STATE OF NEW YORK

380

2023-2024 Regular Sessions

IN ASSEMBLY

January 9, 2023

Introduced by M. of A. BURGOS, JOYNER -- read once and referred to the Committee on Transportation

AN ACT to amend the railroad law, in relation to providing that inter-city rail passenger services and commuter rail services shall be liable for health care costs for injuries to railroad employees caused by passengers, customers or members of the public

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

Section 1. Section 64 of the railroad law is amended to read as follows:

§ 64. Injuries to employees. **1.** In all actions against a railroad corporation, foreign or domestic, doing business in this state, or against a receiver thereof, for personal injury to, or death resulting from personal injury of any person, while in the employment of such corporation, or receiver, arising from the negligence of such corporation or receiver or of any of its [~~or~~], his **or her** officers or employees, every employee, or his **or her** legal representatives, shall have the same rights and remedies for an injury, or for death, suffered by him **or her**, from the act or omission of such corporation or receiver or of its [~~or~~], his **or her** officers or employees, as are now allowed by law, and, in addition to the liability now existing by law, it shall be held in such actions that persons engaged in the service of any railroad corporation, foreign or domestic, doing business in this state, or in the service of a receiver thereof, who are intrusted by such corporation or receiver, with the authority of superintendence, control or command of other persons in the employment of such corporation or receiver, or with the authority to direct or control any other employee in the performance of the duty of such employee, or who have, as a part of their duty, for the time being, physical control or direction of the movement of a signal, switch, locomotive engine, car, train or telegraph office, are

EXPLANATION--Matter in *italics* (underscored) is new; matter in brackets [-] is old law to be omitted.

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vice-principals of such corporation or receiver, and are not fellow-servants of such injured or deceased employee.

2. If an employee, engaged in the service of any such railroad corporation, or of a receiver thereof, shall receive any injury by reason of any defect in the condition of the ways, works, machinery, plant, tools or implements, or of any car, train, locomotive or attachment thereto belonging, owned or operated, or being run and operated by such corporation or receiver, when such defect could have been discovered by such corporation or receiver, by reasonable and proper care, tests or inspection, such corporation or receiver shall be deemed to have had knowledge of such defect before and at the time such injury is sustained; and when the fact of such defect shall be proved upon the trial of any action in the courts of this state, brought by such employee or his **or her** legal representatives, against any such railroad corporation or receiver, on account of such injuries so received, the same shall be prima facie evidence of negligence on the part of such corporation or receiver. [~~This section shall not affect actions or causes of action existing on May twenty-ninth, nineteen hundred and six; and no~~]

3. If any employee, engaged in the service of any intercity rail passenger service, as defined by section ninety-seven of this article, or of a commuter rail service, as defined by section ninety-seven-a of this article, shall suffer a physical and/or mental injury that is caused by a passenger, customer or member of the public while the employee is performing an assigned duty, pursuant to subdivision eleven of section 120.05 of the penal law or otherwise, the intercity rail passenger service or commuter rail service shall be held liable for any health care costs attributable to such injury and, in cases where it is determined by his or her health care provider that such injured employee is unable to perform his or her assigned duties due to such injury, such employee shall be compensated by the intercity rail passenger service or commuter rail service at an amount not less than the employee would have earned on the assignment they would have worked until such time that such employee is designated able to return to work by his or her health care provider.

4. No contract, receipt, rule or regulation, between an employee and a railroad corporation or receiver, shall exempt or limit the liability of such corporation or receiver from the provisions of this section**, however a collective bargaining agreement may alternatively bargain for benefits greater than those provided by this section**.

§ 2. This act shall take effect immediately.