall be evidence of bona fide operation to be considered in connection with the issuance of such certificate. Otherwise the application for such certificate shall be decided in accordance with the procedure provided for in section 307 (a) of this chapter and such certificate shall be issued or denied accordingly. Pending the determination of any such application the continuance of such operation shall be lawful: *And provided further*, That this paragraph shall not be so construed as to require any such carrier lawfully engaged in operation solely within any State to obtain from the Commission a certificate authorizing the transportation by such carrier of passengers or property in interstate or foreign commerce between places within such State if there be a board in such State having authority to grant or approve such certificates and if such carrier has obtained such certificate from such board. Such transportation shall, however, be otherwise subject to the jurisdiction of the Commission under this chapter.

(b) *Application for certificate; form and contents.* Application for certificates shall be made in writing to the Commission, be verified under oath, and shall be in such form and contain such information and be accompanied by proof of service upon such interested parties as the Commission shall, by regulation, require. Any person, not included within the provisions of paragraph (a) of this section, who or which is engaged in transportation in interstate or foreign commerce as a common carrier by motor vehicle when this section takes effect may continue such operation for a period of one hundred and twenty days thereafter without a certificate and, if application for such certificate is made to the Commission within such period, the carrier may, under such regulations as the Commission shall prescribe, continue such operation until otherwise ordered by the Commission. (Feb. 4, 1887, c. 104, Part II, § 206, as added Aug. 9, 1935, c. 498, § 1, 49 Stat. 551.)

Effective date of section, see section 327 of this chapter.

§ 307. Issuance of certificate—(a) *Issuance authorized to qualified applicants for regular routes and between fixed termini.* Subject to section 310, a certificate shall be issued to any qualified applicant therefor, authorizing the whole or any part of the operations covered by the application, if it is found that the applicant is fit, willing, and able properly to perform the service proposed and to conform to the provisions of this chapter and the requirements, rules, and regulations of the Commission thereunder, and that the proposed service, to the extent to be authorized by the certificate, is or will be required by the present or future public convenience and necessity; otherwise such application shall be denied: *Provided, however*, That no such certificate shall be issued to any common carrier of passengers by motor vehicle for operations over other than a regular route or routes, and between fixed termini, except as such carriers may be authorized to engage in special or charter operations.

(b) *Certificate not to confer proprietary or property rights in highway.* No certificate issued under this chapter shall confer any proprietary or property rights in the use of the public highways. (Feb. 4, 1887, c. 104, Part II, § 207, as added Aug. 9, 1935, c. 498, § 1, 49 Stat. 551.)

§ 308. Terms and conditions of certificate—(a) *Specification of routes and termini; extension of routes; restriction on additions to equipment.* Any certificate issued under section 306 or 307 shall specify the service to be rendered and the routes over which, the fixed termini, if any, between which, and the intermediate and off-route points, if any, at which, and in case of operations not over specified routes or between fixed termini, the territory within which, the motor carrier is authorized to operate; and there shall, at the time of issuance and from time to time thereafter, be attached to the exercise of the privileges granted by the certificate such reasonable terms, conditions, and limitations as the public convenience and necessity may from time to time require, including terms, conditions, and limitations as to the extension of the route or routes of the carrier, and such terms and conditions as are necessary to carry out, with respect to the operations of the carrier, the requirements established by the Commission under section 304 (a) (1) and (6): *Provided, however*, That no terms, conditions, or limitations shall restrict the right of the carrier to add to his or its equipment and facilities over the routes, between the termini, or within the territory specified in the certificate, as the development of the business and the demands of the public shall require.

(b) *Deviation from route.* A common carrier by motor vehicle operating under any such certificate may occasionally deviate from the route over which, and/or the fixed termini between which, it is authorized to operate under the certificate, under such general or special rules and regulations as the Commission may prescribe.

(c) *Transportation of special or chartered parties.* Any common carrier by motor vehicle transporting passengers under a certificate issued under this chapter may transport in interstate or foreign commerce to any place special or chartered parties under such rules and regulations as the Commission shall have prescribed.

(d) *Transportation of baggage, newspapers, express or mail.* A certificate for the transportation of passengers may include authority to transport in the same vehicle with the passengers, newspapers, baggage of passengers, express, or mail, or to transport baggage of passengers in a separate vehicle. (Feb. 4, 1887, c. 104, Part II, § 208, as added Aug. 9, 1935, c. 498, § 1, 49 Stat. 552.)

§ 309. Contract carriers by motor vehicle—(a) *Permit essential to operation; carriers in bona fide operation on July 1, 1935; laws relating to national parks and monuments unaffected.* No person shall engage in the business of a contract carrier by motor vehicle in interstate or foreign commerce on any public highway or within any reservation under the exclusive jurisdiction of the United States unless there is in force with respect to such carrier a permit issued by the Commission, authorizing such person to engage in such business: *Provided*, That, subject to section 310, if any such carrier or a predecessor in interest was in bona fide operation as a contract carrier by motor vehicle on July 1, 1935, over the route or routes or within the territory for which application is made and has so operated since that time, or, if engaged in furnishing seasonal service, only, was in bona fide operation on July 1, 1935, during the season ordinarily covered by its operations, except in either instance as to interruptions of service over which the applicant or its predecessor in interest had no control, the Commission shall issue such permit, without further proceedings, if application for such permit is made to the Commission as provided in paragraph (b) of this section and within one hundred and twenty days after this section shall take effect and if such carrier was registered on July 1, 1935, under any code of fair competition requiring registration, the fact of registration shall be evidence of bona fide operation to be considered in connection with the issuance of such permit. Otherwise the application for such permit shall be decided

in accordance with the procedure provided for in paragraph (b) of this section and such permit shall be issued or denied accordingly. Pending determination of any such application the continuance of such operation shall be lawful. Any person, not included within the foregoing provisions of this paragraph, who or which is engaged in transportation as a contract carrier by motor vehicle when this section takes effect, may continue such operation for a period of one hundred and twenty days thereafter without a permit and, if application for such permit is made within such period, the carrier may, under such regulations as the Commission shall prescribe, continue such operation until otherwise ordered by the Commission: *Provided further*, That nothing in this chapter shall be construed to repeal, amend, or otherwise modify any Act or Acts relating to national parks and national monuments under the administrative jurisdiction of the Secretary of the Interior, or to withdraw such authority or control as may by law be held by the Secretary of the Interior with respect to the admission and operation of motor vehicles in any national park or national monument of the United States.

(b) **Application for permit; form and contents; issuance of permit; terms and conditions.** Applications for such permits shall be made to the Commission in writing, be verified under oath, and shall be in such form and contain such information and be accompanied by proof of service upon such interested parties as the Commission may, by regulations, require. Subject to section 310, 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 from the applications or from any hearing held thereon, that 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 this chapter and the lawful requirements, rules, and regulations of the Commission thereunder, and that the proposed operation, to the extent authorized by the permit, will be consistent with the public interest and the policy declared in section 302 (a) of this chapter; otherwise such application shall be denied. The Commission shall specify in the permit the business of the contract carrier covered thereby and the scope thereof and shall attach to it, at the time of issuance, and from time to time thereafter, such reasonable terms, conditions, and limitations consistent with the character of the holder as a contract carrier as are necessary to carry out, with respect to the operations of such carrier, the requirements established by the Commission under section 304 (a) (2) and (6): *Provided, however*, That no terms, conditions, or limitations shall restrict the right of the carrier to substitute or add contracts within the scope of the permit, or to add to his or its equipment and facilities, within the scope of the permit, as the development of the business and the demands of the public may require. (Feb. 4, 1887, c. 104, Part II, § 209, as added Aug. 9, 1935, c. 498, § 1, 49 Stat. 552.)

Effective date of section, see section 327 of this chapter.

§ 310. **Dual operation.** No person, after January 1, 1936, shall at the same time hold under this chapter a certificate as a common carrier and a permit as a contract carrier authorizing operation for the transportation of property by motor vehicle over the same route or within the same territory, unless for good cause shown the Commission shall find that such certificate and permit may be held consistently with the public interest and with the policy declared in section 302 (a) of this chapter. (Feb. 4, 1887, c. 104, Part II, § 210, as added Aug. 9, 1935, c. 498, § 1, 49 Stat. 554.)

§ 311. **Motor transportation brokers—(a) License required.** No person shall for compensation sell or offer for sale transportation subject to this chapter or shall make any contract, agreement, or arrange-

ment to provide, procure, furnish, or arrange for such transportation or shall hold himself or itself out by advertisement, solicitation, or otherwise as one who sells, provides, procures, contracts, or arranges for such transportation, unless such person holds a broker's license issued by the Commission to engage in such transactions: *Provided, however*, That no such person shall engage in transportation subject to this chapter unless he holds a certificate or permit as provided in this chapter. In the execution of any contract, agreement, or arrangement to sell, provide, procure, furnish, or arrange for such transportation, it shall be unlawful for such person to employ any carrier by motor vehicle who or which is not the lawful holder of an effective certificate or permit issued as provided in this chapter: *And provided further*, That the provisions of this paragraph shall not apply to any carrier holding a certificate or a permit under the provisions of this chapter or to any bona fide employee or agent of such motor carrier, so far as concerns transportation to be furnished wholly by such carrier or jointly with other motor carriers holding like certificates or permits, or with a common carrier by railroad, express, or water.

(b) **Issuance of license; brokers in operation prior to enactment of section.** A brokerage license shall be issued to any qualified applicant therefor, authorizing the whole or any part of the operations covered by the application, if it is found that the applicant is fit, willing, and able properly to perform the service proposed and to conform to the provisions of this chapter and the requirements, rules, and regulations of the Commission thereunder, and that the proposed service, to the extent to be authorized by the license, is, or will be consistent with the public interest and the policy declared in section 302 (a) of this chapter; otherwise such application shall be denied. Any broker in operation when this section takes effect may continue such operation for a period of one hundred and twenty days thereafter without a license, and if application for such license is made within such period, the broker may, under such regulations as the Commission shall prescribe, continue such operations until otherwise ordered by the Commission.

(c) **Rules and regulations; bond or other security required.** The Commission shall prescribe reasonable rules and regulations for the protection of travelers or shippers by motor vehicle, to be observed by any person holding a brokerage license, and no such license shall be issued or remain in force unless such person shall have furnished a bond or other security approved by the Commission, in such form and amount as will insure financial responsibility and the supplying of authorized transportation in accordance with contracts, agreements, or arrangements therefor.

(d) **Inspection of accounts, records, etc.** The Commission and its special agents and examiners shall have the same authority as to accounts, reports, and records, including inspection and preservation thereof, of any person holding a brokerage license issued under the provisions of this section, that they have under this chapter with respect to motor carriers subject thereto. (Feb. 4, 1887, c. 104, Part II, § 211, as added Aug. 9, 1935, c. 498, § 1, 49 Stat. 554.)

Effective date of section, see section 327 of this chapter.

§ 312. **Suspension, change, revocation and transfer of certificates, permits and licenses.** (a) Certificates, permits, and licenses shall be effective from the date specified therein, and shall remain in effect until terminated as herein provided. Any such certificate, permit, or license may, upon application of the holder thereof, in the discretion of the Commission, be amended or revoked, in whole or in part, or may upon complaint, or on the Commission's own initiative, after notice and hearing, be suspended, changed, or revoked, in whole or in part, for wilful failure to comply with any provision of this chapter, or with any lawful order, rule, or regulation of the Com-

mission promulgated thereunder, or with any term, condition, or limitation of such certificate, permit, or license: *Provided, however,* That no such certificate, permit, or license shall be revoked (except upon application of the holder) unless the holder thereof willfully fails to comply, within a reasonable time, not less than ninety days, to be fixed by the Commission, with a lawful order of the Commission, made as provided in section 304 (d), commanding obedience to the provision of this chapter, or to the rule or regulation of the Commission thereunder, or to the term, condition, or limitation of such certificate, permit, or license, found by the Commission to have been violated by such holder.

(b) Except as provided in section 313, any certificate or permit may be transferred, pursuant to such rules and regulations as the Commission may prescribe. (Feb. 4, 1887, c. 104, Part II, § 212, as added Aug. 9, 1935, c. 498, § 1, 49 Stat. 555.)

§ 313. Consolidation, merger, acquisition and control—(a) Authorization; application; notice, hearing and order; application by carrier or person not a motor carrier, application of provisions relating to accounts, records, etc. It shall be lawful, under the conditions specified below, but under no other conditions, for two or more motor carriers which are not also carriers by railroad to consolidate or merge their properties, or any part thereof, into one corporation for the ownership, management, and/or operation of the properties theretofore in separate ownership; or for any such motor carriers or two or more such carriers jointly, to purchase, lease, or contract to operate the properties, or any part thereof, of another such carrier; or for any such motor carrier or two or more such carriers jointly, to acquire control of another such carrier through purchase of its stock; or for a person which is not a motor carrier or a carrier by railroad, or express, or water to acquire control of two or more motor carriers through ownership of their stock; or for any such person which has control of one or more motor carriers to acquire control of another such carrier through ownership of its stock; or for a carrier by railroad, express, or water to consolidate, or merge with, or acquire control of, any motor carrier or to purchase, lease, or contract to operate its properties, or any part thereof.

