

SUPERVISION OF CARRIERS

327C.1 Definition.

As used in this chapter, unless the context otherwise requires, "*department*" means the department of transportation.

[C75, § 474.54; C77, 79, 81, § 327C.1; 81 Acts, ch 22, § 22]

86 Acts, ch 1245, § 1958

327C.2 General jurisdiction of transportation department.

The department has general supervision of all railroads in the state, express companies, car companies, freight and freight-line companies, motor carriers, and any common carrier engaged in the transportation of passengers or freight. However, the provisions of this chapter regarding the supervision of carriers do not apply to regular route motor carriers of passengers or charter carriers, as defined under section 325A.12.

[C97, § 2112; S13, § 2120-n; C24, 27, 31, 35, 39, § **7874**; C46, 50, 54, 58, 62, 66, 71, 73, 75, § 474.10; C77, 79, 81, § 327C.2]

86 Acts, ch 1161, § 16; 98 Acts, ch 1100, §51

327C.3 Removal of interfering lights.

The department is hereby vested with authority to order the removal or alteration of any lights erected for illuminating purposes, whether on public or private property, when such lights interfere with the easy observation of railroad signals by those engaged in the operation of railroad trains or equipment.

[C39, § **7874.1**; C46, 50, 54, 58, 62, 66, 71, 73, 75, § 474.11; C77, 79, 81, § 327C.3]

327C.4 Inspection notice to repair.

The department shall inspect the condition of each railroad's rail track, and may inspect the condition of each railroad's rail facilities, equipment, rolling stock, operations and pertinent records at reasonable times and in a reasonable manner to insure proper operations. Employees of the department shall have proper identification which shall be displayed upon request. If found unsafe, the department shall immediately notify the railroad corporation whose duty it is to put the same in repair, which shall be done by it within such time as the department shall fix. If any corporation fails to perform this duty the department may forbid and prevent it from running trains over the defective portion while unsafe or may regulate the speed and operation of trains moving over the defective portion of the railroad. If the railroad corporation violates any requirement provided by the department, the railroad corporation shall be subject to a schedule "two" penalty for each day the repairs have not been made from the date the department set for repairs to be completed. The court may consider the willingness and ability of the railroad corporation to co-operate in removing the safety hazard. Notwithstanding the provisions of chapter 669, the state shall not be held liable for damages for any act or failure to act under the provisions of this section.

[C97, § 2113; S13, § 2113; C24, 27, 31, 35, 39, § **7875**; C46, 50, 54, 58, 62, 66, 71, 73, 75, § 474.12; C77, 79, 81, § 327C.4]

93 Acts, ch 87, § 9

327C.5 Schedule violations penalties.

Violations of the provisions of chapters 327C to 327G, shall be punished as a schedule "one" penalty unless otherwise indicated. Violations of a continuing nature shall constitute a separate offense for each violation unless otherwise provided. The schedule of violations shall be:

1. "*Schedule one*" means a penalty of one hundred dollars per violation.
2. "*Schedule two*" means a penalty of not less than one hundred dollars nor more than five hundred dollars per violation.
3. "*Schedule three*" means a penalty of not less than five hundred dollars nor more than one thousand dollars per violation.
4. "*Schedule four*" means a penalty of not less than five hundred dollars nor more than five thousand dollars per violation.
5. "*Schedule five*" means a penalty of not less than five hundred dollars nor more than five thousand dollars for the first violation and not less than five thousand dollars nor more than ten thousand dollars for each subsequent violation.

[C79, 81, § 327C.5]

327C.6 Changes in operation and improvements.

When, in the judgment of the department, any railroad corporation fails in any respect to comply with the laws of the state; or if any railroad corporation fails to operate its railroad and business in a reasonable and expedient manner which is safe and convenient to the public, the department may order such changes as it finds to be proper and shall serve an order upon such corporation. Nothing in this section or section 327C.4 shall be construed as to nullify responsibility or liability for damage to person or property by any railroad corporation.

[C97, § 2113; S13, § 2113; C24, 27, 31, 35, 39, § 7877; C46, 50, 54, 58, 62, 66, 71, 73, 75, § 474.14; C77, 79, 81, § 327C.6]

327C.7 Withdrawal of service.

