

State of South Dakota

NINETY-SECOND SESSION
LEGISLATIVE ASSEMBLY, 2017

185Y0445

HOUSE BILL NO. 1140

Introduced by: Representatives Turbiville, Ahlers, Brunner, Clark, Dennert, DiSanto, Frye-Mueller, Goodwin, Greenfield (Lana), and Rhoden and Senators Heinert, Bolin, Cronin, Ewing, Frerichs, Haverly, Maher, Partridge, and Sohlt

1 FOR AN ACT ENTITLED, An Act to establish certain provisions regarding contract carriers
2 of railroad employees.

3 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF SOUTH DAKOTA:

4 Section 1. That the code be amended by adding a NEW SECTION to read:

5 For the purposes of this Act, the term, contract carrier, means any person that transports an
6 operating employee of a railroad on a road or highway of this state in a vehicle designed to
7 carry eight or fewer passengers.

8 Section 2. That the code be amended by adding a NEW SECTION to read:

9 A contract carrier may not allow or require a driver to drive or remain on duty for more than:

10 (1) Ten hours after eight consecutive hours uninterrupted rest off-duty. As used in this
11 subdivision, the term, uninterrupted rest, means that the contract carrier may not
12 communicate with the driver by telephone, pager, or in any other manner that could
13 reasonably be expected to disrupt the driver's rest;

14 (2) Fifteen hours of combined on-duty time and drive time since last obtaining eight



1 consecutive hours of off-duty time; or

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

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

5 Section 3. That the code be amended by adding a NEW SECTION to read:

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

13 Section 4. That the code be amended by adding a NEW SECTION to read:

14 A contract carrier shall maintain and retain for a period of six months accurate time records
15 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 for each day;

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

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

20 Section 5. That the code be amended by adding a NEW SECTION to read:

21 A contract carrier shall maintain a driver qualification file for each driver it employs. The
22 driver qualification file may be combined with the personnel file of the employee. The driver
23 qualification file shall include:

24 (1) A certificate of physical examination conducted by a physician every two years that

1 certifies the physical ability of the driver to operate a motor vehicle;

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

4 (3) Documentation related to the driver's violation of applicable motor vehicle laws or
5 ordinances;

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

8 (5) The driver's application for employment as provided by 49 C.F.R. 391.21, as
9 amended to January 1, 2017;

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

11 (7) A copy of the driver's current driver license showing the driver's qualification or the
12 equivalent of a driver license.

13 Section 6. That the code be amended by adding a NEW SECTION to read:

14 A driver shall be disqualified from driving for a contract carrier if the driver has committed
15 two or more serious traffic violations within a three-year period. As used in this section, the
16 term, serious traffic violations, means any violation where the driver license or privilege to
17 operate a motor vehicle has been suspended or revoked by the Department of Public Safety or
18 other administrative agency if the suspension or revocation occurred in another state or any
19 violation in which a driver has been found guilty of:

20 (1) Any intoxication related traffic offense;

21 (2) Any seat belt violation;

22 (3) Any commercial motor vehicle violation;

23 (4) Driving fifteen or more miles per hour over the speed limit;

24 (5) Negligent homicide;

- 1 (6) Using a vehicle to commit a felony;
- 2 (7) Failure to maintain proof of financial responsibility as required by law;
- 3 (8) Leaving the scene of an accident;
- 4 (9) Evading arrest;
- 5 (10) Fleeing by use of a motor vehicle;
- 6 (11) Careless and imprudent driving;
- 7 (12) Prohibited passing of another vehicle;
- 8 (13) Passing a stopped school bus;
- 9 (14) Failure to obey a traffic signal or device;
- 10 (15) Failure to obey a railroad crossing barrier;
- 11 (16) Driving with a suspended, revoked, or cancelled license; or
- 12 (17) Driving the wrong way down a one-way street.