(1) Whenever a consolidation, merger, purchase, lease, operating contract, or acquisition of control is proposed under this section, the carrier or carriers or the person seeking authority therefor shall present an application to the Commission, and thereupon the Commission shall notify the Governor of each State in which any part of the properties or operations of the carriers involved in the proposed transaction is situated, and also such carriers and the applicant or applicants, and other parties known to have a substantial interest in the proceeding of the time and place for a public hearing. If after such hearing the Commission finds that the transaction proposed will be consistent with the public interest and that the conditions of this section have been or will be fulfilled, it may enter an order approving and authorizing such consolidation, merger, purchase, lease, operating contract, or acquisition of control, upon such terms and conditions as it shall find to be just and reasonable and with such modifications as it may prescribe: *Provided, however,* That if a carrier other than a motor carrier is an applicant, or any person which is controlled by such a carrier other than a motor carrier or affiliated therewith within the meaning of section 5 (8) of this title, the Commission shall not enter such an order unless it finds that the transaction proposed will promote the public interest by enabling such carrier other than a motor carrier to use service by motor vehicle to public advantage in its operations and will not unduly restrain competition.

(2) Whenever a person which is not a motor carrier is authorized, by an order entered under subparagraph (1) of this section, to acquire control of any such carrier or of two or more such carriers, such person thereafter shall, to the extent provided by the Commis-

sion, for the purposes of section 304 (a) (1), and section 320 (a) and (b), relating to accounts, records, and reports, and to the inspection of facilities and records, including the penalties applicable in the case of violations thereof, be subject to the provisions of this chapter.

(b) Effectuating control in common interest except as provided by this section unlawful; exception as to railroads; investigation, hearing and order.

(1) It shall be unlawful for any person, except as provided in paragraph (a), to accomplish or effectuate, or to participate in accomplishing or effectuating, the control or management in a common interest of any two or more motor carriers which are not also carriers by railroad, however such result is attained, whether directly or indirectly, by use of common directors, officers, or stockholders, a holding or investment company or companies, a voting trust or trusts, or in any other manner whatsoever. It shall be unlawful to continue to maintain control or management accomplished or effectuated after Aug. 9, 1935 and in violation of this paragraph. As used in this paragraph, the words "control or management" shall be construed to include the power to exercise control or management.

(2) The Commission is hereby authorized, upon complaint or upon its own initiative without complaint, but after notice and hearing, to investigate and determine whether any person is violating the provisions of paragraph (b) (1) of this section. If the Commission finds after such investigation that such person is violating the provisions of such paragraph, it shall by order require such person to take such action consistent with the provisions of this chapter as may be necessary, in the opinion of the Commission, to prevent further violation of such provisions.

(3) For the purposes of this section, wherever reference is made to control, it is immaterial whether such control is direct or indirect.

(c) Jurisdiction of district courts to restrain violations and enforce orders. The district courts of the United States shall have jurisdiction upon the application of the Commission, alleging a violation of any of the provisions of this section or disobedience of any order issued by the Commission thereunder by any person, to issue such writs of injunction or other proper process, mandatory or otherwise, as may be necessary to restrain such person from violation of such provision or to compel obedience to such order.

(d) Supplemental orders. The Commission may from time to time, for good cause shown, make such orders, supplemental to any order made under paragraphs (a) or (b), as it may deem necessary or appropriate.

(e) Number of vehicles involved as affecting application of section. Except where a carrier other than a motor carrier is an applicant or any person which is controlled by such a carrier or carriers by railroad or affiliated therewith within the meaning of section 5 (8) of this title, the provisions of this section requiring authority from the Commission for consolidation, merger, purchase, lease, operating contract, or acquisition of control shall not apply where the total number of motor vehicles involved is not more than twenty.

(f) Relief from operation of antitrust laws. The carriers and any person affected by any order made under the foregoing provisions of this section shall be, and they are hereby, relieved from the operation of the "antitrust laws", as designated in section 12 of Title 15, and of all other restraints or prohibitions by or imposed under authority of law, State or Federal, insofar as may be necessary to enable them to do anything authorized or required by such order. (Feb. 4, 1887, c. 104, Part II, § 213, as added Aug. 9, 1935, c. 498, § 1, 49 Stat. 555.)

§ 314. Issuance of securities. Common or contract carriers by motor vehicle, corporations organized for the purpose of engaging in transportation as such carriers, and corporations authorized by order entered under section 313 (a) (1) to acquire control of any such carrier, or of two or more such carriers,

shall be subject to the provisions of paragraphs 2 to 11, inclusive, of section 20a of this title (including penalties applicable in cases of violations thereof): *Provided, however*, That said provisions shall not apply to such carriers or corporations where the par value of the securities to be issued, together with the par value of the securities then outstanding, does not exceed \$500,000. In the case of securities having no par value, the par value for the purpose of this section shall be the fair market value as of the date of their issue. (Feb. 4, 1887, c. 104, Part II, § 214, as added Aug. 9, 1935, c. 498, § 1, 49 Stat. 557.)

§ 315. **Security for protection of public.** No certificate or permit shall be issued to a motor carrier or remain in force, unless such carrier complies with such reasonable rules and regulations as the Commission shall prescribe governing the filing and approval of surety bonds, policies of insurance, qualifications as a self-insurer or other securities or agreements, in such reasonable amount as the Commission may require, conditioned to pay, within the amount of such surety bonds, policies of insurance, qualifications as a self-insurer or other securities or agreements, any final judgment recovered against such motor carrier for bodily injuries to or the death of any person resulting from the negligent operation, maintenance, or use of motor vehicles under such certificate or permit, or for loss or damage to property of others. The Commission may, in its discretion and under such rules and regulations as it shall prescribe, require any such common carrier to file a surety bond, policies of insurance, qualifications as a self-insurer, or other securities or agreements, in a sum to be determined by the Commission, to be conditioned upon such carrier making compensation to shippers and/or consignees for all property belong [sic] to shippers and/or consignees, and coming into the possession of such carrier in connection with its transportation service. Any carrier which may be required by law to compensate a shipper and/or consignee for any loss, damage, or default for which a connecting motor common carrier is legally responsible shall be subrogated to the rights of such shipper and/or consignee under any such bond, policies of insurance, or other securities or agreements, to the extent of the sum so paid. (Feb. 4, 1887, c. 104, Part II, § 215, as added Aug. 9, 1935, c. 498, § 1, 49 Stat. 557.)

§ 316. **Rates, fares and charges—(a) Duty to establish reasonable rates, etc.; service and equipment; rules and regulations; reasonable divisions of joint fares.** It shall be the duty of every common carrier of passengers by motor vehicle to establish reasonable through routes with other such common carriers and to provide safe and adequate service, equipment, and facilities for the transportation of passengers in interstate or foreign commerce; to establish, observe, and enforce just and reasonable individual and joint rates, fares, and charges, and just and reasonable regulations and practices relating thereto, and to the issuance, form, and substance of tickets, the carrying of personal, sample, and excess baggage, the facilities for transportation, and all other matters relating to or connected with the transportation of passengers in interstate or foreign commerce; and in case of such joint rates, fares, and charges, to establish just, reasonable, and equitable divisions thereof as between the carriers participating therein which shall not unduly prefer or prejudice any of such participating carriers.

(b) **Rates, facilities for carriers of property.** It shall be the duty of every common carrier of property by motor vehicle to provide safe and adequate service, equipment, and facilities for the transportation of property in interstate or foreign commerce; to establish, observe, and enforce just and reasonable rates, charges, and classifications, and just and reasonable regulations and practices relating thereto and to the manner and method of presenting, marking, packing, and delivering property for transportation, the facilities for transportation, and all other matters relating

to or connected with the transportation of property in interstate or foreign commerce.

(c) **Through routes and joint rates.** Common carriers of property by motor vehicle may establish reasonable through routes and joint rates, charges, and classifications with other such carriers or with common carriers by railroad and/or express and/or water; and common carriers of passengers by motor vehicle may establish reasonable through routes and joint rates, fares, or charges with common carriers by railroad and/or water. In case of such joint rates, fares, or charges it shall be the duty of the carriers parties thereto to establish just and reasonable regulations and practices in connection therewith, and just, reasonable, and equitable divisions thereof as between the carriers participating therein which shall not unduly prefer or prejudice any of such participating carriers.

(d) **Undue preferences or prejudices prohibited.** It shall be unlawful for any common carrier by motor vehicle engaged in interstate or foreign commerce to make, give, or cause any undue or unreasonable preference or advantage to any particular person, port, gateway, locality, or description of traffic in any respect whatsoever, or to subject any particular person, port, gateway, locality, or description of traffic to any unjust discrimination or any undue or unreasonable prejudice or disadvantage in any respect whatsoever: *Provided, however*, That this paragraph shall not be construed to apply to discriminations, prejudice or disadvantage to the traffic of any other carrier of whatever description.

(e) **Complaints to and investigation by commission; power of commission to fix reasonable rates, regulations, etc.** Any person, State board, organization, or body politic may make complaint in writing to the Commission that any such rate, fare, charge, classification, rule, regulation, or practice, in effect or proposed to be put into effect, is or will be in violation of this section or of section 317. Whenever, after hearing, upon complaint or in an investigation on its own initiative, the Commission shall be of the opinion that any individual or joint rate, fare, or charge, demanded, charged, or collected by any common carrier or carriers by motor vehicle or by any common carrier or carriers by motor vehicle in conjunction with any common carrier or carriers by railroad and/or express, and/or water for transportation in interstate or foreign commerce, or any classification, rule, regulation, or practice whatsoever of such carrier or carriers affecting such rate, fare, or charge or the value of the service thereunder, is or will be unjust or unreasonable, or unjustly discriminatory or unduly preferential or unduly prejudicial, it shall determine and prescribe the lawful rate, fare, or charge or the maximum or minimum, or maximum and minimum rate, fare, or charge thereafter to be observed, or the lawful classification, rule, regulation, or practice thereafter to be made effective and the Commission shall, whenever deemed by it to be necessary or desirable in the public interest, after hearing, upon complaint or upon its own initiative without a complaint, establish through routes and joint rates, fares, charges, regulations, or practices, applicable to the transportation of passengers by common carriers by motor vehicle, or the maxima or minima, or maxima and minima, to be charged, and the terms and conditions under which such through routes shall be operated: *Provided, however*, That nothing in this chapter shall empower the Commission to prescribe, or in any manner regulate, the rate, fare, or charge for intrastate transportation, or for any service connected therewith, for the purpose of removing discrimination against interstate commerce or for any other purpose whatever.

(f) **Commission empowered to establish just division of joint rates.** Whenever, after hearing, upon complaint or upon its own initiative, the Commission is of opinion that the divisions of joint rates, fares, or charges, applicable to the transportation in interstate or foreign commerce of passengers or property by common carriers by motor vehicle or by such

carriers in conjunction with common carriers by railroad and/or express, and/or water are or will be unjust, unreasonable, inequitable, or unduly preferential or prejudicial as between the carriers parties thereto (whether agreed upon by such carriers, or any of them, or otherwise established), the Commission shall by order prescribe the just, reasonable, and equitable divisions thereof to be received by the several carriers, and in cases where the joint rate, fare, or charge was established pursuant to a finding or order of the Commission and the divisions thereof are found by it to have been unjust, unreasonable, or inequitable, or unduly preferential or prejudicial, the Commission may also by order determine what would have been the just, reasonable, and equitable divisions thereof to be received by the several carriers, and require adjustment to be made in accordance therewith. The order of the Commission may require the adjustment of divisions between the carriers, in accordance with the order, from the date of filing the complaint or entry of order of investigation or such other date subsequent as the Commission finds justified and, in the case of joint rates prescribed by the Commission, the order as to divisions may be made effective as a part of the original order.

