



THE SECRETARY OF TRANSPORTATION
WASHINGTON, D.C. 20590

April 29, 1968

Honorable Hubert H. Humphrey
President of the Senate
Washington, D. C. 20510

IDENTICAL LETTER TO John W. McCormack
Speaker of the House
of Representatives
Washington, D. C. 20515

Dear Mr. President:

There is transmitted herewith a proposed bill

"To authorize the Secretary of Transportation to establish safety standards, rules, and regulations for railroad equipment, trackage, facilities, and operations, and for other purposes",

together with a section-by-section analysis.

This proposed legislation would replace the piecemeal statutory scheme for Federal rail safety regulation with a comprehensive statute authorizing the Secretary of Transportation to promulgate safety requirements relating to locomotives, rolling stock, trackage and roadbed, equipment, appliances, and facilities used in railroad operations in or affecting interstate or foreign commerce.

Most of the existing rail safety statutes, responsibility for which was transferred from the Interstate Commerce Commission to this Department at the time of its creation, were enacted from 50 to 75 years ago at a time prior to the emergence of the dramatic new transportation technology in which the railroads share. Only a few of the most obvious of safety problems are addressed and each statute is limited to particular hazards. In contrast, the more modern safety statutes establish desired safety results, leaving the exact manner of achievement to administrative regulation which can more easily accommodate technological progress.

In enacting more recent Federal transportation and other safety statutes -- such as aviation, motor vehicle, and highway safety -- Congress has followed the principle of vesting in the head of regulatory agencies and departments broad authority to prescribe safety standards, based upon continuing research programs and upon the changing technological needs of the regulated industry. The proposed bill is intended to move Federal railroad safety regulation in this direction. It will permit the Federal Government to bring

modern analytical principles to bear on the identification and solution of rail safety hazards.

Not only do existing statutes prescribe, in many cases, rigid and unrealistic requirements, some important areas are now beyond the scope of Federal rules, regulations, and standards and, therefore, beyond the reach of a uniform, comprehensive safety program. For example, the Department has no jurisdiction over the design, construction, inspection, or maintenance of track, roadway, and bridges. Its authority with respect to freight and passenger cars is scant and applies only to a small part of the vehicle, namely, to safety appliances and certain aspects of the brake systems. Car wheels and axles, which are major causative elements in many accidents, are not subject to Federal regulation. Thus, overall authority for the safety performance of the railroad car as a unit does not exist as it does in Federal statutes regulating aircraft and motor vehicles. Moreover, there is almost no safety regulatory authority extending to the operation of the trains themselves.

The Department's concern is not limited to the desirability of modern administration of rail safety requirements. We are also concerned with the increasing number and severity of railroad accidents attributable to causes beyond the reach of existing safety statutes. Derailment, for example, which is the most frequent type of accident, can often be attributed to wheels, axles, or track condition over which there is no present Federal authority.

In the past seven years, the monthly average of train accidents has increased steadily from 341 in 1961 to an estimated 590 for 1967. One logical result of this increase in accidents has been an increase in casualty rates per million man-hours worked during the same period.

In proposing new legislation, the Department does not suggest that the railroad industry is insensitive to its responsibility for safe operations. As with other transportation modes, however, cost and competitive pressures can frequently work at cross purposes to safety. The cost of greater safety will be borne reluctantly unless it is a burden which falls evenly on each member of the industry. Uniform Federal regulation is the only way industry can be assured of this.

The bill which the Department proposes would give the Secretary of Transportation authority to prescribe standards for construction, use, design, and performance of trackage, locomotives, rolling stock, and facilities, and to prescribe the manner and frequency with which

testing and inspection for compliance is to be performed. The Secretary would also have authority to regulate the qualifications of rail employees, and practices, methods, and procedures of rail carriers, as required in the interests of safety. This would include all safety aspects of crew employment, except as to hours of service.

While the bulk of existing Federal safety statutes would be repealed, the requirements now prescribed in or under these laws would remain in effect as interim standards for up to two years to allow the Secretary time to, by study and research, develop new and more comprehensive standards.

Because uniformity in the regulation of rail safety is generally necessary and desirable, the bill would preempt the area from State regulation with some specified exceptions. These areas include vertical and horizontal clearance requirements, certain aspects of grade crossing protection, and speed and audible signals of trains within urban or other densely populated areas. Even in the excepted areas, a State could not regulate in conflict with Federal regulations.

