

SECOND REGULAR SESSION

HOUSE BILL NO. 2368

95TH GENERAL ASSEMBLY

INTRODUCED BY REPRESENTATIVES SCHAD (Sponsor), BRUNS, FLOOK,
MEADOWS AND ROORDA (Co-sponsors).

5400L.011

D. ADAM CRUMBLISS, Chief Clerk

AN ACT

To amend chapter 389, RSMo, by adding thereto twelve new sections relating to regulation of contract carriers that transport railroad employees, with penalty provisions and an emergency clause.

Be it enacted by the General Assembly of the state of Missouri, as follows:

Section A. Chapter 389, RSMo, is amended by adding thereto twelve new sections, to
2 be known as sections 389.1100, 389.1105, 389.1110, 389.1115, 389.1120, 389.1125, 389.1130,
3 389.1135, 389.1140, 389.1145, 389.1148, and 389.1150, to read as follows:

389.1100. As used in sections 389.1100 to 389.1150, the following terms shall mean:

2 (1) "Contract carrier", a passenger contract carrier that for compensation
3 transports railroad employees;

4 (2) "On-duty time", all time spent driving and all time at a terminal, facility, or
5 other property of a contract carrier or on any public property waiting to be dispatched.
6 "On-duty time" includes time spent inspecting, servicing or conditioning the vehicle, unless
7 the driver has been relieved from duty by the contract carrier.

8 **389.1105. 1. A contract carrier shall maintain a driver qualification file for each**
9 **driver it employs.**

10 **2. The driver qualification file may be combined with the personnel file of the**
11 **employee.**

12 **3. The driver qualification file shall include:**

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

EXPLANATION — Matter enclosed in bold-faced brackets [thus] in the above bill is not enacted and is intended to be omitted from the law. Matter in **bold-face** type in the above bill is proposed language.

- 15 (2) Documentation that establishes that the driver's driving record has been
16 reviewed at least one time per year;
- 17 (3) Documentation related to the driver's violation of motor vehicle laws or
18 ordinances, if applicable;
- 19 (4) Other documentation related to the driver's qualification or ability to drive a
20 motor vehicle;
- 21 (5) The driver's application for employment as provided under 49 CFR 391.21, as
22 amended;
- 23 (6) Responses from previous employers, if required by the current employer; and
- 24 (7) A copy of the driver's current driver's license showing the driver's class E
25 qualification or the equivalent thereof.

389.1110. A driver shall be disqualified from driving for a contract carrier under
2 sections 389.1100 to 389.1150 if the driver has committed two or more serious traffic
3 violations within a three-year period. As used in this section, the term "serious traffic
4 violations" shall mean any violation where the driver's license or privilege to operate a
5 motor vehicle has been suspended or revoked by the department of revenue or other
6 administrative agency if such suspension or revocation occurred in another state or any
7 violation in which a driver has been found guilty of:

- 8 (1) Any intoxication-related traffic offense as defined in section 577.023;
- 9 (2) Any seat belt violation;
- 10 (3) Any commercial motor vehicle violation;
- 11 (4) Driving fifteen or more miles per hour over the speed limit;
- 12 (5) Negligent homicide;
- 13 (6) Using a vehicle to commit a felony;
- 14 (7) Failure to maintain proof of financial responsibility as required by chapter 303;
- 15 (8) Leaving the scene of an accident;
- 16 (9) Evading arrest;
- 17 (10) Fleeing by use of a motor vehicle;
- 18 (11) Careless and imprudent driving in violation of subsection 4 of section 304.016;
- 19 (12) Prohibited passing in violation of section 304.016;
- 20 (13) Passing a stopped school bus in violation of section 304.050;
- 21 (14) Failure to obey a traffic signal or device;
- 22 (15) Failure to obey a railroad crossing barrier in violation of section 304.035;
- 23 (16) Driving with a suspended, revoked, or cancelled license; or
- 24 (17) Driving the wrong way down a one-way street.

389.1115. 1. A contract carrier shall not allow or require a driver to drive or
2 remain on duty for more than:

3 (1) Ten hours after eight consecutive hours off-duty;

4 (2) Fifteen hours of combined on-duty time and drive time since last obtaining eight
5 consecutive hours of off-duty time; or

6 (3) Seventy hours of on-duty and drive time in any period of eight consecutive days.

