Chapter 761

1961 REPLACEMENT PART

Railroad Equipment, Buildings and Tracks

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DEFINITIONS

761.010 Definitions. (1) As used in this chapter, "commissioner" means the Public Utility Commissioner.

(2) As used in ORS 761.110 to 761.140, "railroad" means a railroad as defined in ORS 760.005 and 760.010.

761.020 to 761.100 [Reserved for expansion]

RAILROAD BUILDINGS, TRACKS AND FACILITIES

761.110 Maintenance of adequate passenger and freight depots and facilities. (1) Every railroad shall provide and maintain adequate depots and depot buildings, and clean and suitable toilet rooms, or buildings, at its regular stations where an agent is maintained, for the accommodation of passengers.

(2) The depot buildings shall be kept clean, well lighted and warmed, for the comfort and accommodation of the traveling public.

(3) All railroads shall keep and maintain adequate and suitable freight depots, buildings, switches, spurs and sidetracks for the receiving, handling and delivering of freight transported or to be transported by such railroads.

761.120 Inspection of and recommendations on railroad equipment and facilities. The commissioner shall at least once each year carefully examine and inspect the physical condition of each railroad in the state, its roadbed, stations, equipment and the manner of its conduct and management with reference to the safety of the public, and the employes of such railroad, and the convenience of the public, and shall report the result of his investigations to the railroad company, together with his recommendations thereon.

761.130 When joint station houses, platforms and track connections are required; prorating of expenses; forfeiture. (1) When ordered to do so by the commissioner, all railroads shall, at all points of connection, crossings or intersection with the roads of other railroads, unite therewith in:

(a) Establishing and maintaining suitable platforms and station houses for the convenience of passengers desiring to transfer from one road to the other and for the transfer of passengers, baggage or freight.

(b) Keeping such depot or passenger house warmed, lighted and opened a reasonable time before the arrival and until after the departure, of all trains carrying passengers.

(c) Stopping all trains at said depots for the transfer of passengers, baggage and freight.

(d) Uniting and connecting the tracks of the several roads so as to permit the transfer of cars from the track of one to that of the other.

(2) The expense of constructing and maintaining station houses, platforms and track connections under this section shall be paid by such railroads in proportions fixed by the commissioner, in the event the railroads do not agree among themselves as to the apportionment thereof.

(3) Any railroad which, after having received 90 days' notice from the commissioner, neglects or refuses to comply with this section shall, for every day it neglects or refuses to comply therewith, forfeit the sum of $25 which may be recovered in the name of the state in an action brought in the circuit court in the county wherein such crossing or intersection is situated.

761.140 Construction of connections to lateral or branch lines. (1) Any railroad, upon application of any lateral or branch line railroad, or any shipper tendering intrastate traffic for transportation, shall construct, maintain and operate upon reasonable terms a switch connection with any lateral or branch line of railroad or private sidetrack which may be constructed, where such connection is reasonably practicable and can be put in with safety and will furnish sufficient business to justify the construction and maintenance of the same, and shall furnish cars and transport, to the best of its ability, any traffic tendered to, over or from such lateral or branch line of railroad or private sidetrack, without discrimination in favor of or against such shipper.

(2) However, this section does not compel a railroad to remove from or deliver on a private sidetrack traffic tendered in less than carload lots.

(3) Shipments of livestock, perishable property and explosives may have precedence over all other classes of merchandise.

761.150 Procedure on failure to construct connections. (1) If any railroad fails to install and operate the connections required by ORS 761.140 on application there-

for in writing by the owner of any such lateral or branch line of railroad, or any shipper, the owner of any such lateral or branch line of railroad, or any shipper may make complaint to the commissioner in the manner provided by ORS 760.510 to 760.525 and 760.555 to 760.565. The commissioner shall, in the manner provided in said statutes:

(a) Make investigation of the connections.

(b) Determine the safety, practicability and justification of the connections.

(c) Ascertain the items of reasonable cost of making such connections.

(d) Make an order, directing the railroad to comply with ORS 761.140 in accordance with such order.

(2) The order shall be enforced as other orders of the commissioner fixing a reasonable service are enforced. The railroad shall furnish the rails and fastenings, and the switch, complete with frog and guard rails, and the ties and grading shall be furnished or the expense borne by applicant.

761.160 When track connections with warehouses required; furnishing freight cars. Whenever any warehouse is built within 150 feet of the main line of any railroad in this state, with sidetrack graded and ties laid down without expense to the company owning or operating said road, and not less than 300 tons of freight stored in said warehouse ready for transportation and the warehouses are so situated that trains can be started with the same power as in daily use on ordinary straight and level track, then the said railroad company shall:

(1) Lay down the track, with the necessary connections and switches.

(2) From time to time furnish suitable freight cars necessary for the removal of such freight.

(3) Transport freight in carload lots to or from said warehouse in regular order, as other freight is transported on said road, whenever notice is given to the agent of the company or person in charge of the nearest station thereon.

