

TRANSPORTATION CODE

TITLE 5. RAILROADS

SUBTITLE C. RAILROADS GENERALLY

CHAPTER 111. REGULATION BY TEXAS DEPARTMENT OF TRANSPORTATION

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 111.001. DEFINITION OF PERSON. In this chapter:

(1) "person" includes a corporation, as provided by Section 312.011, Government Code; and

(2) the definition of "person" assigned by Section 311.005, Government Code, does not apply.

Added by Acts 2009, 81st Leg., R.S., Ch. 85 (S.B. 1540), Sec. 2.03, eff. April 1, 2011.

Sec. 111.002. POWER AND AUTHORITY. To the extent not preempted by federal law, the department:

(1) has power and authority over:

(A) railroads, including suburban, belt, and terminal railroads;

(B) public wharves, docks, piers, elevators, warehouses, sheds, tracks, and other property used in connection with railroads; and

(C) persons, associations, and private or municipal corporations that own or operate a railroad, or a wharf, dock, pier, elevator, warehouse, shed, track, or other property used in connection with a railroad; and

(2) shall govern and regulate those railroads, persons, associations, and corporations and prevent abuses in the conduct of their business.

Added by Acts 2009, 81st Leg., R.S., Ch. 85 (S.B. 1540), Sec. 2.03, eff. April 1, 2011.

Sec. 111.003. TRANSFER OF RAILROAD AUTHORITY. On October 1, 2005, all powers and duties of the Railroad Commission of Texas that related primarily to railroads and the regulation of railroads and that existed on that date were transferred to the department, as

provided by Chapter 281, Acts of the 79th Legislature, Regular Session, 2005.

Added by Acts 2009, 81st Leg., R.S., Ch. 85 (S.B. 1540), Sec. 2.03, eff. April 1, 2011.

Sec. 111.004. REFERENCE TO RAILROAD COMMISSION. Any reference in law to the Railroad Commission of Texas that relates primarily to railroads and the regulation of railroads means the department.

Added by Acts 2009, 81st Leg., R.S., Ch. 85 (S.B. 1540), Sec. 2.03, eff. April 1, 2011.

#### SUBCHAPTER B. REGULATION OF RAILROADS BY DEPARTMENT

Sec. 111.051. INSPECTION OF BOOKS AND PAPERS; PENALTY. (a) A member of the commission or a person authorized in writing by a member of the commission under the hand and seal of the department may at any time:

(1) inspect the books and papers of a railroad company; and

(2) examine under oath a railroad company officer, agent, or employee in relation to the business and affairs of the company.

(b) A railroad company that refuses to permit an examination of the company's books and papers under Subsection (a) is liable to the state, for each violation, for a penalty of not less than \$125 or more than \$500 for each day the company fails or refuses to permit the examination.

(c) An officer, agent, or employee of a railroad company who possesses or controls any book or paper of the company commits an offense if, after proper demand, the officer, agent, or employee fails or refuses to exhibit, to any member of the commission or any person authorized to investigate, the book or paper. An offense under this subsection is a misdemeanor punishable by a fine of not less than \$125 or more than \$500.

Added by Acts 2009, 81st Leg., R.S., Ch. 85 (S.B. 1540), Sec. 2.03, eff. April 1, 2011.

Sec. 111.052. INFORMATION SOLICITED BY DEPARTMENT. (a) The department shall as often as necessary provide each railroad company a questionnaire designed to elicit all information concerning the railroad.

(b) A railroad company receiving a questionnaire under Subsection (a) shall properly fill out the questionnaire and answer each question fully and correctly. A railroad company that is unable to answer a question shall give satisfactory reason for the inability to answer.

(c) A railroad company shall return the completed questionnaire, sworn to by the proper officer of the company, to the department not later than the 30th day after the date the company received the questionnaire.

Added by Acts 2009, 81st Leg., R.S., Ch. 85 (S.B. 1540), Sec. 2.03, eff. April 1, 2011.

Sec. 111.053. REFUSAL TO ANSWER BY RAILROAD COMPANY OFFICER OR EMPLOYEE; CRIMINAL PENALTY. (a) An officer or employee of a railroad company commits an offense if the officer or employee:

(1) fails or refuses to fill out and return a questionnaire to the department as required by law;

(2) fails or refuses to answer any question in a questionnaire;

(3) gives a false answer to any question in a questionnaire if the answer to the question is within the officer's or employee's knowledge; or

(4) evades the answer to any question in a questionnaire.

