

CHAPTER 273**INSPECTIONS AND APPEALS DEPARTMENT ACTIVITIES
IN RELATION TO THE TRANSPORTATION DEPARTMENT***H.F. 163*

AN ACT relating to the duties of the department of inspections and appeals in the appeal and hearing processes of the state department of transportation.

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

Section 1. Section 321.211, unnumbered paragraph 1, Code 1989, is amended to read as follows:

Upon suspending the license of ~~any a~~ person as authorized, the department shall immediately notify the licensee in writing and upon the licensee's request shall afford the licensee an opportunity for a hearing before the ~~director or the director's authorized agent~~ department of inspections and appeals as early as practical within ~~not to exceed~~ thirty days after receipt of the request. The hearing shall be held by telephone conference unless the licensee and the department of inspections and appeals agree to hold the hearing in the county in which the licensee resides unless the department and the licensee agree that such hearing may be held or in some other county. Upon ~~such~~ the hearing the ~~director or the director's authorized agent~~ department of inspections and appeals may administer oaths and ~~may~~ issue subpoenas for the attendance of witnesses and the production of relevant books and papers and may require a re-examination of the licensee. Upon ~~such~~ the hearing and issuance of a recommendation by the department of inspections and appeals, the state department of transportation shall either rescind its order of suspension or for good cause may extend the suspension of ~~such~~ the license or revoke ~~such~~ the license. This section does not preclude the director from attempting to effect an informal settlement under chapter 17A.

PARAGRAPH DIVIDED. There is appropriated each year from the road use tax fund to the department of transportation one hundred seven thousand dollars or ~~so~~ as much thereof as ~~may be~~ is necessary to be used to pay the cost of notice and personal delivery of service, if as necessary to meet the notice requirement of this section. The department shall ~~promulgate~~ adopt rules governing the payment of the cost of personal delivery of service. The reinstatement fees collected under section 321.191 shall be deposited in the road use tax fund in a manner provided in section 321.192, as reimbursement for the costs of notice under this section.

Sec. 2. Section 321E.19, Code 1989, is amended to read as follows:

321E.19 PERMIT SUSPENDED, CHANGED, OR REVOKED.

Upon complaint by local authorities or on the department's own initiative and after notice and hearing before one or more members of the permit issuing body in the case of local authorities or the department of inspections and appeals for permits issued by the state department of transportation, permit privileges under this chapter may be suspended, changed, or revoked in whole or in part by the issuing authority for willful failure to comply with ~~any provisions a provision~~ of this chapter, ~~or with any a rule~~ adopted under authority of this chapter, or with ~~any a~~ term, condition, or limitation of the permit.

Sec. 3. Section 322.9, unnumbered paragraphs 1 and 2, Code 1989, are amended to read as follows:

The department may revoke or suspend the license of ~~any a~~ retail motor vehicle dealer if, after notice and hearing by the department of inspections and appeals, it finds that the licensee has been guilty of ~~any an~~ act which would ~~have been~~ be a ground for the denial of a license under section 322.6. ~~Witnesses shall receive the same compensation provided in section 622.69 and shall be compensated from funds appropriated to the department.~~

The department is further authorized to may revoke or suspend the license of ~~any a~~ retail motor vehicle dealer if, after notice and hearing by the department of inspections and appeals, it finds that ~~such~~ the licensee has been convicted or has forfeited bail on three charges of:

Sec. 4. Section 322.24, Code 1989, is amended to read as follows:

322.24 HEARING.

~~The director of transportation shall have the power to state department of transportation and the department of inspections and appeals may issue subpoenas to compel the attendance of witnesses and the production of documents, papers, books, records, and other evidence before the director in any matter over which the director respective department has jurisdiction, control, or supervision pertaining to this chapter.~~

~~If any a person shall refuse refuses to obey any such a subpoena, or to give testimony, or to produce evidence as required thereby, any a judge of the district court of the state of Iowa in and for Polk county may, upon application and proof of such the refusal, make an order awarding process of subpoena, or subpoena duces tecum, out of the said court, for the witness to appear before the director and respective department, to give testimony, and to produce evidence as required thereby. Upon filing such the order in the office of the clerk of said the district court, the clerk shall issue process of subpoena, as directed, under the seal of said the court, requiring the person to whom it is directed to appear at the time and place therein designated.~~

