

## CONSTRUCTION AND OPERATION OF RAILWAYS

H. F. 190

AN ACT to amend, revise, and codify sections forty-nine hundred eighty-two (4982), fifty hundred two (5002) to fifty hundred seven (5007), inclusive, fifty hundred twelve (5012), fifty hundred thirteen (5013), fifty hundred fifty-one (5051), fifty hundred fifty-two (5052), fifty hundred sixty-five (5065), fifty hundred seventy-two (5072), fifty hundred seventy-four (5074), fifty hundred seventy-five (5075), fifty hundred seventy-eight (5078), fifty hundred eighty (5080) to fifty hundred eighty-five (5085), inclusive, fifty-one hundred one (5101) to fifty-one hundred three (5103), inclusive, fifty-one hundred five (5105) to fifty-one hundred seven (5107), inclusive, fifty-one hundred seventy-one (5171), fifty-one hundred seventy-two (5172) of the compiled code of Iowa, and fifty-one hundred seventy-two-a one (5172-a1) to fifty-one hundred seventy-two-a four (5172-a4), inclusive, of the supplement to said code, relating to the construction and operation of railways.

Be It Enacted by the General Assembly of the State of Iowa:

That sections fifty hundred fifty-two (5052) and fifty hundred fifty-one (5051) of the compiled Code of Iowa are amended, revised, and codified to read as follows:

Section 1. Effect of change of name. If any railway company is organized under a corporation name, and has made contracts for payments to it upon delivery of stock in such company, and shall subsequently thereto change its name, or if the real ownership in the property, rights, and franchises has passed legally or equitably into any other company, no such contract shall be enforced until tender or delivery of stock in such last named company or corporation is made.

Sec. 2. Where recorded. The secretary of state shall immediately record in the proper book in his office any document filed pertaining to said change in name, making references to the record of the articles of incorporation.

That sections fifty hundred seventy-two (5072) and fifty hundred sixty-five (5065) of the compiled Code of Iowa are amended, revised, and codified to read as follows:

Sec. 3. Recording - declaration of release. The contracts herein authorized shall be recorded by the secretary of state in a record to be kept for that purpose, and 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 may be made by the vendor, lessor or bailor, or his or its assignee, either on the margin of the record of the contract, duly attested, or in a separate instrument to be acknowledged by the vendor, lessor or bailor, or his or its assignee, and recorded in such record. For such services the secretary of state shall charge a fee of ten cents (10c) per hundred (100) words for recording each contract and each said declaration, but in no case shall the fee be less than one dollar (\$1.00).

Sec. 4. Prior contracts not affected. The two (2) preceding sections shall not invalidate or affect in any way any contract of the kind referred to in the second preceding section, made prior to April twenty-fourth, eighteen hundred ninety-four (1894) and any such contract made prior to said date upon compliance with the provisions of said two (2) sections may be recorded as therein provided.

Sec. 4-a1. Placement of sections. In the preparation of the permanent Code the code editor is directed to place the last two preceding sections in the same order as they appear above and immediately following section fifty hundred seventy-one (5071) of the compiled Code of Iowa.

That sections fifty hundred seventy-four (5074) and fifty hundred seventy-five (5075) of the compiled Code of Iowa are amended, revised, and codified to read as follows:

Sec. 5. Railway fences required. All railway corporations owning or operating a line of railway within the state, shall construct, maintain, and keep in repair a fence on each side of the right of way, so connected with cattle guards at all public road crossings as to prevent live stock getting upon the tracks. All such right of ways shall be fenced within six (6) months after the completion of the track or any part thereof. This provision shall not apply to a class C line of railway through the lands of any owner who by written agreement with the company owning or operating such line waives the fencing thereof.

Sec. 6. Specifications for fencing. All fences shall be not less than fifty-four (54) inches high and may be of any of the following types:

1. Not less than five (5) barbed wires, properly spaced.
2. Not less than three (3) barbed wires above and not less than twenty-four (24) inches of woven wire below.
3. Entirely of woven wire.
4. Five (5) boards properly spaced.
5. Any other type which the fence viewers of any township through which it passes may determine as efficient as any of the above types.

Each of the above types shall be securely nailed to posts firmly set, not more than twenty (20) feet apart for the first three (3) types, nor more than eight (8) feet apart for the fourth.