(g) **New rates; determination of fairness by commission; suspension.** Whenever there shall be filed with the Commission any schedule stating a new individual or joint rate, fare, charge, or classification for the transportation of passengers or property by a common carrier or carriers by motor vehicle, or by any such carrier or carriers in conjunction with a common carrier or carriers by railroad and/or express, and/or water in interstate or foreign commerce, or any rule, regulation, or practice affecting such rate, fare, or charge, or the value of the service thereunder, the Commission is hereby authorized and empowered upon complaint of any interested party or upon its own initiative at once and, if it so orders, without answer or other formal pleading by the interested carrier or carriers, but upon reasonable notice, to enter upon a hearing concerning the lawfulness of such rate, fare, or charge, or such rule, regulation, or practice, and pending such hearing and the decision thereon the Commission, by filing with such schedule and delivering to the carrier or carriers affected thereby a statement in writing of its reasons for such suspension, may suspend the operation of such schedule and defer the use of such rate, fare, or charge, or such rule, regulation, or practice, for a period of ninety days and if the proceeding has not been concluded and a final order made within such period the Commission may, from time to time, extend the period of suspension by order, but not for a longer period in the aggregate than one hundred and eighty days beyond the time when it would otherwise go into effect; and after hearing, whether completed before or after the rate, fare, charge, classification, rule, regulation, or practice goes into effect, the Commission may make such order with reference thereto as would be proper in a proceeding instituted after it had become effective. If the proceeding has not been concluded and an order made within the period of suspension, the proposed change of rate, fare, or charge, or classification, rule, regulation, or practice, shall go into effect at the end of such period: *Provided*, That this paragraph shall not apply to any initial schedule or schedules filed by any such carrier in bona fide operation when this section takes effect.

(h) **Good will, earning power or certificate inadmissible in proceedings to determine rates.** In any proceeding to determine the justness or reasonableness of any rate, fare, or charge of any such carrier, there shall not be taken into consideration or allowed as evidence or elements of value of the property of such carrier, either good will, earning power, or the certificate under which such carrier is operating; and in applying for and receiving a certificate under this chapter any such carrier shall be deemed to have agreed to the provisions of this paragraph, on its own behalf and on behalf of all transferees of such certificate.

(i) **Transportation needs and fair return considered in determining rates, etc.** In the exercise of its power to prescribe just and reasonable rates for the transportation of passengers or property by common carriers by motor vehicle the Commission shall give due consideration, among other factors, to the inherent advantages of transportation by such carriers to the effect of rates upon the movement of traffic by such carriers; to the need, in the public interest, of adequate and efficient transportation service by such carriers at the lowest cost consistent with the furnishing of such service; and to the need of revenues sufficient to enable such carriers, under honest, economical, and efficient management, to provide such service.

(j) **Effect on remedy or right of action.** Nothing in this section shall be held to extinguish any remedy or right of action not inconsistent herewith. (Feb. 4, 1887, c. 104, Part II, § 218, as added Aug. 9, 1935, c. 498, § 1, 49 Stat. 558.)

Effective date of section, see section 327 of this title.

§ 317. **Tariffs of common carriers by motor vehicle—(a) Filing, posting and publication.** Every common carrier by motor vehicle shall file with the Commission, and print, and keep open to public inspection, tariffs showing all the rates, fares, and charges for transportation, and all services in connection therewith, of passengers or property in interstate or foreign commerce between points on its own route and between points on its own route and points on the route of any other such carrier, or on the route of any common carrier by railroad and/or express and/or water, when a through route and joint rate shall have been established. Such rates, fares, and charges shall be stated in terms of lawful money of the United States. The tariffs required by this section shall be published, filed, and posted in such form and manner, and shall contain such information, as the Commission by regulations shall prescribe; and the Commission is authorized to reject any tariff filed with it which is not in consonance with this section and with such regulations. Any tariff so rejected by the Commission shall be void and its use shall be unlawful.

(b) **Deviation from rates and regulations enumerated in tariff forbidden; undue preferences.** No common carrier by motor vehicle shall charge or demand or collect or receive a greater or less or different compensation for transportation or for any service in connection therewith between the points enumerated in such tariff than the rates, fares, and charges specified in the tariffs in effect at the time; and no such carrier shall refund or remit in any manner or by any device, directly or indirectly, or through any agent or broker or otherwise, any portion of the rates, fares, or charges so specified, or extend to any person any privileges or facilities for transportation in interstate or foreign commerce except such as are specified in its tariffs: *Provided*, That the provisions of sections 1 (7) and 22 (1) of this title shall apply to common carriers by motor vehicles subject to this chapter.

(c) **Change in tariffs; filing and posting notice; powers of commission.** No change shall be made in any rate, fare, charge, or classification, or any rule, regulation, or practice affecting such rate, fare, charge, or classification, or the value of the service thereunder, specified in any effective tariff of a common carrier by motor vehicle, except after 30 days' notice of the proposed change filed and posted in accordance with paragraph (a) of this section. Such notice shall plainly state the change proposed to be made and the time when such change will take effect. The Commission may, in its discretion and for good cause shown, allow such change upon notice less than that herein specified or modify the requirements of this section with respect to posting and filing of tariffs either in particular instances or by general order applicable to special or peculiar circumstances or conditions.

(d) **Transportation without filing tariff forbidden.** No common carrier by motor vehicle, unless otherwise

provided by this chapter, shall engage in the transportation of passengers or property unless the rates, fares, and charges upon which the same are transported by said carrier have been filed and published in accordance with the provisions of this chapter. (Feb. 4, 1887, c. 104, Part II, § 217, as added Aug. 9, 1935, c. 498, § 1, 49 Stat. 560.)

§ 318. Schedules of contract carriers by motor vehicle—(a) Filing and posting schedules and contracts affecting rates; notice of and hearing on proposed changes; undue preferences. It shall be the duty of every contract carrier by motor vehicle to file with the Commission, publish, and keep open for public inspection, in the form and manner prescribed by the Commission, schedules or, in the discretion of the Commission, copies of contracts containing the minimum charges of such carrier for the transportation of passengers or property in interstate or foreign commerce, and any rule, regulation, or practice affecting such charges and the value of the service thereunder. No such contract carrier, unless otherwise provided by this chapter, shall engage in the transportation of passengers or property in interstate or foreign commerce unless the minimum charges for such transportation by said carrier have been published, filed, and posted in accordance with the provisions of this chapter. 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 thirty days' notice of the proposed change filed in the aforesaid form and manner; but the Commission may, in its discretion and for good cause shown, allow such change upon less notice, or modify the requirements of this paragraph with respect to posting and filing of such schedules or copies of contracts, either in particular instances, or by general order applicable to special or peculiar circumstances or conditions. Such notice shall plainly state the change proposed to be made and the time when such change will take effect. No such carrier shall demand, charge, or collect a less compensation for such transportation than the charges filed in accordance with this paragraph, as affected by any rule, regulation, or practice so filed, or as may be prescribed by the Commission from time to time, and it shall be unlawful for any such carrier, by the furnishing of special services, facilities, or privileges, or by any other device whatsoever, to charge, accept, or receive less than the minimum charges so filed or prescribed: *Provided*, That any such carrier or carriers, or any class or group thereof, may apply to the Commission for relief from the provisions of this paragraph, and the Commission may, after hearing, grant such relief to such extent and for such time, and in such manner as in its judgment is consistent with the public interest and the policy declared in section 802 (a) of this chapter.

(b) Complaints and investigations; hearings and orders of commission. Whenever, after hearing upon complaint or its own initiative, the Commission finds that any charge of any contract carrier or carriers by motor vehicle, or any rule, regulation, or practice of any such carrier or carriers affecting such charge, or the value of the service thereunder, for the transportation of passengers or property in interstate or foreign commerce, contravenes the policy declared in section 802 (a) of this chapter, the Commission may prescribe such minimum charge, or such rule, regulation, or practice as in its judgment may be necessary or desirable in the public interest and to promote the policy declared in said section. Such minimum charge, or such rule, regulation, or practice, so prescribed by the Commission, shall give no advantage or preference to any such carrier in competition with any common carrier by motor vehicle subject to this chapter, which the Commission may find to be undue or inconsistent with the public interest and the policy declared in said section, and the Commission shall give due consideration to the cost of the services rendered by such carriers and to the effect of such minimum charge, or such rules, regulations,

or practices, upon the movement of traffic by such carriers. All complaints shall state fully the facts complained of and the reasons for such complaint and shall be made under oath.

(c) Reduction in rates; hearings and orders of commission; suspension. Whenever there shall be filed with the Commission by any such contract carrier any schedule or contract stating a reduced charge directly, or by means of any rule, regulation, or practice, for the transportation of passengers or property in interstate or foreign commerce, the Commission is hereby authorized and empowered upon complaint of interested parties or upon its own initiative at once and, if it so orders, without answer or other formal pleading by the interested party, but upon reasonable notice, to enter upon a hearing concerning the lawfulness of such charge, or such rule, regulation, or practice, and pending such hearing and the decision thereon the Commission, by filing with such schedule or contract and delivering to the carrier affected thereby a statement in writing of its reasons for such suspension, may suspend the operation of such schedule or contract and defer the use of such charge, or such rule, regulation, or practice, for a period of ninety days, and if the proceeding has not been concluded and a final order made within such period the Commission may, from time to time, extend the period of suspension, but not for a longer period in the aggregate than one hundred and eighty days beyond the time when it would otherwise go into effect; and after hearing, whether completed before or after the charge, or rule, regulation, or practice goes into effect, the Commission may make such order with reference thereto as would be proper in a proceeding instituted after it had become effective. If the proceeding has not been concluded and an order made within the period of suspension, the proposed change in any charge or rule, regulation, or practice shall go into effect at the end of such period: *Provided*, That this paragraph shall not apply to any initial schedule or schedules, or contract or contracts, filed by any such carrier in bona fide operation when this section takes effect. (Feb. 4, 1887, c. 104, Part II, § 218, as added Aug. 9, 1935, c. 498, § 1, 49 Stat. 561.)

For effective date of section, see section 827 of this title.

§ 319. Receipts or bills of lading; application of section 20 (11). The provisions of section 20 (11) of this title shall apply with like force and effect to receipts or bills of lading of common carriers by motor vehicle. (Feb. 4, 1887, c. 104, Part II, § 219, as added Aug. 9, 1935, c. 498, § 1, 49 Stat. 563.)

§ 320. Accounts, records and reports—(a) Reports, authority of commission to require; form and contents; contracts affecting transportation, filing. The Commission is hereby authorized to require annual, periodical, or special reports from all motor carriers, to prescribe the manner and form in which such reports shall be made, and to require from such carriers specific answers to all questions upon which the Commission may deem information to be necessary. Such reports shall be under oath whenever the Commission so requires. The Commission may also require any motor carrier to file with it a true copy of each or any contract, agreement, or arrangement between such carrier and any other carrier or person in relation to any traffic affected by the provisions of this chapter, to which he or it may be a party.

(b) Accounts, records, etc.; form and contents; inspection of records and property by Commission or examiners. The Commission may, in its discretion, prescribe the forms of any and all accounts, records, and memoranda to be kept by motor carriers and the length of time such accounts, records, and memoranda shall be preserved, including the accounts, records, and memoranda of the movement of traffic, as well as of the receipts and expenditures of money. The Commission or its duly authorized special agents or examiners shall at all times have access to all lands, buildings, or equipment of motor carriers used in connection with interstate or foreign operation and also all

accounts, records, and memoranda, including all documents, papers, and correspondence now or hereafter existing, and kept, or required to be kept, by motor carriers. The special agents or examiners of the Commission shall have authority under its order to inspect and examine any and all such lands, buildings, equipment, accounts, records, and memoranda, including all documents, papers, and correspondence now or hereafter existing and kept or required to be kept by such carriers. This provision shall apply to receivers of carriers and to operating trustees and, to the extent deemed necessary by the Commission, to persons having control, direct or indirect, over or affiliated with any motor carrier.

(c) "Motor carriers" as including brokers. As used in this section the term "motor carriers" includes brokers. (Feb. 4, 1887, c. 104, Part II, § 220, as added Aug. 9, 1935, c. 498, § 1, 49 Stat. 563.)

§ 321. Orders, notices and service of process—(a) Designation of agent for service of notice or orders; manner of service. It shall be the duty of every motor carrier to file with the board of each State in which it operates under a certificate or permit issued under this chapter, and with the Commission, a designation in writing of the name and post-office address of a person upon whom or which service of notices or orders may be made under this chapter. Such designation may from time to time be changed by like writing similarly filed. Service of notices or orders in proceedings under this chapter may be made upon a motor carrier by personal service upon it or upon the person so designated by it, or by registered mail addressed to it or to such person at the address filed. In default of such designation, service of any notice or order may be made by posting in the office of the secretary or clerk of the board of the State wherein the motor carrier maintains headquarters and in the office of the secretary of the Commission. Whenever notice is given by mail as provided herein the date of mailing shall be considered as the time when notice is served.

(b) Effective date and duration of orders of commission. Except as otherwise provided in this chapter, all orders of the Commission shall take effect within such reasonable time as the Commission may prescribe and shall continue in force until its further order, or for a specified period of time, according as shall be prescribed in the order, unless the same shall be suspended or modified or set aside by the Commission, or be suspended or set aside by a court of competent jurisdiction.

(c) Designation of agent for service of process. Every motor carrier shall also file with the board of each State in which it operates a designation in writing of the name and post-office address of a person in such State upon whom process issued by or under the authority of any court having jurisdiction of the subject matter may be served in any proceeding at law or equity brought against such carrier. Such designation may from time to time be changed by like writing similarly filed. In the event such carrier fails to file such designation, service may be made upon any agent of such motor carrier within such State.