It shall be unlawful for any railroad corporation owning or operating any railroad in this state, to withdraw agency service, unless it shall first have filed notice of its intention with the department and otherwise complied with the provisions of this section and sections 327C.8 and 327C.9. Upon the receipt of such notice the department shall specify a notice be published and the railroad corporation shall, at its own expense, cause such notice to be published at least fifteen days in advance of the action to discontinue such agency and shall file proof of publication with the department. The notice shall be in such form as prescribed by the department and shall be published in a newspaper published in the county in which the station is located. An alternative notice procedure giving comparable public notice by registered mail to affected shippers may be prescribed by the department according to rules promulgated under chapter 17A.

[C39, § 7877.1; C46, 50, 54, 58, 62, 66, 71, 73, 75, § 474.15; C77, 79, 81, § 327C.7]

327C.8 Objections hearing.

A person directly affected by the proposed discontinuance of an agency may file written objections with the department stating the grounds for the objections, within fifteen days from the time of the publication of the notice as provided in section 327C.7. Upon the filing of objections the department shall request the

department of inspections and appeals to hold a hearing, which shall be held within sixty days from the filing of the objections. Written notice of the time and place of 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 the hearing.

[C39, § 7877.2; C46, 50, 54, 58, 62, 66, 71, 73, 75, § 474.16; C77, 79, 81, § 327C.8; 81 Acts, ch 22, § 22]

89 Acts, ch 273, § 19

327C.9 Order of department.

Upon said hearing the department may prohibit the discontinuance of such agency or may make such other order as is warranted by the evidence produced at such hearing. But if no objections are filed the department may make an order permitting the railroad corporation to proceed with such discontinuance.

[C39, § 7877.3; C46, 50, 54, 58, 62, 66, 71, 73, 75, § 474.17; C77, 79, 81, § 327C.9; 81 Acts, ch 22, § 22]

327C.10 Investigation and inquiry.

The department may investigate and inquire into the management of all common carriers subject to its jurisdiction. The department may obtain from the carriers full and complete information necessary to enable the department to perform its duties including the administration of railroad assistance agreements. The department may require the attendance and testimony of witnesses, and the production of all books, papers, tariff schedules, contracts, agreements, and documents, relating to any matter under investigation, and may inspect them; and may examine under oath or otherwise any officer, director, agent, or employee of a common carrier; and may issue subpoenas and enforce obedience to them.

[C97, § 2115, 2133; C24, 27, 31, 35, 39, § 7878; C46, 50, 54, 58, 62, 66, 71, 73, 75, § 474.18; C77, 79, 81, § 327C.10; 81 Acts, ch 22, § 22]

86 Acts, ch 1245, § 1959

327C.11 Repealed by 78 Acts, ch 1110, § 25.

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. 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 a carrier or other person to appear before either department and produce all books and papers required by the order and testify in relation to any matter under investigation.

[C97, § 2133; C24, 27, 31, 35, 39, § 7879; C46, 50, 54, 58, 62, 66, 71, 73, 75, § 474.20; C77, 79, 81, § 327C.12; 81 Acts, ch 22, § 22]

89 Acts, ch 273, § 20

Footnotes

Contempts, chapter 665

327C.13 Hindering or obstructing department.

Any person who shall willfully obstruct the department in the performance of their duties, or who shall refuse to give any information within that person's possession that may be required by the department within the line of their duty, shall, upon conviction, be subject to a schedule "two" penalty.

[C97, § 2115; C24, 27, 31, 35, 39, § **7880**; C46, 50, 54, 58, 62, 66, 71, 73, 75, § 474.21; C77, 79, 81, § 327C.13; 81 Acts, ch 22, § 22]

Footnotes

See § 327C.5

327C.14 Cumulative remedies.

Nothing in this chapter or chapter 327D shall be construed to estop or hinder any persons from bringing action against any railway corporation for any violation of the laws of the state.

[C97, § 2118; C24, 27, 31, 35, 39, § **7882**; C46, 50, 54, 58, 62, 66, 71, 73, 75, § 474.23; C77, 79, 81, § 327C.14]

327C.15 Reserved.

327C.16 Mandatory injunction contempt.

