

FIRST REGULAR SESSION

# SENATE BILL NO. 165

97TH GENERAL ASSEMBLY

INTRODUCED BY SENATOR WALSH.

Read 1st time January 17, 2013, and ordered printed.

TERRY L. SPIELER, Secretary.

0434S.011

## 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 be known as sections 389.1100, 389.1105, 389.1110, 389.1115, 389.1120, 389.1125, 389.1130, 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:**

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

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

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

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

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

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

**(2) Documentation that establishes that the driver's driving**

10 record has been reviewed at least one time per year;

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

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

15 (5) The driver's application for employment as provided under  
16 49 C.F.R. 391.21, as amended;

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

19 (7) A copy of the driver's current driver's license showing the  
20 driver's class E qualification or the equivalent thereof.

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

10 (1) Any intoxication-related traffic offense as defined in section  
11 577.023;

12 (2) Any seat belt violation;

13 (3) Any commercial motor vehicle violation;

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

15 (5) Negligent homicide;

16 (6) Using a vehicle to commit a felony;

17 (7) Failure to maintain proof of financial responsibility as  
18 required by chapter 303;

19 (8) Leaving the scene of an accident;

20 (9) Evading arrest;

21 (10) Fleeing by use of a motor vehicle;

22 (11) Careless and imprudent driving in violation of subsection 4  
23 of section 304.016;

24 (12) Prohibited passing in violation of section 304.016;

25 (13) Passing a stopped school bus in violation of section 304.050;

26 (14) Failure to obey a traffic signal or device;

27           **(15) Failure to obey a railroad crossing barrier in violation of**  
28 **section 304.035;**

29           **(16) Driving with a suspended, revoked, or cancelled license; or**

30           **(17) Driving the wrong way down a one-way street.**

**389.1115. 1. A contract carrier shall not allow or require a driver**  
2 **to drive or 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**  
5 **last obtaining eight consecutive hours of off-duty time; or**

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

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

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

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

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

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

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

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

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

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

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

8           **(2) The controlled substances test result from the medical review**  
9 **officer as defined under 49 C.F.R. Part 40.3, as amended, indicates a**  
10 **verified negative test result.**

11           **3. A driver shall be disqualified from driving for a contract**  
12 **carrier if:**

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

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

17           **(3) The driver submits an adulterated specimen, a dilute positive**  
18 **specimen, or a substituted specimen on an alcohol test result or the**  
19 **controlled substances test result that is performed.**

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

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

25           **(2) The driver received a citation for a moving traffic violation**  
26 **arising from the accident and the accident involved:**

27           **(a) Bodily injury to a person who immediately received medical**  
28 **treatment after the accident; or**

29           **(b) Disabling damage occurs to one or more motor vehicles**  
30 **involved in a motor vehicle accident.**

31           **5. Alcohol testing and controlled substances testing shall be**  
32 **completed immediately following the accident. If alcohol testing cannot**  
33 **be conducted immediately following the accident, it shall be conducted**  
34 **within eight hours of the accident. If controlled substances testing**  
35 **cannot be conducted immediately following the accident, it shall be**  
36 **administered within thirty-two hours of the accident. The results of**  
37 **such testing shall be submitted to the Missouri department of**  
38 **transportation.**

39           **6. A contract carrier or the employer of a driver of a contract**  
40 **carrier shall maintain records of the alcohol testing and controlled**  
41 **substances testing of drivers for five years. The records shall be**  
42 **maintained in a secure location.**

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

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

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

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

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

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

9           (1) Tires with sufficient tread as prescribed under 49 C.F.R. Part  
10 393.75, as amended;

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

12           (3) A secured location for personal baggage, including proper  
13 restraints;

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

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

16           (6) A heater and air conditioner that is properly working with  
17 properly working fans;

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

21           (8) A readily available first aid kit complying with the standards  
22 set forth in 29 C.F.R. Section 1910.151, as amended. The first aid kit  
23 shall contain, at a minimum, those articles described in the most recent  
24 American National Standard Institute (ANSI) 2308.1 as recommended

25 by Appendix A to 29 C.F.R. Section 1910.151, as amended.

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

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

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

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

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

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

42 7. The records required to be maintained under subsection 6 of  
43 this section shall be maintained by the contract carrier at its place of  
44 business for one year. If the motor vehicle leaves the contract carrier's  
45 control, the records shall be maintained by the contract carrier at its  
46 place of business for six months.

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

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

3 (1) A facility to determine compliance with sections 389.1100 to  
4 389.1150; and

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

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

389.1145. 1. Any person, corporation, or entity who violates the  
2 provisions of sections 389.1100 to 389.1150 or any rule promulgated

3 thereto shall be subject to a civil penalty in an amount of not more than  
4 two thousand dollars for each offense or violation.

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

9 3. The Missouri department of transportation may recover such  
10 penalties for violations under sections 389.1100 to 389.1150 or any  
11 regulations promulgated thereto from any person, corporation, or  
12 entity under the same terms and conditions as provided in section  
13 389.998.

389.1148. The Missouri highways and transportation commission  
2 shall promulgate rules and regulations to implement and administer  
3 the provisions of section 389.1100 to 389.1150. Any rule or portion of a  
4 rule, as that term is defined in section 536.010, that is created under  
5 the authority delegated in this section shall become effective only if it  
6 complies with and is subject to all of the provisions of chapter 536, and,  
7 if applicable, section 536.028. This section and chapter 536, are  
8 nonseverable and if any of the powers vested with the general assembly  
9 pursuant to chapter 536, to review, to delay the effective date, or to  
10 disapprove and annul a rule are subsequently held unconstitutional,  
11 then the grant of rulemaking authority and any rule proposed or  
12 adopted after August 28, 2013, shall be invalid and void.

389.1150. 1. The provisions of sections 389.1100 to 389.1150 are  
2 not intended to limit, and shall not be construed as limiting, the right  
3 of a railroad to contract with a contract carrier that certifies to the  
4 railroad that it is in compliance with the provisions of sections 389.1100  
5 to 389.1150 or any applicable federal requirements. The railroad is  
6 entitled to rely on a contract carrier's certification that it is operating  
7 in compliance with sections 389.1100 to 389.1150 without further  
8 inquiry.

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

Section B. Because the state needs to ensure safe transportation of

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

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