

PL 100-342, 1988 S 1539

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Additions and Deletions are not identified in this document.

PL 100-342 (S 1539)

June 22, 1988

An Act to amend the Federal Railroad Safety Act of 1970 and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States  
of America in Congress assembled,

**SECTION 1. SHORT TITLE.**

This Act "45 USC 421 note" may be cited as the "Rail Safety Improvement Act of 1988".

**SEC. 2. AUTHORIZATION FOR APPROPRIATIONS.**

Section 214 of the Federal Railroad Safety Act of 1970 (45 U.S.C. 444) is amended to read as follows:

**"SEC. 214. AUTHORIZATION FOR APPROPRIATIONS.**

"(a) There is authorized to be appropriated to carry out this Act not to exceed \$40,649,000 for the fiscal year ending September 30, 1988, not to exceed \$41,868,470 for the fiscal year ending September 30, 1989, and not to exceed \$44,381,000 for the fiscal year ending September 30, 1990.

"(b) Sums appropriated under this section for research and development, automated track inspection, and the State safety grant program are authorized to remain available until expended."

**SEC. 3. INCREASED PENALTIES; LIABILITY OF INDIVIDUALS.**

(a) Section 209 of the Federal Railroad Safety Act of 1970 (45 U.S.C. 438) is amended --

(1) in subsection (a) by striking "railroad" and inserting in lieu thereof "person (including a railroad and any manager, supervisor, official, or other employee or agent of a railroad)";

(2) in subsection (b) by striking all after "(45 U.S.C. 39)" and inserting in lieu thereof "in an amount of not less than \$250 nor more than \$10,000, except that where a grossly negligent violation or a pattern of repeated violations has created an imminent hazard of death or injury to persons, or has caused death or injury, a penalty of not to exceed \$20,000 may be assessed.";

(3) in subsection (c) --

(A) by striking the first sentence and inserting in lieu thereof "Any person violating any rule, regulation, order, or standard referred to in subsection (b) shall be assessed by the Secretary the civil penalty applicable to the standard violated. Penalties may be assessed against individuals under this subsection only for willful violations.";

(B) by inserting ", in which the individual resides," after "such violation occurred"; and

(C) by adding at the end the following new sentences: "For purposes of this section, an individual shall be deemed not to have committed a willful violation where such individual has acted pursuant to the direct order of a railroad official or supervisor, under protest communicated to the supervisor. Such individual shall have the right to document such protest."; and

(4) by adding at the end the following new subsection:

"(f) Where an individual's violation of any rule, regulation, order, or standard prescribed by the Secretary under this title is shown to make that individual unfit for the performance of safety-sensitive functions, the Secretary, after notice and opportunity for a hearing, may issue an order prohibiting such individual from performing safety-sensitive functions in the rail industry for a specified period of time or until specified conditions are met. This subsection shall not be construed to affect the Secretary's authority under section 203 to take such action on an emergency basis."

(b) Within 30 days after the date of the enactment of this Act "45 USC 438 note" the Secretary of Transportation (hereafter in this Act referred to as the "Secretary") shall issue interim rules, regulations, orders, or standards containing penalty schedules applicable to railroads and individuals reflecting the changes made by the amendments in subsection (a). The Secretary shall issue final rules, regulations, orders, or standards with respect to such penalty schedules within 6 months after such date of enactment.

#### SEC. 4. LICENSING OR CERTIFICATION OF ENGINEERS.

(a) Section 202 of the Federal Railroad Safety Act of 1970 (45 U.S.C. 431) is amended by adding at the end the following new subsection:

"(1)(1) The Secretary shall, within 12 months after the date of the enactment of this subsection, issue such rules, regulations, orders, and standards as may be necessary to establish a program requiring the licensing or certification of any operator of a locomotive, including any locomotive engineer, after the expiration of 12 months following the establishment of such program.

