

LEGISLATURE OF NEBRASKA
ONE HUNDRED EIGHTH LEGISLATURE
SECOND SESSION

LEGISLATIVE BILL 1212

Introduced by Walz, 15; Jacobson, 42.

Read first time January 16, 2024

Committee:

1 A BILL FOR AN ACT relating to railroads; to amend section 75-109.01,
2 Revised Statutes Supplement, 2023; to adopt the Railroad Safety Act;
3 to eliminate provisions relating to blocked crossings; to harmonize
4 provisions; to provide an operative date; to repeal the original
5 section; and to outright repeal section 17-225, Reissue Revised
6 Statutes of Nebraska.

7 Be it enacted by the people of the State of Nebraska,

1 Section 1. Sections 1 to 9 of this act shall be known and may be
2 cited as the Railroad Safety Act.

3 Sec. 2. The Legislature finds that:

4 (1) Railroad transportation is a critical component of Nebraska's
5 economy and provides efficient and cost-effective movement of goods
6 across the state and beyond;

7 (2) Protecting Nebraska's residents, environment, and infrastructure
8 from exposure to hazardous substances carried by trains is a top
9 priority; and

10 (3) The safe and efficient operation of railroads requires certain
11 actions to be taken, including regularly maintaining railroad tracks and
12 rolling stock, appropriately using technology to detect and address
13 mechanical and other issues, employing experienced and well-paid workers
14 with critical skill sets to recognize and avoid accidents, and limiting
15 the number of cars that trains carry to ensure that trains have
16 reasonable lengths.

17 Sec. 3. For purposes of the Railroad Safety Act:

18 (1) Accident has the same meaning as in 49 C.F.R. 225.5;

19 (2) Class II railroad has the same meaning as in 49 U.S.C. 20102;

20 (3) Class III railroad has the same meaning as in 49 U.S.C. 20102;

21 (4) Commission means the Public Service Commission;

22 (5) Dangerous good means a substance that:

23 (a) Is corrosive, flammable, explosive, spontaneously combustible,
24 oxidizing, or water-reactive;

25 (b) Has the potential to cause significant harm to an individual,
26 property, or the environment; and

27 (c) Does not qualify as a hazardous substance;

28 (6) Defect includes, but is not limited to, hot wheel bearings, hot
29 wheels, deficient bearings detected through acoustic means, dragging of
30 equipment, excessive height, excessive weight, a shifted load, a loose
31 hose, improper rail temperature, or a deficient wheel condition;

1 (7) Dragging equipment detector means an electronic device or other
2 technology that monitors a passing train to actively detect and alert
3 operators of the train of the existence of any objects dragging from the
4 train;

5 (8) Hazardous substance has the same meaning as in 49 C.F.R. 171.8;

6 (9) Highway-rail crossing means:

7 (a) The point at which any public highway is or will be constructed
8 across the tracks or other facilities of a railroad at, above, or below
9 grade;

10 (b) The point at which the tracks or other facilities of a railroad
11 are or may be constructed across any public highway at, above, or below
12 grade;

13 (c) The point at which any public highway is or will be constructed
14 across private tracks on which any railroad may operate at, above, or
15 below grade; or

16 (d) The point at which private tracks over which any railroad may
17 operate are or will be constructed across any public highway at, above,
18 or below grade;

19 (10) Hot bearings detector means an infrared detector located along
20 railroad tracks to detect and alert the operators of a passing train to
21 any overheating of a train's bearings, axles, or wheels;

22 (11) Incident has the same meaning as in 49 C.F.R. 225.5;

23 (12) Main line means a segment or route of railroad tracks of any
24 railroad over which five million or more gross tons of railroad traffic
25 is transported annually as documented in timetables filed with the
26 Federal Railroad Administration pursuant to 49 C.F.R. 217.7. Main line
27 does not include tourist, scenic, historic, or excursion operations as
28 defined in 49 C.F.R. 238.5;

29 (13) Pathway crossing means:

30 (a) The point at which any public pathway is or will be constructed
31 across the tracks or other facilities of a railroad at, above, or below

1 grade;

2 (b) The point at which any tracks or other facilities of a railroad
3 are or will be constructed across any public pathway at, above, or below
4 grade;

5 (c) The point at which any public pathway is or will be constructed
6 across private tracks over which any railroad may operate at, above, or
7 below grade; or

8 (d) The point at which private tracks over which any railroad may
9 operate are or will be constructed across any public pathway at, above,
10 or below grade;

11 (14) Public crossing means a highway-rail crossing or pathway
12 crossing where the highway or pathway on both sides of the crossing is
13 under the jurisdiction of or is maintained by the state or any political
14 subdivision of the state and is open to public travel;

15 (15) Railroad means a person providing railroad transportation;

16 (16) Railroad transportation means any form of nonhighway ground
17 transportation that runs on rails or electromagnetic guideways. Railroad
18 transportation does not include rapid transit operations in an urban area
19 that are not connected to a general railroad system;

20 (17) Train means a locomotive unit or locomotive units, with or
21 without cars, that require an air brake test pursuant to 49 C.F.R. part
22 232 and 49 C.F.R. part 238; and

23 (18) Wayside detector means an electronic device or a series of
24 connected devices that monitors a passing train to determine whether the
25 train has a defect, including a hot bearings detector and a dragging
26 equipment detector.