Sec. 5. Section 322A.6, unnumbered paragraph 2, Code 1989, is amended to read as follows:

An applicant seeking permission to enter into a franchise for additional representation of the same line-make in a community shall deposit with the department at the time the application is filed, an amount of money to be determined by the department of inspections and appeals to secure the payment of pay the costs and expenses of the hearing. ~~The applicant shall pay the costs of the hearing.~~

Sec. 6. Section 322A.17, Code 1989, is amended to read as follows:

322A.17 JUDICIAL REVIEW.

A decision of the department of inspections and appeals is subject to review by the state department of transportation, whose decision is final agency action for the purpose of judicial review.

Judicial review of actions of the state department of ~~inspections and appeals transportation~~ may be sought in the manner provided for in section 322.10.

Sec. 7. Section 322B.6, unnumbered paragraph 1, Code 1989, is amended to read as follows:

The department may revoke, suspend, or ~~deny refuse~~ the license of a mobile home dealer, mobile home manufacturer, mobile home distributor, manufacturer's representative, or distributor's representative, as applicable, in accordance with the provisions of chapter 17A if the department finds that the mobile home dealer, manufacturer, distributor, or representative is guilty of any of the following acts or offenses:

Sec. 8. Section 322B.6, Code 1989, is amended by adding the following new unnumbered paragraph:

NEW UNNUMBERED PARAGRAPH. In accordance with chapters 10A and 17A, each person whose license or application is revoked, suspended, or refused shall be provided an opportunity for a hearing before the department of inspections and appeals.

Sec. 9. Section 322C.6, unnumbered paragraph 1, Code 1989, is amended to read as follows:

The A license of a person issued under section 322C.4 or 322C.9 may be denied, revoked, or suspended, after opportunity for a hearing before the department of inspections and appeals in accordance with chapters 10A and 17A, if the department finds it is determined that the licensee or applicant has done any of the following:

Sec. 10. Section 325.11, Code 1989, is amended to read as follows:

325.11 RULES OF PROCEDURE.

The department shall adopt rules governing for the procedure to be followed in the filing of applications and in the department of inspections and appeals shall adopt rules for the conduct of hearings.

Sec. 11. Section 325.13, subsection 5, Code 1989, is amended to read as follows:

5. Upon receipt of ~~any protests~~ a protest complying with subsection 3, the department shall ~~request the department of inspections and appeals~~ to set the matter for hearing not less than ten days following the expiration of the time in which protests may be made ~~and~~. ~~The department of inspections and appeals~~ shall give notice to all persons who have filed protests of the time and place of the hearing.

Sec. 12. Section 325.17, Code 1989, is amended to read as follows:

325.17 ~~TESTIMONY RECEIVABLE UNCONTESTED CASE PROCEDURE.~~

~~The~~ If no protest is filed, the department shall consider the application and any ~~objections filed thereto and may hear testimony to aid it~~ relevant evidence in determining the propriety of granting the application.

Sec. 13. Section 325.19, Code 1989, is amended to read as follows:

325.19 ~~EXPENSE OF HEARING.~~

The applicant shall pay all the costs ~~and expenses~~ of the hearing ~~and necessary preliminary investigation in connection therewith~~ before the application shall be ~~is~~ granted. The department of inspections and appeals shall establish appropriate fees which shall be paid to the department ~~at the time the application is filed of inspections and appeals.~~

Sec. 14. Section 325.21, Code 1989, is amended to read as follows:

325.21 ~~JUDICIAL REVIEW.~~

A decision of the department of inspections and appeals is subject to review by the ~~state department of transportation~~. Judicial review of the decisions and actions of the department of transportation may be sought in accordance with the terms of the Iowa administrative procedure Act chapter 17A. ~~Such~~ The petitioners must file with the clerk of the district court a bond for costs in the sum of not less than five hundred dollars.