761.170 Recovery of penalty by injured party for failure to comply with ORS 761.160. If any company or corporation owning or operating any railroad in this state fails to comply with ORS 761.160, the person injured by such failure may recover against such railroad company, in any court having jurisdiction, a penalty of $300 for each week during which such failure continues.

761.180 to 761.300 [Reserved for expansion]

RAILROAD EQUIPMENT

761.310 Electric headlights for locomotives; liability for damages. (1) Every person operating any class A line of railroad, as classified by the Interstate Commerce Commission, shall maintain and use upon every locomotive power vehicle, power car and other equipment used as the equivalent of or in the place of locomotives which is operated at night, electric front and rear headlights of sufficient candle power, measured with a reflector, to throw a light in clear weather that will enable the operator of the same plainly to discern an object the size of a man at a distance of not less than 800 feet. However, every locomotive, power vehicle, power car or other equipment used as the equivalent of or in place of locomotives shall extinguish the light on the end and to which a car is coupled when used for switching purposes only in a railroad yard.

(2) Any person who violates this section, in addition to the penalty prescribed in ORS 761.990, is liable for all damages resulting, in whole or in part, directly or indirectly from the violation.

761.320 Equipment required on track motor cars. (1) Every person operating or controlling any railroad which is a common carrier shall equip each of its track motor cars operating during the period 30 minutes before sunset and 30 minutes after sunrise with:

(a) An electric headlight of sufficient candle power to enable the operator of the car to plainly discern any track obstruction, landmark, warning sign or grade crossing at a distance not less than 300 feet.

(b) A red rear electric light with sufficient candle power to be plainly visible at a distance not less than 300 feet.

(c) A windshield equipped with a device, which must be kept in good working order, with which the operator can clean rain, snow and other moisture from the windshield.

(d) A canopy or top adequate to protect the occupants of the car from sun, rain, snow or other inclement weather.

(2) As used in this section, "track motor car" means all power-propelled speeders and motor cars which can be lifted on and off the track by hand.

761.330 Track scales; inspection and sealing. (1) All track scales used by railroads within this state for the purpose of weighing cars or freight offered for shipment in carload lots shall be under the jurisdiction of the commissioner and subject to his inspection.

(2) The commissioner shall, from time to time, test and inspect all such scales, and cause such scales to be put in an accurate condition.

(3) The commissioner shall approve a suitable sealing device, and cause all track scales inspected under this section to be officially sealed with such device, when such scales are found or made to be accurate.

(4) The car, apparatus or facilities used for tests and inspections may be used in adjoining states to test track scales and for that purpose may be taken beyond the limits of the state under such rules and regulations for the due care and return thereof as the commissioner prescribes.

761.340 Collection and payment of expenses of inspection; expenditures for administration. (1) The commissioner may ascertain, declare and collect the reasonable cost and expenses of making inspections and tests of track scales, other than those operated by railroads as defined in ORS 760.005 and 760.010 and subject to his jurisdiction. Any person other than said railroads operating such scale shall pay the cost and expense of any inspection to the commissioner upon demand, which sum shall be paid by the commissioner into the State Treasury and shall be placed by the State Treasurer to the credit of the Public Utility Commissioner Account and shall be used only for the purpose of paying the expenses of the commissioner in the administration of ORS 761.330 to 761.360.

(2) When, in the judgment of the commissioner, action is deemed necessary to collect any unpaid costs and expenses upon the neglect or refusal, after demand, of any person to pay such costs and expenses, the commissioner shall bring such action or take such proceedings as may be necessary in the name of the state in any court of competent jurisdiction and be entitled to recover all such costs and expenses and the costs and disbursements incurred therein, which moneys shall be credited to the Public Utility Commissioner Account and shall be used only for the purpose of paying the expenses of the commissioner in the administration of ORS 761.330 to 761.360. [Amended by 1957 c 459 §9]

761.350 Tampering with scales prohibited. No person shall break or tamper with or cause to be changed, broken or tampered with, the sealing device or sealing or track scales after the same has been installed or inspected by the commissioner or his inspector.

761.360 Inspection equipment and personnel; transportation of equipment. (1) The commissioner shall procure by purchase, lease or otherwise, necessary apparatus to make the tests and inspections provided for in ORS 761.330 and employ the necessary experts and inspectors therefor and fix their compensation.

(2) All such apparatus shall be transported free by every railroad in this state, when necessary for the purpose of making the tests and inspections under ORS 761.330.

761.370 to 761.400 [Reserved for expansion]

FIRE PREVENTION AND BRIDGE REPAIR

761.410 Rights of way east of Cascades to be mowed annually; procedure on noncompliance of railroad. (1) The right of way of all railroads in the state east of the Cascade Mountains shall be mowed each year between June 1 and July 1.

(2) If any railroad company or corporation owning or operating a railroad over said right of way neglects or refuses to cause its right of way to be mowed as provided in this section, any person occupying or owning the land adjoining the right of way may, after said July 1, cause the portion of the right of way adjoining the land occupied or owned by such person, to be mowed.

