

ASSEMBLY RESOLUTION No. 31

STATE OF NEW JERSEY 219th LEGISLATURE

PRE-FILED FOR INTRODUCTION IN THE 2020 SESSION

Sponsored by:

Assemblyman NICHOLAS CHIARAVALLOTI

District 31 (Hudson)

SYNOPSIS

Urges federal officials to reconsider withdrawing advance notice of proposed rulemaking concerning obstructive sleep apnea.

CURRENT VERSION OF TEXT

Introduced Pending Technical Review by Legislative Counsel.



1 **AN ASSEMBLY RESOLUTION** urging federal officials to reconsider
2 withdrawing the advance notice of proposed rulemaking
3 concerning “Evaluation of Safety Sensitive Personnel for
4 Moderate-to-Severe Obstructive Sleep Apnea.”
5
6 **WHEREAS**, On March 10, 2016, the Federal Motor Carrier Safety
7 Administration (FMCSA) and the Federal Railroad Administration
8 (FRA) issued a joint advance notice of proposed rulemaking and
9 request for public comments concerning “Evaluation of Safety
10 Sensitive Personnel for Moderate-to-Severe Obstructive Sleep
11 Apnea” (OSA ANPRM); and
12 **WHEREAS**, According to the OSA ANPRM, obstructive sleep apnea
13 (OSA) is a respiratory disorder that is characterized by a reduction
14 or cessation of breathing during sleep and repeated episodes of
15 upper airway collapse, which can cause the affected person to
16 awaken partially and, if undiagnosed or inadequately treated, can
17 result in deficits in attention, concentration, situational awareness,
18 and memory; and
19 **WHEREAS**, People who suffer from undiagnosed OSA are often
20 unaware that they have experienced interrupted sleep from
21 difficulty breathing and OSA is often underdiagnosed; and
22 **WHEREAS**, The OSA ANPRM requested “data and information
23 concerning the prevalence of moderate-to-severe...[OSA] among
24 individuals occupying safety sensitive positions in highway and rail
25 transportation, and on its potential consequences for safety of rail
26 and highway transportation”; and
27 **WHEREAS**, The OSA ANPRM also sought, in part, information
28 concerning the “costs and benefits of requiring motor carrier and
29 rail transportation workers in safety sensitive positions who exhibit
30 multiple risk factors for OSA to undergo evaluation and treatment
31 by a healthcare professional with expertise in sleep disorders”; and
32 **WHEREAS**, The OSA ANPRM provides examples of accidents where
33 the National Transportation Safety Board (NTSB) determined that
34 OSA was a factor in causing a motor carrier or train accident or
35 near-accident, including the December 1, 2013 Metro-North
36 Railroad derailment in which a southbound Metro-North passenger
37 train derailed near Spuyten Duyvil Station in New York City,
38 resulting in over 60 injured passengers and four fatalities; and
39 **WHEREAS**, The NTSB concluded that the probable cause of the Metro-
40 North accident “was the engineer’s noncompliance with the 30-mph
41 speed restriction because he had fallen asleep due to undiagnosed
42 severe obstructive sleep apnea exacerbated by a recent circadian
43 rhythm shift required by his work schedule”; and
44 **WHEREAS**, The lawyer of the train engineer who was involved in the
45 September 29, 2016 Hoboken Terminal accident that resulted in
46 one fatality and approximately 110 injured passengers and
47 crewmembers has indicated that the train engineer had undiagnosed
48 severe sleep apnea; and
49 **WHEREAS**, The FMCSA and FRA stated in the OSA ANPRM that
50 they believed that regulatory action may be necessary “[b]ased on

1 the potential severity of OSA-related transportation incidents and
2 accidents, and the varied, non-regulatory, OSA-related actions
3 taken by the Department's Operating Administrations to date" and
4 that "the Agencies are considering taking regulatory action to
5 ensure consistency in addressing the safety issue presented by
6 transportation workers with safety sensitive duties who are at risk
7 for OSA"; and

8 **WHEREAS**, The NTSB has recommended that the FRA "[r]equire
9 railroads to medically screen employees with safety-sensitive
10 positions for sleep apnea and other sleep disorders" and, according
11 to news reports, an NTSB spokesperson stated that OSA "has been
12 in the probable cause of 10 highway and rail accidents investigated
13 by the NTSB in the past 17 years and ...[OSA] is an issue being
14 examined in several, ongoing, NTSB rail and highway
15 investigations"; and

16 **WHEREAS**, On August 8, 2017, the FMCSA and FRA withdrew its
17 OSA ANPRM stating, in part, that the "current safety programs and
18 FRA's rulemaking addressing fatigue risk management are the
19 appropriate avenues to address OSA"; and

20 **WHEREAS**, Since OSA has been a factor in causing motor carrier and
21 train accidents which have resulted in fatalities and injuries, it is in
22 the interest of the traveling public and residents of this State that the
23 Administrator of the FMCSA and Administrator of the FRA
24 reconsider withdrawing the joint advance notice of proposed
25 rulemaking concerning "Evaluation of Safety Sensitive Personnel
26 for Moderate-to-Severe Obstructive Sleep Apnea"; now, therefore,

27
28 **BE IT RESOLVED** by the General Assembly of the State of New
29 Jersey:

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31 1. This House urges the Administrator of the Federal Motor
32 Carrier Safety Administration and Administrator of the Federal
33 Railroad Administration to reconsider withdrawing the joint
34 advance notice of proposed rulemaking concerning "Evaluation of
35 Safety Sensitive Personnel for Moderate-to-Severe Obstructive
36 Sleep Apnea."

37
38 2. Copies of this resolution, as filed with the Secretary of State,
39 shall be transmitted by the Clerk of the General Assembly to the
40 Administrator of the Federal Motor Carrier Safety Administration,
41 Administrator of the Federal Railroad Administration, U.S.
42 Secretary of Transportation, and President of the United States.

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45 **STATEMENT**

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47 This resolution urges the Administrator of the Federal Motor
48 Carrier Safety Administration and Administrator of the Federal

AR31 CHIARAVALLOTI

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- 1 Railroad Administration to reconsider withdrawing the joint
- 2 advance notice of proposed rulemaking concerning “Evaluation of
- 3 Safety Sensitive Personnel for Moderate-to-Severe Obstructive
- 4 Sleep Apnea.”