Sec. 7. Hog-tight fences when. When any person owning land abutting on the right of way is maintaining a hog-tight fence on all sides thereof or any division of such land except along such right of way, the railway company owning such right of way shall, on written request of the landowner, make such right of way fence along such enclosed land hog-tight by the addition of barbed or woven wire or other equally efficient means.

Sec. 8. Failure to fence - liability for stock injured. Any corporation operating a railway and failing to fence its right of way against live stock running at large or to maintain proper and sufficient cattle guards at all points where the right to fence or maintain cattle guards exists, shall be liable to the owner of any stock killed or injured by reason of the want of such fence or cattle guards for the full amount of the damages sustained by the owner, unless it was occasioned by the wilful act of such owner or his agent; and to recover the same it shall only be necessary for him to prove the loss of or injury to his property.

Sec. 9. Double damages. If such corporation fails or neglects to pay such damages within thirty (30) days after notice in writing that a loss or injury has occurred, accompanied by an affidavit thereof, served upon any officer or station or ticket agent employed by said corporation in the county where such loss or injury occurred, such owner shall be entitled to recover from the corporation double the amount of damages actually sustained by him.

Sec. 10. Laws and local regulations not applicable. No law of the state or any local or police regulations of any county, township, city, or town, relating to the restraint of domestic animals, or in relation to the fences of farmers or landowners, shall be applicable to railway right of ways, unless specifically so stated in such law and regulation.

Sec. 11. Depot grounds - speed limit when no fence. Upon depot grounds necessarily used by the public and the corporation, the operating of trains at a greater rate of speed than eight (8) miles an hour where no fence is built, shall be negligence, and shall render such corporation liable for all damages occasioned thereby, in the same manner and to the same extent, except as to double damages, as in cases where the right to fence exists.

That sections forty-nine hundred eighty-two (4982), fifty hundred two (5002) to fifty hundred seven (5007), inclusive, fifty hundred twelve (5012), fifty hundred thirteen (5013), fifty hundred seventy-eight (5078), and fifty hundred eighty (5080) to fifty hundred eighty-five (5085), inclusive, of the compiled Code of Iowa, are amended, revised, and codified to read as follows:

Sec. 12. Railway crossings near Mississippi river. When in the construction of a railway it becomes necessary to cross another railway near the shore of the Mississippi River, each shall be so constructed and maintained at the point of crossing that the respective roadbeds thereof shall be above high water mark in such river, but where the crossing occurs within the limits of any city or town containing six thousand (6,000) or more inhabitants, the council or other governing authorities thereof may establish the crossing grade.

#### Secs. 13-16. Interlocking switches.

Sec. 17. Rights of riparian owners. All owners or lessees of lands or lots situated upon the Iowa banks of the Mississippi or Missouri rivers upon which any business is carried on which is in any way connected with the navigation of either of said rivers, or to which such navigation is a proper or convenient adjunct, are authorized to construct and maintain in front of their property, piers, cribs, booms, and other proper and convenient erections and devices for the use of their respective pursuits, and the protection and harbor of rafts, logs, floats, and water craft, in such manner as to create no material or unreasonable obstruction to the navigation of the stream, or to a similar use of adjoining property.

Sec. 18. Construction of railroad on riparian land or lots. No person or corporation shall construct or operate any railroad or other obstruction between the lots or lands referred to in the preceding section and either of said rivers, or upon the shore or margin thereof, unless the injury and damage to owners or lessees occasioned thereby shall be first ascertained and paid in the manner provided for taking private property for works of internal improvement.

Sec. 19. Railway and highway crossing at grade. Whenever a railway crosses or shall hereafter cross a highway at grade, the railway company and the board of supervisors of the county in which such crossing is located, if a primary or secondary highway, or such railway company and the trustees of the township in which such crossing is located, if a township highway, may agree upon any change, alteration, vacation, or relocation of such highway so as to carry such highway over or under such railway or eliminate such crossing entirely, and upon the expense each party shall pay for making such changes.

Sec. 20. Disagreement - application - notices. If the railway company and said highway authorities cannot agree upon the changes to be made, either party may make written application to the board of railroad commissioners, setting forth the changes and alterations desired, and said board shall fix a date for hearing and give the other party ten (10) days' written notice by mail of such date.

