

48:12-152  
LEGISLATIVE HISTORY CHECKLIST  
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(Railroad immunity)

NJSA: 48:12-152 et al

LAWS OF: 1997 CHAPTER: 309

BILL NO: A1788

SPONSOR(S): Augustine

DATE INTRODUCED: March 25, 1996

COMMITTEE: ASSEMBLY: Transportation & Communications

SENATE: Transportation

AMENDED DURING PASSAGE: No Assembly committee substitute enacted

DATE OF PASSAGE: ASSEMBLY: June 26, 1997

SENATE: December 11, 1997

DATE OF APPROVAL: January 8, 1998

FOLLOWING STATEMENTS ARE ATTACHED IF AVAILABLE:

SPONSOR STATEMENT: Yes

COMMITTEE STATEMENT: ASSEMBLY: Yes 6-3-97 & 6-9-97

SENATE: Yes

FISCAL NOTE: No

VETO MESSAGE: No

MESSAGE ON SIGNING: No

FOLLOWING WERE PRINTED:

REPORTS: No

HEARINGS: No

See newspaper clippings--attached:

"Law bans payment to respassers...", 1-9-98, Asbury Park Press.

"New railroad trespassers law ends lawsuits," 1-9-98, Courier News.

KBP:pp

P.L. 1997, CHAPTER 309, *approved January 8, 1998*  
Assembly Committee Substitute for  
Assembly, No. 1788

1 AN ACT concerning railroads and amending R.S.48:12-152 and  
2 P.L.1979, c.150.

3  
4 **BE IT ENACTED** *by the Senate and General Assembly of the State*  
5 *of New Jersey:*

6  
7 1. R.S.48:12-152 is amended to read as follows:

8 48:12-152. **[It shall not be lawful for any]**a. No person other than  
9 those connected with or employed upon the railroad [to walk along the  
10 tracks of any railroad except when the same shall be laid upon a  
11 public highway.

12 Any person injured by an engine or car while walking, standing or  
13 playing on a railroad or by jumping on or off a car while in motion  
14 shall be deemed to have contributed to the injury sustained and shall  
15 not recover therefor any damages from the company owning or  
16 operating the railroad. This section shall not apply to the crossing of  
17 a railroad by a person at any lawful public or private crossing.] who  
18 are acting within the scope of their employment shall enter upon the  
19 right of way of any railroad or come into contact with any equipment,  
20 machinery, wires or rolling stock of any railroad. This section shall  
21 not prohibit a passenger for hire from utilizing those parts of a railroad  
22 particularly intended for passenger use nor shall it prohibit a person  
23 from using a crossing established by the railroad.

24 b. No person shall recover from the company owning or operating  
25 the railroad or from any officer or employee of the railroad, any  
26 damages for death or injury to person or property as a result of  
27 contact with any equipment, machinery, wires or rolling stock of any  
28 railroad, if death or injury occurred while that person was:

29 (1) under the influence of alcohol as evidenced by a blood alcohol  
30 concentration of 0.10% or higher by weight of alcohol in the person's  
31 blood; or

EXPLANATION - Matter enclosed in bold-faced brackets [thus] in the above bill is not enacted and is intended to be omitted in the law.

Matter underlined thus is new matter.

1 (2) under the influence of drugs, other than drugs medically  
2 prescribed for use by that person and used in the manner prescribed;

3 or

4 (3) engaging in conduct intended to result in personal bodily injury  
5 or death; or

6 (4) engaging in conduct proscribed by subsection a. of this section;  
7 or

8 (5) using the property of any railroad in a manner in which it was  
9 not intended to be used or in violation of posted regulations.

10 In the absence of proof to the contrary, any person injured while  
11 attempting to board or disembark from a moving train shall be  
12 presumed to have used the property in a manner in which it was not  
13 intended to be used.

14 This subsection shall apply notwithstanding the provisions of  
15 P.L.1973, c.146 (C.2A:15-5.1 et seq.).

16 c. This section shall not preclude recovery for injury or death of  
17 a person who was, at the time of the injury, less than 18 years of age.  
18 (cf: R.S.48:12-152)

19  
20 2. Section 8 of P.L.1979, c.150 (C.27:25-8) is amended to read  
21 as follows:

22 8. a. The corporation or any subsidiary thereof shall not be  
23 considered a public utility as defined in R.S.48:2-13 and except with  
24 regard to subsection c. of this section, subsection b. of R.S.48:3-38  
25 **[and]** , section 2 of P.L.1989, c.291 (C.27:25-15.1) and R.S.48:12-  
26 152 the provisions of Title 48 of the Revised Statutes shall not apply  
27 to the corporation or any subsidiary thereof.