Federal preemption of rail safety regulation will not have a great effect in most States. While historically some States have contributed to safer rail operations through activity in selected areas, only a few States have substantial rail safety programs. The bill will enable those few States to concentrate their activities in the excepted areas.

The bill authorizes the Secretary to utilize the services of State agencies in conducting inspection and surveillance activities necessary to enforcement of Federal regulations. The Secretary may reimburse a State agency for the cost of providing such services from any funds available for administration of the rail safety program.

The Secretary would have authority to require reports of the carriers necessary to the discharge of his duties under the bill, including the authority to investigate rail accidents. However, the authority which the National Transportation Safety Board now has to determine and report the cause or probable cause of rail accidents, and to delegate its authority to perform various functions, would be preserved.

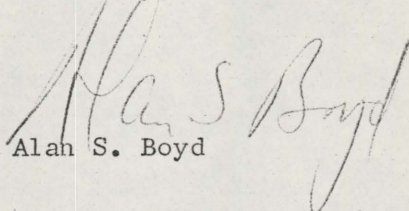
The bill would provide penalties for any failure to comply with applicable standards, rules, or regulations, or to cooperate in the various recordkeeping and inspections requirements which the Secretary would be authorized to impose. The Government should have available

to it the full range of sanctions from which to choose in insuring compliance with the bill. For this reason the bill provides for injunctive relief, as well as civil and criminal penalties. The latter would be imposed only for knowing and willful violations.

In summary, the time has come to revise the outmoded legislative structure supporting rail safety. The enclosed bill would do this and place regulation of the Nation's railroads on substantially the same footing as aviation and highway safety regulation.

The Bureau of the Budget has advised that enactment of this proposed legislation is in accord with the President's program.

Sincerely,



Alan S. Boyd

Enclosures

A BILL

To authorize the Secretary of Transportation to establish safety standards, rules, and regulations for railroad equipment, trackage, facilities, and operations, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "Federal Railroad Safety Act of 1968".

Sec. 2. Definitions. As used in this Act, unless the context otherwise requires --

(1) "Board" means the National Transportation Safety Board.

(2) "Chairman" means the Chairman of the National Transportation Safety Board.

(3) "Department" means the Department of Transportation.

(4) "Person" means any individual, firm, co-partnership, corporation, company, association, joint-stock association, or body politic; and includes any trustee, receiver, assignee, or other similar representative thereof.

(5) "Railroad" means any contrivance now known or hereafter invented, used or designed for operating on, along or through a track, monorail, tube, or other guideway.

(6) "Rail commerce" means any operation by railroad in or affecting interstate or foreign commerce or the transportation of mail by railroad.

(7) "Rail carrier" means any person who engages in rail commerce.

(8) "Rail facilities and equipment" include, without limitation, trackage, roadbed and guideways, and any facility, building, property, locomotive, rolling stock, device, equipment,

or appliance used or designed for use in rail commerce, and any part or appurtenance of any of the foregoing.

(9) "Secretary" means the Secretary of Transportation.

Sec. 3. Federal Safety Regulation. (a) The Secretary is empowered and it shall be his duty to promote safety in rail commerce by prescribing, and revising from time to time --

(1) Minimum standards governing the use, design, materials, workmanship, installation, construction, and performance of rail facilities and equipment;

(2) Rules, regulations, and minimum standards governing the use, inspection, testing, maintenance, servicing, repair, and overhaul of rail facilities and equipment, including frequency and manner thereof and the equipment and facilities required therefor; and

(3) Rules, regulations, or minimum standards, governing qualifications of employees, and practices, methods, and procedures of rail carriers as the Secretary may find necessary to provide adequately for safety in rail commerce.

(b) Within ninety days following the date of enactment of this Act, the Secretary shall prescribe as interim Federal rail safety regulations the specific safety requirements prescribed in or under the statutes repealed by section 13. The interim regulations shall remain in effect for two years or until modified, terminated, superseded, set aside or repealed by the Secretary, whichever is earlier. The provisions of the Administrative Procedure Act shall not apply to the establishment of interim regulations. In construing any

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interim regulation, all orders, determinations, delegations, rules, regulations, standards, requirements, permits, and privileges which (1) have been issued, made, granted, or allowed to become effective under the statute from which that standard is derived and (2) are in effect on the date of enactment of this Act, shall apply and continue to be applicable according to their terms until modified, terminated, superseded, set aside, or repealed by the Secretary in the exercise of authority vested in him by this Act, by any court of competent jurisdiction, or by operation of law.

