

Stricken language would be deleted from and underlined language would be added to the law as it existed prior to this session of the General Assembly.

Act 243 of the Regular Session

1 State of Arkansas

As Engrossed: H2/11/09 S2/17/09

2 87th General Assembly

A Bill

3 Regular Session, 2009

HOUSE BILL 1318

4
5 By: Representatives Nix, M. Burris, Carroll

6
7
8 **For An Act To Be Entitled**

9 AN ACT TO ENSURE THE SAFE TRANSPORTATION OF
10 RAILROAD EMPLOYEES BY CONTRACT CARRIERS BY
11 ESTABLISHING STANDARDS FOR DRIVERS EMPLOYED BY
12 THE CONTRACT CARRIERS AND THE MOTOR VEHICLES USED
13 BY THE CONTRACT CARRIERS; AND FOR OTHER PURPOSES.

14
15 **Subtitle**

16 THE SAFE TRANSPORTATION OF RAILROAD
17 EMPLOYEES BY CONTRACT CARRIERS ACT.

18
19
20 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:

21
22 SECTION 1. Arkansas Code Title 23, Chapter 16 is amended to add an
23 additional subchapter to read as follows:

24 23-16-501. Title.

25 This subchapter shall be known as and may be cited as the "Safe
26 Transportation of Railroad Employees by Contract Carriers Act".

27
28 23-16-502. Definitions.

29 As used in this subchapter:

30 (1) "Contract carrier" means a passenger contract carrier that
31 for compensation transports railroad employees with a vehicle designed or
32 used to transport eight (8) persons or less, including the driver; and

33 (2)(A) "On-duty time" means all time at a terminal, facility, or
34 other property of a contract carrier or on any public property waiting to be
35 dispatched.



1 (B) "On-duty time" includes time spent inspecting,
2 servicing or conditioning the vehicle, unless the driver has been relieved
3 from duty by the contract carrier.

4
5 23-16-503. Driver qualification file.

6 (a)(1) A contract carrier shall maintain a driver qualification file
7 for each driver it employs.

8 (2) The driver qualification file may be combined with the
9 personnel file of the employee.

10 (b) The driver qualification file shall include:

11 (1) A certificate of physical examination conducted by a
12 physician every two (2) years that certifies the physical ability of the
13 driver to operate a commercial motor vehicle;

14 (2) Documentation that establishes that the driver's driving
15 record has been reviewed at least one (1) time per year;

16 (3) Documentation related to the driver's violation of motor
17 vehicle laws or ordinances, if applicable;

18 (4) Other documentation related to the driver's qualification or
19 ability to drive a motor vehicle;

20 (5) The driver's application for employment as provided under 49
21 C.F.R. 391.21.

22 (6) Responses from previous employers, if required by the
23 current employer; and

24 (7) A certificate of the driver's road test or a copy of the
25 current driver's license.

26
27 23-16-504. Driver disqualification and limitations.

28 (a) A driver is disqualified from driving for a contract carrier under
29 this subchapter if the driver has committed two (2) or more serious traffic
30 violations under § 27-16-401 within a three-year period.

31 (b)(1) A contract carrier shall not allow or require a driver to drive
32 or remain on duty for more than:

33 (A) Ten (10) hours after eight (8) consecutive hours off-
34 duty;

35 (B) Fifteen (15) hours of combined on-duty time and drive
36 time since last obtaining eight (8) consecutive hours of off-duty time; or

1 (C) Seventy (70) hours of on-duty and drive time in any
2 period of eight (8) consecutive days.

3 (2) After twenty-four (24) hours off-duty, a driver begins a new
4 seven (7) consecutive day period and on-duty time is reset to zero (0).

5 (3) A transport vehicle driver who encounters an emergency and
6 cannot, because of that emergency, safely complete a transportation
7 assignment within the ten-hour maximum driving time permitted under this
8 section may drive and be permitted or required to drive a transport motor
9 vehicle for not more than two (2) additional hours in order to complete that
10 transportation assignment or to reach a place offering safety for the
11 occupants of the transport motor vehicle and security for the transport motor
12 vehicle if the transportation assignment reasonably could have been completed
13 within the ten-hour period absent the emergency.