"(2) The program established by the Secretary under paragraph (1) --

"(A) shall be implemented through review and approval of each railroad's operator qualification standards;

"(B) shall provide minimum training requirements;

"(C) shall require comprehensive knowledge of applicable railroad operating practices and operating rules;

"(D) shall, except as provided in paragraph (4), require the consideration, to the extent information is

available, of the motor vehicle driving record of each individual seeking licensing or certification under such program, including --

"(i) any denial of a motor vehicle operator's license by a State for cause within the previous 5 years;

"(ii) any cancellation, revocation, or suspension of a motor vehicle operator's license by a State for cause within the previous 5 years; and

"(iii) any conviction within the previous 5 years of an offense described under section 205(a)(3)(A) or (B) of the National Driver Register Act of 1982,

and may, based on such driving record, require disqualification of an individual or the granting of a license or certification conditioned on such terms as the Secretary may prescribe; and

"(E) shall require any individual seeking a license or certification under this subsection to --

"(i) request the chief driver licensing official of each State in which such individual has within the previous 5 years held a motor vehicle operator's license to provide information to his or her employer or prospective employer, or to the Secretary, as the Secretary may determine, with respect to such individual's driving record; and

"(ii) make the request provided for in section 206(b)(5) of the National Driver Register Act of 1982, for information to be transmitted to his or her employer, prospective employer, or the Secretary, as the Secretary may determine.

"(3) The Secretary, employer, or prospective employer, as appropriate, shall make information obtained under paragraph (2)(E) available to the individual, who shall be given an opportunity to comment on it in writing. Any such comment shall be included in any record or file maintained by the Secretary, employer, or prospective employer that contains the information to which the comment is related.

"(4)(A) The Secretary shall establish standards and procedures for waiving the application of requirements established under paragraph (2)(D) to any individual or class of individuals who the Secretary determines are not currently unfit to operate a locomotive.

"(B) In establishing the program under this subsection, the Secretary may not waive the application of requirements established under paragraph (2)(D) to an individual or class of individuals with a conviction, cancellation, revocation, or suspension described in paragraph (6)(A) or (B) who have not successfully completed a rehabilitation program established by a railroad or approved by the Secretary.

"(5) An individual who is denied a license or certification or whose license or certification is conditioned under requirements established under paragraph (2)(D) shall be entitled to an administrative hearing under subsection (b) to determine whether such license or certification has been properly denied or conditioned.

"(6) No individual shall be denied a license or certification under requirements established under paragraph (2)(D) because of --

"(A) a conviction for operating a motor vehicle while under the influence of, or impaired by, alcohol or a controlled substance; or

"(B) the cancellation, revocation, or suspension of the motor vehicle operator's license of such individual on the basis of operating a motor vehicle while under the influence of, or impaired by, alcohol or a controlled substance,

if such individual subsequent to such conviction, cancellation, revocation, or suspension has successfully completed a rehabilitation program established by a railroad or approved by the Secretary."

(b)(1) Section 206(b) of the National Driver Register Act of 1982 (23 U.S.C. 401, note) is amended by adding at the end the following new paragraph:

"(5) Any individual who is employed by a railroad as an operator of a locomotive, or who seeks employment with a railroad as an operator of a locomotive, may request the chief driver licensing official of a State to transmit information regarding the individual under subsection (a) of this section to his or her employer or prospective employer, or to the Secretary. There shall be no access to information in the Register under this paragraph which was entered in the Register more than three years before the date of such request, unless such information relies on revocations or suspensions that are still in effect on the date of the request. Information submitted to the Register by the States under Public Law 86-660 (74 Stat. 526) or under this title shall be subject to access for the purpose of this paragraph during the transition described under section 203(c) of this title."

(2) Paragraphs (1) and (2) of subsection (b) of section 206 of the National Driver Register Act of 1982 (23 U.S.C. 401, note) are each amended by adding at the end the following: "Information submitted to the Register by States under Public Law 86-660 (74 Stat. 526) or under this title shall be subject to access for the purpose of this paragraph during the transition described under section 203(c) of this title."