28 b. The authority hereby given the corporation pursuant to section  
29 6 of this act with respect to fares and service, shall be exercised  
30 without regard or reference to the jurisdiction vested in the  
31 Department of Transportation by R.S.48:2-21, 48:2-24 and 48:4-3.  
32 The Department of Transportation shall resume jurisdiction over  
33 service and fares upon the termination and discontinuance of a  
34 contractual relationship between the corporation and a private or  
35 public entity relating to the provision of public transportation services  
36 operated under the authority of certificates of public convenience and  
37 necessity previously issued by the department or its predecessors;  
38 provided, however, that no private entity shall be required to restore  
39 any service discontinued or any fare changed during the existence of  
40 a contractual relationship with the corporation, unless the Department  
41 of Transportation shall determine, after notice and hearing, that the  
42 service or fare is required by public convenience and necessity.

43 c. Notwithstanding any other provisions of this act, all vehicles  
44 used by any public or private entity pursuant to contract authorized by  
45 this act, and all vehicles operated by the corporation directly, shall be  
46 subject to the jurisdiction of the Department of Transportation with

1 respect to maintenance, specifications and safety to the same extent  
2 such jurisdiction is conferred upon the department by Title 48 of the  
3 Revised Statutes.

4 d. Before implementing any fare increase for any motorbus regular  
5 route or rail passenger services, or the substantial curtailment or  
6 abandonment of any such services, the corporation shall hold a public  
7 hearing in the area affected during evening hours. Notice of such  
8 hearing shall be given by the corporation at least 15 days prior to such  
9 hearing to the governing body of each county whose residents will be  
10 affected and to the clerk of each municipality in the county or counties  
11 whose residents will be affected; such notice shall also be posted at  
12 least 15 days prior to such hearing in prominent places on the railroad  
13 cars and buses serving the routes to be affected.

14 (cf: P.L.1989, c.291, s.3)

15

16 3. This act shall take effect immediately and shall apply to causes  
17 of action which accrue on or after the effective date of this act.

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22 Provides that railroad immunity act controls in certain actions  
23 concerning railroad-related injuries.

ASSEMBLY, No. 1788

STATE OF NEW JERSEY

INTRODUCED MARCH 25, 1996

By Assemblyman AUGUSTINE

1 AN ACT concerning railroads and amending R.S.48:12-152.

2

3 **BE IT ENACTED** by the Senate and General Assembly of the State  
4 of New Jersey:

5

6 1. R.S.48:12-152 is amended to read as follows:

7 48:12-152. It shall not be lawful for any person other than those  
8 connected with or employed upon the railroad to walk along the tracks  
9 of any railroad except when the same shall be laid upon a public  
10 highway.

11 Any person injured by an engine or car while walking, standing or  
12 playing on a railroad or by jumping on or off a car while in motion  
13 **[shall be deemed to have contributed to the injury sustained and]**  
14 shall not recover therefor any damages from the company owning or  
15 operating the railroad. This section shall apply notwithstanding the  
16 provisions of P.L.1973, c.146 (C.2A:15-5.1 et seq.), but shall not  
17 apply to the crossing of a railroad by a person at any lawful public or  
18 private crossing.

19 (cf: R.S.48:12-152)

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21 2. This act shall take effect immediately and shall apply to any  
22 action for damages initiated on or after the effective date of this act.

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STATEMENT

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27 R.S.48:12-152 provides that any person injured by a railroad engine  
28 or car while walking, standing or playing on a railroad shall be deemed  
29 to have contributed to the injury sustained and therefore shall not  
30 recover any damages from the company owning or operating the  
31 railroad. However, in the case of Renz v. Penn Central Corp., 87 N.J.  
32 437 (1981), the New Jersey Supreme Court held, in effect, that the  
33 provisions of the comparative negligence act, P.L.1973, c.146  
34 (C.2A:15-5.1 et seq.), rather than the provisions of R.S.48:12-152,

EXPLANATION - Matter enclosed in bold-faced brackets **[thus]** in the above bill is not enacted and intended to be omitted in the law.

Matter underlined thus is new matter.