Sec. 15. Section 325.25, unnumbered paragraph 1, Code 1989, is amended to read as follows:

A certificate of convenience and necessity shall not be sold, transferred, leased, or assigned, nor shall ~~any a~~ contract or agreement with reference to or affecting ~~any a~~ certificate be made without the written approval of the department. The department may ~~request the department of inspections and appeals~~ to hold a hearing at its ~~discretion and~~. ~~The department of transportation~~ shall approve the sale, transfer, lease, or assignment upon a finding by ~~the department of inspections and appeals~~ that there has been continuous service under the certificate for at least ninety days prior to the transfer, ~~and that the transferee is fit, willing, and able to perform the operations authorized by the certificate, and that the transfer is consistent with the public interest.~~ Pending determination of an application filed with the department for approval of a sale, transfer, lease, or assignment, the department may grant temporary approval of the proposed operation upon a finding of good cause.

Sec. 16. Section 327.16, Code 1989, is amended to read as follows:

327.16 ~~REVOCAION OF PERMIT.~~

For just cause, after due hearing ~~conducted by the department of inspections and appeals,~~ the ~~state department of transportation~~ may at any time alter, amend, or revoke ~~any a~~ permit ~~issued~~. If the holder of the permit or the holder's agent persists in a violation of ~~any a~~ prescribed safety regulation prescribed by the department rule, the department may ~~recommend revocation of said~~ revoke the permit and such violation shall be grounds for such revocation.

Sec. 17. Section 327A.4, Code 1989, is amended to read as follows:

327A.4 ~~DISPOSAL OF CERTIFICATE.~~

~~Whenever any~~ If a person shall file files an application with the department an application for authority to sell, transfer, lease, or assign a certificate of convenience and necessity issued under the ~~provisions~~ of this chapter, the department shall ~~request the department of inspections and appeals~~ to fix a date for hearing ~~thereon and~~. ~~The state department of transportation shall~~ cause a notice addressed to the citizens of each county through or in which the

proposed service will be rendered to be published in ~~some~~ a newspaper of general circulation in each such county, once each week for two consecutive weeks, ~~and~~. The department shall notify each liquid transport carrier holding a certificate, issued by the department, to transport over, in, or through the area described in the application, by mailing notice of the hearing to each such carrier at least ten days before the date fixed for hearing, ~~and the provisions of chapter. Chapter 325, inclusive of and this chapter shall, insofar as appropriate be, are applicable to the said hearing.~~

Sec. 18. Section 327A.14, Code 1989, is amended to read as follows:

327A.14 PRIOR SERVICE — RIGHTS TRANSFERRED OR ASSIGNED.

~~Any~~ A liquid transport carrier actively and continuously engaged in business as such between the first day of December, 1956, and the fourteenth day of January, 1957, shall be issued a certificate of convenience and necessity covering all points in this state to all other points in this state, and all routes and areas in this state, ~~provided that if the application therefor shall be is made within sixty days after May 17, 1957. No rights~~ Rights so granted ~~may shall not~~ be sold, leased, transferred, or assigned to ~~any~~ a person engaged directly or indirectly in the transportation for hire of liquid products in bulk or freight in interstate commerce or in intrastate commerce, in this or any other state, or the District of Columbia, or to any person engaged in the leasing of equipment for such purposes, ~~except such rights as which~~ are actively being exercised at the time of sale, lease, transfer, or assignment; ~~provided, however, rights so granted may be sold, leased, transferred, or assigned to any a person who has not engaged directly or indirectly in the transportation for hire of liquid products in bulk or freight in interstate or intrastate commerce prior to the date of such the transfer, or to any a person who has not prior to such that date engaged in the leasing of equipment for such that purpose, and on hearing it shall is not be necessary for the department of inspections and appeals to find that such the sale, lease, transfer, or assignment is necessary in the public interest. Before any rights may be sold, leased, transferred, or assigned, application therefor shall be filed with the department of transportation, which shall fix request the department of inspections and appeals to set a date for hearing thereon on the application, and the provisions of section 327A.4 shall be is applicable thereto. Rights actively being exercised may be sold, leased, transferred, or assigned to any a person engaged in the transportation for hire of liquid products in bulk or freight under the conditions hereinafter set forth in this section:~~