(c) The Secretary may grant such exemptions from the requirements of any regulation prescribed under this Act as he considers to be in the public interest.

Sec. 4. State Regulation and Enforcement. A State may regulate safety in rail commerce, in a manner which does not conflict with any Federal regulation, in the following areas and no others: (1) vertical and horizontal clearance requirements; (2) grade crossing protection (including grade separation) which relates to the location of new crossings, closing of existing crossings, the type of crossing protection required or permitted, and rules governing train blocking of crossings; (3) the speed and audible signals of trains while operating within urban and other densely populated areas; and (4) the installation or removal of industrial and spur tracks. In exercising the authority reserved by clause (4), nothing herein shall be interpreted to diminish any authority which the Interstate Commerce Commission may have to require its approval of such actions.

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Other State laws and regulations affecting safety in rail commerce will continue in full force and effect for a period of two years following the date of enactment of this Act, unless abrogated prior to that time by court order, State legislative or administrative action, or by regulations issued by the Secretary.

Sec. 5. Prohibitions. (a) No person shall --

(1) fail to comply with any applicable standard, rule, or regulation established or continued in effect pursuant to this Act; or

(2) fail or refuse access to or copying of records, or fail to make reports or provide information, or fail or refuse to permit entry or inspection, as required under section 9.

(b) Compliance with any standard, rule, or regulation established under this Act does not exempt any person from any liability which would otherwise accrue, except to the extent that the action creating the liability was specifically compelled by any such standard, rule, or regulation.

Sec. 6. Penalties. (a) Any person who violates any provision of section 5 shall be subject to a civil penalty of not less than \$250 nor more than \$1,000 for each violation. If the violation is a continuing one, each day of such violation shall constitute a separate offense. Any person who knowingly and willfully violates any such provision shall be fined not more than \$10,000 or imprisoned

not more than one year, or both. Imposition of any punishment under this section shall be in lieu of whatever civil penalty might otherwise apply.

(b) The civil penalties provided in this section may be compromised by the Secretary. The amount of any penalty, when finally determined, or the amount agreed upon in compromise, may be deducted from any sums owing by the United States to the person charged.

(c) Whoever forcibly assaults, resists, opposes, impedes, intimidates, or interferes with any person engaged in the performance of inspection or investigatory duties under this Act, or on account of the performance of such duties, shall be fined not more than \$5,000 or imprisoned not more than three years, or both. Whoever, in the commission of any such acts, uses a deadly or dangerous weapon shall be fined not more than \$10,000 or imprisoned not more than ten years, or both. Whoever kills any other person engaged in the performance of inspection or investigatory duties under this Act, or on account of the performance of such duties, shall be punished as provided under sections 1111 and 1112 of title 18, United States Code.

Sec. 7. Injunctive Relief. (a) The United States district courts shall have jurisdiction, subject to the provisions of rule 65 (a) and (b) of the Federal Rules of Civil Procedure, to restrain violations of this Act (including the restraint of operations in rail commerce) or to enforce standards, rules, or regulations

established hereunder, upon petition by the appropriate United States attorney or the Attorney General on behalf of the United States. Whenever practicable, the Secretary shall give notice to any person against whom an action for injunctive relief is contemplated and afford him an opportunity to present his views, and, except in the case of a knowing and willful violation, shall afford him reasonable opportunity to achieve compliance. However, the failure to give such notice and afford such opportunity shall not preclude the granting of such relief.

(b) In any proceeding for criminal contempt for violation of an injunction or restraining order issued under this section, which violation also constitutes a violation of this Act, trial shall be by the court or, upon demand of the accused, by a jury. Such trial shall be conducted in accordance with the practice and procedure applicable in the case of proceedings subject to the provisions of rule 42(b) of the Federal Rules of Criminal Procedure.