1 should prevail in railroad-related injury cases. In Renz the Court  
2 determined that the absolute bar to recovery under contributory  
3 negligence which existed in R.S.48:12-152 should be replaced by the  
4 apportionment of the loss among those who are at fault as under the  
5 comparative negligence doctrine. This bill would clarify the  
6 Legislature's intent that the provisions R.S.48:12-152 would control  
7 in railroad-related injuries sustained by trespassers; that is, there  
8 remains an absolute bar to recovery for these injuries despite the  
9 adoption of the comparative negligence doctrine in New Jersey. New  
10 Jersey Transit estimates that since 1981 over 250 trespasser cases have  
11 resulted in approximately \$10 million in actual and projected claim  
12 payouts by the corporation.

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17 Provides that railroad immunity act controls in actions concerning  
18 railroad-related injuries sustained by trespassers.

[Passed Both Houses]

ASSEMBLY COMMITTEE SUBSTITUTE FOR  
ASSEMBLY, No. 1788

**STATE OF NEW JERSEY**

ADOPTED JUNE 9, 1997

Sponsored by Assemblyman AUGUSTINE

1 AN ACT concerning railroads and amending R.S.48:12-152 and  
2 P.L.1979, c.150.

3  
4 **BE IT ENACTED** *by the Senate and General Assembly of the State*  
5 *of New Jersey:*

6  
7 1. R.S.48:12-152 is amended to read as follows:

8 48:12-152. **[It shall not be lawful for any]a.** No person other  
9 than those connected with or employed upon the railroad **[to walk**  
10 **along the tracks of any railroad except when the same shall be laid**  
11 **upon a public highway.**

12 Any person injured by an engine or car while walking, standing or  
13 playing on a railroad or by jumping on or off a car while in motion  
14 shall be deemed to have contributed to the injury sustained and shall  
15 not recover therefor any damages from the company owning or  
16 operating the railroad. This section shall not apply to the crossing of  
17 a railroad by a person at any lawful public or private crossing. **[ who**  
18 **are acting within the scope of their employment shall enter upon the**  
19 **right of way of any railroad or come into contact with any equipment,**  
20 **machinery, wires or rolling stock of any railroad. This section shall**  
21 **not prohibit a passenger for hire from utilizing those parts of a railroad**  
22 **particularly intended for passenger use nor shall it prohibit a person**  
23 **from using a crossing established by the railroad.**

24 **b. No person shall recover from the company owning or operating**  
25 **the railroad or from any officer or employee of the railroad, any**  
26 **damages for death or injury to person or property as a result of**  
27 **contact with any equipment, machinery, wires or rolling stock of any**  
28 **railroad, if death or injury occurred while that person was:**

29 **(1) under the influence of alcohol as evidenced by a blood alcohol**

EXPLANATION - Matter enclosed in bold-faced brackets [thus] in the above bill is not enacted and is intended to be omitted in the law.

Matter underlined thus is new matter.

1 concentration of 0.10% or higher by weight of alcohol in the person's  
2 blood; or

3 (2) under the influence of drugs, other than drugs medically  
4 prescribed for use by that person and used in the manner prescribed;

5 or

6 (3) engaging in conduct intended to result in personal bodily injury  
7 or death; or

8 (4) engaging in conduct proscribed by subsection a. of this section;  
9 or

10 (5) using the property of any railroad in a manner in which it was  
11 not intended to be used or in violation of posted regulations.

12 In the absence of proof to the contrary, any person injured while  
13 attempting to board or disembark from a moving train shall be  
14 presumed to have used the property in a manner in which it was not  
15 intended to be used.

16 This subsection shall apply notwithstanding the provisions of  
17 P.L.1973, c.146 (C.2A:15-5.1 et seq.).

18 c. This section shall not preclude recovery for injury or death of  
19 a person who was, at the time of the injury, less than 18 years of age.  
20 (cf: R.S.48:12-152)

21

22 2. Section 8 of P.L.1979, c.150 (C.27:25-8) is amended to read  
23 as follows:

24 8. a. The corporation or any subsidiary thereof shall not be  
25 considered a public utility as defined in R.S.48:2-13 and except with  
26 regard to subsection c. of this section, subsection b. of R.S.48:3-38  
27 **[and]** , section 2 of P.L.1989, c.291 (C.27:25-15.1) and R.S.48:12-  
28 152 the provisions of Title 48 of the Revised Statutes shall not apply  
29 to the corporation or any subsidiary thereof.

