

## **IC 8-3-2**

### **Chapter 2. Operation of Freight Railroads**

#### **IC 8-3-2-1**

##### **Freight carriers; law governing**

Sec. 1. The provisions of the chapter shall apply to all such corporations, foreign or domestic, and to the receivers and lessees thereof as shall be engaged in the business of a common carrier of freight in carload lots or less, for hire, on railroads between points within this state. The provisions of this chapter shall also apply to all carriers engaged in the performance of transfer or switching service on and over any terminal, transfer, belt, or switching railroad in this state; provided, that the provisions of this chapter shall not be so applied as to regulate or control interstate commerce, or to in any manner affect or regulate the charges imposed therefor. It is further provided that the provisions of this chapter shall not apply to any carrier or carriers within this state whose income from freight business does not equal thirty-three and one-third percent (33 1/3%) of their gross revenue.

*(Formerly: Acts 1907, c.231, s.1.) As amended by P.L.62-1984, SEC.13.*

#### **IC 8-3-2-2**

##### **Freight cars or locomotives; duty to provide and maintain**

Sec. 2. All carriers subject to the provisions of this chapter are required to provide and to maintain in serviceable condition the number of suitable and substantial freight cars necessary to promptly supply the demands on their respective lines in this state for the prompt and expeditious shipment of all freight in carload lots. All such carriers are also required to provide and maintain in serviceable condition the number of suitable and substantial locomotives and other appliances and facilities necessary to promptly and expeditiously transport from point of origin to destination in this state all freight in carload lots which shall originate on their respective lines in this state and be tendered for transportation.

*(Formerly: Acts 1907, c.231, s.2.) As amended by P.L.62-1984, SEC.14.*

#### **IC 8-3-2-3**

##### **Freight movements; time limit**

Sec. 3. All carriers subject to the provisions of this chapter are required, when any carload freight has been properly loaded and proper shipping instructions have been delivered, to move the same forward to destination, if on its line, or to the point of junction with the connecting carrier named in the shipping directions, not less than average of fifty (50) miles every twenty-four (24) hours, Sundays and legal holidays excepted; provided, that twenty-four (24) hours shall be allowed for movements through the terminals at point of origin

and for passing through any transfer or terminal en route. Every such carrier shall receive from its connecting lines, at junction points, or at point of interchange agreed upon between them, all carload freight tendered there for forwarding on its lines and shall move the same forward to destination, or to the connecting carrier named in the shipping directions an average of not less than fifty (50) miles every twenty-four (24) hours, Sundays and legal holidays excepted; provided, that twenty-four (24) hours shall be allowed for the movement through the terminal at point of origin and for passing through any transfer or terminal en route. In case any such carrier shall fail, unless prevented by wrecks or strikes or accident to tracks, to forward carload shipments as provided in this section, then every such carrier shall forfeit and pay to the consignee of such freight the sum of five dollars (\$5) per car for each twenty-four (24) hours or major part thereof that the same has not been moved forward as required by this section, and the sum due on account of any such forfeiture may be deducted from the freight charges following any such shipment. All shipments of freight in less than carload lots shall be moved by the carrier at the same rate of speed as required by this section for freight in carload lots, except that forty-eight (48) hours shall be allowed for getting out of terminal at point of origin, and for passing through any terminal or transfer en route. The penalty for failure to so move shipments of freight in less than carload lots shall be an amount equal to twenty-five percent (25%) of the freight charged on such shipment for every day's delay or fraction of a day. *(Formerly: Acts 1907, c.231, s.3.) As amended by P.L.62-1984, SEC.15.*