1. ~~Whenever~~ When an application for a sale, lease, transfer, assignment, consolidation, merger, or acquisition of control is filed with the department, ~~if on after a hearing by the department of inspections and appeals, the department of transportation finds that (a) the proposed purchaser, lessee, transferee, or assignee is fit, willing and able, and (b) that the proposed seller, lessor, transferor, or assignor has not abandoned, suspended, or discontinued operations, and (c) that the transaction proposed will be consistent with the public interest, and that the conditions of this section have been or will be fulfilled, the department of transportation may enter an order approving and authorizing such the sale, lease, transfer, assignment, consolidation, merger, or acquisition of control, upon such terms and conditions as it shall find finds to be just and reasonable and with such modifications as it may prescribe.~~

2. Except as otherwise provided in subsection 1, ~~it shall be is unlawful for any a person to accomplish or effectuate, or to participate in accomplishing or effectuating, the control or management in a common interest of any two or more persons engaged in the transportation for hire of liquid products in bulk or freight or of one or more persons so engaged, 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.~~

3. The department ~~is hereby authorized may, upon complaint, or upon its own initiative without complaint, but after notice, and hearing, to investigate and determine whether any a person is violating the provisions of this section. If the department finds upon investigation that any a person is violating the provisions of this section, it shall, by order after a hearing conducted by the department of inspections and appeals, require such the person to take such~~

action consistent with the provisions of this chapter as may be necessary, in the opinion of the department, to prevent continued violation of such provisions this section.

Sec. 19. Section 327C.8, Code 1989, is amended to read as follows:

327C.8 OBJECTIONS — HEARING.

Any A person directly affected by the proposed discontinuance of any an agency, may file written objections with the department, stating the grounds for such the objections, within fifteen days from the time of the publication of the notice as provided in section 327C.7. Upon the filing of such objections the department shall request the department of inspections and appeals shall fix the time and place for to hold a hearing, which shall be held within sixty days from the filing of such the objections. Written notice of the time and place of such the hearing shall be mailed by the department of inspections and appeals to the railroad corporation and the person filing objections at least ten days prior to the date fixed for such the hearing.

Sec. 20. Section 327C.12, Code 1989, is amended to read as follows:

327C.12 AID FROM COURTS.

The department or the department of inspections and appeals may invoke the aid of any court of record in the state in requiring the attendance and testimony of witnesses and the production of books, papers, tariff schedules, agreements, and other documents. Any court having jurisdiction of the inquiry shall, in case of the refusal of any If a person refuses to obey a subpoena or other process, a court having jurisdiction of the inquiry shall issue an order requiring any of the officers, agents, or employees of any a carrier or other person to appear before the either department and produce all books and papers required by such the order and testify in relation to any matter under investigation.

Sec. 21. Section 327C.17, Code 1989, is amended to read as follows:

327C.17 WHEN ORDER EFFECTIVE — VIOLATION.

If any a railroad fails, neglects, or refuses to comply with any a rule or order made by the state department of transportation or the department of inspections and appeals within the time specified, it shall the railroad is, for each day of such failure, be subject to a schedule "two" penalty.

Sec. 22. Section 327C.19, Code 1989, is amended to read as follows:

327C.19 JUDICIAL REVIEW.

A decision of the department of inspections and appeals is subject to review by the state department of transportation.

Judicial review of the actions of the state department of transportation may be sought in accordance with the terms of the Iowa administrative procedure Act chapter 17A.

Sec. 23. Section 327C.20, Code 1989, is amended to read as follows:

327C.20 REMITTING PENALTY.

If a common carrier fails in a judicial review proceeding to secure a vacation of the order objected to, it may apply to the court in which the review proceeding is finally adjudicated for an order remitting the penalty which has accrued during the review proceeding. Upon a satisfactory showing that the petition for judicial review was filed in good faith and not for the purpose of delay, and that there were reasonable grounds to believe that the order was unreasonable or unjust or that the power of the department of transportation or the department of inspections and appeals to make the same order was doubtful, such the court may remit the penalty that has accrued during the review proceeding.