30 b. The authority hereby given the corporation pursuant to section  
31 6 of this act with respect to fares and service, shall be exercised  
32 without regard or reference to the jurisdiction vested in the  
33 Department of Transportation by R.S.48:2-21, 48:2-24 and 48:4-3.  
34 The Department of Transportation shall resume jurisdiction over  
35 service and fares upon the termination and discontinuance of a  
36 contractual relationship between the corporation and a private or  
37 public entity relating to the provision of public transportation services  
38 operated under the authority of certificates of public convenience and  
39 necessity previously issued by the department or its predecessors;  
40 provided, however, that no private entity shall be required to restore  
41 any service discontinued or any fare changed during the existence of  
42 a contractual relationship with the corporation, unless the Department  
43 of Transportation shall determine, after notice and hearing, that the  
44 service or fare is required by public convenience and necessity.

45 c. Notwithstanding any other provisions of this act, all vehicles  
46 used by any public or private entity pursuant to contract authorized by



1 this act, and all vehicles operated by the corporation directly, shall be  
2 subject to the jurisdiction of the Department of Transportation with  
3 respect to maintenance, specifications and safety to the same extent  
4 such jurisdiction is conferred upon the department by Title 48 of the  
5 Revised Statutes.

6 d. Before implementing any fare increase for any motorbus regular  
7 route or rail passenger services, or the substantial curtailment or  
8 abandonment of any such services, the corporation shall hold a public  
9 hearing in the area affected during evening hours. Notice of such  
10 hearing shall be given by the corporation at least 15 days prior to such  
11 hearing to the governing body of each county whose residents will be  
12 affected and to the clerk of each municipality in the county or counties  
13 whose residents will be affected; such notice shall also be posted at  
14 least 15 days prior to such hearing in prominent places on the railroad  
15 cars and buses serving the routes to be affected.

16 (cf: P.L.1989, c.291, s.3)

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18 3. This act shall take effect immediately and shall apply to causes  
19 of action which accrue on or after the effective date of this act.

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23

24 Provides that railroad immunity act controls in certain actions  
25 concerning railroad-related injuries.

ASSEMBLY TRANSPORTATION AND COMMUNICATIONS  
COMMITTEE

STATEMENT TO

ASSEMBLY COMMITTEE SUBSTITUTE FOR  
ASSEMBLY, No. 1788

**STATE OF NEW JERSEY**

DATED: JUNE 9, 1997

The Assembly Transportation and Communications Committee reports favorably an Assembly Committee Substitute for Assembly Bill No. 1788.

This substitute bill would amend R.S.48:12-152 to clarify the law concerning prohibited behavior with regard to railroad property and the ability to recover for injuries sustained as a result of that behavior. It is the sponsor's intent that the provisions of this bill affect recovery when a person engages in prohibited behavior and not when a person is injured only because of a railroad's negligent or reckless action.

The substitute bill provides that no person other than one connected with or employed upon the railroad acting within the scope of their employment may enter upon the right of way of any railroad or to come in contact with any equipment, machinery, wires or rolling stock of any railroad. However, these provisions would not prohibit a passenger for hire from utilizing those parts of the railroad particularly intended for passenger use nor shall it prohibit a person from using a crossing established by the railroad.

The substitute bill also provides that a person shall not recover for injuries sustained while coming into contact with any real property, equipment, machinery, wires or rolling stock of any railroad while that person was:

(1) under the influence of alcohol as evidenced by a blood alcohol concentration of 0.10% or higher by weight of alcohol in the person's blood; or

(2) under the influence of drugs, other than drugs medically prescribed for use by that person and used in the manner prescribed; or

(3) engaging in conduct intended to result in personal bodily injury or death; or

(4) engaging in conduct proscribed by subsection a. of section 1 of this bill; or

(5) using the property of any railroad in a manner in which it was not intended to be used or in violation of posted regulations.

The substitute bill also establishes a rebuttable presumption that

any person injured while attempting to board or disembark from a moving train used the property in a manner in which it was not intended to be used.

The substitute bill provides that its provisions shall apply notwithstanding the provisions of P.L.1973, c.146 (C.2A:15-5.1 et seq.), the comparative negligence act.

The substitute bill does not preclude recovery for injury or death of a person who was, at the time of the injury, less than 18 years of age.

ASSEMBLY TRANSPORTATION AND COMMUNICATIONS  
COMMITTEE

STATEMENT TO

**ASSEMBLY, No. 1788**

with committee amendments

**STATE OF NEW JERSEY**

DATED: JUNE 3, 1996

The Assembly Transportation and Communications Committee favorably reports Assembly Bill No. 1788 with committee amendments.

This amended bill would clarify the Legislature's intent that the provisions of R.S. 48:12-152 would control in railroad-related injuries sustained by a trespasser; that is, there remains an absolute bar to recovery for these injuries despite the adoption of the comparative negligence doctrine in New Jersey.