Sec. 21. Hearing - order. The board of railroad commissioners shall hear and determine such application, taking into consideration the necessity of such changes and the expense thereof, the location of any crossing and the manner in which it shall be constructed and maintained, or whether a crossing is to be eliminated and the provisions therefor, and may make such order in relation thereto as shall be equitable, including authority to condemn and take additional land for such purposes when necessary, and shall determine what portion of the expense shall be paid by any party to such controversy.

Sec. 22. Railway company to hold in trust. Any portion of the expense of making such crossing changes and alterations borne by any municipal corporation or township, the state or any person, shall forever be held in trust by such railroad corporation or its successors, and no part of such funds shall constitute any part of the value of its property on which it is entitled to receive a return.

Sec. 23. Further repairs - aid by court. If the board of supervisors, township trustees, city or town council, or any official having jurisdiction over such highway, shall determine that such crossing is unsafe or is in need of further repairs or alterations, and can not agree with the railroad company as to such repairs or additional alterations, the proper board, council, or officer shall file a petition in the district court of the county in which the crossing is located, setting forth the facts and conditions on which relief is sought and serve the railroad company with written notice thereof in the time and manner required for original notices.

Sec. 24. Issues - hearing - order. The railroad company may join issue by answer. The court or a judge thereof shall hear the controversy in a summary manner in equity in term time or vacation and make such order or decree as may be found equitable and fix a reasonable time for compliance therewith and, on default of the railroad company, it may enjoin the operation of trains over that portion of the railway during the continuance of such default. The court may award costs against either party in its discretion.

Sec. 25. Good condition after change - temporary ways. When a railroad company changes, alters, or repairs a highway crossing, it shall upon completion of the work leave it free from obstructions to travel and in good condition. If travel will be obstructed while any alterations or repairs are being made, the railroad company shall provide safe and convenient temporary ways for the public to avoid or pass such obstructions.

Sec. 26. Crossing railway, canal or watercourse. Any railroad company may build its railway across, over or under any other railway, canal, or watercourse, when necessary, but shall not thereby unnecessarily impede travel, transportation, or navigation. It shall be liable for all damages caused by such crossing.

Sec. 27. Maintenance of bridges - damages. Every railroad company shall build, maintain, and keep in good repair all bridges, abutments or other construction necessary to enable it to cross over or under any canal, watercourse, other railway, public highway, or other way, except as otherwise provided by law, and shall be liable for all damages sustained by any person by reason of any neglect or violation of the provisions of this section.

Sec. 28. Private crossings. When any person owns land on both sides of any railway, or when a railway runs parallel with a public highway thereby separating a farm from such highway, the corporation owning or operating such railway, on request of the owner of such land or farm, shall construct and maintain a safe and adequate farm crossing or roadway across such railway and right of way at such reasonable place as the owner of the land may designate, and shall construct and maintain a cattle guard on each side of such roadway where it crosses the track, connected by wing or cross fences to the fences on each side of the right of way.

Sec. 29. Overhead, underground, or more than one crossing. Such owner of land may serve upon such railroad company a request in writing for more than one (1) such farm or private crossing, or for an overhead or underground crossing, accompanied by a plat of his land designating thereon the location and character of crossing desired. If the railroad company refuses or neglects for thirty (30) days after such service to comply with such request, the owner of the land may make written application to the board of railroad commissioners to hear and determine his rights in said respect. Such board, after reasonable notice to the railroad company, shall hear said application and all objections thereto, and make such order as shall be reasonable and just, and if it requires the railroad company to construct any crossing or roadway, fix the time for compliance with such order. The matter of costs shall be in the discretion of the board.

Sec. 30. Right to lay pipes. Such railway may lay, maintain, and repair pipes through any lands adjoining its tracks for a distance not to exceed three-fourths ( $3/4$ ) of a mile therefrom, in order to conduct water, for its engines, from any running stream. Said pipes shall not be laid to any spring, nor be so used as to injuriously withdraw the water from any farm.

Sec. 31. Duty to restore natural surface. It shall, without unnecessary delay after such laying or repairing, restore the surface of the land to its natural grade, and replace any fence or other improvement which it may have disturbed.

Sec. 32. Right of landowner. The owner of the land through which any such pipes may be laid shall have the right to use the land in any manner which will not interfere with such pipes.

Sec. 33. Liability to landowner. Said corporation shall be liable to the owner of the land for any damages occasioned by laying, maintaining, or repairing such pipes.

