

1 **State of Arkansas**
2 **79th General Assembly**
3 **Regular Session, 1993**
4 **By: Senator Scott**

A Bill

ACT 726 OF 1993
SENATE BILL 157

For An Act To Be Entitled

"THE RAILROAD REGULATORY AND SAFETY ACT OF 1993."

Subtitle

"THE RAILROAD REGULATORY AND SAFETY ACT OF 1993."

13 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:

14
15 *SECTION 1. The Arkansas Highway Commission administers the railroad*
16 *crossing safety program in Arkansas and has heretofore been designated by the*
17 *legislature as the sole public body to deal with, and given the exclusive*
18 *jurisdiction concerning the location, construction, improvement and protection*
19 *of railroad crossings in Arkansas. It is in the public's interest and safety*
20 *that uniformity be established in other matters pertaining to the maintenance*
21 *of railroad crossings and the operation and movement of trains in this state.*

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23 *SECTION 2. This act may be referred to as the Railroad Safety and*
24 *Regulatory Act of 1993.*

25
26 *SECTION 3. Maintenance of Crossings of Public Roads and Railroads-*
27 *Failure to Comply--Penalties.*

28 *(a) The Arkansas Highway Commission is hereby designated as the sole*
29 *public body to deal with, and is hereby given exclusive jurisdiction over, all*
30 *matters pertaining to the maintenance of any location where any railroad*
31 *crosses any public road, highway, or street in this state or where any public*
32 *road, highway, or street crosses any railroad.*

33 *(b) The Commission shall make such investigation and studies as it*
34 *deems necessary to properly exercise the jurisdiction hereby conferred and*
35 *shall involve Arkansas counties, municipalities, and railroads operating*
36 *within this state and unions representing railroad employees.*

1 (c) Pursuant to regulation providing for an opportunity of notice and
2 hearing, the Arkansas Highway Commission shall promulgate appropriate
3 regulations pertaining to the maintenance of railroad crossings of state,
4 county, city or municipal streets and highways.

5 (d) Prior to any request by a state, municipal or county official for
6 sanctions against any railroad company for violation of any regulation
7 promulgated pursuant to this section, the state, municipal, or county official
8 shall state the claim or complaint in writing by certified mail to the
9 registered agent of the railroad company in question. Within thirty (30) days
10 after the receipt of the written claim or complaint by the railroad company,
11 the railroad company shall respond to the claim or complaint, stating with
12 specificity, the corrective action taken, any corrective or remedial action
13 planned and the time for its completion, or the reason for any refusal on the
14 part of the railroad to correct the situation. This response shall be in
15 writing to the complaining official by certified mail. In the event the issue
16 is then not resolved to the satisfaction of the complaining official, the
17 official shall notify the Arkansas Highway Commission in writing. The
18 Commission shall, within fifteen (15) days after receipt of the complaint,
19 hold a hearing on the complaint. Notice of such hearing shall be given the
20 railroad and the complainant at least ten (10) days before the hearing. The
21 Commission or its designated representative shall, after appropriate notice
22 and hearing on the complaint, and within ten (10) days after such hearing,
23 determine the adequacy of the railroad's action and/or the reasonableness of
24 its refusal under the circumstances. If the Arkansas Highway Commission makes
25 a finding of inadequate action or unreasonable refusal on the part of the
26 railroad based on information presented at a hearing before the Commission or
27 before a designated representative of the Commission, the railroad company
28 charged with such violation shall be subject to a penalty of not less than two
29 hundred dollars (\$200) nor more than ten thousand dollars (\$10,000), per
30 occurrence, said penalty to be assessed by the Arkansas Highway Commission.
31 The decision of the Commission may be appealed to the circuit court of the
32 county in which the violation occurred at any time within thirty (30) days
33 after the decision is rendered. Provided, the decision of the Commission
34 shall be final unless appealed as authorized herein.

35 (e) If the state owns the highway where the questioned crossing is

1 located all monies recovered under the provisions of this section shall be
2
3 placed in the State Highway and Transportation Department Fund. All other
4 monies recovered under this section shall be divided equally between the State
5 Highway and Transportation Department Fund and the general, road or highway
6 fund of the county or municipality which owns the highway, road or street
7 where the questioned crossing is located.

8 SECTION 4. Operation and Movement of Trains-Regulations, Penalties and
9 Enforcement.

10 (a) The Arkansas Highway Commission is hereby designated as the sole
11 public body to deal with, and is hereby given exclusive jurisdiction over, all
12 matters pertaining to the operation and movement of trains within this state
13 including, but not limited to, the obstruction of any public highway, road,
14 street or other railroad crossing or public property by a standing train.

