

CHAPTER 69

PUBLIC UTILITIES

SENATE BILL 00-129

BY SENATORS Dyer and Chlouber;
also REPRESENTATIVES Larson, Coleman, Gotlieb, Kaufman, May, McElhany, Pfiffner, Scott, and Swenson.

AN ACT

CONCERNING ECONOMIC DEREGULATION OF INTRASTATE RAILROADS.

Be it enacted by the General Assembly of the State of Colorado:

SECTION 1. Repeal. 40-3-104 (1) (b), (4), and (5), Colorado Revised Statutes, are repealed as follows:

40-3-104. Changes in rates - notice. (1) (b) ~~In the case of a rail carrier, a proposed rate change resulting in an increased rate or a new rate shall not become effective for twenty days after the notice to the commission and the public, and a proposed tariff change resulting in a reduced rate or a change resulting in no change in rates shall not become effective for ten days after such notice; except that a contract authorized under section 40-3-106 (1) (b) shall become effective in accordance with the provisions of such section.~~

(4) ~~Rail carriers may change rates, classifications, rules, and practices by filing amendments or supplements without filing complete tariffs that cover matters that are not being changed. However, all rate changes of rail carriers and rail rate-making associations shall be incorporated into their individual tariffs by the end of the second year after the change becomes effective. A rate not incorporated in an individual tariff as so required is void.~~

(5) ~~Rail carrier rates may be established not to exceed reasonable minimums and maximums in conformance with 49 U.S.C. 10701a.~~

SECTION 2. 40-3-104.5, Colorado Revised Statutes, is amended to read:

40-3-104.5. Special provisions for rail carrier rate increases. (1) ~~Notwithstanding sections 40-3-104 and 40-6-111 and any other provision of this title to the contrary, with respect to rail carriers, the commission shall not exercise any jurisdiction over general rate increases under 49 U.S.C. 10706, inflation-based rate increases under 49 U.S.C. 10712, or fuel adjustment surcharges approved by the interstate commerce commission.~~

Capital letters indicate new material added to existing statutes; dashes through words indicate deletions from existing statutes and such material not part of act.

~~(2) (a) Notwithstanding section 40-6-111 or any other provision of this title to the contrary, with respect to rail carriers, the commission shall adopt rules or regulations in conformance with 49 U.S.C. 10707a allowing:~~

~~(I) Rate increases which, when added to the existing rate, produce a rate not in excess of the adjusted base rate for the movement in question, which increases shall not be found to exceed a reasonable maximum for the involved transportation;~~

~~(II) Consistent with 49 U.S.C. 10707a (c) and (d), rate increases not to exceed a specified percentage of the adjusted base rate without suspension thereof, and without investigation except upon complaint by an interested party alleging that such rate increase violates the provisions of this title and showing that the rate as increased produces a revenue-variable cost percentage limit specified in 49 U.S.C. 10707a (c) (2). In determining whether to investigate a rate increase under this section, the commission shall consider the factors set forth in 49 U.S.C. 10707a (c) (2) (B).~~

~~(b) For the purposes of this subsection (2), "adjusted base rate" shall have the same meaning, with respect to rail carriers in this state, as in 49 U.S.C. 10707a (a).~~

~~(3) Notwithstanding section 40-6-111 or any other provision of this title to the contrary, with respect to rail carriers, the commission shall adopt rules or regulations in conformance with 49 U.S.C. 10709 allowing rate increases without suspension thereof if the rail carrier proposing the rate increase is found by the commission not to have market dominance of the transportation. The commission shall determine whether or not the rail carrier has market dominance in accordance with the manner established in 49 U.S.C. 10709, and the definition of market dominance set forth in 49 U.S.C. 10709 (a) is hereby adopted. In making such determination, the commission shall find that the rail carrier does not have market dominance over the transportation to which the rate applies if the rail carrier proves that the rate charged results in a revenue-variable cost percentage for such transportation that is less than the percentages specified in 49 U.S.C. 10709 (d) (2). For the purposes of this subsection (3), "revenue-variable cost percentage" shall have the same meaning, with respect to rail carriers in this state, as in 49 U.S.C. 10709 (d) (1).~~