(b) An offense under this section is a misdemeanor punishable by a fine of \$500 for each day that the officer or employee violates this section after the date the questionnaire is due to the department.

Added by Acts 2009, 81st Leg., R.S., Ch. 85 (S.B. 1540), Sec. 2.03, eff. April 1, 2011.

Sec. 111.054. REFUSAL TO ANSWER BY RAILROAD COMPANY;

PENALTY. (a) A railroad company is liable to the state for a penalty of \$500 if:

(1) an officer or employee of the company:

(A) fails or refuses to fill out and return a questionnaire under Section 111.052;

(B) fails or refuses to answer a question in a questionnaire under Section 111.052;

(C) gives a false answer to a question in a questionnaire under Section 111.052 and the fact inquired of is within the officer's or employee's knowledge; or

(D) evades the answer to such a question in a questionnaire under Section 111.052; and

(2) it appears that the officer or employee acted in obedience to the company's direction, permission, or request in the officer's or employee's failure, refusal, or evasion.

(b) The department may prescribe a system of bookkeeping to be observed by each railroad company that receives a questionnaire under Section 111.052, under the penalties of Subsection (a).

Added by Acts 2009, 81st Leg., R.S., Ch. 85 (S.B. 1540), Sec. 2.03, eff. April 1, 2011.

Sec. 111.055. WITNESSES. (a) This section applies only to the extent that it does not conflict with Chapter 2001, Government Code.

(b) In an examination or investigation under this chapter, the department may compel the attendance of witnesses and may issue subpoenas for witnesses in accordance with rules prescribed by the department. The officer to whom process is directed shall serve it.

(c) A witness who appears before the department by order of the department at a place outside the county where the witness resides is entitled to receive for the witness's attendance:

(1) \$1 for each day; and

(2) three cents for each mile the witness travels, by the nearest practical route, in going to and returning from that place.

(d) On the presentation of proper vouchers, sworn to by the

witness and approved by the department, the comptroller shall pay the witness the amount to which the witness is entitled.

(e) A witness is not entitled to fees or mileage if, when summoned at the request of a railroad, the witness:

(1) is directly or indirectly interested in the railroad;

(2) is in any way interested in stock, a bond, a mortgage, or a security, or the earnings of the railroad; or

(3) was an officer, agent, or employee of the railroad.

(f) A witness furnished with free transportation may not receive pay for the distance the witness travels on the free transportation.

(g) The department may issue an attachment as in civil cases for a witness who fails or refuses to obey a subpoena and may compel the witness to appear before the department and testify on a matter as the department requires.

(h) If a witness, after being summoned, fails or refuses to attend or to answer a question asked of the witness that the witness would be required to answer if in court, the department may fine and imprison the witness for contempt in the same manner that a judge of the district court might do under similar circumstances.

(i) The claim that testimony might tend to incriminate the person giving the testimony does not excuse a witness from testifying, but the evidence or testimony may not be used against the witness in a criminal trial.

Added by Acts 2009, 81st Leg., R.S., Ch. 85 (S.B. 1540), Sec. 2.03, eff. April 1, 2011.

Sec. 111.056. DEPOSITIONS. (a) The department may in its discretion issue process to take the testimony of a witness by a written or oral deposition instead of compelling the personal attendance of the witness.

(b) An officer executing process issued under a provision of this subtitle or Subtitle D may charge a fee as determined by the department, not to exceed fees prescribed by law for similar services.

Added by Acts 2009, 81st Leg., R.S., Ch. 85 (S.B. 1540), Sec. 2.03, eff. April 1, 2011.

Sec. 111.057. PENALTY NOT OTHERWISE PROVIDED. A railway company doing business in this state is liable to the state for a penalty of not more than \$5,000 each time the railway company:

(1) violates any provision of this subtitle or Subtitle D or fails or refuses to perform any duty imposed upon it for which a penalty has not been provided by law; or

(2) fails, neglects, or refuses to obey any requirement, order, judgment, or decree of the department.

Added by Acts 2009, 81st Leg., R.S., Ch. 85 (S.B. 1540), Sec. 2.03, eff. April 1, 2011.