R.S.48:12-152 provides that any person injured by a railroad engine or car while walking, standing or playing on a railroad shall be deemed to have contributed to the injury sustained and therefore shall not recover any damages from the company owning or operating the railroad. However, in the case of Renz v. Penn Central Corp., 87 N.J. 437 (1981), the New Jersey Supreme Court held, in effect, that the provisions of the comparative negligence act, P.L.1973, c.146 (C.2A:15-5.1 et seq.), rather than the provisions of R.S.48:12-152, should prevail in railroad-related injury cases. In Renz the Court determined that the absolute bar to recovery which existed in R.S.48:12-152 was grounded in the doctrine of contributory negligence, not trespass, and should be replaced by the apportionment of the loss among those who are at fault as under the comparative negligence doctrine. This bill would amend R.S.48:12-152 to specifically provide that its provisions shall apply notwithstanding the adoption of the comparative negligence act. The bill also amends the New Jersey Transit Corporation's enabling laws to clarify that the provisions of R.S.48:12-152 would apply to the corporation.

New Jersey Transit estimates that since 1981 over 300 trespasser cases have resulted in approximately \$24 million in actual and projected claim payouts by the corporation.

The committee amendments clarify the types of behavior which would fall under the provisions of R.S.48:12-152. The amendments also provide that the bar to recovery extends to suits brought against employees of a railroad company and clarify that the provisions of

R.S.48:12-152 would extend to the corporation. Finally, the committee amendments provide that the provisions of the bill would apply to causes of action which accrue on or after the effective date of the act.

SENATE TRANSPORTATION COMMITTEE

STATEMENT TO

ASSEMBLY COMMITTEE SUBSTITUTE FOR  
**ASSEMBLY, No. 1788**

**STATE OF NEW JERSEY**

DATED: DECEMBER 1, 1997

The Senate Transportation Committee favorably reports Assembly Committee Substitute for Assembly Bill No. 1788.

This bill would amend R.S.48:12-152 to clarify the law concerning prohibited behavior with regard to railroad property and the ability to recover for injuries sustained as a result of that behavior. It is the sponsor's intent that the provisions of this bill affect recovery when a person engages in prohibited behavior and not when a person is injured only because of a railroad's negligent or reckless action.

The bill provides that no person other than one connected with or employed upon the railroad acting within the scope of their employment may enter upon the right of way of any railroad or to come in contact with any equipment, machinery, wires or rolling stock of any railroad. However, these provisions would not prohibit a passenger for hire from utilizing those parts of the railroad particularly intended for passenger use nor shall it prohibit a person from using a crossing established by the railroad.

The bill also provides that a person shall not recover for injuries sustained while coming into contact with any equipment, machinery, wires or rolling stock of any railroad while that person was:

(1) under the influence of alcohol as evidenced by a blood alcohol concentration of 0.10% or higher by weight of alcohol in the person's blood; or

(2) under the influence of drugs, other than drugs medically prescribed for use by that person and used in the manner prescribed; or

(3) engaging in conduct intended to result in personal bodily injury or death; or

(4) engaging in conduct proscribed by subsection a. of section 1 of this bill; or

(5) using the property of any railroad in a manner in which it was not intended to be used or in violation of posted regulations.

The bill also establishes a rebuttable presumption that any person injured while attempting to board or disembark from a moving train used the property in a manner in which it was not intended to be used.

The bill provides that its provisions shall apply notwithstanding the provisions of P.L.1973, c.146 (C.2A:15-5.1 et seq.), the comparative negligence act.

The bill does not preclude recovery for injury or death of a person who was, at the time of the injury, less than 18 years of age.

LEGISLATIVE FISCAL ESTIMATE TO

[First Reprint]

**ASSEMBLY, No. 1788**

**STATE OF NEW JERSEY**

DATED: JUNE 25, 1996

Assembly Bill No. 1788 (1R) of 1996 provides that any person injured while unlawfully on a railroad or railroad vehicle would not recover damages from the company owning or operating the railroad.

New Jersey Transit (NJT) has noted that since 1981 over 300 trespasser cases have resulted in about \$24 million in actual and projected claim payouts by the corporation.

The Office of Legislative Services (OLS) anticipates that enactment of this bill would reduce future liability claims against NJT, thereby saving money for the corporation. However, OLS cannot readily determine the amount of the avoided costs.

The legislative fiscal estimate has been produced by the Office of Legislative Services due to the failure of the Executive Branch to respond to our request for a fiscal note.

This fiscal estimate has been prepared pursuant to P.L.1980, c.67.