Sec. 24. Section 327C.25, Code 1989, is amended to read as follows:

327C.25 COMPLAINTS.

Any A person, city or county may file with the department a petition setting forth any particular in which any a common carrier has violated the law to which it is subject and the amount of damages sustained by reason thereof of the violation. The department shall furnish a copy

of the complaint to the carrier against which a complaint is filed, a copy thereof, and a reasonable time. The department shall be fixed by request the department of inspections and appeals within to schedule a hearing in which such the carrier shall answer the petition or satisfy the demand therein made demands of the complaint. If such the carrier fails to satisfy the complaint within the time fixed or there appears to be reasonable grounds for investigating the matters set forth in said the petition, the department of inspections and appeals shall hear and determine the questions involved and make such orders as it shall find to be finds proper. When If the department of transportation has reason to believe that any a carrier is violating any of the laws to which it is subject, if the department may institute an investigation and cause request the department of inspections and appeals to conduct a hearing to be held before the department of inspections and appeals in relation to such the matters in all respects as fully as if a petition had been filed.

Sec. 25. Section 327C.26, Code 1989, is amended to read as follows:

327C.26 INVESTIGATION — REPORT.

When a hearing has been held before the department of inspections and appeals after notice, it shall make a report in writing setting forth the findings of fact and its conclusions together with its recommendations or orders as to what reparation, if any, the offending carrier shall make to any a party who has suffered damage. Such finding The findings of fact shall thereafter in all legal proceedings be prima facie are prima facie evidence in all further legal proceedings of every fact found. All reports of hearings and investigations made by the department of transportation and the department of inspections and appeals shall be entered of record and a copy furnished to the carrier against which the complaint was filed, to the party complaining, and to any other person having a direct interest in the matter. A reasonable fee not to exceed the actual duplication costs may be charged for the copies.

Sec. 26. Section 327C.28, Code 1989, is amended to read as follows:

327C.28 VIOLATION OF ORDER — PETITION — NOTICE.

When any If a person violates or fails to obey any a lawful order or requirement of the department of transportation or the department of inspections and appeals, the department of transportation or the department of inspections and appeals shall apply by petition in the name of the state, against such the person, to the district court, alleging such the violation or failure to obey; the. The court shall hear and determine the matter set forth in the petition on reasonable notice to the person, to be fixed by the court and to be served in the same manner as an original notices notice for the commencement of action.

Sec. 27. Section 327C.29, Code 1989, is amended to read as follows:

327C.29 INTERESTED PARTY MAY BEGIN PROCEEDINGS.

Any A person or city or county interested in the matter of enforcing any an order or requirement of the department of transportation or the department of inspections and appeals, may file a petition against such person the violator, alleging the failure to comply with such the order or requirement and praying asking for summary relief to the same extent and in the same manner as the department of transportation or the department of inspections and appeals may do under section 327C.28, and the proceedings after the filing of such the petition shall be the same as in section 327C.28.

Sec. 28. Section 327D.53, Code 1989, is amended to read as follows:

327D.53 DIVISION OF JOINT RATES.

Before the promulgation adoption of such the rates, the department shall notify the railroad corporations interested in the schedule of joint rates fixed, and give them a reasonable time to agree upon a division of the charges provided. If such the corporations fail to agree upon a division, and to notify the department thereof of their agreement, the department shall, after a hearing of the corporations interested conducted by the department of inspections and appeals, decide the same rates, taking into consideration the value of terminal facilities and all the circumstances of the haul, and the division so determined by it shall is, in all controversies or

actions between the railroad corporations interested, be ~~prima-facie~~ prima facie evidence of a just and reasonable division thereof.

Sec. 29. Section 327D.83, Code 1989, is amended to read as follows:

327D.83 POWER TO REVISE RATES.

~~Whenever there shall be~~ If a schedule is filed with the department ~~any schedule~~ stating a rate, the department may, either upon complaint or upon its own motion, ~~immediately, and,~~ if it ~~so orders, without answer or formal pleadings by the interested common carrier,~~ enter upon request the department of inspections and appeals to conduct a hearing concerning the propriety of such the rate.