7 2. After twenty-four hours off-duty, a driver begins a new seven consecutive day
8 period and on-duty time is reset to zero.

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

17 4. A contract carrier shall maintain and retain for a period of six months accurate
18 time records that show:

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

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

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

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

389.1120. 1. Before a driver performs any duties for a contract carrier, the driver
2 shall undergo testing for alcohol and controlled substances as provided under 49 CFR Part
3 40 and Part 382, as amended.

4 2. A driver shall be qualified to drive for a contract carrier if:

5 (1) The alcohol test result under subsection 1 of this section indicates an alcohol
6 concentration of zero; and

7 (2) The controlled substances test result from the medical review officer as defined
8 under 49 CFR Part 40.3, as amended, indicates a verified negative test result.

9 3. A driver shall be disqualified from driving for a contract carrier if:

10 (1) The alcohol test result and the controlled substances test result are not in
11 compliance with subsection 2 of this section;

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

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

17 4. As soon as practicable after an accident involving a motor vehicle owned or
18 operated by a contract carrier, the contract carrier shall test each surviving driver for
19 alcohol and controlled substances if:

20 (1) The accident involved the loss of human life; or

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

23 (a) Bodily injury to a person who immediately received medical treatment after the
24 accident; or

25 (b) Disabling damage occurs to one or more motor vehicles involved in a motor
26 vehicle accident.

27 5. Alcohol testing and controlled substances testing shall be completed immediately
28 following the accident. If alcohol testing cannot be conducted immediately following the
29 accident, it shall be conducted within eight hours of the accident. If controlled substances
30 testing cannot be conducted immediately following the accident, it shall be administered
31 within thirty-two hours of the accident. The results of such testing shall be submitted to
32 the Missouri department of transportation.

33 6. A contract carrier or the employer of a driver of a contract carrier shall maintain
34 records of the alcohol testing and controlled substances testing of drivers for five years.
35 The records shall be maintained in a secure location.

 389.1125. 1. A contract carrier shall inspect or cause to be inspected a motor
2 vehicle that it operates for passenger transportation.

3 2. If a contract carrier uses a commercial motor vehicle for passenger
4 transportation, the contract carrier shall perform an inspection on the commercial motor
5 vehicle and its components at least one time in every twelve-month period in compliance
6 with the rules promulgated by the United States Department of Transportation as provided
7 under 49 CFR 396.17, Appendix G. The inspection under this section shall be performed
8 by an individual who is qualified to perform the inspection as prescribed in 49 CFR Part
9 396.19, as amended.

10 3. A contract carrier shall require each of its drivers to complete a written motor
11 vehicle report upon completion of each day's work on the motor vehicle that the driver
12 operated as prescribed under 49 CFR Part 396.11, as amended.

 389.1130. 1. A contract carrier shall establish a maintenance and repair program
2 to include at least weekly inspections under this section.

3 **2. A contract carrier's maintenance and repair program shall include checking**
4 **parts and accessories for safety and proper operation at all times, including the items**
5 **under subsection 3 of this section, and overall cleanliness of the motor vehicle.**

6 **3. A motor vehicle used by a contract carrier shall have:**

7 **(1) Tires with sufficient tread as prescribed under 49 CFR Part 393.75, as**
8 **amended;**

9 **(2) A spare tire that is fully inflated;**

10 **(3) A secured location for personal baggage, including proper restraints;**

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

12 **(5) If the weather requires it, traction devices, studs, or chains;**

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

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

17 **(8) A readily available first aid kit complying with the standards set forth in 29**
18 **CFR Section 1910.151, as amended. The first aid kit shall contain, at a minimum, those**
19 **articles described in the most recent American National Standard (ANSI) 2308.1 as**
20 **recommended by Appendix A to 29 CFR Section 1910.151, as amended.**

21 **4. All vehicles in a contract owner's fleet shall be equipped with an operable amber**
22 **light or strobe light which shall be mounted to the roof of the vehicle in the rear one third**
23 **portion in order to provide warning to other motorists whenever said vehicle has slowed**
24 **or stopped on or near the roadway.**