(d) "Motor carriers" as including brokers. As used in this section, the term "motor carriers" includes brokers. (Feb. 4, 1887, c. 104, Part II, § 221, as added Aug. 9, 1935, c. 498, § 1, 49 Stat. 563.)

§ 322. Unlawful operation—(a) Violation of chapter or rules or orders; penalty where none otherwise provided. Any person knowingly and willfully violating any provision of this chapter, or any rule, regulation, requirement, or order thereunder, or any term or condition of any certificate, permit, or license, for which a penalty is not otherwise herein provided, shall, upon conviction thereof, be fined not more than \$100 for the first offense and not more than \$500 for any subsequent offense. Each day of such violation shall constitute a separate offense.

(b) Jurisdiction of district courts to restrain violations and enforce orders. If any motor carrier or

broker operates in violation of any provision of this chapter (except as to the reasonableness of rates, fares, or charges and the discriminatory character thereof), or any rule, regulation, requirement, or order thereunder, or of any term or condition of any certificate or permit, the Commission or its duly authorized agent may apply to the district court of the United States for any district where such motor carrier or broker operates, for the enforcement of such provision of this chapter, or of such rule, regulation, requirement, order, term, or condition; and such court shall have jurisdiction to enforce obedience thereto by a writ of injunction or by other process, mandatory or otherwise, restraining such carrier or broker, his or its officers, agents, employees, and representatives from further violation of such provision of this chapter or of such rule, regulation, requirement, order, term, or condition and enjoining upon it or them obedience thereto.

(c) Participation in unjust discrimination; evasion of regulations; penalty. Any person, whether carrier, shipper, consignee, or broker, or any officer, employee, agent, or representative thereof, who shall knowingly offer, grant, or give, or solicit, accept, or receive any rebate, concession, or discrimination in violation of any provision of this chapter, or who by means of any false statement or representation, or by the use of any false or fictitious bill, bill of lading, receipt, voucher, roll, account, claim, certificate, affidavit, deposition, lease, or bill of sale, or by any other means or device, shall knowingly and willfully assist, suffer or permit any person or persons, natural or artificial, to obtain transportation of passengers or property subject to this chapter for less than the applicable rate, fare, or charge, or who shall knowingly and willfully by any such means or otherwise fraudulently seek to evade or defeat regulation as in this chapter provided for motor carrier or brokers, shall be deemed guilty of a misdemeanor and upon conviction thereof be fined not more than \$500 for the first offense and not more than \$2,000 for any subsequent offense.

(d) Disclosure of information by special agent or examiner; penalty. Any special agent or examiner who divulges any fact or information which may come to his knowledge during the course of the examination of the accounts, records, and memoranda of motor carriers or brokers as provided in section 320 (b), except as he may be directed by the Commission or by a court of competent jurisdiction or judge thereof, shall be subject, upon conviction in any court of the United States of competent jurisdiction, to a fine of not more than \$5,000 or imprisonment for a term not exceeding two years, or both.

(e) Disclosure or solicitation of information concerning property in transportation. It shall be unlawful for any motor carrier or broker engaged in interstate or foreign commerce or any officer, receiver, trustee, lessee, agent, or employee of such carrier, broker, or person, or for any other person authorized by such carrier, broker, or person to receive information, knowingly to disclose to, or permit to be acquired by any person other than the shipper or consignee without the consent of such shipper or consignee, any information concerning the nature, kind, quantity, destination, consignee, or routing of any property tendered or delivered to such motor carrier or broker for such transportation, which information may be used to the detriment or prejudice of such shipper or consignee, or which may improperly disclose his business transactions to a competitor; and it shall also be unlawful for any person to solicit or knowingly receive any such information which may be so used.

(f) Giving information in response to legal process, or to government officers or to other carriers for adjustment of rates permitted. Nothing in this chapter shall be construed to prevent the giving of such information in response to any legal process issued under the authority of any court, or to any officer or agent of the Government of the United States or of any State, Territory, or District thereof, in the exercise of his power, or to any officer or other duly

authorized person seeking such information for the prosecution of persons charged with or suspected of crimes or to another carrier or broker, or its duly authorized agent, for the purpose of adjusting mutual traffic accounts in the ordinary course of business of such carriers or brokers.

(g) Failure or refusal to make reports or keep accounts and records; altering or making false report or record; penalty. Any motor carrier, or broker, or any officer, agent, employee, or representative thereof who shall willfully fail or refuse to make a report to the Commission as required by this chapter, or to keep accounts, records, and memoranda in the form and manner approved or prescribed by the Commission, or shall knowingly and willfully falsify, destroy, mutilate, or alter any such report, account, record, or memorandum, or shall knowingly and willfully file any false report, account, record, or memorandum, shall be deemed guilty of a misdemeanor and upon conviction thereof be subject for each offense to a fine of not less than \$100 and not more than \$5,000. (Feb. 4, 1887, c. 104, Part II, § 222, as added Aug. 9, 1935, c. 498, § 1, 49 Stat. 564.)

§ 323. Collection of rates and charges; extension of credit; liability of agent of beneficial owner. No common carrier by motor vehicle shall deliver or relinquish possession at destination of any freight transported by it in interstate or foreign commerce until all tariff rates and charges thereon have been paid, except under such rules and regulations as the Commission may from time to time prescribe to govern the settlement of all such rates and charges, including rules and regulations for weekly or monthly settlement, and to prevent unjust discrimination or undue preference or prejudice: *Provided*, That the provisions of this paragraph shall not be construed to prohibit any such carrier from extending credit in connection with rates and charges on freight transported for the United States, for any department, bureau, or agency thereof, or for any State or Territory, or political subdivision thereof, or for the District of Columbia. Where any common carrier by motor vehicle is instructed by a shipper or consignor to deliver property transported by such carrier to a consignee other than the shipper or consignor, such consignee shall not be legally liable for transportation charges in respect of the transportation of such property (beyond those billed against him at the time of delivery for which he is otherwise liable) which may be found to be due after the property has been delivered to him, if the consignee (a) is an agent only and had no beneficial title in the property, and (b) prior to delivery of the property has notified the delivering carrier in writing of the fact of such agency and absence of beneficial title, and, in the case of shipment reconsigned or diverted to a point other than that specified in the original bill of lading, has also notified the delivering carrier in writing of the name and address of the beneficial owner of the property. In such cases the shipper or consignor, or, in the case of a shipment so reconsigned or diverted, the beneficial owner shall be liable for such additional charges, irrespective of any provisions to the contrary in the bill of lading or in the contract under which the shipment was made. If the consignee

has given to the carrier erroneous information as to who is the beneficial owner, such consignee shall himself be liable for such additional charges, notwithstanding the foregoing provisions of this paragraph. On shipments reconsigned or diverted by an agent who has furnished the carrier with a notice of agency and the proper name and address of the beneficial owner, and where such shipments are refused or abandoned at ultimate destination, the said beneficial owner shall be liable for all legally applicable charges in connection therewith. (Feb. 4, 1887, c. 104, Part II, § 223, as added Aug. 9, 1935, c. 498, § 1, 49 Stat. 565.)

§ 324. Identification plates for interstate motor carriers. The Commission is hereby authorized, under such rules and regulations as it shall prescribe, to require the display by motor carriers upon each motor vehicle operated under a certificate or permit issued by the Commission, suitable identification plate or plates, to provide for the issuance of such plates, and to require the payment by such carriers of the reasonable cost thereof. All moneys so collected shall be paid into the Treasury of the United States. Any substitution, transfer, or use of any such identification plate or plates, except such as may be duly authorized by the Commission, is hereby prohibited and shall be unlawful. (Feb. 4, 1887, c. 104, Part II, § 224, as added Aug. 9, 1935, c. 498, § 1, 49 Stat. 566.)

§ 325. Investigation of motor vehicle sizes and weights and qualifications and hours of service of employees. The Commission is hereby authorized to investigate and report on the need for Federal regulation of the sizes and weight of motor vehicles and combinations of motor vehicles and of the qualifications and maximum hours of service of employees of all motor carriers and private carriers of property by motor vehicle; and in such investigation the Commission shall avail itself of the assistance of all departments or bureaus of the Government and of any organization of motor carriers having special knowledge of any such matter. (Feb. 4, 1887, c. 104, Part II, § 225, as added Aug. 9, 1935, c. 498, § 1, 49 Stat. 566.)

§ 326. Separability clause. If any provision of this chapter, or the application thereof to any person, or commerce, or circumstance, is held invalid, the remainder of the chapter, and the application of such provision to other persons, or commerce, or circumstances, shall not be affected thereby. (Feb. 4, 1887, c. 104, Part II, § 226, as added Aug. 9, 1935, c. 498, § 1, 49 Stat. 567.)

§ 327. Effective date of chapter. This chapter (except this section, which shall become effective immediately upon approval) shall take effect and be in force on and after the 1st day of October 1935: *Provided*, however, That the Commission shall, if found by it necessary or desirable in the public interest, by general or special order, postpone the taking effect of any provision of this chapter to such time after the 1st day of October 1935, as the Commission shall prescribe, but not beyond the 1st day of April 1936. (Feb. 4, 1887, c. 104, Part II, § 227, as added Aug. 9, 1935, c. 498, § 1, 49 Stat. 567.)

[CHAPTER 388]

AN ACT

To codify and enact into positive law, title 1 of the United States Code, entitled "General Provisions".

July 30, 1947
[H. R. 1565]
[Public Law 278]

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That title 1 of the United States Code entitled "General Provisions", is codified and enacted into positive law and may be cited as "1 U. S. C., § —", as follows:

Title 1, U. S. Code.
Codification and enactment into positive law.

TITLE 1—GENERAL PROVISIONS

| Chap. | Sec. |
|--|------|
| 1. Rules of construction----- | 1 |
| 2. Acts and resolutions; formalities of enactment; repeals; sealing of instruments----- | 101 |
| 3. Code of Laws of United States and Supplements; District of Columbia Code and Supplements----- | 201 |

CHAPTER 1—RULES OF CONSTRUCTION

- § 1. Words denoting number, gender, etc.
- § 2. "County" as including "parish", etc.
- § 3. "Vessel" as including all means of water transportation.
- § 4. "Vehicle" as including all means of land transportation.
- § 5. "Company" or "association" as including successors and assigns.
- § 6. Limitation of term "products of American fisheries."

WORDS DENOTING NUMBER, GENDER, AND SO FORTH

§ 1. In determining the meaning of any Act or resolution of Congress words importing the singular number may extend and be applied to several persons or things; words importing the plural number may include the singular; words importing the masculine gender may be applied to females; the words "insane person" and "lunatic" shall include every idiot, non compos, lunatic, and insane person; the word "person" may extend and be applied to partnerships and corporations, and the reference to any officer shall include any person authorized by law to perform the duties of such office, unless the context shows that such words were intended to be used in a more limited sense; and a requirement of an "oath" shall be deemed complied with by making affirmation in judicial form.

"COUNTY" AS INCLUDING "PARISH", AND SO FORTH

§ 2. The word "county" includes a parish, or any other equivalent subdivision of a State or Territory of the United States.

"VESSEL" AS INCLUDING ALL MEANS OF WATER TRANSPORTATION

§ 3. The word "vessel" includes every description of watercraft or other artificial contrivance used, or capable of being used, as a means of transportation on water.

"VEHICLE" AS INCLUDING ALL MEANS OF LAND TRANSPORTATION

§ 4. The word "vehicle" includes every description of carriage or other artificial contrivance used, or capable of being used, as a means of transportation on land.

"COMPANY" OR "ASSOCIATION" AS INCLUDING SUCCESSORS AND ASSIGNS

§ 5. The word "company" or "association", when used in reference to

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WILLIAMS TENNESSEE CODE ANNOTATED

EXHIBIT

16

1947 Cumulative Pocket Supplement

Under the Editorial Supervision

of

BEIRNE STEDMAN

Associate Editor of Michie on Banks and Banking,
Michie's Digest of Tennessee Reports, etc.

Volume III

Place this supplement in the pocket of the corresponding volume
of the set and discard previous supplement

THE MICHIE COMPANY, LAW PUBLISHERS
CHARLOTTESVILLE, VIRGINIA

1947

cated an intention to turn to his left off of the main highway, and has carried out his indicated intention by vacating the right-hand half of the highway, the driver of a motor vehicle to the rear is warranted in concluding that the vehicle in front will continue its indicated course. In such a situation it is not incumbent upon the driver of the vehicle in the rear to stop until the foremost vehicle has completed the operation of completely vacating the highway by driving to the left. But when the driver of the foremost vehicle has indicated his intention to turn to the left and has vacated a sufficient portion of the

2674 1603 (1175). Stopping in road.

Illustrative Case.

Automobile driver held not guilty of

negligence. *Fuson v. Cantrell*, 25 Tenn. App. 608, 166 S. W. (2d) 405.