Secs. 34-35. Interlocking switches.

That sections fifty-one hundred one (5101) to fifty-one hundred three (5103), inclusive, of the compiled Code of Iowa, are amended, revised, and codified to read as follows:

Sec. 36. Classification of railroads. All railroads of the state shall be classified in accordance with the gross amount of their several annual earnings within the state, per mile, for the preceding year, as follows:

1. Class A shall include those whose gross annual earnings per mile shall be four thousand dollars (\$4,000.00) or more.

2. Class B shall include those whose gross annual earnings per mile shall be three thousand dollars (\$3,000.00) or any sum in excess thereof less than four thousand dollars (\$4,000.00).

3. Class C shall include those whose gross annual earnings per mile shall be less than three thousand dollars (\$3,000.00). All steam railroads operating wholly within this state, and not to exceed twenty-five (25) miles in length, shall be included in and classified as class C railroads.

Sec. 37. Basis of classification. In determining the classification of any railroad, the entire railroad properly owned or operated by any company shall be considered as a single railroad, and the aggregate gross earnings of the entire railroad within the state shall be divided by the entire mileage owned or operated within the state, to ascertain the gross earnings per mile of such railroad.

Sec. 38. Classification by executive council. The executive council shall at its regular meeting on the second Monday in July in each year classify the different railways, as provided by the two (2) preceding sections, from information as to gross earnings obtained from the annual reports of railways made to the executive council for assessment and taxation, if it shall be satisfied of the correctness of same, or from information obtained by said executive council from any other source, and, when there shall be any change in classification, shall issue a certificate to any corporation or corporations affected by such change, certifying the class to which they are respectively assigned. Any change of rates by any corporation pursuant to any change of classification shall take effect and be in force from and after the date of such certificate.

Sec. 39. Passenger rates - limitation. All railroad corporations according to their classifications as herein prescribed shall be limited to compensation per mile for the transportation of any person with ordinary baggage not exceeding one hundred fifty (150) pounds in weight, as follows:

1. Class A, two cents (2c).

2. Class B, two and one-half cents (2 1/2c).

3. Class C, three cents (3c).

4. For children twelve (12) years of age or under, one-half (1/2) the rate above prescribed.

5. Every railroad corporation shall be entitled to charge a fare of not to exceed ten cents (10c) for the transportation of each passenger with ordinary baggage for any distance not exceeding five (5) miles.

6. A charge of ten cents (10c) may be added to the fare of any passenger when the same is paid upon the cars, if a ticket might have been procured within a reasonable time before the departure of the train, except in those cases where a minimum of ten cents (10c) is charged for a distance of less than five (5) miles as above provided.

That sections fifty-one hundred five (5105) to fifty-one hundred seven (5107), inclusive, of the compiled Code of Iowa, are amended, revised, and codified to read as follows:

Sec. 40. Violations - penalty. Any railway company violating the provisions of the preceding section and any agent, telephone or telegraph operator of such railroad company violating the provisions of said section, in relation to posting bulletins in the waiting room indicating when the trains are late or on time, shall be punished by a fine of not less than five dollars (\$5.00) nor more than fifty dollars (\$50.00).

Sec. 41. Automatic couplers on all cars. No corporation, company, or person operating a railroad and no car manufacturing or transportation company using or leasing cars shall operate upon any railroad in this state any car that is not equipped with safety automatic couplers, so constructed as to enable a person to couple and uncouple them without going between cars.

That sections fifty-one hundred seventy-one (5171) and fifty-one hundred seventy-two (5172) of the compiled Code of Iowa, and sections fifty-one hundred seventy-two-a one (5172-a1) to fifty-one hundred seventy-two-a four (5172-a4), inclusive, of the supplement to said Code are amended, revised, and codified to read as follows:

Sec. 42. Buildings on railroad lands-disagreements. When a disagreement arises between a railroad company and the owner of any building used for receiving, storing, or manufacturing any article of commerce transported or to be transported, situated on the railroad right of way or any land owned or controlled by the railroad company for railroad purposes, as to the terms and conditions on which the same is to be continued thereon or removed therefrom, or when application is made by any person, firm, or corporation for a site on such lands for the erection and maintenance of such improvements, and the railway company and the applicant can not agree as to whether such improvement shall be placed on such lands, or as to the character and location of the buildings to be erected and maintained thereon, or as to the terms and conditions under which the same may be placed or operated, such railway company, person, firm, or corporation may make written application to the board of railroad commissioners and such board shall, as speedily as possible after the filing of such application, hear and determine such controversy and make such order in relation thereto as shall be just and equitable between the parties, which order shall be enforced in the same manner as other orders of the board.