15 (b) The Arkansas Highway Commission shall make such investigations as
16 it deems necessary, or as requested by state, municipal or county officials,
17 to properly exercise the exclusive jurisdiction hereby conferred and pursuant
18 to required notice and hearing shall promulgate all necessary orders or
19 regulations concerning train operation, train movement, permissible standing
20 time for trains, and all other related matters. The investigation of
21 crossings shall include, but is not limited to, the reasonable availability or
22 use of other crossings by vehicular or pedestrian traffic, the frequency and
23 necessity of use of the railroad crossing by railroad trains and vehicular and
24 pedestrian traffic, the restriction of emergency and law enforcement vehicles
25 using the crossing, and the hours of frequent use of the crossing. In the
26 investigation, the Arkansas Highway Commission shall seek the advice of
27 *Arkansas Counties, municipalities, railroads operating within this state and*
28 *unions representing railroad employees.* Provided, unless and until the
29 Arkansas Highway Commission by order or regulation provides otherwise, it is
30 unlawful for any corporation, company or person owning or operating any
31 railroad trains in the state to permit a standing train to obstruct any public
32 highway, road, street, or other railroad crossing for more than ten (10)
33 minutes.

34 (c) Prior to any request by a state, municipal or county official for
35 sanctions against a railroad company for violation of this section, the state,

1 municipal or county official shall state the claim or complaint in writing, by
2 certified mail, to the registered agent of the railroad company in question.
3 Within thirty (30) days after the receipt of the written claim or complaint by
4 the railroad company, the railroad company shall respond to the claim or
5 complaint, in writing, stating with specificity the reasons for obstructing a
6 crossing for an unlawful period of time. This response shall be in writing to
7 the complaining official by certified mail. In the event the issue is then
8 not resolved to the satisfaction of the complaining official, the official
9 shall notify the Arkansas Highway Commission in writing and shall enclose a
10 copy of the complaint and response. The Commission shall, within fifteen (15)
11 days after receipt of the notice, hold a hearing on the complaint. Notice of
12 such hearing shall be given the railroad and the complainant at least ten (10)
13 days before the hearing. The Commission or its designated representative,
14 after an appropriate notice and hearing on the complaint, shall determine
15 whether the obstruction was for an unlawful period of time under the
16 circumstances. If the Arkansas Highway Commission makes such a finding of
17 unlawful delay based on information presented at a hearing before the
18 Commission or before its designated representative, the railroad company
19 charged with such violation shall be subject to a penalty to be imposed by the
20 Arkansas Highway Commission of not less than two hundred dollars (\$200), nor
21 more than five hundred dollars (\$500), per occurrence. After the initial ten
22 (10) minute period or such other period as may be prescribed by regulation of
23 the Arkansas Highway Commission, each ten (10) minute period or other period
24 as may be prescribed by regulation of the Arkansas Highway Commission, that
25 the crossing is obstructed by a standing train shall constitute a separate
26 offense and penalties may be imposed accordingly. The decision of the
27 Commission may be appealed to the circuit court of the county in which the
28 violation occurred at any time within thirty (30) days after the decision is
29 rendered. Provided, the decision of the Commission shall be final unless
30 appealed as authorized herein.

31 (d) *If the crossing where the violation occurred is located within the*
32 *boundaries of a city or town, one-half (1/2) of the monies recovered under the*
33 *provisions of this section shall be placed in the general fund or street fund*
34 *of the municipality and one-half (1/2) of the funds shall be placed in the*
35 *State Highway and Transportation Department Fund. All other monies recovered*

1 under the provisions of this section shall be divided equally between the
2 State Highway and Transportation Department Fund and the general road fund of
3 the county in which the violation occurred.

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5 SECTION 5. All provisions of this act of a general and permanent nature
6 are amendatory to the Arkansas Code of 1987 Annotated and the Arkansas Code
7 Revision Commission shall incorporate the same in the Code.

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9 SECTION 6. If any provision of this act or the application thereof to
10 any person or circumstance is held invalid, such invalidity shall not affect
11 other provisions or applications of the act which can be given effect without
12 the invalid provision or application, and to this end the provisions of this
13 act are declared to be severable.

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15 SECTION 7. All laws and parts of laws in conflict with this act,
16 including but not limited to A.C.A. § 23-12-305 and A.C.A. § 23-12-307, are
17 hereby repealed.

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APPROVED: 3/26/93

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As Engrossed: 3/2/93 3/3/93 3/11/93

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