Sec. 30. Section 327D.85, Code 1989, is amended to read as follows:

327D.85 DECISION.

~~On such~~ At the hearing the department of inspections and appeals shall establish propose the rates on the schedule, in whole or in part, or others in lieu thereof, which ~~it shall find to be the department of inspections and appeals finds are just and reasonable rates. The action of the department of inspections and appeals is subject to review by the state department of transportation. The decision of the state department of transportation is the final agency action.~~

Sec. 31. Section 327D.89, Code 1989, is amended to read as follows:

327D.89 COMPLAINT OF VIOLATION.

~~When any a person, city or county shall make complaint complains~~ to the department that the rate charged or published by ~~any a railway corporation,~~ or the maximum rate fixed by law, is unreasonably high or discriminating, the department may investigate the matter, and, ~~hold request the department of inspections and appeals to conduct a hearing; giving. The department of inspections and appeals shall give the parties notice of the time and place of the hearing.~~

Sec. 32. Section 327D.90, Code 1989, is amended to read as follows:

327D.90 HEARING — EVIDENCE.

At the time of the hearing the department of inspections and appeals shall receive any evidence and listen to any arguments presented by either party relevant to the matter under investigation, and the burden of proof ~~shall is~~ not be upon the person making the complaint. The complainant shall add to the showing made at ~~such the~~ hearing whatever information the complainant ~~may then have has,~~ or can obtain from any source, ~~including schedules of rates actually charged by any railway corporation for substantially the same kind of service, in this or any other state. The lowest rates published or charged by any railway corporation for substantially the same kind of service whether in this or another state, shall, at the instance of the person complaining, be accepted as prima-facie evidence of a reasonable rate for the services under investigation; and if the railway corporation complained of is operating a line of railroad beyond the state, or has a traffic arrangement with any such railway corporation, the same shall be taken into consideration in determining what is a reasonable rate; if it be operating a line of railway beyond the state, the rate charged or established for substantially a similar or greater service by it in another state shall also be considered. The department of transportation inspections and appeals shall establish propose just and reasonable rates, which may be adopted in whole or in part or modified as the state department shall determine of transportation determines.~~

Sec. 33. Section 327D.128, Code 1989, is amended to read as follows:

327D.128 WEIGHING — DISAGREEMENT.

If a railroad corporation and the owner, consignor, or consignee of car lots of bulk commodities cannot reach agreement relative to the weighing of the commodities, appeal may be made to the state department of inspections and appeals transportation. The state department of transportation, after a hearing by the department of inspections and appeals, shall issue an order equitable to all parties including but not limited to allocation of costs and specification of the place and manner of weighing.

Sec. 34. Section 327G.12, Code 1989, is amended to read as follows:

327G.12 OVERHEAD, UNDERGROUND, OR MORE THAN ONE CROSSING.

~~Such~~ The owner of land may serve upon ~~such~~ the railroad corporation a request in writing for more than one ~~such~~ private crossing, or for an overhead or underground crossing, accompanied by a plat of the owner's land designating ~~thereon~~ the location and character of crossing desired. If the railroad corporation refuses or neglects to comply within thirty days of ~~such~~ a written request, the owner of the land may make written application to the department to hear and determine the owner's rights in ~~said~~ respect. The department of inspections and appeals, after notice to the railroad corporation, shall hear ~~said~~ the application and all objections ~~thereto~~ to the application, and make ~~such an~~ an order ~~as shall be~~ which is reasonable and just, and if it requires the railroad company to construct any crossing or roadway, fix the time for compliance with the order and apportion the costs as appropriate. ~~The matter of costs shall be in the discretion of the department of inspections and appeals. The order of the department of inspections and appeals is subject to review by the state department of transportation. The decision of the state department of transportation is the final agency action.~~

Sec. 35. Section 327G.16, Code 1989, is amended to read as follows:

327G.16 DISAGREEMENT — APPLICATION — NOTICE.