27 Sec. 4. (1) A railroad shall not operate a train carrying hazardous
28 substances that has a length greater than eight thousand five hundred
29 feet on any main line in the state.

30 (2) Except as provided in subsection (3) of this section:

31 (a) A railroad operating a train on any main line in the state shall

1 have an operational and properly maintained wayside detector system.
2 Along each main line, the wayside detector system must have a hot
3 bearings detector and a dragging equipment detector installed at least
4 every twenty miles;

5 (b) On or before January 1, 2026, and on or before January 1 of each
6 year thereafter, a railroad operating a train on any main line in the
7 state shall submit to the commission a report that, at a minimum,
8 discloses (i) the nearest milepost number, latitude and longitude
9 coordinates, or other attribute that specifically identifies the location
10 of each installed wayside detector system, (ii) the type and
11 characteristic of each installed wayside detector system, (iii) the
12 operational status of all installed hot bearings detectors and dragging
13 equipment detectors, and (iv) any other information regarding wayside
14 detector systems that the commission deems necessary. The commission
15 shall electronically submit the report to the Legislature by January 31
16 of each year; and

17 (c) After a train receives a defect message from a wayside detector
18 system, the railroad operating the train shall:

19 (i) Stop the train in accordance with the railroad's applicable
20 safety procedures;

21 (ii) Inspect the location of the defect from a position on the
22 ground;

23 (iii) If the inspection indicates that the train is safe for
24 movement, allow the train to proceed along the train's route at a speed
25 not greater than restricted speed if the train is carrying a hazardous
26 substance or dangerous good or at a speed of not greater than thirty
27 miles per hour if the train is not carrying a hazardous substance or
28 dangerous good;

29 (iv) Remove and set out any defective car at the earliest
30 opportunity;

31 (v) Prepare a written inspection report; and

1 (vi) Provide the written inspection report to the appropriate
2 railroad official.

3 (3) Subsection (2) of this section does not apply to a Class II
4 railroad or Class III railroad not exceeding restricted speed.

5 (4) A railroad operating a train on any main line in the state shall
6 not permit any train, freight car, passenger car, or railroad
7 transportation engine to obstruct a public crossing for longer than ten
8 minutes. This subsection does not apply if the train, freight car,
9 passenger car, or railroad transportation engine is continuously moving
10 or if circumstances beyond the railroad's control prevent the train,
11 freight car, passenger car, or railroad transportation engine from
12 moving.

13 Sec. 5. (1) A crew member of a train operated by a railroad in the
14 state may report to the crew member's designated union representative:

15 (a) A violation of any of the safety requirements specified in
16 section 4 of this act;

17 (b) An injury the crew member or another crew member sustained while
18 operating a train on any main line in the state or in yard service; or

19 (c) A death that occurred during the operation of a train or in yard
20 service.

21 (2) A designated union representative receiving a report pursuant to
22 subsection (1) of this section may enter a railroad's place of operation
23 during reasonable hours to investigate the report. Before entering, the
24 designated union representative shall give reasonable notice to the
25 appropriate railroad officer.

26 Sec. 6. (1) If a railroad or any officer, agent, or employee of the
27 railroad violates section 4 of this act or, by denying entry to a place
28 of operation, violates subsection (2) of section 5 of this act, the
29 commission may impose a fine of not less than ten thousand dollars but
30 not more than twenty-five thousand dollars on the railroad. Each day of a
31 continuing violation constitutes a separate violation.

1 (2) Notwithstanding subsection (1) of this section, the commission
2 may impose a fine of up to one hundred thousand dollars per violation if
3 the commission finds:

4 (a) The railroad intentionally or knowingly violated section 4 of
5 this act or subsection (2) of section 5 of this act; or

6 (b) The railroad's violation was part of a pattern and practice of
7 repeated violations of section 4 of this act or subsection (2) of section
8 5 of this act.

9 (3) All fines collected pursuant to this section shall be remitted
10 to the State Treasurer for distribution in accordance with Article VII,
11 section 5, of the Constitution of Nebraska.

12 (4) The commission shall adopt and promulgate rules and regulations
13 for the determination, imposition, and appeal of fines under this
14 section.

15 Sec. 7. (1) On or before January 1, 2026, and at least once every
16 three years thereafter, each railroad shall offer training to each fire
17 department having jurisdiction along tracks upon which the railroad
18 operates in the state. In satisfying this requirement, a railroad may
19 offer such training simultaneously to more than one fire department.

20 (2) The training described in subsection (1) of this section shall:

21 (a) Address the general hazards of dangerous goods and hazardous
22 substances, techniques to assess risks posed to the environment and to
23 the safety of emergency responders and the public, factors an incident
24 commander must consider in determining whether to attempt to suppress a
25 fire or to evacuate the public and emergency responders from an area, and
26 other strategies for initial response by emergency responders; and

27 (b) Include suggested protocols or practices for emergency
28 responders to use to safely accomplish the tasks described in subdivision
29 (2)(a) of this section.