(c) Actions under this Act may be brought in the district wherein any act or transaction constituting the violation occurred, or in the district wherein the defendant is found or is an inhabitant or transacts business, and process in such cases may be served in any other district of which the defendant is an inhabitant or transacts business or wherever the defendant may be found.

(d) In any action brought under this Act, subpoenas for witnesses who are required to attend a United States district court may run into any other district.

Sec. 8. Designation of Agent for Service. It shall be the duty of every rail carrier to designate in writing an agent upon whom service of all administrative and judicial processes, notices, orders, decisions and requirements may be made for and on behalf of said rail carrier and to file such designation with the Secretary, which designation may from time to time be changed by like writing, similarly filed. Service of all administrative and judicial processes, notices, orders, decisions and requirements may be made upon said rail carrier by service upon such designated agent at his office or usual place of residence with like effect as if made personally upon said rail carrier, and in default of such designation of such agent, service of process, notice, order, decision or requirement in any proceeding before the Secretary or in any judicial proceeding for enforcement of this Act or any rule, regulation, or standard prescribed pursuant to this Act may be made by posting such process, notice, order, decision, or requirement in the Office of the Secretary.

Sec. 9. Records and Reports. (a) Every rail carrier shall establish and maintain such records, make such reports, and provide such information as the Secretary may reasonably require to enable him to determine whether such carrier has acted or is acting in compliance with this Act and rules, regulations, and standards issued thereunder, and to otherwise carry out his responsibilities under this Act. Each such rail carrier shall, upon request of an officer, employee, or agent authorized by the Secretary, permit

such officer, employee, or agent to inspect and copy books, papers, records, and documents relevant to determining whether such person has acted or is acting in compliance with this Act and orders, rules, and regulations issued thereunder.

(b) To carry out the Board's and the Secretary's responsibilities under this Act, officers, employees, or agents authorized by the Secretary or Chairman, upon display of proper credentials, are authorized at all times to enter upon, inspect and examine rail facilities and equipment.

(c) All information reported to or otherwise obtained by the Secretary or the Board or their representatives pursuant to subsection (a) containing or relating to a trade secret or other matter referred to in section 1905 of title 18 of the United States Code, shall be considered confidential for the purpose of that section, except that such information may be disclosed to other officers, employees, or agents concerned with carrying out this Act or when relevant in any proceeding under this Act. Nothing in this section shall authorize the withholding of information by the Secretary, Chairman, or any officer or employee under their control, from the duly authorized committees of the Congress.

Sec. 10. General Powers. (a) The Secretary is authorized to conduct, or contract with individuals, States, or non-profit institutions for the conduct of, research, development, testing, evaluation, and training as necessary to carry out the provisions of this Act.

(b) The Secretary may, subject to such regulations, supervision, and review as he may prescribe, delegate to any qualified private person, or to any employee or employees under the supervision of such person, any work, business, or function respecting the examination, inspection, and testing necessary to carry out his responsibilities under this Act.

(c) The Secretary is authorized to advise, assist, and cooperate with other Federal departments and agencies and State and other interested public and private agencies and persons, in the planning and development of (1) Federal rail safety standards, rules, and regulations, and (2) methods for inspecting and testing to determine compliance with Federal rail safety standards, rules, and regulations.

(d) The Secretary is empowered to perform such acts, to conduct such investigations, to issue such subpoenas, to take such depositions, to issue and amend such orders, and to make and amend such special rules and regulations as he shall deem necessary to carry out the provisions of, and to exercise and perform his powers and duties under this Act.

Sec. 11. Accident Investigation. (a) The Secretary is authorized to conduct investigations of any accident occurring in rail commerce, and may invite participation by State agencies.

(b) The Board shall have the authority to determine the cause or probable cause and report the facts, conditions, and circumstances

relating to accidents investigated under subsection (a) above, but may delegate such authority to any officer or official of the Board or to any officer or official of the Department, with the approval of the Secretary, as it may determine appropriate.

(c) No part of any report required of a rail carrier under this Act, or any report made to the Secretary by an employee of the Department, or any report of the Secretary or the Board, relating to any accident or the investigation thereof, shall be admitted as evidence or be used in any suit or action for damages growing out of any matter mentioned in such report or reports. Employees of the Board or Department who have engaged in the investigation of a railroad accident shall not give expert or opinion testimony concerning such accidents in any such suit or action. Factual testimony of Board or Department personnel on matters observed in accident investigation shall be required only where the Chairman or the Secretary initially, or the Court before which such suit or action is pending, determines that the evidence is not available by other means. Unless otherwise ordered by the Court, such factual testimony shall be taken only by deposition upon oral examination or written interrogatories, pursuant to regulations issued by the Secretary or the Board.