Sec. 111.058. SUITS FOR PENALTY. (a) For a penalty provided under this chapter that is recoverable by the state, the attorney general, or an attorney acting under the direction of the attorney general, may bring suit in the name of the state in:

(1) Travis County; or

(2) any county in or through which the railroad runs.

(b) The attorney bringing a suit under this section is entitled to receive:

(1) a fee to be paid by the state of \$50 for each penalty recovered and collected by the attorney; and

(2) 10 percent of the amount collected.

(c) In all suits arising under this chapter or Section 112.003, the rules of evidence shall be the same as in ordinary civil actions, except as otherwise provided by this chapter.

Added by Acts 2009, 81st Leg., R.S., Ch. 85 (S.B. 1540), Sec. 2.03, eff. April 1, 2011.

#### SUBCHAPTER C. DEPARTMENT SAFETY REGULATION

Sec. 111.101. IMPLEMENTATION OF FEDERAL SAFETY LAWS; FEES.

(a) The department may perform any act, adopt any rules, and issue any orders as permitted by the Federal Railroad Safety Act of 1970, originally codified as 45 U.S.C. Sections 421, 431 et seq. and

recodified in 1994 as 49 U.S.C. Sections 20101-20117, 20131, 20133-20141, 20143, 21301, 21302, 21304, 21311, 24902, and 24905 and Sections 4(b)(1), (i), and (t) of Pub. L. No. 103-272.

(b) The department by rule shall:

(1) adopt reasonable fees to be assessed annually against railroads operating within the state; and

(2) establish the method by which the fees are calculated and assessed.

(c) The total amount of fees estimated to be collected by rules adopted by the department under this section may not exceed the amount estimated by the department to be necessary to recover the costs of administering the department's rail safety program.

(d) In adopting a fee structure, the department may consider the gross ton miles for railroad operations within this state for each railroad operating in the state to provide for the equitable allocation among railroads of the cost of administering the department's rail safety program.

(e) A fee collected under this section shall be deposited to the credit of the general revenue fund to be used for the rail safety program.

Added by Acts 2009, 81st Leg., R.S., Ch. 85 (S.B. [1540](#)), Sec. 2.03, eff. April 1, 2011.

Sec. 111.102. HAZARDOUS MATERIALS INSPECTIONS. (a) The department may enter private property on which a railroad facility that is connected to but not a part of a general railroad system of transportation is located at a reasonable time and in a reasonable manner to perform an inspection, investigation, or surveillance of facilities, equipment, records, and operations relating to the packaging, loading, or transportation of hazardous materials to determine whether the railroad facility complies with the applicable safety requirements of this chapter or a rule adopted under this chapter.

(b) In performing an inspection under this section, the department may not require a railroad facility owner or operator to alter or cease rail operations.

(c) Any inspection, investigation, or surveillance

performed on the site of a manufacturing facility shall be performed in compliance with the safety rules of the facility, including a rule regarding security clearance at the front gate if appropriate.

Added by Acts 2009, 81st Leg., R.S., Ch. 85 (S.B. 1540), Sec. 2.03, eff. April 1, 2011.

Sec. 111.103. HIGH-SPEED RAIL SAFETY STANDARDS. (a) For the purposes of this section, "high-speed rail" means passenger rail service capable of operating at speeds greater than 185 miles per hour.

(b) On application by a railroad company, the department by rule may adopt safety standards for high-speed rail systems, including rolling stock, for that railroad company.

(c) In adopting safety standards under Subsection (b), the department:

(1) shall consider the safety records of high-speed rail systems, including rolling stock, operated in countries with a history of safe high-speed rail service; and

(2) may require the railroad company to construct grade separations or physical barriers to isolate the railroad company's high-speed rail systems from streets, roadways, or existing freight or passenger railroads.

(d) A railroad company is not required to submit an application to the department under Subsection (b) if the railroad company is operating under safety standards approved by the Federal Railroad Administration or another federal agency.

(e) The department by rule shall impose a reasonable fee on a railroad company that submits an application under Subsection (b) to recover costs incurred by the department in administering this section.

Added by Acts 2011, 82nd Leg., R.S., Ch. 1047 (H.B. 3771), Sec. 1, eff. September 1, 2011.