13 Section 7. That the code be amended by adding a NEW SECTION to read:

14 Before a driver performs any duties for a contract carrier, the driver shall undergo testing
15 for alcohol and controlled substances as provided by 49 C.F.R. Part 40 and Part 382, as
16 amended to January 1, 2017.

17 Section 8. That the code be amended by adding a NEW SECTION to read:

18 A driver shall be qualified to drive for a contract carrier after the test pursuant to section 7
19 of this Act if:

- 20 (1) The alcohol test result indicates an alcohol concentration of zero; and
- 21 (2) The controlled substances test result from the medical review officer as defined in
22 49 C.F.R. 40.3, as amended to January 1, 2017, indicates a verified negative test
23 result.

24 Section 9. That the code be amended by adding a NEW SECTION to read:

1 A driver shall be disqualified from driving for a contract carrier after the test pursuant to
2 section 7 of this Act if:

- 3 (1) The alcohol test result and the controlled substances test result are not in compliance
4 with section 7 of this Act;
- 5 (2) The driver refuses to provide a specimen for an alcohol test result or the controlled
6 substances test result or both; or
- 7 (3) The driver submits an adulterated specimen, a dilute positive specimen, or a
8 substituted specimen on an alcohol test result or the controlled substances test result
9 that is performed.

10 Section 10. That the code be amended by adding a NEW SECTION to read:

11 As soon as practicable after an accident involving a motor vehicle owned or operated by a
12 contract carrier, the contract carrier shall test each surviving driver for alcohol and controlled
13 substances if:

- 14 (1) The accident involved the loss of human life; or
- 15 (2) The driver received a citation for a moving traffic violation arising from the accident
16 and the accident involved:
 - 17 (a) Bodily injury to a person who immediately received medical treatment after
18 the accident; or
 - 19 (b) Disabling damage occurs to one or more motor vehicles involved in a motor
20 vehicle accident.

21 Section 11. That the code be amended by adding a NEW SECTION to read:

22 Alcohol testing and controlled substances testing shall be completed immediately following
23 the accident. If alcohol testing cannot be conducted immediately following the accident, it shall
24 be conducted within eight hours of the accident. If controlled substances testing cannot be

1 conducted immediately following the accident, testing shall be administered within thirty-two
2 hours of the accident. The results of the testing shall be submitted to the Department of Public
3 Safety.

4 Section 12. That the code be amended by adding a NEW SECTION to read:

5 The contract carrier of a driver shall maintain records of the alcohol testing and controlled
6 substances testing of each driver for five years. The records shall be maintained in a secure
7 location.

8 Section 13. That the code be amended by adding a NEW SECTION to read:

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

11 Section 14. That the code be amended by adding a NEW SECTION to read:

12 If a contract carrier uses a motor vehicle for passenger transportation, the contract carrier
13 shall perform an inspection on the motor vehicle and the vehicle's components at least one time
14 in every twelve-month period in compliance with the rules promulgated by the United States
15 Department of Transportation as provided under 49 C.F.R. 396.17, Appendix G as of January 1,
16 2017. The inspection under this section shall be performed by a person who is qualified to
17 perform the inspection as prescribed in 49 C.F.R. Part 396.19, as amended to January 1, 2017.

18 Section 15. That the code be amended by adding a NEW SECTION to read:

19 A contract carrier shall require each of its drivers to complete a written motor vehicle report
20 upon completion of each day's work on the motor vehicle that the driver operated as prescribed
21 under 49 C.F.R. Part 396.11, as amended to January 1, 2017.

22 Section 16. That the code be amended by adding a NEW SECTION to read:

23 A contract carrier shall establish a maintenance and repair program to include at least weekly
24 inspections.

1 Section 17. That the code be amended by adding a NEW SECTION to read:

2 The contract carrier's maintenance and repair program shall include checking parts and
3 accessories for safety and proper operation at all times, including the items under section 18 of
4 this Act, and overall cleanliness of the motor vehicle.