Sec. 12. Use of State Services. The Secretary is authorized to enter into agreements with appropriate State agencies for the

provision of inspection and surveillance services as necessary to effective enforcement of Federal rail safety regulations. State services may be procured on such terms and conditions as the Secretary may prescribe and may be reimbursed from any appropriations available for expenditure under this Act. The Secretary may delegate to an officer of such State, and authorize successive redelegation of, any authority under this Act necessary to the conduct of an effective enforcement program.

Sec. 13. Statutes Repealed; Savings Provision. (a) The Safety Appliance Acts including the Power or Train Brakes Safety Appliance Act of 1958 (45 U.S.C. 1-16), the Ash Pan Act (45 U.S.C. 17-21), the Locomotive Inspection Act (45 U.S.C. 22-34), the Accident Reports Act (45 U.S.C. 38-43), and the Signal Inspection Act (49 U.S.C. 26) are repealed as of the effective date of the interim regulations required to be promulgated by section 3(b) of this Act.

(b) No suit, action, or other proceeding and no cause of action under the statutes repealed by this Act shall abate by reason of enactment of this Act.

Sec. 14. Appropriation Authorization. There are hereby authorized to be appropriated such sums as may be necessary to carry out the provisions of this Act.

Sec. 15. Separability. If any provision of this Act or the application thereof to any person or circumstance is held invalid, the remainder of this Act, and the application of such provision to other persons or circumstances shall not be affected thereby.

SECTION-BY-SECTION ANALYSIS OF A BILL

To authorize the Secretary of Transportation to establish safety standards, rules, and regulations for railroad equipment, trackage, facilities, and operations, and for other purposes.

Section 1 -- This section provides that the Act may be referred to as the "Federal Railroad Safety Act of 1968".

Section 2 -- This section defines the operative words employed in the Act. The standards and regulations authorized by the Act would apply to persons engaged in rail commerce, defined as "any operation by railroad in or affecting interstate or foreign commerce or the transportation of mail by railroad".

Railroad, in turn, means "any contrivance now known or hereafter invented, used or designed for operating on, along or through a track, monorail, tube, or other guideway".

The rail facilities and equipment which would be subject to regulation include trackage, roadbed and guideways, and any facility, building, property, locomotive, rolling stock, device, equipment, or appliance used or designed for use in rail commerce.

Section 3 -- This section authorizes and directs the Secretary of Transportation to promote safety in rail commerce by prescribing (1) minimum standards for use, design, materials, workmanship, installation, construction, and performance of rail facilities and equipment; (2) rules, regulations, and minimum standards for use, inspection, testing, and the like, for equipment and facilities to be used in such inspection and testing, and for the periods and manner in which such testing and inspection are to be accomplished; and (3) rules, regulations, or other standards governing qualifications of employees and practices, methods, and procedures of rail carriers where required for safety in rail commerce.

While the standards and regulations described in subsection 3(a) are being developed, interim standards will be applicable. The Secretary must prescribe interim standards within ninety days of enactment of this Act, which standards are to be the requirements currently in force under existing rail safety statutes. Most of the existing safety statutes will be repealed, pursuant to section 13, concurrent with establishment of interim standards. Interim standards will remain in effect for two years, unless sooner changed or repealed by action of the Secretary.

This section also contains a provision permitting the Secretary to grant exemptions, if such actions would be in the public interest.

Section 4 -- This section authorizes the States to regulate in certain specified areas, in a manner not in conflict with Federal regulation. Further, unless they are sooner superseded by the courts, State action, or regulations issued by the Secretary, other State laws relating to rail safety may remain in full force and effect for a period of two years after the date of enactment of this Act.

Section 5 -- This section requires persons subject to the Act to comply with all applicable standards, rules, and regulations issued thereunder and, as specified in section 9, requires them to grant access to company records, furnish required reports and information, and allow entry upon and inspection of carrier facilities. Compliance with any standard, rule, or regulation established under the Act will not exempt any person from any liability which would otherwise accrue unless the action creating the liability was specifically compelled by the standard, rule, or regulation.