~~(4) The commission shall maintain and revise as necessary standards and procedures for establishing revenue levels for rail carriers providing transportation subject to its jurisdiction that are adequate, under honest, economical, and efficient management, to cover total operating expenses, including depreciation and obsolescence, plus a reasonable and economic profit or return, or both, on capital employed in the business. The commission shall make an adequate and continuing effort to assist those carriers in attaining revenue levels prescribed under this subsection (4). Revenue levels established under this subsection (4) should provide a flow of net income plus depreciation adequate to support prudent capital outlays; assure the repayment of a reasonable level of debt, permit the raising of needed equity capital, and cover the effects of inflation and should attract and retain capital in amounts adequate to provide a sound transportation system in the United States.~~

~~(5) (a) In every proceeding begun to investigate a proposed new rate or rate change, the commission shall specifically consider whether a proposed increase or decrease would:~~

~~(I) Change the rate relationships between commodities, places, regions, areas, or other particular descriptions of traffic; and~~

~~(II) Have a significant adverse effect on the competitive position of shippers or consignees served by the rail carrier proposing the increase or decrease.~~

~~(b) Subject to subsection (2) of this section, the commission may on its own motion or on complaint of an interested party investigate to determine whether the change or effect violates this title either before or after the proposed increase or decrease becomes effective. NOTWITHSTANDING SECTION 40-3-105 AND ANY OTHER PROVISION OF THIS TITLE TO THE CONTRARY, THE COMMISSION SHALL NOT EXERCISE ANY JURISDICTION OVER RATES WITH RESPECT TO INTRASTATE RAIL CARRIERS.~~

SECTION 3. Repeal. 40-3-106 (1) (b), Colorado Revised Statutes, is repealed as follows:

40-3-106. Advantages prohibited - graduated schedules. ~~(1) (b) (I) One or more rail carriers may enter into a contract with one or more purchasers of rail services to provide specified services under specified rates and conditions. Such a rail carrier may not enter into a contract with purchasers of rail services except as provided in 49 U.S.C. 10713 and any rules and regulations adopted by the commission pursuant to this paragraph (b).~~

~~(II) Each contract entered into under this section shall be filed with the commission, together with a summary of the contract containing such nonconfidential information as the commission prescribes. In addition to any other rules or regulations adopted by the commission to implement this paragraph (b), which shall be in conformance with 49 U.S.C. 10713, The commission shall publish special tariff rules for such contracts in order to assure that the essential terms of the contract are available to the general public in tariff format.~~

~~(III) A contract filed under this section shall be approved by the commission in the manner provided in 49 U.S.C. 10713 and the commission's rules and regulations pursuant thereto. Once approved, a contract governs the transportation to which it applies, and the provisions of this title which may be in conflict with the contract shall not apply thereto for the term of the contract.~~

SECTION 4. Repeal. 40-3-113, Colorado Revised Statutes, is repealed.

SECTION 5. Repeal. 40-6-111 (1) (c) and (2) (b), Colorado Revised Statutes, are repealed as follows:

40-6-111. Hearing on schedules - suspension - new rates - rejection of tariffs. ~~(1) (c) (I) Pending the hearing and decision thereon in the case of a rail carrier, the commission may suspend a proposed rate, classification, rule, or practice during the course of a commission proceeding under this section upon petition and in accordance with 49 U.S.C. 10707 and the regulations promulgated by the commission thereunder, and only when it appears from the specific facts shown by the verified statement of a person that:~~

~~(A) It is substantially likely that the protestant will prevail on the merits of its challenge to the rate change;~~

~~(B) Without suspension, the proposed rate change will cause substantial injury to the protestant or the party represented by the protestant; and~~

~~(C) Because of the peculiar economic circumstances of the protestant, the provisions of subparagraph (III) of this paragraph (c) do not protect the protestant.~~

~~(II) The burden shall be on the protestant to prove the matters described in sub-subparagraphs (A), (B), and (C) of subparagraph (I) of this paragraph (c).~~

~~(III) The commission may by rule or regulation provide for: Carrier refunds to shippers, including interest, when a rate increase is subsequently found unreasonable;~~

carrier assessments on shippers, including interest, when a suspended rate increase is subsequently found reasonable; and carrier refunds to shippers when a suspended rate decrease is subsequently found reasonable. Such rules or regulations shall be in conformance with 49 U.S.C. 10707.