5 Section 18. That the code be amended by adding a NEW SECTION to read:

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

- 7 (1) Tires with sufficient tread as prescribed under 49 C.F.R. Part 393.75, as amended to
8 January 1, 2017;
- 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 fans;
- 14 (7) An emergency road kit that contains at least a tire inflating aerosol can, flares or
15 reflective triangles, jumper cables, and a fire extinguisher; and
- 16 (8) A readily available first aid kit complying with the standards set forth in 29 Code of
17 Federal Regulations, section 1910.151, as amended to January 1, 2017. The first aid
18 kit shall contain, at a minimum, those articles described in the most recent American
19 National Standard (ANSI) Z308.1 as recommended by Appendix A to 29 C.F.R.
20 Section 1910.151, as amended to January 1, 2017.

21 Section 19. That the code be amended by adding a NEW SECTION to read:

22 Each vehicle in a contract carrier's fleet shall be equipped with an operable amber light or
23 strobe light which shall be mounted to the roof of the vehicle in the rear one third portion in
24 order to provide warning to other motorists whenever said vehicle has slowed or stopped on or

1 near the roadway.

2 Section 20. That the code be amended by adding a NEW SECTION to read:

3 A vehicle may not be operated in a condition that is likely to cause an accident or
4 mechanical breakdown.

5 Section 21. That the code be amended by adding a NEW SECTION to read:

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

- 8 (1) Identifying information for the motor vehicle to include the vehicle identification
9 number, make, year manufactured, and company identification number if one is
10 provided;
- 11 (2) Owner information if the contract carrier is not the owner of the vehicle; and
- 12 (3) The history of inspections, repairs, and maintenance that describe the activity and the
13 date the activity was performed.

14 The records required to be maintained under this section shall be maintained by the contract
15 carrier at its principal place of business for one year. If the motor vehicle leaves the contract
16 carrier's control, the records shall be maintained by the contract carrier at its principal place of
17 business for six months.

18 Section 22. That the code be amended by adding a NEW SECTION to read:

19 A contract carrier and its officers, drivers, agents, and employees who are concerned with
20 the inspection or maintenance of motor vehicles shall comply with and be knowledgeable of the
21 contract carrier's maintenance and repair program.

22 Section 23. That the code be amended by adding a NEW SECTION to read:

23 A contract carrier shall allow an employee of the Department of Public Safety access to:

- 24 (1) A facility to determine compliance with this Act; and

(2) Records or information related to an accident investigation.

Section 24. That the code be amended by adding a NEW SECTION to read:

A contract carrier shall obtain and maintain an insurance policy of one million dollars per person for bodily injury or death up to a maximum of five million dollars for each motor vehicle that transports railroad employees.

Section 25. That the code be amended by adding a NEW SECTION to read:

The contract carrier shall obtain and maintain uninsured and underinsured insurance coverage for each passenger in each motor vehicle in a minimum amount of one million dollars.

Section 26. That the code be amended by adding a NEW SECTION to read:

If any person, corporation, or entity violates the provisions of this Act, or any rule promulgated thereto, the Department of Public Safety may impose a civil penalty in an amount of not more than two thousand dollars for each offense or violation. Any penalty collected pursuant to this section shall be deposited in the state general fund.

Section 27. That the code be amended by adding a NEW SECTION to read:

Each violation of the provisions of this Act shall constitute a separate and distinct offense, and in the case of a continuing violation, each day's continuance thereof shall be deemed to be a separate and distinct offense.

Section 28. That the code be amended by adding a NEW SECTION to read:

The provisions of this Act are not intended to limit, and may not be construed as limiting, the right of a railroad to contract with a contract carrier or entity that certifies to the railroad that it is in compliance with the provisions of this Act or any applicable federal requirements.

Section 29. That the code be amended by adding a NEW SECTION to read:

If a railroad transports its crews in vehicles owned or leased by the railroad, each of the provisions of this Act shall be applicable to such transportation.