

VIRGINIA ACTS OF ASSEMBLY — CHAPTER

An Act to amend the Code of Virginia by adding a section numbered 56-446.1, relating to limitations on passenger rail transportation liability.

[S 652]

Approved

Be it enacted by the General Assembly of Virginia:

1. That the Code of Virginia is amended by adding a section numbered 56-446.1 as follows:

§ 56-446.1. Limitations on passenger rail transportation liability.

A. As used in this section, unless the context requires otherwise:

"Authority" means a political subdivision of the Commonwealth that is comprised of two transportation commissions of the Commonwealth collectively engaged in providing, directly or indirectly, passenger rail transportation services to the general public.

"Claim" means a claim, action, suit, or request for damages, whether compensatory, punitive, or otherwise, made by or on behalf of any rail passenger arising out of the provision of passenger rail services against an authority or a railroad, against a member of an authority's governing body, or against a director, officer, employee, affiliate engaged in railroad operations, or agent of an authority or a railroad, for property damage, personal injury, bodily injury, or death.

"Passenger rail services" means the transportation of rail passengers by or on behalf of an authority, and all related services performed by a railroad or an authority, including services performed by a railroad on behalf of an authority, pursuant to a contract with the authority arising from or in connection with the transportation of rail passengers.

"Railroad" means a railroad company or railroad corporation that has entered into any contracts or operating agreements of any kind with an authority for the provision of passenger rail services.

B. An authority may contract with any railroad to allocate financial responsibility for claims against the railroad or the authority arising from or in connection with any incident or accident of any kind related to the provision of passenger rail services, which may include but not be limited to executing indemnity agreements, notwithstanding any other statutory, common law, public policy, or other prohibition against same, and regardless of the nature of the claim or the conduct giving rise to such claim.

C. The aggregate liability of the authority and any applicable railroad, including the authority or railroad's governing board, directors, officers, employees, affiliates engaged in railroad operations, or an agent of an authority, for all claims of rail passengers arising from a single incident or accident of any kind involving passenger rail services or incidental services related thereto for property damage, personal injury, bodily injury, and death shall be limited to \$250 million per single incident or accident.

D. This section shall not affect the damages that may be recovered under the Federal Employers' Liability Act of 1908 (45 U.S.C. § 51 et seq.), as amended.

E. This section shall not affect the damages that may be recovered for a claim if it can be shown that the accident or injury occurred as a result of willful and wanton conduct, felonious criminal conduct, or gross negligence on the part of the railroad.

F. The limitation on aggregate liability provided in this section shall be modified each year, beginning in January, 2011, and continuing each January thereafter, by adjusting the amount of the limitation by a percentage equal to the percentage change in the medical care component of the Consumer Price Index, as published by the Bureau of Labor Statistics, over that component published for the previous December.

G. The Virginia Division of Risk Management shall be designated to examine the history of claims made and amounts recovered against the Virginia Railway Express arising from or in connection with the provision of passenger rail service in the Commonwealth, and to provide a complete review of those findings to the General Assembly by November 30, 2010.

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