25 **5. A motor vehicle shall not be operated in a condition that is likely to cause an**
26 **accident or mechanical breakdown.**

27 **6. A contract carrier shall maintain records for its maintenance and repair**
28 **program for each motor vehicle. The records shall include:**

29 **(1) Identifying information for the motor vehicle to include the vehicle**
30 **identification number, make, year manufactured, and company identification number if**
31 **one is provided;**

32 **(2) Owner information if the contract carrier is not the owner of the vehicle; and**

33 **(3) The history of inspections, repairs, and maintenance that describe the activity**
34 **and the date the activity was performed.**

35 **7. The records required to be maintained under subsection 5 of this section shall**
36 **be maintained by the contract carrier at its place of business for one year. If the motor**
37 **vehicle leaves the contract carrier's control, the records shall be maintained by the contract**
38 **carrier at its place of business for six months.**

39 8. A contract carrier and its officers, drivers, agents, and employees who are
40 concerned with the inspection or maintenance of motor vehicles shall comply with and be
41 knowledgeable of the contract carrier's maintenance and repair program under this
42 section.

 389.1135. A contract carrier shall allow an employee of the Missouri department
2 of transportation or its designee access to:

3 (1) A facility to determine compliance with sections 389.1100 to 389.1150; and

4 (2) Records or information related to an accident investigation under sections
5 389.1100 to 389.1150.

 389.1140. A contract carrier shall obtain and maintain an insurance policy of five
2 million dollars for each motor vehicle that transports railroad employees.

 389.1145. 1. Any person, corporation, or entity who violates the provisions of
2 sections 389.1100 to 389.1150 or any rule promulgated thereto shall be subject to a civil
3 penalty in an amount of not more than two thousand dollars for each offense or violation.

4 2. Every violation of the provisions of sections 389.1100 to 389.1150 shall constitute
5 a separate and distinct offense, and in the case of a continuing violation, each day's
6 continuance thereof shall be deemed to be a separate and distinct offense.

7 3. The Missouri department of transportation may recover such penalties for
8 violations under sections 389.1100 to 389.1150 or any regulations promulgated thereto
9 from any person, corporation, or entity under the same terms and conditions as provided
10 in section 389.998.

 389.1148. On or after August 28, 2010, the Missouri highways and transportation
2 commission shall promulgate rules and regulations to implement and administer the
3 provisions of section 389.1100 to 389.1150. Any rule or portion of a rule, as that term is
4 defined in section 536.010, that is created under the authority delegated in this section shall
5 become effective only if it complies with and is subject to all of the provisions of chapter
6 536, and, if applicable, section 536.028. This section and chapter 536, are nonseverable and
7 if any of the powers vested with the general assembly pursuant to chapter 536, to review,
8 to delay the effective date, or to disapprove and annul a rule are subsequently held
9 unconstitutional, then the grant of rulemaking authority and any rule proposed or adopted
10 after August 28, 2010, shall be invalid and void.

 389.1150. 1. The provisions of sections 389.1100 to 389.1150 are not intended to
2 limit, and shall not be construed as limiting, the right of a railroad to contract with a
3 contract carrier that certifies to the railroad that it is in compliance with the provisions of
4 sections 389.1100 to 389.1150 or any applicable federal requirements. The railroad is

5 entitled to rely on a contract carrier's certification that it is operating in compliance with
6 sections 389.1100 to 389.1150 without further inquiry.

7 **2. The provisions established in sections 389.1100 to 389.1150 shall be considered**
8 **minimum standards and shall not be construed to supercede or abrogate any law, rule, or**
9 **regulation that imposes stricter standards or regulations upon the operation of contract**
10 **carriers that transport railroad employees.**

Section B. Because the state needs to ensure safe transportation of railroad employees
2 by contract carriers, section A of this act is deemed necessary for the immediate preservation of
3 the public health, welfare, peace and safety, and is hereby declared to be an emergency act within
4 the meaning of the constitution, and section A of this act shall be in full force and effect upon
5 its passage and approval.

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