#### **IC 8-3-2-4**

##### **Consignee; time for freight delivery; forfeitures**

Sec. 4. All carriers subject to the provisions of this chapter shall deliver to a consignee on a private track, a track used by the consignee for loading or unloading, or on their public delivery track, and receive from a connecting carrier, at any terminal point in this state, for the purpose of delivery to points located on its line at the terminal or points reached over or through its line at the terminal, all carload freight tendered it by a connecting line, and shall deliver the same to the consignee on a private track, or on its tracks, or to the connecting line on its tracks at the terminal, within twenty-four (24) hours after the freight is tendered. If a carrier fails to deliver a car, it shall pay to the consignee the sum of five dollars (\$5) for each twenty-four (24) hours or major part thereof that it fails to make delivery as required by this section. Wrecks, strikes, or accidents to tracks are a sufficient excuse for failure to make delivery. The sum due because of a forfeiture may be deducted from the freight charges following a shipment. The Indiana department of transportation, after a full hearing of all parties interested, may relieve a carrier from switching carload freight at terminal points which is to be delivered

upon its public delivery tracks at a terminal when it appears that the facilities of the carrier at the point are only sufficient to care for the business originating and terminating on its line at the point. Each carrier may impose and collect a reasonable transportation charge for the performance of the service required by this section.

*(Formerly: Acts 1907, c.231, s.4.) As amended by P.L.62-1984, SEC.16; P.L.384-1987(ss), SEC.34; P.L.18-1990, SEC.42.*

#### **IC 8-3-2-5**

##### **Freight and coal cars; duty to provide; shipment of livestock and perishable property; preference**

Sec. 5. Every carrier subject to this chapter shall furnish to all parties who apply therefor, as provided in this chapter, suitable cars for the transportation of all kinds of freight in carload lots. If the car equipment of the carrier is not adequate to supply the whole number of cars demanded by applicants for immediate use, then the carrier shall distribute its available equipment between the applicants in proportion to their respective requirements for immediate use, and the distribution shall be made without discrimination between shippers or between competitive and noncompetitive points, subject to the rules of the Indiana department of transportation. Preference shall be given to the shipment of livestock and perishable property, and in all cases where any coal mine or mines are under contract to furnish all or any part of their product to the state for the use of all or any of the buildings or public institutions of the state, the department may, by order, require any carrier serving the mine or mines to supply empty coal cars to the mine or mines for delivery only of coal within Indiana up to one hundred percent (100%) of the cars necessary to fill the daily order contracted by the mine with the state for the use of state buildings or institutions. A carrier serving a coal mine or mines shall comply with the order. Reconsignment of shipments of coal are unlawful unless authorized by the Indiana department of transportation.

*(Formerly: Acts 1907, c.231, s.5; Acts 1920(2ss), c.15, s.1.) As amended by P.L.62-1984, SEC.17; P.L.384-1987(ss), SEC.35; P.L.18-1990, SEC.43.*

#### **IC 8-3-2-6**

##### **Carload freight shipments; billings; records; freight cars requested and furnished**

Sec. 6. Each carrier subject to this chapter shall provide and permanently keep at each billing station on its line in Indiana where it handles carload shipments a substantially bound book, which shall be in the form prescribed by the Indiana department of transportation, suitable for permanently recording and preserving the information required by this section and other information as the department may prescribe concerning the subject matter of this chapter. Any applicant for cars for use at a station shall record in the

book the date of application showing the number and kind of cars required, when required, for what kind of loading, the point of destination, and other information as the department prescribes. If it is not practical or possible for the applicant to apply in person, then application may be made in writing or by wire, and if made in writing or by wire, then one (1) authentic copy shall be furnished the local agent for filing in the local agent's office, which copy shall constitute a part of the lawful record. Each carrier shall furnish to the applicant, in not less than forty-eight (48) hours after 6 p.m. of the day of filing such application, the cars so required, unless the cars are not so soon required, in which case they shall be furnished when required. The carrier's agent at every station shall record in the book the date the cars were furnished and billed out, and other information as the department may prescribe in the form for the record, and every record, or a properly authenticated copy, shall be competent evidence in all the courts of this state and before the department concerning the matters required to be recorded therein. A carrier shall not be required to furnish cars for shipment unless applied for under this section. The distribution and delivery of coal cars to coal mines on carriers' lines in this state are not controlled by this section.

*(Formerly: Acts 1907, c.231, s.6.) As amended by P.L.62-1984, SEC.18; P.L.384-1987(ss), SEC.36; P.L.18-1990, SEC.44.*

#### **IC 8-3-2-7**

##### **Records; freight cars requested and furnished; violations**

Sec. 7. It is a Class C infraction for a person to make any false entry in the record provided for in section 6 of this chapter, or to alter, change, or mutilate any entry therein made, without notice to and with the consent of the other party interested therein. It is a Class C infraction for a person to record in such a record a demand for cars not required, or for more cars than are required, or to duplicate any demand for cars previously ordered and not then furnished.