Sec. 43. Destruction of buildings - liability of railroad. In the event that any building referred to in the preceding section, situated on the right of way or other land of a railroad company used for railway purposes, shall be injured or destroyed by the negligence of the railroad company, or the servants or agents thereof, in the conduct of the business of such company, the railroad company causing such injury or destruction shall be liable therefor to the same extent as if such building used for said purposes was not situated on the right of way or other land of such railroad company used for railway purposes, any provision in any lease or contract to the contrary notwithstanding.

Sec. 44. Construction and maintenance. Every railroad, whether operated by steam or electricity, shall acquire the necessary rights of way for, by condemnation or purchase, and shall construct, connect, and operate and maintain a reasonably adequate and suitable spur track, whenever such spur track does not necessarily exceed three miles in length, and is required for the successful operation of any existing or proposed mill, elevator, storehouse, warehouse, dock, wharf, pier, manufacturing establishment, lumber yard, coal dock, or other industry or enterprise, and its construction and operation is not unusually unsafe and dangerous, and is not unreasonably harmful to public interest. No such track is required to be constructed until, or if hereafter constructed need not be maintained unless the board of railroad commissioners, after hearing, shall have declared the same to be necessary.

Sec. 45. Deposit for cost of construction. Such railroad company may require the person or persons, firm, corporation, or association primarily to be served thereby to pay the legitimate cost and expense of acquiring, by condemnation or purchase, the necessary rights of way for such spur track and of constructing the same as shall be determined in separate items by the board of railroad commissioners. Except as in the next section provided, the total estimated cost thereof as ascertained by said board shall be deposited with the railroad company before it shall be required to incur any expense whatsoever therefor.

Sec. 46. Option to give bond for construction. When the total estimated cost has been ascertained by the board such person, firm, corporation, or association shall have the option to either deposit said amount with the railroad company or to file with such company its written election to build and construct such spur track accompanied by a good and sufficient surety company bond running to such railroad company and conditioned upon the construction of such spur track, in a good and workmanlike manner according to plans and specifications furnished by such railroad company and approved by the commission. If such person, firm, corporation, or association so elects to build such spur track it shall only be required to deposit with such railroad company the estimated cost of the necessary right of way for such spur track as ascertained by the commission, and the total amount stated in such written election.

Sec. 47. Bond to secure costs in excess of deposit. In any event before the railroad company shall be required to incur any expense whatever in the construction of such spur track the person, firm, corporation, or association primarily to be served thereby shall give the railroad company a bond to be approved by the commissioners as to form, amount, and surety, securing the railroad company against loss on account of any expense incurred beyond the amount so deposited with the railroad company.

Sec. 48. Failure of railroad company to act - hearing - order. In case of failure, neglect, or refusal of any railroad company to comply with any of the provisions of the three (3) preceding sections, the person, firm, corporation, or association primarily to be served thereby may file a complaint with the board of railroad commissioners setting forth the facts upon which such grievance is based. The said commissioners after reasonable notice to the railroad company shall investigate and determine all matters in controversy and make such order as the facts in relation thereto will warrant. Any such order shall have the same force and effect as other orders made by said board in other proceedings within its jurisdiction and shall be enforced in the same manner.

Sec. 49. Other connections with original spurs - prorating costs. Whenever such spur track is so connected with the main line, as provided in this chapter, at the expense of the owner of such proposed or existing mill, elevator, storehouse, dock, wharf, pier, manufacturing establishment, and any person, firm, corporation, or association shall desire a connection with such spur track, application therefor shall be made to the commission, and such person, firm, corporation, or association shall be required to pay to the person, firm, corporation, or association that shall have paid or contributed to the primary cost and expense of acquiring the right of way for such original spur track, and of constructing the same, an equitable proportion thereof, to be determined by the commission, upon such application and notice, to the persons, firms, corporation, or associations that have paid or contributed towards the original cost and expense of acquiring the right of way and constructing the same.

Approved April 16, 1924.