If the persons specified in section 327G.15 cannot reach an agreement, either party may make written application to the ~~authority~~ department requesting resolution of the disagreement. The ~~authority~~ department shall ~~fix~~ request the department of inspections and appeals to set a date for hearing ~~and~~. ~~The department of inspections and appeals shall give the other party ten days' written notice by mail of the hearing date. The authority shall promulgate rules subject to department approval for processing applications which are filed with the authority prior to a written disagreement. The authority may set a hearing date after the disagreement has been filed.~~

Sec. 36. Section 327G.17, Code 1989, is amended to read as follows:

327G.17 HEARING — ORDER.

The department of inspections and appeals shall hear the evidence of each party to the controversy and shall make an order, which may include, pursuant to the provisions of chapters 471 and 472, authority to condemn, resolving the controversy ~~including what~~. ~~The order shall include the portion of the expense shall to be paid by each party to such the controversy. In determining what portion of the expense shall be paid by each party the department of inspections and appeals may consider the ratio of the benefits accruing to the railroad or the governmental unit or both, as it bears to the general public use and benefit and such benefits may in the case of construction be consistent with the standards adopted for similar purposes by the federal highway administration under the federal aid highway Act of 1973 as amended to July 1, 1976, [23 U.S.C. § 101 et seq.].~~

~~The order of the department of inspections and appeals is subject to review by the state department of transportation. The decision of the state department of transportation is the final agency action.~~

Sec. 37. Section 327G.32, Code 1989, is amended to read as follows:

327G.32 BLOCKING HIGHWAY CROSSING.

A railroad corporation or its employees shall not operate ~~any~~ a train in such a manner as to prevent vehicular use of ~~any~~ a highway, street, or alley for a period of time in excess of ten minutes except in ~~any of the following circumstances~~:

1. When necessary to comply with signals affecting the safety of the movement of trains.
2. When necessary to avoid striking ~~any an~~ an object or person on the track.
3. When the train is disabled.
4. When necessary to comply with governmental safety regulations including, but not limited to, speed ordinances and speed regulations.

~~Any~~ An officer or employee of a railroad corporation violating ~~any~~ a provision of this section ~~shall is~~, upon conviction, be subject to the penalty provided in section 327G.14. An employee

~~shall~~ is not be guilty of ~~such~~ a violation if the employee's action was necessary to comply with the direct order or instructions of a railroad corporation or its supervisors. ~~Such~~ guilt shall ~~be~~ with the railroad corporation.

~~This~~ Other portions of this section notwithstanding, a political subdivision may pass a ~~reso-~~ lution or an ordinance regulating the length of time a specific crossing may be blocked if the political subdivision demonstrates that a ~~resolution or an~~ ordinance is necessary for public safety or convenience. If a ~~resolution or an~~ ordinance is passed, the political subdivision shall, within thirty days of the effective date of the ~~resolution or~~ ordinance, notify the department and the railroad corporation using the crossing affected by the ~~resolution or~~ ordinance. The ~~reso-~~ lution or ordinance shall does not become effective unless the department and the railroad corporation are notified within thirty days. The ~~resolution or~~ ordinance ~~shall become~~ becomes effective thirty days after notification unless a person files an objection to the ~~resolution or~~ ordinance with the department. If an objection is filed the department shall notify the department of inspections and appeals which shall hold a hearing. ~~The~~ After a hearing by the department of inspections and appeals, the state department of transportation may disapprove the ~~resolution or~~ ordinance if public safety or convenience does not require a ~~resolution or the~~ ordinance. The decision of the state department of transportation is final agency action. The ~~resolution or~~ ordinance approved by the political subdivision is ~~prima-facie~~ prima facie evidence that the ~~resolution or~~ ordinance is adopted to preserve public safety or convenience.

The department of inspections and appeals when considering rebuttal evidence shall weigh the benefits accruing to the political subdivision as it bears to they affect the general public use compared to the burden placed on the railroad operation. Public safety or convenience may include, but ~~shall~~ is not be limited to, high traffic density at a specific crossing of a main artery or interference with the flow of authorized emergency vehicles.