It shall be the duty of the court in which any such cause shall be pending to require the issue to be made up within twenty days after commencement of the action and to give the same precedence over other civil business. If the court shall find that such rule, regulation, or order is reasonable and just, and that in refusing compliance therewith said railway company is neglecting and omitting the performance of any public duty or obligation, the court shall decree a mandatory and perpetual injunction, compelling obedience to and compliance with such rule, order, or regulation by said railroad company or person, its officers, agents, servants and employees, and may grant such other relief as may be deemed just and proper. All violations of such decree shall render the company, persons, officers, agents, servants and employees who are in any manner instrumental in such violation, guilty of contempt of court, and the court may punish such contempt by a fine not exceeding one thousand dollars for each offense. Such decree shall continue and remain in effect and be enforced until the rule, order, or regulation shall be modified or vacated by the department.

[C97, § 2119; S13, § 2119; C24, 27, 31, 35, 39, § **7884**; C46, 50, 54, 58, 62, 66, 71, 73, 75, § 474.25; C77, 79, 81, § 327C.16]

327C.17 Penalty.

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

[S13, § 2119; C24, 27, 31, 35, 39, § **7885**; C46, 50, 54, 58, 62, 66, 71, 73, 75, § 474.26; C77, 79, 81, § 327C.17; 81 Acts, ch 22, § 22]

89 Acts, ch 273, § 21

Footnotes

See § 327C.5

327C.18 Time may be extended to test legality.

The time for the taking effect of any rule, order, or regulation affecting public rights, made by the department, may, in its discretion, be extended; and said extension of time may be granted for the purpose of testing the legality thereof, upon application by any such aggrieved railroad, showing reasonable grounds therefor, and that said application is made in good faith and not for the purpose of delay.

[S13, § 2119; C24, 27, 31, 35, 39, § 7886; C46, 50, 54, 58, 62, 66, 71, 73, 75, § 474.27; C77, 79, 81, § 327C.18]

327C.19 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 chapter 17A.

[S13, § 2119; C24, 27, 31, 35, 39, § 7887; C46, 50, 54, 58, 62, 66, 71, 73, 75, § 474.28; C77, 79, 81, § 327C.19]

89 Acts, ch 273, § 22

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 order was doubtful, the court may remit the penalty that has accrued during the review proceeding.

[S13, § 2119; C24, 27, 31, 35, 39, § 7888; C46, 50, 54, 58, 62, 66, 71, 73, 75, § 474.29; C77, 79, 81, § 327C.20; 81 Acts, ch 22, § 22]

89 Acts, ch 273, § 23

327C.21 Costs attorney's fees.

When a decree shall be entered against a railroad corporation or person under sections 327C.16 to 327C.20 the court shall render judgment for costs, and attorney's fees for counsel representing the state.

[C97, § 2120; C24, 27, 31, 35, 39, § 7889; C46, 50, 54, 58, 62, 66, 71, 73, 75, § 474.30; C77, 79, 81, § 327C.21]

327C.22 Interstate freight rates.

The department shall exercise constant diligence to ascertain the rates, charges, rules, and practices of common carriers operating in this state, in relation to the transportation of freight in interstate business. When it shall ascertain from any source or have reasonable grounds to believe that the rates charged on such interstate business or the rules or practices in relation thereto discriminate unjustly against any of the citizens, industries, interests, or localities of the state, or place any of them at an unreasonable disadvantage as

compared with those of other states, or are in violation of the laws of the United States regulating commerce, or in conflict with the rulings, orders, or regulations of the surface transportation board, the department shall take the necessary steps to prevent the continuance of such rates, rules, or practices.

[S13, § 2120-a; C24, 27, 31, 35, 39, § **7890**; C46, 50, 54, 58, 62, 66, 71, 73, 75, § 474.31; C77, 79, 81, § 327C.22]

2003 Acts, ch 108, §59

327C.23 Application to surface transportation board.

When any common carrier has put in force any rates, rules, or practices in relation to interstate freight business, in violation of the laws of the United States regulating commerce, or of the orders, rules, or regulations of the surface transportation board, or shall unjustly discriminate against any of the citizens, industries, interests, or localities of the state, the department shall present the material facts involved in such violations or discrimination to the surface transportation board and seek relief therefrom, and, if deemed necessary or expedient, the department shall prosecute any charge growing out of such violation or discrimination, at the expense of the state, before the surface transportation board.

[S13, § 2120-b; C24, 27, 31, 35, 39, § **7891**; C46, 50, 54, 58, 62, 66, 71, 73, 75, § 474.32; C77, 79, 81, § 327C.23]

2003 Acts, ch 108, §60

327C.24 Choice of remedies.