14 (c) A contract carrier shall maintain and retain for a period of six
15 (6) months accurate time records that show:

16 (1) The time the driver reports for duty each day;

17 (2) The total number of hours of on-duty time for each driver
18 for each day;

19 (3) The time the driver is released from duty each day; and

20 (4) The total number of hours driven each day.

21
22 23-16-505. Driver testing.

23 (a)(1) Before a driver performs any duties for a contract carrier, the
24 driver shall undergo testing for alcohol and controlled substances as
25 provided under 49 C.F.R. Part 40 and Part 382, as in effect on January 1,
26 2009.

27 (2) A driver is qualified to drive for a contract carrier if:

28 (A) The alcohol test result under subdivision (a)(1) of
29 this section indicates an alcohol concentration of zero (0); and

30 (B) The controlled substances test result from the medical
31 review officer as defined under 49 C.F.R. Part 40.3, as in effect on January
32 1, 2009, indicates a verified negative test result.

33 (3) A driver is disqualified from driving for a contract carrier
34 if:

35 (A) The alcohol test result and the controlled substances
36 test result are not in compliance with subdivision (a)(2) of this section;

1 (B) The driver refuses to provide a specimen for an
2 alcohol test result or the controlled substances test result or both; or

3 (C) The driver submits an adulterated specimen, a dilute
4 positive specimen, or a substituted specimen on an alcohol test result or the
5 controlled substances test result that is performed.

6 (b)(1) As soon as practicable after an accident involving a motor
7 vehicle owned or operated by a contract carrier, the contract carrier shall
8 test each surviving driver for alcohol and controlled substances if:

9 (A) The accident involved the loss of human life; or

10 (B) The driver received a citation for a moving traffic
11 violation arising from the accident and the accident involved:

12 (i) Bodily injury to a person who immediately
13 received medical treatment after the accident; or

14 (ii) Disabling damage that required the motor
15 vehicle to be towed from the accident scene to one (1) or more motor vehicles
16 as a result of the accident.

17 (2) If alcohol testing and controlled substances testing cannot
18 be completed as soon as possible but no later than thirty-two (32) hours
19 after the accident, the records shall be submitted to the Arkansas Highway
20 Police Division of the Arkansas State Highway and Transportation Department.

21 (c)(1) A common carrier or the employer of a driver of a common
22 carrier shall maintain records of the alcohol testing and controlled
23 substances testing of drivers for five (5) years.

24 (2) The records shall be maintained in a secure location.

25
26 23-16-506. Vehicle inspection.

27 (a) A contract carrier shall inspect or cause to be inspected a motor
28 vehicle that it operates for passenger transportation.

29 (b)(1) If a contract carrier uses a commercial motor vehicle for
30 passenger transportation, the contract carrier shall perform an inspection on
31 the commercial motor vehicle and its components at least one (1) time in
32 every twelve-month period in compliance with the rules promulgated by the
33 United States Department of Transportation as provided under 49 C.F.R.
34 396.17, Appendix G.

35 (2) The inspection under this subsection shall be performed by
36 an individual who is qualified to perform the inspection as prescribed in 49

1 C.F.R. Part 396.19, as in effect on January 1, 2009.

2 (c) A contract carrier shall require each of its drivers to complete a
3 written motor vehicle report upon completion of each day's work on the motor
4 vehicle that the driver operated as prescribed under 49 C.F.R. Part 396.11,
5 as in effect on January 1, 2009.

6
7 23-16-507. Maintenance and repair program.

8 (a) A contract carrier shall establish a maintenance and repair
9 program to include at least weekly inspections under this section.

10 (b) A contract carrier's maintenance and repair program shall include
11 checking parts and accessories for safety and proper operation at all times,
12 including the items under subsection (c) of this section, and overall
13 cleanliness of the motor vehicle.

14 (c) A motor vehicle used by a contract carrier shall have:

15 (1) Tires with sufficient tread as prescribed under 49 C.F.R.
16 Part 393.75, as in effect on January 1, 2009;

17 (2) A spare tire that is fully inflated;

18 (3) A secured location for personal baggage, including proper
19 restraints;

20 (4) Fully-operational seatbelts for all passenger seats;

21 (5) If the weather requires it, traction devices, studs, or
22 chains;

23 (6) A heater and air conditioner that is properly working with
24 properly working fans; and

25 (7) An emergency road kit that contains at least a tire
26 inflating aerosol can, flares or reflective triangles, jumper cables, and a
27 fire extinguisher.