Political subdivisions shall notify the authority within sixty days of July 1, 1976, of each existing resolution or ordinance which does not conform with the provisions of this section. Political subdivisions not notifying the authority of an existing resolution or ordinance during the calendar year beginning January 1, 1976 shall have an additional sixty days after July 1, 1977 to notify the authority. Failure to do so shall render the resolution or ordinance void.

~~Such ordinances or resolutions may remain in effect until the department of inspections and appeals has acted upon each ordinance or resolution under the procedures specified in this section.~~

A resolution regulating the length of time a specific crossing may be blocked, which was adopted before the effective date of Senate File 500 of the Seventy-third General Assembly, is an ordinance for the purposes of this section.

Sec. 38. Section 327G.62, Code 1989, is amended to read as follows:

327G.62 CONTROVERSIES.

When a disagreement arises between a railroad corporation, its grantee, or its successor in interest, and the owner, lessee, or licensee of a building or other improvement, including trackage, used for receiving, storing, transporting, or manufacturing an article of commerce transported or to be transported, situated on a present or former railroad right-of-way or any on land owned or controlled by the railroad corporation, its grantee, or its successor in interest, as to the terms and conditions on which the article is to be continued or removed, the railway corporation, its grantee, or its successor in interest, or the owner, lessee, or licensee may make written application to the department ~~and the~~. The department shall notify the department of inspections and appeals which shall hear and determine the controversy and make an order as which is just and equitable between the parties, ~~which~~. That order shall be enforced in the same manner as other orders of is subject to review by the state department of transportation. The decision of the state department of transportation is final agency action.

Sec. 39. Section 327G.65, Code 1989, is amended to read as follows:
327G.65 COST OF CONSTRUCTION.

~~Such~~ The railroad corporation may require the person primarily to be served ~~thereby~~ to pay the legitimate cost and expense of acquiring, by condemnation or purchase, the necessary right of way for ~~such~~ the spur track and of constructing ~~the same~~ it, as shall be determined in separate items by the department. Except as provided in section 327G.66, the total cost ~~thereof~~ as ascertained by ~~said~~ the department shall be deposited with the railroad corporation before it ~~shall be~~ is required to incur any expense. If an agreement cannot be reached, the question shall be referred to the department which may, after a hearing conducted by the department of inspections and appeals, issue an order.

Sec. 40. Section 601J.5, subsection 3, paragraph d, Code 1989, is amended to read as follows:

d. The department of inspections and appeals shall establish an appeal process under chapter pursuant to chapters 10A and 17A which allows those agencies or organizations determined to not be in compliance with this chapter an opportunity for a timely hearing before the department of inspections and appeals. A decision by the department of inspections and appeals is subject to review by the state department of transportation. The state department of transportation's decision is the final agency action. Judicial review of the action of the department may be sought in accordance with chapter 17A.

Approved June 1, 1989

CHAPTER 274

TRAVEL AGENTS

H.F. 355

AN ACT relating to travel agents and agencies by providing for registration and regulation, and providing for fees and penalties.

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

Section 1. NEW SECTION. 120.1 DEFINITIONS.

1. "Applicant" means a person applying for registration under this chapter.
2. "Customer" means a person who is offered or who purchases travel services.
3. "Solicitation" means contact by a travel agency or travel agent of a customer for the purpose of selling or offering to sell travel services.
4. "Registrant" means a person registered pursuant to this chapter.
5. "Secretary" means the secretary of state.
6. "Travel agency" means a person who represents, directly or indirectly, that the person is offering or undertaking by any means or method, to provide travel services for a fee, commission, or other valuable consideration, direct or indirect.
7. "Travel agent" means a person employed by a travel agency whose principal duties include consulting with and advising persons concerning travel arrangements or accommodations.
8. "Travel services" means arranging or booking vacation or travel packages, travel reservations or accommodations, tickets for domestic or foreign travel by air, rail, ship, bus, or other medium of transportation, or hotel or other lodging accommodations. Travel services include travel related prizes or awards for which the customer must pay a fee or, in connection with the prize or award, expend moneys for the direct or indirect monetary benefit of the person making the award, in order for the customer to collect or enjoy the benefits of the prize or award.