ARTICLE III—REGULATION OF MOTOR AND OTHER VEHICLES

SECTION.

2690. Parking on highways prohibited.

2695. Lights; brakes; emergency parts.

2703. Vehicles, trucks, engines, or tractors

2681. Reckless driving.

Negligence, What Constitutes.

The actions of a driver of a truck in turning to the left as though leaving the highway on the left-hand side, with his arm held out of the left window, constituted an invitation to the following driver to pass on, and his action thereafter in suddenly turning to the right into the passing automobile constituted the proximate cause of the collision, and this conduct constituted a violation of this section. *Chattanooga Ice Delivery Co. v. Burnett*

Co., 24 Tenn. App. 535, 147 S. W. (2d) 750.

Automobile driver held not guilty of negligence. *Fuson v. Cantrell*, 25 Tenn. App. 608, 166 S. W. (2d) 405.

Negligence and Contributory Negligence for Jury.

The questions of negligence and contributory negligence held properly left to the jury. *Evansville Container Corp. v. McDonald*, 132 F. (2d) 80, 84.

2682. Lawful speed; reckless driving; starting, stopping or turning.

Amendments.

Section 2700, providing for a lien in any suit for damages brought for injuries sustained while any motor vehicle was being run in excess of twenty miles per hour, was considered to have been superseded by the 1931 amendment of this section containing a similar provision for a lien. The 1937 amendment omitted such lien provision.

Cited: *Donaho v. Large*, 25 Tenn. App. 433, 158 S. W. (2d) 447.

Signal upon Stopping Not Required in Emergency.

Subsection (d) requiring signal upon intention to stop is inapplicable in an emergency as where a car in front suddenly stops without any warning. *Russell v. Furniture Renewal*, 177 Tenn. (13 Beeler) 525, 151 S. W. (2d) 1066.

Nevertheless there is imposed upon the operators of the rear vehicles the duty of having their vehicles under such control as to be able to stop in time to prevent running into the car ahead in case the latter vehicle comes to a sudden stop in case of an emergency or in obedience to traffic signals. *Russell v. Furniture Re-*

right-hand side of the highway for the hindmost vehicle to pass in safety, the driver of the hindmost vehicle will not be held guilty of negligence per se in continuing on his regular course. *Chattanooga Ice Delivery Co. v. Burnett Co.*, 25 Tenn. App. 535, 147 S. W. (2d) 750.

And if the foremost vehicle is suddenly turned to the right under such circumstances so as to be brought into collision with the hindmost vehicle, a question for the determination of the jury is presented whether the driver of the foremost vehicle is negligent. *Chattanooga Ice Delivery Co. v. Burnett Co.*, 24 Tenn. App. 535, 147 S. W. (2d) 750.

shall not be operated upon public highway without compliance with regulations.

Proximate Cause.

Failure of defendant to give signal of intention to slow down or stop was held not the proximate cause of the accident. *Harris v. Hendrixson*, 25 Tenn. App. 221, 153 S. W. (2d) 876.

In an action for personal injuries sustained by a minor when his bicycle collided with an automobile, it was held that evidence of the minor's violation of this section must be undisputed to raise the presumption that plaintiff was guilty of contributory negligence as a matter of law, and even then, the question of whether that contributory negligence was proximate or remote, was still a question of fact to be determined by the jury. *Holt*

hand side of the highway for the most vehicle to pass in safety. If the hindmost vehicle will not be guilty of negligence per se in continuing on his regular course. *Chattanooga Ice Delivery Co. v. Burnett Co.*, 24 Tenn. App. 535, 147 S. W. (2d) 750. If the foremost vehicle is suddenly d to the right under such circumstances so as to be brought into collision with the hindmost vehicle, a question for determination of the jury is presented. *Chattanooga Ice Delivery Co. v. Burnett Co.*, 24 Tenn. App. 535, 147 S. W. (2d) 750.

gence. *Fuson v. Cantrell*, 25 Tenn. App. 608, 166 S. W. (2d) 405.

MOTOR AND OTHER

shall not be operated upon public highway without compliance with regulations.

4 Tenn. App. 535, 147 S. W. (2d) 750.

omobile driver held not guilty of negligence. *Fuson v. Cantrell*, 25 Tenn. App. 608, 166 S. W. (2d) 405.

Negligence and Contributory Negligence

Jury. questions of negligence and contributory negligence held properly left to the jury. *Evansville Container Corp. v. McDonald*, 132 F. (2d) 80, 84.

Starting, stopping or turning.

177 Tenn. (13 Beeler) 525, 151 S. W. (2d) 1066.

tions. instruction that subsection (d) requiring upon intention to stop does not impose duties and responsibilities imposed upon law was erroneous but harmless. *Russell v. Furniture Renewal*, 177 Tenn. App. 525, 151 S. W. (2d) 1066.

ate Cause. re of defendant to give signal of intention to slow down or stop was held to be proximate cause of the accident. *Hendrixson*, 25 Tenn. App. 221, 151 S. W. (2d) 876.

action for personal injuries sustained by a minor when his bicycle collided with an automobile, it was held that the minor's violation of this statute must be undisputed to raise the question that plaintiff was guilty of contributory negligence. *Holt*, 24 Tenn. App. 535, 147 S. W. (2d) 750.

Walsh, 180 Tenn. (16 Beeler) 307, 174 S. W. (2d) 657, 659.

Law of the Road, Driving to the Right.

The law of the road is exemplified in this section which makes it the duty of travelers on the highway to drive to the right of the center of the street or highway except on one-way streets. *Evansville Container Corp. v. McDonald*, 132 F. (2d) 80, 83.

The concept of this statute is that travelers shall turn to the right sufficiently that neither shall be retarded in his progress by reason of the other occupying his half of the way which the law has assigned to him for his use. This is a regulation to

2683. Railroad crossing.

Section Applies under Two Conditions.

This section applies under two conditions only (1) when a signal warns of the approach of a train, or (2) when the crossing has been designated by the Highway

2687. Meeting and overtaking vehicles, turning at intersections, signals.

Protection of Pedestrians.

Subsection (c) is for the protection of pedestrians. *Hunter v. Stacey*, 24 Tenn. App. 158, 141 S. W. (2d) 921.

Subsection (d) is designed to promote the safety of pedestrians and must be given a reasonable construction and application. *Hamilton v. Moyers*, 24 Tenn. App. 86, 140 S. W. (2d) 799, 802.

Pedestrian Crossing at Intersection.

Subsection (d) is not applicable to a pedestrian crossing a highway at an intersection, and the fact that a person was angling across the intersection at a 15 degree angle would not constitute him a pedestrian using the highway as a walkway. *Tiffany v. Shipley*, 25 Tenn. App. 539, 161 S. W. (2d) 373, 375.

Precedence Given Pedestrian Is Relative.

The right of precedence given the pedestrian by subsection (c) is relative and not absolute or inflexible. It only has the effect of turning the scales where the rights of the parties are balanced. *Tri-State Transit Co. v. Duffey*, 27 Tenn. App. 731, 173 S. W. (2d) 706, 710.

But He Has First Use of Crossing.

The pedestrian has the first use of the crossing where a collision might be apprehended if both proceeded without regard to the other, and it is made the duty of the motorist to yield the right of way to the pedestrian by diverting his course, slowing down or stopping in order to give a reasonable opportunity to pass in safety. *Tri-State Transit Co. v. Duffey*, 27 Tenn. App. 731, 173 S. W. (2d) 706, 710.

And Pedestrians' Right of Way Is Over Entire Width of Street.

The right of way given to pedestrians crossing a street in the manner provided in this section is over the entire width of the street and not just a portion of it.

avoid collisions and if one neglects it and an accident follows an explanation of the occurrence begins with a presumption against him. As to meeting cars, the center line of the road is "no man's land" and belongs to neither driver. Each must use his portion of the road with reasonable regard to others on the highway. *Evansville Container Corp. v. McDonald*, 132 F. (2d) 80, 83.

Negligence, What Constitutes.

Automobile driver held not guilty of negligence under subsection (c) of this section. *Fuson v. Cantrell*, 25 Tenn. App. 608, 166 S. W. (2d) 405.

Department as "a particularly dangerous crossing." *Nashville, etc., Railway v. Barnes*, 177 Tenn. (13 Beeler) 690, 152 S. W. (2d) 1023; *Illinois Cent. R. Co. v. Sigler*, 122 Fed. (2d) 279.

Tri-State Transit Co. v. Duffey, 27 Tenn. App. 731, 173 S. W. (2d) 706, 713.

Precedence Given Pedestrian, When Applicable.

The right of precedence given the pedestrian by subsection (c) has no special application except where the parties approach the "path of the vehicle" so nearly at the same time and at such rates of speed, respectively, that if both proceed each without regard to the other collision or interference between them is reasonably to be apprehended. *Tri-State Transit Co. v. Duffey*, 27 Tenn. App. 731, 173 S. W. (2d) 706, 710.

Care Regardless of Right of Way.

Under this section, where a collision might be apprehended if both motorist and pedestrian proceed without regard to the other, the pedestrian is not obliged to stop or slacken his pace. But because he has the right of way he may not proceed serenely oblivious of surrounding circumstances. He is of course bound to exercise ordinary care for his own safety. *Tri-State Transit Co. v. Duffey*, 27 Tenn. App. 731, 173 S. W. (2d) 706, 710.

In an action for the death of a pedestrian who was killed when he attempted to cross an intersection while there was "a continuous stream" of automobiles in all four traffic lanes, extending for two or three blocks in each direction, and traveling at an estimated distance of fifteen to thirty feet apart, it was held that pedestrian was guilty of contributory negligence barring recovery, for, assuming that he had acquired the right-of-way within the meaning of this section, this did not mean that he could proceed "serenely oblivious" of surrounding circumstances. *Zamora v. Shappley*, 27 Tenn. App. 768, 173 S. W. (2d) 721, 722.

Duty of Pedestrian Walking Along Highway.

While a pedestrian will not be permitted to determine for himself when to observe subsection (d), he will not, at the same time, be required to place himself in a position of danger in order to observe the strict provisions of it. *Hamilton v. Moyers*, 24 Tenn. App. 86, 140 S. W. (2d) 799, 802.

In *Donaho v. Large*, 25 Tenn. App. 433, 158 S. W. (2d) 447, it was held that defendant had a right to presume that plaintiff would obey the law and would not de-

liberately walk on the wrong side of the highway and place himself in a position of danger and then completely fail to take any precaution for his own safety.

In *Donaho v. Large*, 25 Tenn. App. 433, 158 S. W. (2d) 447, a pedestrian was held guilty of negligence per se by walking on his own right-hand side of the highway in violation of the provisions of subsection (d), barring his right of recovery from a truck driver for injuries sustained when he was struck from behind by the truck at night.

2688. Private drives, police and fire departments, right of way.

Cited: *National Life, etc., Ins. Co. v. Morrison*, 179 Tenn. (15 Beeler) 29, 162 S. W. (2d) 501, 508.

2689. Main highways.**Erection of Stop-Sign, in Absence of Ordinance.**

By reason of the provisions of this section, motorist was required to obey stop-sign erected at street intersection notwithstanding fact that city had not by ordinance expressly provided that a "stop-sign" should be placed at the particular intersection. *Trimble v. Bridges*, 27 Tenn. App. 320, 180 S. W. (2d) 590, 591.

Erection of Stop-Sign, Presumption.

Where it was shown that stop-sign had been at intersection for at least four years, in the absence of evidence to the contrary, it was presumed that it was placed there by competent officials in the exercise of the authority conferred by this section. *Trimble v. Bridges*, 27 Tenn. App. 320, 180 S. W. (2d) 590, 591.

2690. Parking on highways prohibited.—

* * * * *

(d) The provisions of this section shall not apply to the driver of any vehicle operating as a carrier of passengers for hire and holding a certificate of convenience and necessity or interstate permit issued by the railroad and public utilities commission of Tennessee authorizing the operation of such vehicle upon the roads, streets or highways in Tennessee, while taking passengers on such vehicle, or discharging passengers therefrom, provided, said vehicle is stopped so that a clear view of such vehicle shall be obtained from a distance of two hundred feet in each direction, upon such roads, streets or highways.

(e) The commissioner of safety in areas outside of incorporated cities and towns and the highest law enforcement officer of incorporated cities and towns is hereby empowered and authorized to designate no-parking area or areas at any point along the highway of the State of Tennessee where, in the discretion of the commissioner of safety or the highest law enforcement officer of any incorporated city or town a no-parking area, or areas, is necessary to protect the life, limb or property of the public and said no-parking areas designated as herein above provided shall be clearly marked or designated by any appropriate sign, mark and other indicia adopted by the state commissioner of safety to inform the public of the designation of such no-parking areas. (1931, ch. 82, sec. 10; 1941, ch. 116, sec. 1; 1947, ch. 236, sec. 1.)