30 Sec. 8. (1) Beginning January 1, 2026, in addition to any insurance
31 coverage required by any other provision of law, a railroad that

1 transports hazardous substances in Nebraska shall maintain insurance
2 coverage in an amount that is adequate to pay for costs, damages, and
3 liabilities arising from accidents involving such transportation. A
4 railroad shall maintain the insurance coverage in the minimum amounts as
5 are required by rules and regulations adopted and promulgated by the
6 commission pursuant to subsection (3) of this section.

7 (2) On or before January 1, 2026, and on or before each January 1
8 thereafter, each railroad that transports hazardous substances in
9 Nebraska shall submit to the commission a certificate of insurance or
10 similar documentation that demonstrates the railroad's compliance with
11 this section and the rules and regulations adopted and promulgated
12 pursuant to this section.

13 (3) On or before November 1, 2025, the commission shall adopt and
14 promulgate rules and regulations establishing minimum insurance coverage
15 requirements for railroads that transport hazardous substances in
16 Nebraska, as described in subsection (1) of this section. In establishing
17 the requirements, the commission shall consider the type and quantity of
18 the hazardous substances transported, the routes used, and other relevant
19 risk factors.

20 (4) The commission shall conduct periodic audits or investigations
21 to ensure each railroad's compliance with the insurance requirements
22 described in this section.

23 (5) At least once every three years, the Public Service Commission
24 shall hold a public hearing at which interested stakeholders and members
25 of the public may provide comments concerning the implementation of this
26 section.

27 (6) A railroad that violates this section is subject to a fine of at
28 least one thousand dollars, but not more than five thousand dollars, for
29 each day of noncompliance.

30 (7) All fines collected pursuant to this section shall be remitted
31 to the State Treasurer for distribution in accordance with Article VII,

1 section 5, of the Constitution of Nebraska.

2 Sec. 9. The Railroad Safety Act shall not be construed as giving
3 the commission jurisdiction or control over the relations between any
4 railroad and its employees or its employees' order, union, or other
5 bargaining agent, either contractual or otherwise.

6 Sec. 10. Section 75-109.01, Revised Statutes Supplement, 2023, is
7 amended to read:

8 75-109.01 Except as otherwise specifically provided by law, the
9 Public Service Commission shall have jurisdiction, as prescribed, over
10 the following subjects:

11 (1) Common carriers, generally, pursuant to sections 75-101 to
12 75-158;

13 (2) Grain pursuant to the Grain Dealer Act and the Grain Warehouse
14 Act and sections 89-1,104 to 89-1,108;

15 (3) Manufactured homes and recreational vehicles pursuant to the
16 Uniform Standard Code for Manufactured Homes and Recreational Vehicles;

17 (4) Modular housing units pursuant to the Nebraska Uniform Standards
18 for Modular Housing Units Act;

19 (5) Motor carrier registration, licensure, and safety pursuant to
20 sections 75-301 to 75-343, 75-369.03, 75-370, and 75-371;

21 (6) Pipeline carriers and rights-of-way pursuant to the Major Oil
22 Pipeline Siting Act, the State Natural Gas Regulation Act, and sections
23 75-501 to 75-503. If the provisions of Chapter 75 are inconsistent with
24 the provisions of the Major Oil Pipeline Siting Act, the provisions of
25 the Major Oil Pipeline Siting Act control;

26 (7) Railroad carrier safety pursuant to the Railroad Safety Act and
27 sections 74-918, 74-919, 74-1323, and 75-401 to 75-430;

28 (8) Telecommunications carriers pursuant to the Automatic Dialing-
29 Announcing Devices Act, the Emergency Telephone Communications Systems
30 Act, the Enhanced Wireless 911 Services Act, the Intrastate Pay-Per-Call
31 Regulation Act, the Nebraska Telecommunications Regulation Act, the

1 Nebraska Telecommunications Universal Service Fund Act, the
2 Telecommunications Relay System Act, the Telephone Consumer Slamming
3 Prevention Act, and sections 86-574 to 86-578, 86-1307, and 86-1308;

4 (9) Transmission lines and rights-of-way pursuant to sections 70-301
5 and 75-702 to 75-724;

6 (10) Water service pursuant to the Water Service Regulation Act; and

7 (11) Jurisdictional utilities governed by the State Natural Gas
8 Regulation Act. If the provisions of Chapter 75 are inconsistent with the
9 provisions of the State Natural Gas Regulation Act, the provisions of the
10 State Natural Gas Regulation Act control.

11 Sec. 11. This act becomes operative on July 1, 2025.

12 Sec. 12. Original section 75-109.01, Revised Statutes Supplement,
13 2023, is repealed.

14 Sec. 13. The following section is outright repealed: Section
15 17-225, Reissue Revised Statutes of Nebraska.