(3) The person performing such work shall receive the reasonable value thereof, to be fixed by the county judge, who shall certify to the value of such work. This certificate shall be filed with the county clerk. The certified bill shall be charged to the delinquent company and collected for the person doing the work in the same manner and at the same time as general taxes are collected.

761.420 Removal of inflammable material from railroad rights of way. Every person operating a railroad of any kind in

this state shall annually, or oftener, if so directed by the State Forester, and in a manner and to an extent directed by the State Forester, destroy or remove all inflammable material from the right of way of the railroad. All burning under this section shall be in accordance with ORS 477.152 and 477.154.

761.430 Railroad receiver to rebuild or repair bridges; sale of receiver's certificates; penalty for noncompliance. (1) Any receiver, whether in charge of any railroad constructed within this state by a home or by a foreign corporation organized to build railroads in Oregon, and whether acting under the orders of the courts of this state or of the United States, or otherwise, shall, whenever any railroad bridge over any river of this state has been removed, carried away, injured, destroyed or rendered impassable or unsafe to life or property, rebuild or repair the bridge within six months from the time it was moved, carried away, injured, destroyed or rendered impassable or unsafe to life or property. Such receiver shall issue and sell receiver's certificates for the cost of construction, reconstruction, or repair of the bridge, at such rate of interest and with such security as the courts may direct.

(2) If any receiver fails to rebuild or repair the bridge within the time provided in this section such corporation shall pay a fine thereafter of not less than $50 per day until the bridge is rebuilt or repaired.

761.440 to 761.500 [Reserved for expansion]

CONDITIONAL SALES OF RAILROAD EQUIPMENT AND LEASES WITH OPTION TO BUY

761.510 Contracts for conditional sale of equipment or rolling stock; leases with option to buy. (1) In any contract for the sale of railroad equipment or rolling stock, it is lawful to agree that the title to the property sold or contracted to be sold, although deliverable immediately, or at any time subsequently, shall not vest in the purchaser until the purchase price is fully paid, or that the seller shall have and retain a lien thereon for the unpaid purchase money.

(2) In any contract of or for the leasing of such property, it is lawful to stipulate for a conditional sale thereof at the termination of such lease, and that the rentals received may, as paid, be applied and treated as purchase money, and that the title to the property shall not vest in the lessee or vendee until the purchase price is paid in full, notwithstanding delivery to and possession by such lessee or vendee.

Note: ORS 761 510, 761 520 and 761 530 are repealed effective September 1, 1963 See section 427 of chapter 726, Oregon Laws 1961 (Uniform Commercial Code). Until September 1, 1963, ORS 761 510, 761 520 and 761 530 remain in effect, unless otherwise provided by legislative action after 1961

761.520 When contract is valid against subsequent purchaser or judgment creditor. No contract under ORS 761.510 is valid as against any subsequent judgment creditor or bona fide purchaser for value and without notice, unless:

(1) It is evidenced by an instrument duly acknowledged before some person authorized by law to take acknowledgements of deeds.

(2) The instrument is filed for record in the office of the county clerk of the county in which at the time of the execution thereof is situated the principal office of the vendee or lessee within this state.

(3) Each locomotive, engine or car so sold, or constructed to be sold or leased has the name of the vendor or lessor plainly marked on each side thereof, followed by the word "owner" or "lessor," as the case may be.

Note: See note under ORS 761.510

761.530 Recordation and discharge of contract. The contracts authorized by ORS 761.510 shall be recorded by the county clerk mentioned in subsection (2) of ORS 761.520 in the book of records of mortgages of real estate in the county. On payment in full of the purchase money, and the performance of the terms and conditions stipulated in such contract, a declaration in writing to that effect shall be made by the vendor or his assignee. This declaration may be made on the margin of the record of the contract, attested by the county clerk, or it may be made by a separate instrument, to be acknowledged and recorded as provided in subsection (2) of ORS 761.520. For such services the clerk shall be entitled to the fees provided by law for the recording of deeds and mortgages of real estate.

Note: See note under ORS 761 510

761.540 to 761.980 [Reserved for expansion]

PENALTIES

761.990 Penalties. (1) Violation of ORS 761.310 is punishable, upon conviction,

by a fine of not less than $100 and not more than $500 for each offense.

(2) Violation of ORS 761.320 is punishable, upon conviction, by a fine of not more than $100 for each offense.

(3) Violation of ORS 761.350 is a misdemeanor.

(4) Violation of ORS 761.420 is punishable, upon conviction, by a fine of not less than $25 nor more than $250 for each offense, or by imprisonment in the county jail for not less than 10 days nor more than 90 days.

CERTIFICATE OF LEGISLATIVE COUNSEL

Pursuant to ORS 173.170, I, Sam R Haley, Legislative Counsel, do hereby certify that I have compared each section printed in this chapter with the original section in the enrolled bill, and that the sections in this chapter are correct copies of the enrolled sections, with the exception of the changes in form permitted by ORS 173.160 and other changes specifically authorized by law.

Done at Salem, Oregon,
on December 1, 1961.

Sam R. Haley
Legislative Counsel

CHAPTER 762

[Reserved for expansion]