Any person claiming damages from a common carrier on account of any violation of the provisions of chapter 327D may either make complaint to the department, or may bring action on the person's behalf for the recovery of such damages; but the person shall not have the right to pursue both of said remedies at the same time.

[C97, § 2131; C24, 27, 31, 35, 39, § **7892**; C46, 50, 54, 58, 62, 66, 71, 73, 75, § 474.33; C77, 79, 81, § 327C.24]

327C.25 Complaints.

A person may file with the department a petition setting forth any particular in which a common carrier has violated the law to which it is subject and the amount of damages sustained by reason of the violation. The department shall furnish a copy of the complaint to the carrier against which a complaint is filed. The department shall request the department of inspections and appeals to schedule a hearing in which the carrier shall answer the petition or satisfy the demands of the complaint. If 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 the petition, the department of inspections and appeals shall hear and determine the questions involved and make orders it finds proper. If the department of transportation has reason to believe that a carrier is violating any of the laws to which it is subject, the department may institute an investigation and request the department of inspections and appeals to conduct a hearing in relation to the matters as if a petition had been filed.

[C97, § 2134; C24, 27, 31, 35, 39, § **7893**; C46, 50, 54, 58, 62, 66, 71, 73, 75, § 474.34; C77, 79, 81, § 327C.25; 81 Acts, ch 22, § 22]

89 Acts, ch 273, § 24

327C.26 Reports.

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 as to what reparation, if any, the offending carrier shall make to a party who has suffered damage. The findings of fact are prima facie evidence in all further legal proceedings of every fact found. All reports of hearings and investigations made by 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.

[C97, § 2135; C24, 27, 31, 35, 39, § **7894**; C46, 50, 54, 58, 62, 66, 71, 73, 75, § 474.35; C77, 79, 81, § 327C.26; 81 Acts, ch 22, § 22]

89 Acts, ch 273, § 25

327C.27 Orders compliance.

When the department finds as the result of any investigation or hearing that a common carrier has violated or is violating any of the provisions of law to which it is subject, or that any complainant or other person has sustained damages by reason of such violation, the department shall order such carrier to cease such violation at once and shall fix a time within which it shall pay the amount of damage which has been found due to any person as a result of such violation.

[C97, § 2136; C24, 27, 31, 35, 39, § **7895**; C46, 50, 54, 58, 62, 66, 71, 73, 75, § 474.36; C77, 79, 81, § 327C.27; 81 Acts, ch 22, § 22]

327C.28 Violation of order petition notice.

If a person violates or fails to obey 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 the person, to the district court, alleging the violation or failure to obey. 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 notice for the commencement of action.

[C97, § 2137; C24, 27, 31, 35, 39, § **7896**; C46, 50, 54, 58, 62, 66, 71, 73, 75, § 474.37; C77, 79, 81, § 327C.28; 81 Acts, ch 22, § 22]

89 Acts, ch 273, § 26

Footnotes

Manner of service, R.C.P. 1.3021.315

327C.29 Interested party may begin proceedings.

A person interested in enforcing an order or requirement of the department of transportation or the department of inspections and appeals, may file a petition against the violator, alleging the failure to comply with the order or requirement and 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 under section 327C.28, and the proceedings after the filing of the petition shall be the same as in section 327C.28.

[C97, § 2137; C24, 27, 31, 35, 39, § **7897**; C46, 50, 54, 58, 62, 66, 71, 73, 75, § 474.38; C77, 79, 81, §

327C.29; 81 Acts, ch 22, § 22]

89 Acts, ch 273, § 27

327C.30 Duty of department, general counsel and county attorney.

When any proceeding has been instituted under sections 327C.28 and 327C.29, the department general counsel shall prosecute the same, and the county attorney of the county in which such proceeding is pending shall render such assistance as the department general counsel may require.

[C97, § 2137; C24, 27, 31, 35, 39, § **7898**; C46, 50, 54, 58, 62, 66, 71, 73, 75, § 474.39; C77, 79, 81, § 327C.30; 81 Acts, ch 22, § 22]

327C.31 Hearing in equity injunction.

All such causes shall be in equity, and the order or report of the department in question shall be considered prima facie evidence. If the court shall find that the order or requirement in question is lawful and has been violated, it shall issue an injunction or other proper process.