(2) (b) ~~In determining whether a rail rate is reasonable, the commission shall consider, among other factors, evidence of the following:~~

~~(I) The amount of traffic which is transported at revenues which do not contribute to going-concern value and efforts made to minimize such traffic;~~

~~(II) The amount of traffic which contributes only marginally to fixed costs and the extent to which, if any, rates on such traffic can be changed to maximize the revenues from such traffic; and~~

~~(III) The carrier's mix of rail traffic to determine whether one commodity is paying an unreasonable share of the carrier's overall revenues.~~

SECTION 6. 40-21-101, Colorado Revised Statutes, is amended to read:

40-21-101. Domestic railroads - headquarters. Every railroad company chartered by this state shall keep and maintain permanently its general offices within the state of Colorado at the place named in its charter for the location of its general offices; and, if no certain place is named in its charter where its general offices shall be located and maintained, said railroad company shall keep and maintain its general offices at the place within this state where it contracts or agrees for a valuable consideration to locate its general offices; and, if said railroad company has not contracted or agreed for a valuable consideration to maintain its general offices at any certain place within this state, such general offices shall be located and maintained at such place on its line in this state as said railroad company may designate. ~~Such railroad companies shall keep and maintain their division headquarters, stations, machine shops, and roundhouses, or any of them, at such places as they may have contracted for a valuable consideration to keep them; and, if said general offices and shops and roundhouses, or any of them, are located on the line of a railroad in a county which has aided said railroad by an issue of bonds in consideration of such location being made, said location shall not be changed; and this shall apply as well to a railroad that may have been consolidated with another as to those which have maintained their original organization.~~

SECTION 7. 40-21-103, Colorado Revised Statutes, is amended to read:

40-21-103. Violation of article - penalty. Each railroad company chartered by this state or owning, operating, or controlling any line of railroad within this state which violates any of the provisions of this article shall forfeit to the state of Colorado the charter or right by which it operates its railroad in this state and be subject to a penalty of not less than five hundred dollars nor more than five thousand dollars for each and every day in which it violates any of the provisions of this article, to be recovered by suit in the name of the state of Colorado prosecuted by the attorney general in any court of competent jurisdiction. ~~It is the duty of the attorney general of this state, upon the application of any interested party or on his own motion, to proceed at once by proper action to forfeit the charter of the railroad company so violating any of the provisions of this article and to recover said penalty; or action may be instituted by the district attorney of any judicial district in which any violation occurs to recover the penalty provided in this section for such violation.~~ Any money recovered from any railroad company under the provisions of this article shall be paid into the state treasury and become a part of the available public school fund.

SECTION 8. Repeal. 40-24-109, 40-24-110, 40-24-111, articles 25, 26, and 28 of title 40, 40-29-104, 40-29-105, 40-29-108, 40-29-109, 40-29-112, 40-29-113, 40-29-114, and 40-29-115, Colorado Revised Statutes, are repealed.

SECTION 9. 40-29-110, Colorado Revised Statutes, is amended to read:

40-29-110. Duties of commission. (1) For the purpose of protecting the health and safety of employees of railroads, the public utilities commission of Colorado referred to in this article as the "commission", shall prescribe standards of safety. ~~and safety devices concerning:~~

~~(a) The installation and maintenance by railroads of electric marker warning lights on the rear of all trains with sufficient candle power to be visible at a distance of three thousand feet under ordinary atmospheric conditions;~~

~~(b) The installation and maintenance by railroads of adequate electrical lighting within cabooses for clerical work.~~

SECTION 10. 40-29-111 (1), Colorado Revised Statutes, is amended to read:

40-29-111. Compliance. (1) It is the duty of all persons engaged in the operation of railroads to comply with any regulation or order of the commission issued under the provisions of ~~sections~~ SECTION 40-29-110 ~~to 40-29-115~~ and to furnish any information required by the commission for purposes of ~~sections~~ SECTION 40-29-110. ~~to 40-29-115~~. The provisions of said ~~sections~~ SECTION shall not apply to any caboose operated on tracks of less than standard gauge nor to any caboose used only in yard service.