Amendments. The 1941 amendment added subsection (d), and the 1947 amendment added subsection (e). As subsections

(a), (b) and (c) were not changed, they are not set out.

Repealing and Emergency Clauses. Sec-

liberately walk on the wrong side of highway and place himself in a position of danger and then completely fail to take any precaution for his own safety.

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shall not apply to the driver of passengers for hire and holding a driver's or interstate permit issued by the commission of Tennessee authorizing such vehicle, or discharging such vehicle is stopped so that a clear view from a distance of two hundred feet on streets or highways.

areas outside of incorporated areas enforcement officer of incorporated and authorized to designate along the highway of the action of the commissioner of officer of any incorporated city necessary to protect the life, no-parking areas designated marked or designated by any adopted by the state commission of the designation of such 1941, ch. 116, sec. 1; 1947,

and (c) were not changed, they set out. **Sign and Emergency Clauses. Sec-**

tion 2, Acts 1941, ch. 116 repealed all laws or parts of laws in conflict and declared an emergency. Passed February 13, 1941. Approved February 15, 1941.

Section 2, Acts 1947, ch. 236 repealed all laws or parts of laws in conflict and declared an emergency. Passed March 14, 1947. Approved March 14, 1947.

Any Stopping without Required Clearance Is Violation.

The legislature had an intention to make stronger the statute by adding the words "leave standing." This was put in to carry the idea that not only was it prohibited to park a vehicle, which might mean for an appreciable length of time, but that stopping at all without leaving the required clearance would violate the statute. The word leave means "to put, place, deposit, deliver, or the like. The word stand means "to cease from movement or progress; to pause; stop; remain stationary or inactive." *Jaggers v. Southeastern Greyhound Lines*, 34 Fed. Supp. 667, reversed, on other grounds, 126 Fed. (2d) 762, cited in *Stafford v. Consolidated Bus Lines*, 179 Tenn. (15 Beeler) 185, 164 S. W. (2d) 15.

But It May Be Excused.

Under this construction it would not mean that in all conditions a person would not be excused from violating the letter of the section. The violation of this section would be excused for the same reasons as the violation of other sections are excused — such as an emergency, the working of undue hardship, the protection of life or limb, and the like. *Jaggers v. Southeastern Greyhound Lines*, 34 Fed. Supp. 667, reversed, on other grounds, 126 Fed. (2d) 762, cited in *Stafford v. Consolidated Bus Lines*, 179 Tenn. (15 Beeler) 185, 164 S. W. (2d) 15, 16.

Ordinary Stops of a Bus.

It would be against the public weal to

2695. Lights; brakes; emergency parts.—A. (a) Every vehicle other than a motor vehicle when traveling upon a state highway, state aid road or other road or highway or street under the control of the State of Tennessee or the federal government or any political division thereof, dedicated, appropriated, or open to public use or travel; shall be equipped with a light attached to and on the upper side of such vehicle, capable of displaying a light visible 500 feet to the front and 500 feet to the rear of such vehicle under ordinary atmospheric conditions and such light shall be displayed during the period from one-half hour after sunset to one-half hour before sunrise and at all other times when there is not sufficient light to render clearly discernible any person on the road or highway at a distance of 200 feet ahead of such vehicle.

(b) Every motor vehicle other than a motorcycle, road roller, road machinery or farm tractor shall be equipped with two (2) headlights, no more and no less, at the front of and on opposite sides of the motor vehicle provided that auxiliary road lighting lamps may be used [but] not more than two of such lamps shall be lighted at any one time in ad-

decide that passenger buses could stop on highways, not giving the clearance required by this section, to take on and put off passengers, and not be held to violate the law. Such stops are not temporary stops for necessary purposes. *Jaggers v. Southeastern Greyhound Lines*, 34 Fed. Supp. 667, reversed, on other grounds, 126 Fed. (2d) 762. Note the provisions of the 1941 amendment. Ed. note.

School Bus.

Subsection (a) held not applicable to school bus stopping to let off school girl. *Gholston v. Richards*, 179 Tenn. (15 Beeler) 645, 169 S. W. (2d) 846.

Moving Vehicle Does Not Violate Section.

The arbitrary terms of the section are violated only when the vehicle is standing. If the vehicle is moving, no matter how slowly, the section is not violated. *Jaggers v. Southeastern Greyhound Lines*, 34 Fed. Supp. 667, reversed, on other grounds, 126 Fed. (2d) 762.

Jury Questions.

Where a bus driver stopped the bus with more than half its width on the main traveled portion of the highway, it was for the jury to decide, under the circumstances, if it was practicable to park or leave the bus standing off the paved or main traveled portion of the highway. *Jaggers v. Southeastern Greyhound Lines*, 126 Fed. (2d) 762, reversing 34 F. Supp. 667. Note the provisions of the 1941 amendment. Ed. note.

Proximate Cause.

Evidence was sufficient to justify jury in concluding that the stopping of the bus in violation of this section proximately contributed to the accident. *Jaggers v. Southeastern Greyhound Lines*, 126 Fed. (2d) 762, reversing 34 Fed. Supp. 667.

dition to the two (2) required headlights and provided that no spot light or auxiliary lamps shall be so aimed upon approaching another vehicle that any part of the high intensity portion of the beam therefrom is directed beyond the left side of the motor vehicle upon which the spot light or auxiliary lamp is mounted, nor more than one hundred (100) feet ahead of such motor vehicle. Provided, further, that no vehicle except emergency vehicles of fire and police departments or highway patrol vehicles, ambulances, or emergency repair vehicles shall be equipped with any light that displays a red light to the front of such vehicle. Provided, further, that every motor vehicle shall be equipped with one red tail lamp on the rear of such vehicle and one red or amber stop light on the rear of such vehicle. The stop light shall be so arranged as to be actuated by the application of the service or foot brakes and shall be capable of being seen and distinguished from a distance of one hundred (100) feet to the rear of a motor vehicle in normal daylight but shall not project a glaring or dazzling light. The stop light may be incorporated with the tail lamp.

(c) Every motorcycle shall be equipped with at least one (1) and not more than two (2) headlamps.

Whenever any bus, truck or truck tractor is disabled upon the traveled portion of the highway or the shoulder next thereto, except within a business or residential district of a municipality, the following requirements shall be complied with during the period of such disablement:

During the time when lights are required, that is, between one-half hour after sunset and one-half hour before sunrise and at all other times when there is not sufficient light to render clearly discernible a person 200 feet ahead, a lighted fusee shall be immediately placed on the roadway at the traffic side of the motor vehicle; as soon thereafter as possible and in any case within the burning period of the fusee, three (3) lighted flares or pot torches shall be placed on the roadway as follows:

1. One in the center of the line of traffic occupied by the disabled motor vehicle not less than forty (40) paces or approximately one hundred (100) feet distant therefrom in the direction of traffic approaching in that line.

2. One not less than forty (40) paces, or approximately one hundred (100) feet from said vehicle in the opposite direction.

3. One at the traffic side of such vehicle approximately ten (10) feet rearward or forward thereof.

4. Provided, however, that if the motor vehicle is disabled within three hundred (300) feet of a curve, crest of a hill or other obstruction to view, the flare in that direction shall be so placed as to afford ample warning to other users of the highway but in no case less than forty (40) paces approximately one hundred (100) feet nor more than one hundred twenty (120) paces approximately three hundred (300) feet from the disabled vehicle.

5. Provided, further, that care should be taken in placing any flare,

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fusee, or any signal produced by a flame to prevent igniting any gasoline or other inflammable liquid or gas.

6. Every motor vehicle used for the transportation of inflammable liquids or inflammable compressed gas in cargo tanks, whether loaded or empty, the use of flares, pot torches, fusee or any signal produced by a flame is prohibited and lighted red electric lanterns shall be used in lieu thereof. Provided further, that every motor vehicle whether required to carry red electric lanterns or not, may carry such red electric lanterns in lieu of flares, pot torches and fusees; the placement of such red electric lanterns in the event of disablement shall be the same as the requirements for the placing of pot torches, fusees or flares.

During such time as lights are not required, red flags shall be placed in the manner prescribed for the lighted electric lanterns or flares except that no flag shall be required to be placed at the side of the vehicle; provided, however, that if such disablement continues into the period when lights are required, lighted flares or lighted red electric lanterns shall then be placed as prescribed. Whenever any bus, truck or truck tractor is stopped upon the traveled portion of the highway or the shoulder next thereto except within a business or residential district of a municipality or for any cause other than disablement or for necessary traffic stops, the following requirements shall be complied with during the period of such stop:

1. During the time that lights are required a lighted fusee or lighted red electric lantern shall be immediately placed on the roadway at the traffic side of the motor vehicle.

2. If such stop exceeds or is intended to exceed ten (10) minutes, the placing of flares, red electric lanterns or flags shall be in the manner prescribed for disabled vehicles.

Every motor vehicle having a windshield shall be equipped with at least one windshield wiper for cleaning rain, snow or other moisture from the windshield in order to provide clear vision for the driver.

(d) Every motor vehicle and every trailer or semi-trailer which is being drawn at the end of a train of vehicles shall carry at the rear a lamp of a type which exhibits a yellow or red light plainly visible under normal atmospheric conditions from a distance of five hundred (500) feet to the rear of such vehicle shall be so constructed and placed that the number plate carried on the rear of such vehicle shall under like conditions be so illuminated by a white light as to read from a distance of fifty (50) feet to the rear of such vehicle.

(e) Every motor vehicle other than any road roller, road machinery or farm tractor having a width at any part in excess of eighty (80) inches shall be equipped with at least the following lighting devices and reflectors:

1. On the front two headlamps, one at each side and two amber clearance lamps one at each side at the widest point of the said vehicle.

2. On the rear, one red tail lamp; one red or amber stop light; two (2) red clearance lamps, one on each side at the widest point of the said vehicle and two red reflectors, one on each side.

3. On each side, one amber side marker lamp, located at or near the front; one red side marker lamp located at or near the rear; one amber reflector located at or near the front; one red reflector located at or near the rear; and such clearance lights shall be capable of displaying an amber light visible two hundred (200) feet to the front of the vehicle and capable of displaying a red light visible under normal atmospheric conditions from a distance of five hundred (500) feet to the rear of such vehicle.

4. On every tractor other than farm tractors there shall be at least the following lighting devices: On the front two headlamps, one at each side and two amber clearance lights, one at each side. On the rear, one red tail lamp; one rear amber stop light; provided that farm tractors shall be required to have head lamps and tail lights where operated on a public road, highway or street.

During the time when lights are required to be displayed, there shall be attached to the rearmost extremity of any load which projects four (4) feet or more beyond the rear of the body of the motor vehicle, or at any tail board or tail gate so projecting, or to the rearmost extremity of any load, carried on a pole trailer, at least one lighted red lantern, securely fastened thereto, which shall be visible from a distance of at least five hundred (500) feet to the sides and rear under normal atmospheric conditions. At all other times a red cloth flag shall be so displayed.

C. (a) Every motor vehicle according to its type or character of operation as listed below, shall carry at all times the following emergency parts and accessories, which shall be in proper and effective working order and available for immediate use.

On every bus, truck, or truck tractor:

At least one (1) fire extinguisher, of a type inspected and labeled by Underwriters' Laboratories, Inc., under classification B, and utilizing an extinguishing agent which does not need protection from freezing. (Minimum size, one-quart carbon tetrachloride type, or two-pound carbon dioxide type); one (1) red lantern, when projecting loads are carried; and one (1) red cloth flag, not less than twelve (12) inches square, when projecting loads are carried.

(b) On every bus, truck, and truck tractor, operating outside the corporate limits of municipalities excepting busses subject to the general supervision and regulation, jurisdiction and control of the governing body of a municipality under chapter 51 and chapter 52, Public Acts of 1943 as amended [§§ 5447, 5447.1 and 5448], and operating within the territorial limits of the regulatory jurisdiction of such governing body.

All items listed under (a) above, and in addition:

At least one (1) spare electric bulb for each kind of electric lamp where such electric lamp is used for any of the lighting devices required by these regulations;

One (1) set of tire chains (for all vehicles likely to encounter conditions requiring them);

marker lamp, located at or near the rear; one amber light located at or near the rear; one red reflector located at or near the rear; and all lights shall be capable of displaying a beam of light visible under normal atmospheric conditions to a distance of (200) feet to the front of the vehicle and five hundred (500) feet to the rear.

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required to be displayed, there shall be no load which projects from the body of the motor vehicle, or attaching, or to the rearmost extremity thereof, at least one lighted red lantern, all be visible from a distance of at least 100 feet on the sides and rear under normal atmospheric conditions. A red cloth flag shall be so displayed.

