

Stricken language would be deleted from and underlined language would be added to present law.

State of Arkansas
93rd General Assembly
Regular Session, 2021

A Bill

HOUSE BILL 1524

By: Representative Miller

For An Act To Be Entitled

AN ACT TO AMEND THE LAW CONCERNING THE OPERATION OF A RAILROAD TRAIN; TO REQUIRE A RAILROAD TRAIN STANDARD CREW SIZE FOR CLASS I RAILROAD TRAIN OPERATIONS WITHIN THE STATE; TO DECLARE AN EMERGENCY; AND FOR OTHER PURPOSES.

Subtitle

TO AMEND THE LAW CONCERNING THE OPERATION OF A RAILROAD TRAIN; TO REQUIRE A RAILROAD TRAIN STANDARD CREW SIZE FOR CLASS I RAILROAD TRAIN OPERATIONS WITHIN THE STATE; AND TO DECLARE AN EMERGENCY.

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

SECTION 1. DO NOT CODIFY. Legislative intent.

The General Assembly finds that the:

(1) Federal Railroad Administration has determined that maintaining two (2) crew members on a railroad train is essential for safety reasons now that some railroad trains exceed two (2) miles in length; and

(2) Operation of a railroad train with two (2) or more crew members within the state prevents unnecessary dangers imposed upon communities and the public at large and disruptions of commerce for Arkansas and its citizens.

SECTION 2. Arkansas Code § 19-6-405, concerning revenues deposited into the State Highway and Transportation Department Fund, is amended to add



an additional subdivision to read as follows:

(11) Administrative penalties assessed under § 23-12-1106.

SECTION 3. Title 23, Chapter 12, is amended to add an additional subchapter to read as follows:

Subchapter 11 – Class I Railroad Minimum Crew Size

23-12-1101. Definitions.

As used in this subchapter:

(1)(A) "Helper service" means the use of a locomotive or group of locomotives to assist a railroad train:

(i) With mechanical failure; or

(ii) That lacks the power to traverse difficult terrain.

(B) "Helper service" includes a locomotive traveling to or from a location where a railroad train needs assistance under subdivision (1)(A) of this section;

(2) "Hostler service" means the movement within a rail yard of a locomotive that is not attached to a railcar;

(3) "Mine load out, plant dumping operation" means the loading or unloading of a freight train in an assembly line manner at an industry location while the freight train moves at ten miles per hour (10 m.p.h.) or less;

(4) "Railroad train" means one (1) or more locomotives with or without railcars, requiring an air brake test in accordance with 49 C.F.R. § 232 or 49 C.F.R § 238, as in effect on January 1, 2021, including without limitation:

(A) A single locomotive;

(B) Multiple locomotives coupled together; or

(C) One (1) or more locomotives coupled with one (1) or more railcars;

(5) "Remote control railroad train operator" means a person who operates a railroad train:

(A) Remotely while he or she is not physically located at the controls of the locomotive within the confines of the locomotive cab; and

(B) Equipped with a remote control system which uses

either a mechanical or radio transmitter and receiver system to allow for the remote operation of the railroad train; and

(6) "Tourist, scenic, historic, or excursion railroad train" means a railroad train that is not a part of the general railroad system of transportation.

23-12-1102. Minimum railroad train crew size.

Except as provided in this subchapter, a freight, passenger, or commuter Class I railroad train shall not be operated without at least two (2) crew members.

23-12-1103. General exceptions.

The minimum requirement of two (2) crew members under § 23-12-1102 does not apply when a railroad train is operated:

- (1) To perform helper service;
- (2) As a tourist, scenic, historic, or excursion railroad train;
- (3) To perform hostler service;
- (4) For mine load out, plant dumping operation; or
- (5) By a remote control railroad train operator.

23-12-1104. Exceptions.

(a) The Director of State Highways and Transportation may exempt a railroad carrier that does not have more than fifteen (15) employees from the minimum requirement of two (2) crew members under § 23-12-1102 if the railroad carrier operates the railroad train:

- (1) At fifteen miles per hour (15 m.p.h.) or less; and
- (2) Over a railroad track segment with an average grade that is less than:

- (A) One percent (1%) over three (3) continuous miles; or
- (B) Two percent (2%) over two (2) continuous miles.