*(Formerly: Acts 1907, c.231, s.7.) As amended by Acts 1978, P.L.2, SEC.822.*

#### **IC 8-3-2-8**

##### **Freight cars; delay in furnishing; forfeiture**

Sec. 8. Every carrier subject to the provisions of this chapter which shall fail and neglect to furnish cars to applicants in accordance with the application therefor, and as provided in section 6 of this chapter, shall forfeit and pay to the applicant the sum of one dollar (\$1) for each car for each twenty-four (24) hours, or the major part thereof, that the delivery of the same shall be delayed beyond the date when the cars were required to be furnished; provided, that such forfeiture shall not accrue if the carrier shall show to the satisfaction of the court or jury trying the cause that it did not have the cars in its control at the time they were required for delivery, and that, for a reasonable time prior to the failure and at the time of the failure, it

had made and then made a bona fide and reasonable effort to supply its line with the necessary car equipment to care for the traffic then on its line and such future traffic as it could reasonably anticipate would be offered for shipment.

*(Formerly: Acts 1907, c.231, s.8.) As amended by P.L.62-1984, SEC.19.*

#### **IC 8-3-2-9**

##### **Coal cars; duty to furnish**

Sec. 9. At the request of a carrier, coal mine operator, or other interested party, the Indiana department of transportation, after five (5) days notice to the interested carrier and the coal mine operators on the carrier's line and a full hearing, shall adopt rules for the distribution by the carrier of empty coal cars to the coal mines on the line of the carrier. The rules adopted by the department may not conflict with the provisions of section 5 of this chapter. The department shall prescribe the manner in which the cars shall be applied for, the manner in which the capacity and output of the mines shall be ascertained, and the manner in which empty cars shall be distributed and delivered. The department shall adopt other rules concerning the subject as are necessary to secure a fair and equitable distribution of cars without discrimination, so that each mine, in case of car shortage, shall be secured the maximum amount of working time to which it is entitled, after taking into consideration the capacity and output and the shipping orders of all the mines and the available equipment on the line for use in their operation. If conditions are the same, the department may adopt the same rules for all carriers having coal mines on their lines, or different rules for different lines, as the differing conditions may require. The rules shall go into effect upon the date fixed by the department and shall be observed by the carriers and all other persons until set aside or modified by the department. The department may, at any time, upon application by an interested party, modify or set aside the rules and adopt other rules as required. Any party interested in such rules may file a civil suit against the department in any court of competent jurisdiction to set aside or annul a rule adopted by the department.

*(Formerly: Acts 1907, c.231, s.9.) As amended by P.L.62-1984, SEC.20; P.L.384-1987(ss), SEC.37; P.L.18-1990, SEC.45.*

#### **IC 8-3-2-10**

##### **Coal cars; failure to furnish; forfeiture**

Sec. 10. A carrier that fails, neglects, or refuses to deliver to a coal mine operator on its line empty coal cars for use at the mine in accordance with this chapter and the rules of the Indiana department of transportation adopted under this chapter shall forfeit to the coal mine operator the sum of two dollars (\$2) per day for each car for each day, or major part thereof, that the car remains undelivered.

*(Formerly: Acts 1907, c.231, s.10.) As amended by P.L.62-1984,*

*SEC.21; P.L.384-1987(ss), SEC.38; P.L.18-1990, SEC.46.*

#### **IC 8-3-2-11**

##### **Coal in transit; confiscation by carrier**

Sec. 11. When for any reason coal in transit is confiscated by the carrier, immediate notice shall be given both consignor and consignee of such confiscation, and any carrier failing or refusing to give such immediate notice shall, on settlement, pay fifty cents (50 cents) per ton over and above contract-price to consignee for such coal confiscated.