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At least three (3) flares or three (3) red emergency reflectors, or three (3) red electric lanterns, unless the motor vehicle is operated solely on streets or highways which are artificially lighted at night; each flare (liquid-burning pot torch) or red emergency reflector or red electric lantern shall be capable of being seen and distinguished at a distance of five hundred (500) feet under normal atmospheric conditions; each flare (pot torch) shall be capable of burning for not less than twelve (12) hours in five (5) miles per hour wind velocity, capable of burning in any air velocities from zero to forty (40) miles per hour, substantially constructed so as to withstand reasonable shocks without leaking, and shall be carried in a metal rack or box; each red electric lantern shall be capable of operating continuously for not less than twelve (12) hours and shall be substantially constructed so as to withstand reasonable shock without breakage;

Each red emergency reflector shall conform in all respects to the requirements of the following specifications, and must be approved for use in Tennessee by the Tennessee department of safety:

Each red emergency reflector shall be comprised of a multiplicity of red reflecting elements on each side (not less than two) front and back, every one of which red reflecting elements shall conform as a minimum requirement to the specification for class A Reflex Reflectors contained in the SAE Handbook, 1944 edition (published by the Society of Automotive Engineers, 29 West 39th Street, New York 18, N. Y.). The aggregate candlepower output of the reflecting elements of the device when tested in the perpendicular position at one-third degree as specified by SAE photometric procedure shall be not less than twelve.

If the reflecting surfaces of reflector elements would be adversely affected by dust, soot, or other foreign matter, they shall be adequately sealed within the body of the units in which they are incorporated. Each reflector device shall be of such weight and dimensions as to remain stable and stationary when in a 40 mile per hour wind on any road surface on which it is likely to be used and shall be so constructed as to withstand reasonable shock without breakage. Each reflector device shall be so constructed that the reflecting elements shall be in a plane perpendicular to the plane of the roadway when placed thereon.

Reasonable protection shall be afforded each reflector device, and the reflecting elements incorporated therein, by enclosure in a box or rack from which the three devices readily may be extracted for use. In the event the reflector devices are collapsible, locking means shall be provided to maintain the reflecting elements in effective position, and such locking means shall be readily capable of adjustment without the use of tools or special equipment.

Each unit of a set of three (3) red emergency reflectors shall be marked plainly with the certification of the manufacturer that it fulfills the requirements of these specifications.

Each red emergency reflector when used shall be so placed on the highway as to reflect to oncoming vehicles a maximum amount of reflected light.

At least three (3) red burning fusees (if carrier elects to carry and use flares as warning signals), unless the motor vehicle is operated solely on streets or highways which are artificially lighted at night; each fusee shall be made in accordance with the specifications of the Bureau of Explosives, 30 Vesey Street, New York, New York, and so marked, and shall be capable of burning at least fifteen (15) minutes; and

At least two (2) red cloth flags, not less than twelve (12) inches square, with standards.

Whenever any bus, truck or truck tractor is disabled upon the traveled portion of the highway or the shoulder next thereto, except within a business or residential district of a municipality the following requirements shall be complied with during the period of such disablement:

During the time when lights are required, that is, between one-half hour after sunset and one-half hour before sunrise and at all other times when there is not sufficient light to render clearly discernible a person 200 feet ahead, a lighted fusee shall be immediately placed on the roadway at the traffic side of the motor vehicle; as soon thereafter as possible, and in any case within the burning period of the fusee, three (3) lighted flares or pot torches shall be placed on the roadway as follows:

1. One in the center of the line of traffic occupied by the disabled motor vehicle not less than forty (40) paces or approximately one hundred (100) feet distant therefrom in the direction of traffic approaching in that line.

2. One not less than forty (40) paces, or approximately one hundred (100) feet from said vehicle in the opposite direction.

3. One at the traffic side of such vehicle approximately ten (10) feet rearward or forward thereof.

4. Provided, however, that if the motor vehicle is disabled within three hundred (300) feet of a curve, crest of a hill or other obstruction to view, the flare in that direction shall be so placed as to afford ample warning to other users of the highway but in no case less than forty (40) paces approximately one hundred (100) feet nor more than one hundred twenty (120) paces approximately three hundred (300) feet, from the disabled vehicle.

5. Provided, further, that care should be taken in placing any flare, fusee, or any signal produced by a flame to prevent igniting any gasoline or other inflammable liquid or gas.

6. Every motor vehicle used for the transportation of inflammable liquids or inflammable compressed gas in cargo tanks, whether loaded or empty, the use of flares, pot torches, fusees or any signal produced by a flame is prohibited and lighted red electric lanterns or red emergency reflectors shall be used in lieu thereof. Provided, further, that every motor vehicle whether required to carry red electric lanterns or red emergency reflectors or not, may carry such red electric lanterns or red emergency reflectors in lieu of flares, pot torches and fusees; the

t less than twelve (12) inches

tractor is disabled upon the
shoulder next thereto, except
t of a municipality the follow-
ith during the period of such

ired, that is, between one-half
efore sunrise and at all other
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shall be immediately placed on
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transportation of inflammable cargo tanks, whether loaded with fusees or any signal produced by electric lanterns or red emergency lights thereof. Provided, further, that no vessel shall carry red electric lanterns or carry such red electric lanterns, fusees, pot torches and fusees; the

placement of such red electric lanterns or red emergency reflectors in the event of disablement shall be the same as the requirements for the placing of pot torches, fusees or flares.

During such time as lights are not required, red flags shall be placed in the manner prescribed for the lighted electric lanterns or flares except that no flag shall be required to be placed at the side of the vehicle; provided, however, that if such disablement continues into the period when lights are required, lighted flares or lighted red electric lanterns or red emergency reflectors shall then be placed as prescribed. Whenever any bus, truck or truck tractor is stopped upon the traveled portion of the highway or the shoulder next thereto, except within a business or residential district of a municipality or for any cause other than disablement or for necessary traffic stops, the following requirements shall be complied with during the period of such stop.

1. During the time that lights are required, a lighted fusee or lighted red electric lantern or red emergency reflector shall be immediately placed on the roadway at the traffic side of the motor vehicle.

2. If such stop exceeds or is intended to exceed ten (10) minutes, the placing of flares, red electric lanterns or red emergency reflectors or flags shall be in the manner prescribed for disabled vehicles.

None of the provisions of this section which relate to fire extinguishers, red lanterns, red flags, tire chains, flares, and fuses, shall apply to trucks and pickup trucks owned and operated by any person in the transportation of produce and farm products grown exclusively by that person in transporting them to and from market. (1931, ch. 82, sec. 15; 1937, ch. 245, sec. 5; 1937, 2nd ex. ses., ch. 12, sec. 1; 1939, ch. 206, secs. 4, 5; 1941, ch. 121, sec. 1; 1947, ch. 121, sec. 1.)

Compiler's Notes. Section 2, Acts 1941, ch. 121 provided: "If any section, subsection, sentence, clause or phrase of this act is for any reason held to be unconstitutional such decision shall not affect the validity of the remaining portions of this act."

Section 2, Acts 1947, ch. 121 provides: "If any section or sections of this act shall be declared unconstitutional or invalid, they shall not invalidate any other section thereof."

Amendments. The 1941 amendment amended subsections (a), (b), (c), (d) and (e) of subdivision (A). The 1947 amendment rewrote subsection (b) of subdivision (C). As subsections (f)-(k) of subdivision (A) and subdivision (B) were not affected by the amendments they are not set out.

Repealing and Emergency Clauses. Section 3, Acts 1941, ch. 121 repealed all laws or parts of laws in conflict.

Section 3, Acts 1941, ch. 121 declared an emergency. Passed Feb. 14, 1941. Approved February 15, 1941.

Section 3, Acts 1947, ch. 121 repealed all laws and parts of laws in conflict and declared an emergency. Passed March 3, 1947. Approved March 10, 1947.

Cited: Getz v. Weiss, 25 Tenn. App. 520, 160 S. W. (2d) 438.

Necessity of Using Flares.

The act requiring busses and trucks to carry flares was evidently passed to cause them to have lights they could put out if their own lights failed and they were broken down on the paved portion of the highway, and where the head lights and tail lights of a wrecked car and a wrecker were burning, both cars being out on the shoulder of the road, there was no need to set out the flares carried by the wrecker even though the road was icy. *Stanford v. Holloway*, 25 Tenn. App. 379, 157 S. W. (2d) 864.

Assumption That Section Is Being Observed as to Flares Is Justified.

The driver of an approaching vehicle has a right to assume that this section insofar as it relates to the placing of lighted flares on roadway when motor vehicle is disabled is being observed and until this glaring and inescapable warning appears may proceed on the assumption that no standing obstruction is ahead. *Inter-City Trucking Co. v. Daniels*, 181 Tenn. (17 Beeler) 126, 178 S. W. (2d) 756, 757.

And Violation of Section Is Negligence
Per Se.

The violation of this section insofar as it relates to the placing of lighted flares on roadway when motor vehicle is disa-

bled is negligence per se. *Inter-City Trucking Co. v. Daniels*, 181 Tenn. (17 Beeler) 126, 178 S. W. (2d) 756, 757.

Which May Bar Defense of Contributory Negligence.

In *Inter-City Trucking Co. v. Daniels*, 181 Tenn. (17 Beeler) 126, 178 S. W. (2d) 756, 759, it was held that failure of driver to comply with the provisions of this section in the placing of lighted flares on roadway when truck became disabled amounted to a conscious disregard of the rights and safety of others, a class of negligence defined as gross and wanton, which deprived defendant guilty thereof of the

right to rely upon plaintiff's contributory negligence.

Proximate Cause.

It is not every violation of a statute such as this section, that renders a person guilty of such contributory negligence as will bar his recovery on account of the negligence of another party. It is only when such violation of a statute is the proximate cause of the accident or injury that the party so offending is guilty of contributory negligence as a matter of law so as to bar his action. *Chattanooga Ice Delivery Co. v. Burnett Co.*, 24 Tenn. App. 535, 147 S. W. (2d) 750.

2702. Registration is prima facie evidence of ownership; and proof that the operation was for the owner's benefit.

Cited: *Callis v. Capitol Chevrolet*, 26 Tenn. App. 309, 171 S. W. (2d) 828.

Nature of Presumption.

The true effect of this section is to give to proof of registration a procedural consequence that would not otherwise result. It is available only in the absence of any evidence upon the subject; and operates merely to shift to the defendant the burden of going forward with the evidence on the point involved. When this burden has been met the presumption is *functus officio*. *Southern Motors v. Morton*, 25 Tenn. App. 204, 154 S. W. (2d) 801.

"Upon the other hand, the fact that the rebutting evidence comes from impeached or challenged sources otherwise assailed merely prevents the destruction of the presumption, permitting it to operate in the sense that by reason thereof the judge cannot take the question from the jury, thus leaving it to that body to pass upon the credibility of the witnesses under fire by giving to their testimony the weight they think it is entitled to or rejecting it altogether, just as they see fit and proper; but the point is, that in doing this they are not to consider or be influenced by the presumption. If the challenged testi-

mony be rejected by the jury, then upon the strength of the presumption the finding on that question ought to be for the plaintiff; for the rejection of the testimony would leave no counter-evidence in the case; conversely, if the testimony be accepted notwithstanding the attack upon its source, the finding ought to be for the defendant; for such acceptance validates the testimony so that it destroys the presumption and renders it unavailable for weighing against the counter-evidence or for any purpose." *Southern Motors v. Morton*, 25 Tenn. App. 204, 154 S. W. (2d) 801, 807.

Proof of Registration Can Be Established by Defendant's Admissions.

Where the certificate of registration was not certified as a correct copy of the records by the head of that department, it was held that proof of registration could be established by defendant's own admission. Such proof of registration of the car in his name raised a *prima facie* case for the jury that the car was being operated by his servant upon his business. *Fulmer v. Jennings*, 24 Tenn. App. 635, 148 S. W. (2d) 39.

2703. Vehicles, trucks, engines, or tractors shall not be operated upon public highway without compliance with regulations.—

The foregoing part of this section shall have no application to passenger busses operating as a common carrier, and authorized to do so by a certificate of convenience and necessity issued by the railroad and public utilities commission of the State of Tennessee; provided that the maximum weight of any such bus operated on any of the highways of this state, including the load thereon, shall not exceed thirty thousand (30,000) pounds. (1945, ch. 165, sec. 1.)

Amendment. The 1945 amendment directed that the above sentence be added at the end of this section. As the foregoing part of the section was not changed, it is not set out.

Repealing and Emergency Clauses. Section 2, Acts 1945, ch. 165 repealed all laws or parts of laws in conflict and declared an emergency. Passed February 28, 1945. Approved March 2, 1945.

SECTION.

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ARTICLE IIIA—TRUCKS AND TRAILERS

ght to rely upon plaintiff's contributory negligence.

Proximate Cause.

It is not every violation of a statute such as this section, that renders a person guilty of such contributory negligence as will bar his recovery on account of the negligence of another party. It is only when such violation of a statute is the proximate cause of the accident or injury that the party so offending is guilty of contributory negligence as a matter of law so as to bar his action. *Chattanooga Ice Delivery Co. v. Burnett Co.*, 24 Tenn. App. 5, 147 S. W. (2d) 750.