(b) The director may allow a railroad carrier the exemption under subsection (a) of this section:

- (1) After a full hearing;
- (2) For good cause shown; and
- (3) If the exemption is in the public interest and will not have an adverse effect on railroad train safety.

(c) The exemption under subsection (a) of this section shall be:

- (1) For a specific period of time; and
- (2) Subject to review one (1) time each year.

23-12-1105. Hazardous material.

A minimum of two (2) crew members are required when a railroad train is transporting:

(1) One (1) or more loaded freight railcars containing materials poisonous by inhalation as defined in 49 C.F.R. § 171.8, including without limitation:

- (A) Anhydrous ammonia; or
- (B) Ammonia solutions;

(2) Ten (10) or more loaded freight railcars;

(3) Freight railcars loaded with:

- (A) Bulk packaging as defined in 49 C.F.R. § 171.8; or
- (B) Intermodal portable tanks containing any combination

of the materials under subdivision (1) of this section; or

(4) Any:

(A) Division 2.1 flammable gases as defined in 49 C.F.R. § 173.115;

(B) Class 3 flammable liquids as defined in 49 C.F.R. § 173.120;

(C) Division 1.1 or 1.2 explosives as defined in 49 C.F.R. § 173.50; or

(D) Hazardous substances listed in 49 C.F.R. § 173.31(f)(2).

23-12-1105. Penalties.

(a)(1) The State Highway Commission shall impose:

(A) An administrative penalty of not less than five thousand dollars (\$5,000) but not more than ten thousand dollars (\$10,000) on a person or railroad carrier in violation of this subchapter; or

(B) A one-time administrative penalty of five hundred thousand dollars (\$500,000) for a grossly negligent violation of this subchapter or a pattern of repeated violations of this subchapter that have caused:

(i) An imminent hazard of death or injury; or

(ii) Death or injury.

(2) An administrative penalty collected under subdivision (a)(1) of this section shall be deposited into the State Highway and Transportation Department Fund.

(3) A railroad carrier is liable for a violation caused by any person that causes the railroad carrier to be in violation of this subchapter.

(4) A separate violation occurs for each railroad carrier's railroad train that is not in compliance with this subchapter.

(b)(1) The Director of State Highways and Transportation and the person or railroad carrier responsible for a violation of this subchapter may negotiate the amount of the administrative penalty owed under subdivision (a)(1) of this section.

(2) In determining the negotiated amount under subdivision (b)(1) of this section, the director shall consider:

(A) The nature, circumstances, extent, and gravity of the violation; and

(B) With respect to the person or railroad carrier responsible for the violation:

(i) The degree of culpability;

(ii) Any history of violations;

(iii) The ability to pay;

(iv) Any effect on the ability to continue to do business; and

(v) Any other factor that may be used to determine the negotiated amount.

(c) If the director does not negotiate the amount of the administrative penalty and the administrative penalty is not promptly paid, the director shall refer the case to the Attorney General for collection.

23-12-1107. Action to collect.

(a) The Attorney General shall bring a civil action to collect an administrative penalty owed under § 23-12-1106:

(1) Within three (3) years from the date the violation occurred; and

(2) In a district court:

(A) Within the judicial district in which the violation occurred;

(B) Where the railroad carrier has its principal executive office; or

(C) Within the judicial district in which the person resides, if the violation is committed by a person.

(b) In any proceeding under this section, a railroad carrier is presumed to know the acts of the railroad carrier's:

(1) Employees;

(2) Officers; and

(3) Agents.

SECTION 4. EMERGENCY CLAUSE. It is found and determined by the General Assembly of the State of Arkansas that maintaining two (2) crew members on a railroad train has been the operating model most conducive to optimal safety and service performance; that the Federal Railroad Administration has determined that maintaining two (2) crew members on a railroad train is essential for safety reasons now that some railroad trains exceed two (2) miles in length; that maintaining safe operating practices by railroad carriers of railroad trains is essential to the day-to-day operations of railroad carriers and essential for the effective movement of commerce in this state. Therefore, an emergency is declared to exist, and this act being immediately necessary for the preservation of public peace, health, and safety shall become effective on:

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

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

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