

81st Texas Legislature

SB481 – Carona

Relating to safety regulations for certain contract carriers:

Contract Carrier use in the Railroad industry.

Railroads use contract carriers to transport operating crews to and from trains, and between terminals.

- Over the years railroads have changed their operations by increasing the distance between crew change points. The distance has increased to the point that it is now common that, in order to meet federal hours of service limitations for the operating crew, more than one crew is needed to complete the trip. This business plan requires that train crews be transported to and from the train, as well as to and from crew change points, according to the train traffic requirements. Railroads have contracted with outside vendors (contract carriers) for the crew transportation services.
- Almost exclusively, the vehicle the contract carrier uses is a small passenger van designed to transport eight or fewer passengers including the driver. **These vehicles do not meet the definition of a commercial vehicle under state or federal law.**
- Typically, two crew members are transported at one time, although as many as four, and occasionally one, crew member may be transported.
- The transport may be local, within a city or a railroad yard for example, or it may involve traveling for hours from one point within the state to another. At times the transport involves crossing the state line.

Since 1997 these contract carriers have been governed by certain state laws.

- In response to HB 3252, passed during the 76th Texas Legislature, the Texas Department of Public Safety adopted certain rules to govern contract carriers that transport the operating employees of a railroad in a vehicle designed to carry 15 or fewer passengers.
- The rules the Department adopted are Chapter 37 of the Texas Administrative Code, rules 4.11(c)(1)(G) and 4.12(a)(7).
- 37 TAC §4.11(c)(1)(G) stipulates that certain Federal Motor Carriers Safety (FMCS) regulations are adopted by Texas for the regulation of contract carriers transporting railroad operating employees in Texas. However, 37 TAC §4.12(a)(7) limits the applicability to certain FMCS regulations only.

The regulations applicable to contract carriers transporting the operating employees of a railroad on a road or highway of this state in a vehicle designed to carry 15 or fewer passengers are 49CFR parts:

- 391 – Qualifications of Drivers and Longer Vehicles (except 391.11(b)(4) and subpart E - Physical Qualifications and Examinations)
- 393 – Parts and Accessories Necessary for Safe Operation
- 395 – Hours of Service
- 396 – Inspection Repair and Maintenance (except 396.17 – Periodic Inspection)

The statutory requirement of HB3252 did not require the Department of Public Safety to adopt rules requiring drug and alcohol testing for the carry-all drivers or minimum liability insurance.

- SB481 requires that the DPS adopt drug and alcohol testing and minimum liability insurance regulations for the contract carriers.
- The bill also directs the Texas Department of Public Safety to inform or educate contract carriers, and the railroad companies that hire them, regarding the requirements of Texas law applicable to contract carrier services.

This legislation is vitally important to railroad operating crews because we have a great deal of exposure to potentially unsafe drivers:

- In 1997 most contract carriers were small businesses with a regional scope. Since then the contract carriers have grown into a multi-million dollar industry.
- Everyday, in Texas, hundreds of railroad operating employees (engineers, conductors and trainmen) are transported by contract carrier to and from trains and between terminals. These employees very often take a nap during the period they are riding in the carry-all, which is often several hours, and therefore do not monitor the vehicle driver.
- In 2004 contract providers hauled Burlington Northern Santa Fe (BNSF) crews over 52,000,000 road miles and provided over 1,500,000 hours of service in yard operations. 89% of the road miles were handled by 8 contract “primary providers” and the remainder of the service was provided by variety of 64 secondary providers and a few “common carriers” such as buses.
- In 2006 Union Pacific spent 2 million dollars a month on carry-all services on the southern region alone. Approximately one half million dollars is spent on transporting crews in the Houston terminal each month. At an average of two hundred dollars per trip, that is 2500 trips per month in the Houston terminal.
- We estimate that contract carriers travel nearly 20 million miles each year in Texas.

On August 14, 2005, one person was killed and two railroad employees were severely injured when the carry-all they were riding in ran off the road near Coleman, Texas and struck a tree.

- As a result of his injuries in this accident, Justin Little, a BNSF conductor, is disabled for life. He is dependent upon others for his care.
- Steve Morgan, a BNSF engineer, also suffered injuries that ended his 23 year railroad career.
- The passenger, who was fatally injured, was the vehicle driver’s cousin.
- The driver of the carryall tested positive for methamphetamines.
- The carryall company, United Special Services (USS), had hired the driver only two days before, without taking an application, performing a background check or administering a pre-employment drug screen.
 - USS was a sub-contractor for Renzenberger, a primary contract carrier for Burlington Northern Santa Fe Railroad (BNSF).

USS had only \$55,000 dollars of liability insurance on the vehicle at the time of the accident.

- Minimum liability insurance requirements for contract carriers will provide peace of mind for the railroad employees being transported and will reduce liability to the railroad, in case of injury to an employee.
- The minimum insurance requirements will not interfere with contract provisions that may require more than the minimum amount of liability insurance.

Contracts have proven to be problematic in protecting railroad employees. Adoption of a state statute governing the contract carriers will provide a uniform requirement regardless of the provider or railroad.

- In their contract with their transportation providers, BNSF stipulates that the contract carriers must have a drug and alcohol testing program for their drivers. However, as evidenced by the fatal carry-all accident, this contract has proven to be ineffective.
- Contracts provisions vary from railroad to railroad.

If this bill becomes law, the Texas DPS will adopt Federal Motor Carrier drug and alcohol testing regulations (49 CFR Part 382) for contract carriers.

- These regulations will provide uniform testing procedures.
- The regulations include protection for the carry-all drivers who will undergo drug and alcohol testing.
- The regulations also require the contract carriers to keep records on drug and alcohol test results.

Railroads, and railroad operating employees, support this legislation.



Vehicle involved in the fatal crash that occurred in August, 2005