

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.

1 State of Arkansas
2 87th General Assembly
3 Regular Session, 2009

A Bill

HOUSE BILL 1318

4
5 By: Representatives Nix, M. Burris, Carroll
6
7

For An Act To Be Entitled

8
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

Subtitle

15
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. Definition.

29 As used in this subchapter, "contract carrier" means a passenger
30 contract carrier that transports fewer than nine (9) passengers and engages
31 in the passenger contract business with a railroad for the transportation of
32 railroad employees.
33

34 23-16-503. Driver qualification file.

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



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

3 (b) The driver qualification file shall include:

4 (1) A certificate of physical examination conducted by a
 5 physician every three (3) years that certifies the physical ability of the
 6 driver to operate a commercial motor vehicle;

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

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

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

13 (5) The driver's application for employment;

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

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

18
 19 23-16-504. Driver disqualification and limitations.

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

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

25 (A) Ten (10) hours after eight (8) consecutive hours off-
 26 duty;

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

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

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

33 (3) A transport vehicle driver who encounters an emergency and
 34 cannot, because of that emergency, safely complete a transportation
 35 assignment within the ten-hour maximum driving time permitted under this
 36 section may drive and be permitted or required to drive a transport motor

1 vehicle for not more than two (2) additional hours in order to complete that
2 transportation assignment or to reach a place offering safety for the
3 occupants of the transport motor vehicle and security for the transport motor
4 vehicle if the transportation assignment reasonably could have been completed
5 within the ten-hour period absent the emergency.

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

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

9 (2) The total number of hours the driver is on duty each day;

10 and

11 (3) The time the driver is released from duty each day.

12
13 23-16-505. Driver testing.

14 (a)(1) Before a driver performs any duties for a contract carrier, the
15 driver shall undergo testing for alcohol and controlled substances as
16 provided under 49 C.F.R. Part 40 and Part 382, as in effect on January 1,
17 2009.

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

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

21 (B) The controlled substances test result from the medical
22 review officer as defined under 49 C.F.R. Part 40.3, as in effect on January
23 1, 2009, indicates a verified negative test result.

24 (3) A driver is disqualified from driving for a contract carrier
25 if:

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

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

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

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

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

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

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

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

8 (2) If alcohol testing and controlled substances testing cannot
 9 be completed within eight (8) hours after the accident, then the records
 10 shall be submitted to the Department of Arkansas State Police.

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

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

15
 16 23-16-506. Vehicle inspection.

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

19 (b)(1) If a contract carrier uses a commercial motor vehicle for
 20 passenger transportation, the contract carrier shall perform an inspection on
 21 the commercial motor vehicle and its components at least one (1) time in
 22 every twelve-month period in compliance with the rules promulgated by the
 23 United States Department of Transportation.

24 (2) The inspection under this subsection shall be performed by
 25 an individual who is qualified to perform the inspection as prescribed in 49
 26 C.F.R. Part 396.19, as in effect on January 1, 2009.

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

31
 32 23-16-507. Maintenance and repair program.

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

35 (b) A contract carrier's maintenance and repair program shall include
 36 checking parts and accessories for safety and proper operation at all times,

1 including the items under subsection (c) of this section, and overall
 2 cleanliness of the motor vehicle.

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

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

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

7 (3) A secured location for personal baggage, including proper
 8 restraints;

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

10 (5) If the weather requires it, traction devices, studs, or
 11 chains;

12 (6) A heater and air conditioner that is properly working with
 13 properly working fans; and

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

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

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

21 (2) The records shall include:

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

25 (B) Owner information if the contract carrier is not the
 26 owner of the vehicle; and

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

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

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

35 (f) A contract carrier and its officers, drivers, agents, and
 36 employees who are concerned with the inspection or maintenance of motor

1 vehicles shall comply with and be knowledgeable of the contract carrier's
2 maintenance and repair program under this section.

3
4 23-16-508. Access to facilities and records.

5 A contract carrier shall allow an employee of the Department of
6 Arkansas State Police or its designee access to:

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

8 (2) Records or information related to an accident investigation
9 under this subchapter.

10
11 23-16-509 . Liability protection.

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

15
16 23-16-510. Penalties.

17 (a)(1) A person who knowingly violates a provision of this subchapter
18 is liable to the state for a civil penalty not to exceed one thousand dollars
19 (\$1,000) for each violation.

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

21 (b) The Department of Arkansas State Police shall assess penalties for
22 violations under this subchapter by written notice to the violator.

23 (c) To determine the amount of the penalty, the department or its
24 designee shall evaluate:

25 (1) The nature, circumstances, extent, and gravity of the
26 violation;

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

30 (3) Other circumstances as justice may require.