28 (d) A motor vehicle shall not be operated in a condition that is
29 likely to cause an accident or mechanical breakdown.

30 (e)(1) A contract carrier shall maintain records for its maintenance
31 and repair program for each motor vehicle.

32 (2) The records shall include:

33 (A) Identifying information for the motor vehicle to
34 include the vehicle identification number, make, year manufactured, and
35 company identification number if one is provided;

36 (B) Owner information if the contract carrier is not the

1 owner of the vehicle; and

2 (C) The history of inspections, repairs, and maintenance
3 that describe the activity and the date the activity was performed.

4 (3)(A) Except as provided under subdivision (e)(3)(B) of this
5 section, the records under this subsection shall be maintained by the
6 contract carrier at its place of business for one (1) year.

7 (B) If the motor vehicle leaves the contract carrier's
8 control, the records under this subsection shall be maintained by the
9 contract carrier at its place of business for six (6) months.

10 (f) A contract carrier and its officers, drivers, agents, and
11 employees who are concerned with the inspection or maintenance of motor
12 vehicles shall comply with and be knowledgeable of the contract carrier's
13 maintenance and repair program under this section.

14
15 23-16-508. Access to facilities and records.

16 A contract carrier shall allow an employee of the *Arkansas Highway*
17 *Police Division of the Arkansas State Highway and Transportation Department*
18 *or its designee access to:*

19 (1) A facility to determine compliance with this subchapter; and

20 (2) Records or information related to an accident investigation
21 under this subchapter.

22
23 23-16-509 . Liability protection.

24 A contract carrier shall obtain and maintain an insurance policy of
25 five million dollars (5,000,000) for each motor vehicle that transports
26 railroad employees.

27
28 23-16-510. Penalties.

29 (a)(1) A person who knowingly violates a provision of this subchapter
30 is liable to the state for a civil penalty not to exceed one thousand dollars
31 (\$1,000) for each violation.

32 (2) Each day that a violation continues is a separate offense.

33 (b) *The Arkansas Highway Police Division of the Arkansas State Highway*
34 *and Transportation Department shall assess penalties for violations under*
35 *this subchapter by written notice to the violator.*

36 (c) To determine the amount of the penalty, the department or its

1 designee shall evaluate:

2 (1) The nature, circumstances, extent, and gravity of the
3 violation;

4 (2) The degree of culpability, history of prior offenses,
5 ability to pay, and effect on the ability to continue to do business of the
6 person found to have committed a violation; and

7 (3) Other circumstances as justice may require.

8
9 23-16-511. Right of railroad to contract.

10 (a) This subchapter is not intended to limit, and shall not be
11 construed as limiting, the right of a railroad to contract with a contract
12 carrier that certifies to the railroad that it is in compliance with the
13 provisions of this subchapter or any applicable federal requirements.

14 (b) The railroad is entitled to rely on a contract carrier's
15 certification that it is operating in compliance with this subchapter without
16 further inquiry.

17
18 SECTION 2. EMERGENCY CLAUSE. It is found and determined by the
19 General Assembly of the State of Arkansas that safety issues have arisen
20 where the contract carrier that transports railroad employees have operated
21 under less than ideal circumstances; that by establishing standards in state
22 law that are consistent with federal law, railroad employees will be provided
23 transportation that complies with recognized safety standards; and that this
24 act is immediately necessary to ensure the safe transportation of railroad
25 employees by contract carriers. Therefore, an emergency is declared to exist
26 and this act being immediately necessary for the preservation of the public
27 peace, health, and safety shall become effective on:

28 (1) The date of its approval by the Governor;

29 (2) If the bill is neither approved nor vetoed by the Governor,
30 the expiration of the period of time during which the Governor may veto the
31 bill; or

32 (3) If the bill is vetoed by the Governor and the veto is
33 overridden, the date the last house overrides the veto.

34
35 /s/ Nix

36 **APPROVED: 2/26/2009**