Section 6 -- This section provides a civil penalty of not less than \$250 or more than \$1,000 per day for each violation of the Act or regulations issued under it. These may be compromised by the Secretary and deducted from any amounts owing to the carrier by the United States.

The section further provides criminal penalties of up to \$10,000 fine and up to one year's imprisonment, or both, for every knowing and willing violation of such a provision, as well as criminal penalties for the assault or killing of any person who is engaged in the performance of official duties under the Act. These penalties are the same as those provided for the same offenses in title 18, United States Code. If a criminal penalty is imposed, a civil penalty cannot be pursued for the same violation.

Section 7 -- This section authorizes the Secretary to obtain injunctive relief to enforce standards, rules, and regulations issued under the Act. Wherever it is practicable, the Secretary is to give notice of his intention to seek an injunction in order to give the person who is in violation an opportunity to come into compliance.

In contempt proceedings for violation of an injunction or restraining order, where the act which constitutes the violation is also a violation of the Act, the accused has the option of trial by the court or before a jury.

This section also provides for the venue of actions brought under the Act and provides that subpoenas in such cases may run outside the districts in which they are issued.

Section 8 -- This section requires that every rail carrier designate, by filing in writing with the Secretary, an agent upon whom all service in administrative and judicial proceedings may be made for and on behalf of the carrier. If any carrier fails to file such a designation, valid service may be made upon that carrier simply by posting in the Office of the Secretary a copy of the material to be served.

Section 9 -- This section confers certain powers on the Secretary to facilitate his duties under the Act by (1) requiring carriers to maintain records, to make reports of accidents and other reports, and to provide the Secretary with information, (2) requiring carriers to permit the inspection of books, papers, records, and documents, and (3) permitting properly identified officers, employees, and agents to enter upon and inspect carrier premises. Any trade secrets which may come into the possession of the Secretary or his representatives through the exercise of these powers may not be disclosed except to persons concerned with carrying out the Act or when relevant in a proceeding under the Act.

Section 10 -- This section grants to the Secretary a series of general powers which he must have to effectively discharge his duties under the Act. They are the powers to: (1) conduct or contract for research, development, testing, evaluation, and training; (2) delegate to qualified private persons activities relating to examination, inspection, and testing; (3) cooperate with various Federal and non-Federal agencies in developing safety standards, rules, and regulations, and methods for inspecting and testing to determine compliance; and (4) conduct investigations, issue subpoenas, take depositions, and issue necessary orders and special rules and regulations.

Section 11 -- This section authorizes the Secretary to investigate accidents occurring in rail commerce and to invite State participation. Since certain of the rail accident authority of the National Transportation Safety Board derives from statutes which are repealed by section 13, this section confirms that the NTSB will continue to have its sole authority to report facts, conditions, and circumstances of rail accidents, make findings of probable cause, and to delegate such of its authority as it may wish to its employees, to the Secretary, or to officials of the Department of Transportation. That is, the NTSB will continue to enjoy the powers, duties, and responsibilities with respect to rail accidents that it now has by virtue of section 5 of the Department of Transportation Act.

The section provides that no reports required to be made by carriers or made by the Secretary or the Board may be used in any lawsuit arising out of matters mentioned in such reports. It also provides that investigators may testify only as to facts, and may not give expert or opinion testimony.

Section 12 -- This section authorizes the Secretary to contract with State agencies for the provision of inspection and surveillance services necessary to enforcement of Federal safety regulations. The reimbursement of State costs may be made from appropriations available for carrying out the rail safety program.

Section 13 -- This section enumerates the existing Federal rail safety statutes which will be repealed. These laws are, for the most part, outdated and requirements written into statute will be replaced with comprehensive regulatory authority placed in the Secretary by this Act. The repeals would be effective simultaneously with establishment of interim standards under section 3(b) so that there would be no hiatus in Federal safety regulation. Any litigation now pending as a result of these statutes would not be terminated, however, simply because of their repeal.

Section 14 -- This section authorizes the appropriation of such sums as may be necessary to carry out the provisions of the Act.

Section 15 -- This section provides for separability.