[C97, § 2137; C24, 27, 31, 35, 39, § **7899**; C46, 50, 54, 58, 62, 66, 71, 73, 75, § 474.40; C77, 79, 81, § 327C.31; 81 Acts, ch 22, § 22]

327C.32 Repealed by 76 Acts, ch 1245(4), § 525.

327C.33 Appeal effect.

An appeal to the supreme court shall not stay or supersede the order of the court or the execution of any writ or process thereon. When appeal is taken by the department, it shall not be required to give an appeal bond or security for costs.

[C97, § 2137; C24, 27, 31, 35, 39, § **7901**; C46, 50, 54, 58, 62, 66, 71, 73, 75, § 474.42; C77, 79, 81, § 327C.33; 81 Acts, ch 22, § 22]

327C.34 Suits by the department.

When the department has reason to believe that any person has been guilty of unjust discrimination, the department shall cause action to be commenced against such person. Such action may be brought in the district court of any county through which the railway owned or operated by such person may extend.

[C97, § 2149, 2150; C24, 27, 31, 35, 39, § **7902**; C46, 50, 54, 58, 62, 66, 71, 73, 75, § 474.43; C77, 79, 81, § 327C.34; 81 Acts, ch 22, § 22]

327C.35 Repealed by 78 Acts, ch 1110, § 25.

327C.36 Rights and remedies not exclusive.

Nothing in this chapter shall abridge any rights or remedies existing at common law or by statute, but shall be in addition to such remedies.

[C24, 27, 31, 35, 39, § **7904**; C46, 50, 54, 58, 62, 66, 71, 73, 75, § 474.45; C77, 79, 81, § 327C.36]

327C.37 Accidents investigations of report.

Upon the occurrence of any serious accident upon any railroad within this state, which shall result in personal injury, or loss of life, the corporation operating the road upon which the accident occurred shall give immediate notice thereof to the department whose duty it shall be, if they deem it necessary, to investigate the same, and promptly report to the governor the extent of the personal injuries, or loss of life, and whether the same was the result of mismanagement or neglect of the corporation on whose line the injury or loss of life occurred; but such report shall not be evidence or referred to in any case in any court.

[S13, § 2120-k; C24, 27, 31, 35, 39, § **7905**; C46, 50, 54, 58, 62, 66, 71, 73, 75, § 474.46; C77, 79, 81, § 327C.37]

327C.38 Annual reports from companies.

The department shall require annual reports from all common carriers subject to the provisions of chapter 327D and prescribe the manner in which specific answers to all questions upon which it may need information shall be made.

[C73, § 1280; C97, § 2143; C24, 27, 31, 35, 39, § **7906**; C46, 50, 54, 58, 62, 66, 71, 73, 75, § 474.47; C77, 79, 81, § 327C.38]

327C.39 Repealed by 78 Acts, ch 1110, § 25.

327C.40 Reserved.

327C.41 Additional reports.

The department may also require of any and all common carriers subject to the provisions of chapter 327D such other reports, and fix the time for filing the same, as in its judgment shall be necessary and reasonable, which reports shall be in such form, and concerning such subjects, and be from such sources as it shall direct, except as otherwise provided herein.

[C97, § 2143; C24, 27, 31, 35, 39, § **7909**; C46, 50, 54, 58, 62, 66, 71, 73, 75, § 474.50; C77, 79, 81, § 327C.41]

327C.42 Uniform accounts.

The department may prescribe uniformity and methods of keeping accounts, as near as may be, and fix a time when such regulations shall take effect.

[C97, § 2143; C24, 27, 31, 35, 39, § **7910**; C46, 50, 54, 58, 62, 66, 71, 73, 75, § 474.51; C77, 79, 81, § 327.42]

327C.43 Violations.

Any corporation, company, or individual owning or operating a railway within the state, neglecting or refusing to make the required reports by the date fixed by rule of the department, shall, upon conviction, be subject to a schedule "one" penalty for each and every day of delay in making the same after the date thus fixed.

[C73, § 1281, 1282; C97, § 2143; C24, 27, 31, 35, 39, § **7911**; C46, 50, 54, 58, 62, 66, 71, 73, 75, § 474.52; C77, 79, 81, § 327C.43]

Footnotes

See § 327C.5