*(Formerly: Acts 1907, c.231, s.11.)*

#### **IC 8-3-2-12**

##### **Forfeiture and damages; delay in transportation or failure to furnish freight cars**

Sec. 12. The forfeiture accruing under this chapter may be collected in any court of competent jurisdiction in any county in this state into which the carrier operates, and in case the plaintiff recovers, the court or jury trying the cause shall allow the plaintiff a reasonable sum for his attorney's fees. The accruing and collection of any such forfeiture shall not preclude any such party from collecting actual damages in excess thereof which he shall have sustained on account of any such delay in transportation or failure to furnish cars as required by this chapter.

*(Formerly: Acts 1907, c.231, s.12.) As amended by P.L.62-1984, SEC.22.*

#### **IC 8-3-2-13**

##### **Repealed**

*(Repealed by P.L.384-1987(ss), SEC.95.)*

#### **IC 8-3-2-14**

##### **Actions and proceedings to enforce railroad law**

Sec. 14. The Indiana department of transportation may inquire into the management and business of carriers as regulated by this chapter and shall keep informed as to the manner and method in which the management is conducted. The department may obtain from the carriers, and their agents, officers, and employees full and complete information to enable it to perform its duties under this chapter. The department shall execute and enforce this chapter and for that purpose may, with the approval of the governor, employ and pay special counsel and other persons to assist it. The department may sue in its name in all the courts of Indiana and prosecute all necessary and appropriate actions at law or suits in equity for the purpose of securing the observance and enforcement of this chapter. If the department, in an action, is entitled to a temporary restraining order or injunction, pending final hearing, the court shall grant the order or injunction with all reasonable dispatch and without requiring

bond or surety from the department. All state statutes, concerning examinations by the department of books and papers, and the production thereof, and the attendance of examination of witnesses in any investigation held by the department, regulate the proceedings of the department in any investigations held by it under this chapter. *(Formerly: Acts 1907, c.231, s.14.) As amended by P.L.62-1984, SEC.24; P.L.384-1987(ss), SEC.39; P.L.18-1990, SEC.47.*

#### **IC 8-3-2-15**

##### **Temporary and emergency rates, routes, and regulations; receivership**

Sec. 15. If a carrier fails to provide the equipment, motive power, and other facilities necessary to properly receive and care for the business on their lines, as required by this chapter, or fails to perform the duties enjoined upon it by this chapter, and because of the failure considerable traffic on its line is refused or not promptly moved as required by this chapter, resulting in material injury to the citizens of a community in Indiana, or the industries or commerce of Indiana, then the Indiana department of transportation, after five (5) days notice to the carrier interested and a hearing, shall adopt temporary emergency rates, establish temporary emergency routes of shipment, and adopt temporary emergency rules concerning the movement of traffic as are necessary to correct the existing conditions and may issue orders suspending certain traffic in favor of other traffics for the purpose of preventing existing or threatened public calamity or distress. The carrier shall promptly comply with all orders of the department, and, upon its failure so to do, the department shall apply to a court of competent jurisdiction for the appointment of an operating receiver to enforce the orders and rules adopted by the department and may also apply to a court for the appointment of a receiver for a carrier to enforce a provision or requirement of this chapter which the offending carrier has failed to observe. In the proceeding, the court may operate a carrier through its receiver, enforce orders made by the department concerning the carrier as approved by the court, and continue so to do so long as is necessary. The court may order its receiver to purchase the equipment and motive power, and supply other appliances and facilities as may be necessary to properly transact the carrier's present and prospective business in Indiana as required by this chapter. The court may authorize its receiver to issue and sell receiver's certificates for the purpose of obtaining funds for the uses specified in this chapter or to issue certificates of indebtedness to pay for expenditures authorized by this chapter. The court may declare certificates authorized under this chapter to be the first and prior lien upon the property and income of the carrier in the manner and upon the terms as the court shall decree.

*(Formerly: Acts 1907, c.231, s.15.) As amended by P.L.62-1984, SEC.25; P.L.384-1987(ss), SEC.40; P.L.18-1990, SEC.48.*

**IC 8-3-2-16****Partial invalidity of law**

Sec. 16. In case any of the provisions of this chapter shall be held invalid, such fact shall not operate to make invalid any other portion of the chapter, and the portions of this chapter not adjudged to be invalid shall be observed and enforced the same as though the invalid portion had not been enacted.

*(Formerly: Acts 1907, c.231, s.16.) As amended by P.L.62-1984, SEC.26.*