

CHAPTER 103
SENATE BILL No. 309

AN ACT relating to fines and penalties; concerning the state corporation commission; relating to railroad companies; amending K.S.A. 66-138, 66-177 and 66-274 and repealing the existing sections.

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

Section 1. K.S.A. 66-138 is hereby amended to read as follows: 66-138. (a) If any common carrier or public utility governed by the provisions of this act violates any of the provisions of this act, or shall do any act herein prohibited, or fails or refuses to perform any duty enjoined upon it in this act, or fails, neglects or refuses to obey any lawful requirement or order made by the commission, or any final judgment or decree made by any court upon appeal from any order of the commission, it shall, for every such violation, failure or refusal, forfeit and pay to the state treasurer ~~a sum not less than \$100 and not more than \$1,000 for such offense~~ *(1) A sum not less than \$100 and not more than \$1,000 for such offense if the violator is a telecommunications public utility subject to traditional rate of return regulation; a telecommunications public utility described in K.S.A. 66-104a, and amendments thereto; a municipally owned and operated electric or natural gas public utility; an electric or natural gas cooperative public utility; a water public utility; or a nonprofit public utility; and (2) a sum not less than \$100 and not more than \$5,000 for such offense if the violator is any other common carrier or public utility.* Upon receipt of any such sum, the state treasurer shall credit the entire amount thereof to the public service regulation fund or the motor carrier license fee fund, as the case requires.

Such forfeiture shall be enforced and collected by the attorney general in any court of competent jurisdiction. The attorney general may appoint a corporation commission attorney as a special assistant attorney general for the purposes of enforcing and collecting any forfeiture contemplated herein. In construing and enforcing the provisions of this act, any act, omission or failure of any officer, agent or other person acting for or employed by any such public utility or common carrier, while acting within the scope of such person's employment, shall in every case be deemed to be the act, omission or failure of such public utility or common carrier and every day during which any such public utility or common carrier or officer, agent or employee thereof, fails to comply with any order or direction of the commission, or to perform any duty required or enjoined by this act, shall constitute a separate and distinct violation of the provisions of this act.

(b) The provisions of subsection (a), shall not apply to any motor carrier.

Sec. 2. K.S.A. 66-177 is hereby amended to read as follows: 66-177. (a) Any public utility or common carrier willfully violating or evading any of the provisions of law for the regulation of such public utility or common carrier not otherwise specifically provided for shall, for each offense, forfeit and pay a penalty of ~~not less than \$100 nor more than \$5,000.~~ *(1) Not less than \$100 nor more than \$2,000 if the violator is a telecommunications public utility subject to traditional rate of return regulation; a telecommunications public utility described in K.S.A. 66-104a, and amendments thereto; a municipally owned and operated electric or natural gas public utility; an electric or natural gas cooperative public utility; a water public utility; or a nonprofit public utility; and (2) not less than \$100 nor more than \$10,000 if the violator is any other common carrier or public utility.* All penalties provided for herein shall be recovered by a civil action, to be instituted and prosecuted in the name of the state, by the county attorney of the county in which the offense has been committed, upon the direction of the corporation commission. If upon the trial of the action the jury finds for the plaintiff, the jury shall assess and return with their verdict the amount of the fine to be imposed upon the defendant and the court shall render judgment accordingly. All such penalties recovered shall be paid to the state treasurer pursuant to K.S.A. 20-2801, and amendments thereto, and the corporation commission may require the attorney general to assist such county attorney in the prosecution of such action. No bond for costs shall be required of the state in any such action.

(b) The provisions of subsection (a), shall not apply to any motor carrier.

Sec. 3. K.S.A. 66-274 is hereby amended to read as follows: 66-274. Any railroad company or corporation operating a line of railroad in Kansas failing or neglecting to comply with K.S.A. 66-273, and amendments thereto, shall be guilty of a misdemeanor, and upon conviction shall be punished by a fine as follows: ~~Fifty~~ *One hundred* dollars if the blocking is for more than 10 minutes but less than 20 minutes; ~~\$150~~ \$300 if the blocking is for more than 20 minutes but less than 30 minutes; ~~\$300~~ \$600 if the blocking is for ~~more than~~ 30 minutes *and \$600 for each additional 30 minutes if the blocking is for more than 30 minutes*. No member of a railroad train, yard, or engine crew shall be held personally responsible or found guilty of violating any state laws or any municipal ordinances regulating or intended to regulate the occupying or blocking of any street, road or highway crossing-at-grade by trains or passenger or freight cars upon reasonable proof that such person's action was necessary due to circumstances beyond such person's control, or to comply with the order or instructions, either written or verbal, of the person's employer or officers or supervisory officials. Nothing in this section shall relieve the employer or railroad from any responsibility placed upon such employer or railroad by any such state law or any municipal ordinance.

Sec. 4. K.S.A. 66-138, 66-177 and 66-274 are hereby repealed.

Sec. 5. This act shall take effect and be in force from and after its publication in the statute book.

Approved April 16, 2004.