Evidence of ownership; and proof of the owner's benefit.

Only be rejected by the jury, then upon the strength of the presumption the finding on that question ought to be for the plaintiff; for the rejection of the testimony would leave no counter-evidence in the case; conversely, if the testimony be accepted notwithstanding the attack upon its source, the finding ought to be for the defendant; for such acceptance validates the testimony so that it destroys the presumption and renders it unavailable for weighing against the counter-evidence for any purpose." *Southern Motors v. Horton*, 25 Tenn. App. 204, 154 S. W. (2d) 801, 807.

Proof of Registration Can Be Established by Defendant's Admissions.

Where the certificate of registration was not certified as a correct copy of the records by the head of that department, it is held that proof of registration could be established by defendant's own admission. Such proof of registration of the car in his name raised a prima facie case for the jury that the car was being operated by his servant upon his business. *Slmer v. Jennings*, 24 Tenn. App. 635, 8 S. W. (2d) 39.

Tractors shall not be operated upon with regulations.—

shall have no application to passenger-carrier, and authorized to do so by necessity issued by the railroad and the State of Tennessee; provided that operated on any of the highways on, shall not exceed thirty thousand pounds per square foot (sec. 1.)

Repealing and Emergency Clauses. Section 2, Acts 1945, ch. 165 repealed all laws in conflict and declared emergency. Passed February 28, 1945. Approved March 2, 1945.

SECTION.

2715.3. Maximum length of vehicles.
2715.4. Maximum width and height.

2715.3. Maximum length of vehicles.—No motor vehicle subject to this act whose length, including any part of its body or load, exceeds thirty-five feet, and no motor vehicle with trailer or semitrailer attached, the total length of which combination, including any part of the body or load, exceeds forty-five feet, shall be operated on any highway. (1933, ch. 35, sec. 3; 1945, ch. 132, sec. 1.)

Amendment. The 1945 amendment substituted "thirty-five" for "twenty-seven" and "forty-five" for "thirty-five."

2715.4. Maximum width and height.—No motor vehicle subject to this act or any trailer or semitrailer, whose width, including any part of the load, exceeds eight feet (that is, four feet on each side of the center line of the vehicle) or whose height, including any part of the load, exceeds twelve and one-half feet, shall be operated on any highway. (1933, ch. 35, sec. 4; 1945, ch. 132, sec. 2.)

Amendment. The 1945 amendment substituted "twelve and one-half" for "twelve."

2715.5. [Repealed.]

Compiler's Note. This section was repealed by Acts 1945, ch. 132, § 3.

Emergency Clause. Section 4, Acts

1945, ch. 132 declared an emergency. Passed February 27, 1945. Approved March 1, 1945.

ARTICLE IIIB—SCHOOL BUSES

2715.11. Motor vehicles to stop upon approaching school busses.**Negligence of School Bus Driver.**

A school bus driver was charged with negligence for failure to exercise due care in discharging a child, with notice that a truck was approaching and that the route of the child would be around the bus and

into the pathway of the oncoming truck. It was held that the driver had no right to rely upon the fact that this section required the truck to come to a stop. *Cartwright v. Graves*, 182 Tenn. (18 Beeler) 114, 184 S. W. (2d) 373.

2715.12. Busses used in transporting school children to be marked "School Bus."**Stopping School Bus.**

The intention of the statute was to have the school bus stop at the right-hand extremity of the paved portion of the highway, not at the extremity of the shoulder. It does not require the driver to pull his vehicle out on the shoulder of a road when he stops to take on or discharge school children. *Gholston v. Richards*, 179 Tenn.

(15 Beeler) 645, 169 S. W. (2d) 846, 847.

It was no violation of the statute for the driver to stop a school bus on its right of the highway, with the left wheels on the pavement and the right wheels on the shoulder. *Gholston v. Richards*, 179 Tenn. (15 Beeler) 645, 169 S. W. (2d) 846.

ARTICLE IIIC—MOTOR VEHICLE OPERATORS' AND CHAUFFEURS' LICENSE ACT

SECTION.

2715.17. Persons not eligible for license.

2715.19a. License of persons in armed

forces of United States may be renewed without examination.

2715.17. Persons not eligible for license.

(c) To any person, as an operator or chauffeur, whose license has been suspended during such suspension or to any person whose license has been revoked, for a first offense, until the expiration of six months

after such license was revoked, and for subsequent offenses, until the expiration of one (1) year after such license was revoked; (1943, ch. 82, sec. 1.)

Amendment. As only subsection (c) was affected by the 1943 amendment, the rest of the section is not set out. The amendment inserted the words "for a first offense, until the expiration of six months after such license was revoked, and for subsequent offenses."

Emergency Clause. Section 2, Acts 1943, ch. 82 declared an emergency. Passed February 8, 1943. Approved February 10, 1943.

Cited: *Ratliff v. State*, 182 Tenn. (18 Beeler) 177, 184 S. W. (2d) 572.

2715.19a. Licenses of persons in armed forces of United States may be renewed without examination. — All persons who are now in the United States armed forces and who are holders of automobile drivers' licenses in the State of Tennessee may have said licenses renewed upon application to the department of safety of the State of Tennessee upon their return to Tennessee without further examination. (1943, ch. 56, sec. 1.)

Repealing and Emergency Clauses. Section 2, Acts 1943, ch. 56 repealed all laws and parts of laws in conflict and de-

clared an emergency. Passed February 5, 1943. Approved February 9, 1943.

2715.21. License to be carried and exhibited on demand.
Exhibition to State Highway Patrolman.

A state highway patrolman is empowered under this section at any time to stop a car and require an exhibition of the driver's license. *Cox v. State*, 181 Tenn. (17 Beeler) 344, 181 S. W. (2d) 338.

One of the few exceptions of the law relating to arrests without a warrant is the authority of highway patrol officers to stop a car and demand to see the license of the operator. *Robertson v. State*, — Tenn. —, 198 S. W. (2d) 633.

Officer's Right Strictly Construed.

Highway patrol officers must exercise this right to check operators' licenses in good faith and not as a pretext or subterfuge for an inspection of or a prying into the contents of an automobile or any other possession of a citizen. This right of the officers should be strictly construed and made to stay within its proper limitations. *Robertson v. State*, — Tenn. —, 198 S. W. (2d) 633.

2715.25. Suspension of licenses.

Notice Where License Taken Up.

It may well be doubted that any written notice is necessary in a case where the license has been physically taken up by highway department officials. *Ratliff v. State*, 182 Tenn. (18 Beeler) 177, 184 S. W. (2d) 572.

Where a motorist has been arrested for transporting liquor by highway department officials, who took up his driver's license, the notice of suspension of the license need not describe with any particularity the offense for which he was arrested.

2715.28. Driving while license suspended or revoked.

Section Covers Any Person Operating a Motor Vehicle.

The obvious intent of this section is to

Unlawful Stoppage of Car.

Where highway patrolman's claim that stoppage of defendant's car was for the purpose of learning whether he had a driver's license or registration receipt was a subterfuge, objection was properly made to his testimony on the ground that his stopping of the automobile and arrest of its occupants was unlawful and his testimony therefore was inadmissible. *Smith v. State*, 182 Tenn. (18 Beeler) 158, 184 S. W. (2d) 390.

Where, in stopping defendant's car and asking for his driver's license, highway patrolmen were primarily actuated by a desire to see if they could detect any evidence of intoxicating liquor being transported, and they had no concern whatever about his driver's license, the effect of defendant's apprehension was to require him to give evidence against himself, and therefore violated his constitutional rights. *Cox v. State*, 181 Tenn. (17 Beeler) 344, 181 S. W. (2d) 338.

Ratliff v. State, 182 Tenn. (18 Beeler) 177, 184 S. W. (2d) 572.

Suspension Authorized.

Defendant was arrested while unlawfully transporting liquor, his driver's license was taken from him, and a notice given him of its suspension. Thereafter he was arrested for driving without a license and his prosecution under § 2715.28 followed. It was held that the suspension was authorized although when tried for transporting liquor he was not convicted of a felony. *Ratliff v. State*, 182 Tenn. (18 Beeler) 177, 184 S. W. (2d) 572.

cover and include "any person" operating a motor vehicle, whether holding an operator's license, a chauffeur's license, or exer-

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Att. v. State, 182 Tenn. (18 Beeler) 177, 184 S. W. (2d) 572.

and forces of United States may all persons who are now in the holders of automobile drivers' have said licenses renewed upon of the State of Tennessee upon examination. (1943, ch. 56,

and an emergency. Passed February 1943. Approved February 9, 1943.

ited on demand.

Lawful Stoppage of Car. Here highway patrolman's claim that page of defendant's car was for the use of learning whether he had a driver's license or registration receipt was a refuge, objection was properly made to testimony on the ground that his stoppage of the automobile and arrest of its pants was unlawful and his testimony before was inadmissible. *Smith v. State*, 182 Tenn. (18 Beeler) 158, 184 S. W. (2d)

here, in stopping defendant's car and for his driver's license, highway men were primarily actuated by a e to see if they could detect any evidence of intoxicating liquor being transported, and they had no concern whatever with his driver's license, the effect of defendant's apprehension was to require to give evidence against himself, and fore violated his constitutional rights. *Att. v. State*, 181 Tenn. (17 Beeler) 344, 184 S. W. (2d) 338.

Att. v. State, 182 Tenn. (18 Beeler) 177, 184 S. W. (2d) 572.

sion Authorized.

Defendant was arrested while unlawfully transporting liquor, his driver's license was taken from him, and a notice of its suspension. Thereafter he was arrested for driving without a license and his prosecution under § 2715.28 was denied. It was held that the suspension was authorized although when tried for transporting liquor he was not convicted of a felony. *Att. v. State*, 182 Tenn. (18 Beeler) 177, 184 S. W. (2d) 572.

l or revoked.

and include "any person" operating a motor vehicle, whether holding an operator's license, a chauffeur's license, or exer-

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 cising a driving privilege as a non-resident. There is no intention in the language or context of the section to restrict its application to nonresidents. *Ratliff v. State*, 182 Tenn. (18 Beeler) 177, 184 S. W. (2d) 572.

Instance of Violation of Section. Defendant was arrested while transporting several cases of liquor, his driver's license was taken up, and a notice given him of its suspension. Thereafter he was

arrested for driving without a license and his prosecution under this section followed. It was held that defendant was guilty of violating this section, although when tried for transporting liquor he was not convicted of a felony. The suspension of his license was authorized regardless of the final outcome of the felony case. *Ratliff v. State*, 182 Tenn. (18 Beeler) 177, 184 S. W. (2d) 572.

ARTICLE VI—COUNTY AND MUNICIPAL AIRPORTS

2726.13. Establishment of airports by political subdivisions authorized.

Lands without the State. City of Chattanooga has authority to acquire and hold in its proprietary capacity for airport purposes lands in such amount as may reasonably appear to the municipal authorities to be necessary,

whether lying within or without (1) the corporate limits, or (2) within or without the State of Tennessee. *McLaughlin v. Chattanooga*, 180 Tenn. (16 Beeler) 638, 177 S. W. (2d) 823, 826.

ARTICLE VII—BUREAU OF AERONAUTICS

SECTION.
 2726.27. Bureau created; membership and organization.
 2726.30. Powers and duties of commission and bureau.
 2726.37. Tax on motor fuel sold for aviation purposes.
 2726.38. Funds from federal and other sources.
 2726.44a. Taxes and fees to be used solely

SECTION.
 for advancement of aviation program.
 2726.44b. Discrimination prohibited.
 2726.46a. Auditing books of localities receiving funds from gasoline tax.
 2726.46b. Approval of project; agency to receive and disburse federal funds; contracts in behalf of localities.

2726.27. Bureau created; membership and organization.

Any sum or sums of money allocated to said bureau of aeronautics out of the proceeds of gasoline tax as herein provided, shall be used by said bureau solely for the purpose of advancing the aviation program in the state and for no other purpose. (1937, ch. 305, sec. 5; 1939, ch. 195, sec. 1; 1945, ch. 72, sec. 4.)

Amendment. As the 1945 amendment changed only the last paragraph, the rest of the section is not set out.

2726.30. Powers and duties of commission and bureau.

The bureau shall have the exclusive jurisdiction of granting certificates of public convenience and necessity for the operation as common carrier by air for the transportation of persons or property.

Upon the filing of an application for a certificate of public convenience and necessity, the bureau shall within a reasonable time, fix a time and place for hearing such application, not less than twenty (20) days after such filing and shall hear and determine such application within a reasonable length of time. If the bureau shall find the proposed operation justified, and that the applicant is fit, willing and able to properly perform the services proposed and to conform to the provisions of this act and of the requirements, rules and regulations of the bureau, it shall issue a certificate to the applicant, subject to such terms, limitations and restrictions as the bureau may deem proper, authorizing in whole or in part the operations covered by the application. If