SECTION 11. Repeal. 40-32-101, 40-32-102, 40-32-105, 40-32-109, 40-32-110, 40-32-111, 40-32-112, and 40-32-113, Colorado Revised Statutes, are repealed.

SECTION 12. 40-32-104.5 (2), Colorado Revised Statutes, is amended to read:

40-32-104.5. Railroad peace officer - defined - scope of authority - responsibility and liability of railroad. (2) ~~Notwithstanding the police powers given to conductors under this article,~~ A class I railroad corporation may employ a railroad peace officer to protect and investigate offenses against the corporation. Such railroad peace officer, while engaged in the conduct of his OR HER employment, shall possess and exercise all the powers vested in a peace officer, level II, of this state, pursuant to section 18-1-901 (3) (1) (III), C.R.S. Such authority shall be exercised only in the protection of persons, including on-duty employees, who are located on the class I railroad corporation's property and in the protection of all real and personal property in the current physical possession of such railroad corporation. Such authority may include engaging in immediate pursuit. In the exercise of his OR HER duties, the railroad peace officer shall have the power to arrest for violation of laws upon railroad property; except that he OR SHE shall be required to notify the appropriate local law enforcement agency before applying for any warrant or lodging any criminal complaint unless the arrest is pursuant to section 40-32-107.

SECTION 13. 40-32-106, Colorado Revised Statutes, is amended to read:

40-32-106. Eject disorderly passengers. When any passenger is guilty of disorderly conduct, or uses any obscene language to the annoyance and vexation of passengers ~~or plays any game of cards or other games of chance for money or other valuable thing upon any railroad train,~~ and refuses to desist therefrom when requested by the conductor, the conductor ~~of such train~~ is authorized to stop ~~his~~ THE train at any station and eject such passenger from the train, using only such force as may be

necessary, ~~to accomplish such removal~~, and may command the assistance of the employees of the railroad company ~~or any of the passengers~~ to assist in such removal; but before doing so he shall tender to such passenger such proportion of the fare he has paid as the distance he then is from the place to which he has paid his fare bears to the whole distance for which he has paid his fare; but nothing in this section shall relieve any railroad company from liability for damages to any passenger for an unwarranted exercise of such ~~police~~ power by any such conductor.

SECTION 14. 40-32-107, Colorado Revised Statutes, is amended to read:

40-32-107. Arrest and take before county court. When any passenger is guilty of any crime or misdemeanor upon any train, ~~the conductor or employees~~ A RAILROAD PEACE OFFICER of such train may arrest such passenger, take ~~him~~ SUCH PASSENGER before any county court in any county in which such crime or misdemeanor was committed, and file a complaint charging ~~him~~ SUCH PASSENGER with such crime or misdemeanor.

SECTION 15. 40-32-108, Colorado Revised Statutes, is amended to read:

40-32-108. Duties of commission. ~~(1) For the purpose of protecting the health and safety of employees of railroads, the public utilities commission, hereinafter called the "commission", shall prescribe standards of health, sanitation, and safety concerning:~~

~~(a) The installation and maintenance by railroads of sanitary drinking water coolers of the glass bottle design securely fastened in an appropriate location within all cabooses used in road service, and other service if deemed necessary by the commission, for the use of the employees of said railroads;~~

~~(b) The installation and maintenance by railroads of individual paper drinking cups and dispenser within such cabooses as described in paragraph (a) of this subsection (1) for the use of said employees;~~

~~(c) The installation and maintenance by railroads of first-aid kits within such cabooses as described in paragraph (a) of this subsection (1), of a type and with contents as shall be determined by the commission, for use in administering first-aid to said employees.~~

~~(2) For the purposes of protecting the general public, The commission shall establish standards for the employment of railroad peace officers relating to education or experience in law enforcement.~~

SECTION 16. Safety clause. The general assembly hereby finds, determines, and declares that this act is necessary for the immediate preservation of the public peace, health, and safety.

Approved: March 29, 2000