

Senate Fiscal Agency
P. O. Box 30036
Lansing, Michigan 48909-7536

SFA



BILL ANALYSIS

Telephone: (517) 373-5383
Fax: (517) 373-1986
TDD: (517) 373-0543

Senate Bill 859 (Substitute S-2 as passed by the Senate)
Sponsor: Senator Shirley Johnson
Committee: Transportation and Tourism

Date Completed: 7-27-00

RATIONALE

Under the Michigan Vehicle Code, when a person driving a vehicle approaches a railroad grade crossing where a signal device or lowered gate indicates the approach of a train, the driver must stop the vehicle and may not proceed until he or she can do so safely. A person also is prohibited from driving a vehicle through, around, or under a crossing gate or barrier at a railroad crossing while the gate or barrier is closed or is being opened or closed. According to the Michigan Department of Transportation (MDOT), 60% of the car/train crashes and fatalities that occur in the State result when drivers ignore warning signals and gates at railroad crossings and purposely drive across tracks as a train approaches. Many times, however, people drive around or under gates or ignore warning signals with no consequence because there are no police at the crossing to witness the violation. Some people believe that State and local authorities should be permitted to install unmanned traffic monitoring devices at railroad crossings in order to record motorists who drive through, under, or around a gate or through a crossing as a train approaches.

- **Specify that it would be an affirmative defense that the mechanical warning devices at a crossing were malfunctioning.**
- **Require the MDOT to undertake a diagnostic review of a railroad crossing located in a city with a population of at least 60,000, if there were a fatality at the crossing.**

Installation

Under the bill, the Department of State Police or the State Transportation Department; a county board of commissioners, board of county road commissioners, or county sheriff; or other local authority having jurisdiction over a highway or street, could authorize the installation and use of unmanned traffic monitoring devices at a railroad grade crossing on a highway or street under its jurisdiction. Each device would have to be marked or identified sufficiently or a sign would have to be placed at the approach to the crossing indicating that the crossing was monitored by an unmanned traffic monitoring device.

Diagnostic Review

The Department of Transportation would have to schedule a diagnostic review within 120 days following a fatality at a railroad grade crossing in a city with a population of at least 60,000. If the review confirmed that warning devices such as flashing lights and gates were needed, the Department would have to order the improvements.

Violation

Beginning 31 days after the installation of an unmanned traffic monitoring device at a railroad crossing, a person would be responsible for a civil infraction as provided in Section 667 of the Code, if the person violated a provision of that section on the basis of evidence obtained from an unmanned traffic monitoring device. (Section 667, described in detail below, requires a driver to stop at a railroad grade crossing under certain circumstances.)

CONTENT

The bill would amend the Michigan Vehicle Code to do the following:

- **Permit State and local officials to install and use unmanned traffic monitoring devices at railroad grade crossings on a highway or street in their jurisdictions.**
- **Specify that a person would be responsible for a civil infraction for failing to stop at a railroad crossing, on the basis of evidence obtained from an unmanned traffic monitoring device.**
- **Specify procedures for establishing a violation based on evidence obtained from an unmanned traffic monitoring device, and provide for the mailing of citations for the violation.**

For the first 30 days after a person was responsible for a civil infraction under the bill, he or she could be issued a written warning only. The bill specifies that it would be an affirmative defense to a charge of violating Section 667 that the mechanical warning devices at the crossing were malfunctioning.

A sworn statement of a police officer from the State or local authority having jurisdiction over the highway or street on which the railroad grade crossing was located, based on inspection of photographs, microphotographs, videotape, or other recorded images produced by an unmanned traffic monitoring device, would be prima facie evidence of the facts contained in the statement. ("Prima facie evidence" refers to evidence that is sufficient to establish a given fact unless it is rebutted.) Any photographs, microphotographs, videotape, or other recorded images indicating a violation would have to be available for inspection in any proceeding to adjudicate the responsibility for a violation of Section 667.

In the prosecution of a violation of Section 667 established by an unmanned traffic monitoring device, prima facie evidence that the vehicle described in the citation issued was operated in violation of that section, together with proof that the defendant was at the time of the violation the registered owner of the vehicle, would constitute evidence a rebuttable presumption that the registered owner of the vehicle was the person who committed the violation. The presumption could be rebutted if the registered owner of the vehicle filed with the court clerk by regular mail an affidavit that he or she was not the operator of the vehicle at the time of the alleged violation or testified in open court under oath that he or she was not the operator of the vehicle at the time of the alleged violation. The presumption also could be rebutted if a certified copy of a police report, showing that the vehicle had been reported to the police as stolen before the time of the alleged violation, were presented before the return date established on the citation.

Notwithstanding Section 742 of the Code (which governs the issuance of citations for violations of the Code or a substantially corresponding local ordinance), a citation for a violation of Section 667 on the basis of evidence obtained from an unmanned traffic monitoring device could be executed by the mailing, by first-class mail, of a copy to the address of the vehicle owner as shown on the records of the Secretary of State. If the summoned person failed to appear on the date of return set out in the citation, a copy would have to be sent by certified mail-return receipt requested. If the summoned person failed to appear on either of the dates of return set out in the copies of the mailed citation, the citation would have to be executed in the manner provided by law for

personal service. The court could issue a warrant for the arrest of a person who failed to appear within the time limit established on the citation.

(Under Section 667 (MCL 257.667), when a person driving a vehicle approaches a railroad grade crossing under any of the following circumstances, the driver must stop the vehicle not more than 50 feet but not less than 15 feet from the nearest rail of the railroad, and may not proceed until the driver can do so safely: a clearly visible electric or mechanical signal device gives warning of the immediate approach of a railroad train; a crossing gate is lowered or a flagman gives or continues to give a signal of the approach or passage of a railroad train; a railroad train approaching within 1,500 feet of the highway crossing gives a signal audible from that distance, and the train by reason of its speed or nearness to the crossing is an immediate hazard; or an approaching railroad train is plainly visible and is in hazardous proximity to the crossing. A person is prohibited from driving a vehicle through, around, or under a crossing gate or barrier at a railroad crossing while the gate or barrier is closed or is being opened or closed. A person who violates these provisions is responsible for a civil infraction.)

Proposed MCL 257.667a

ARGUMENTS

(Please note: The arguments contained in this analysis originate from sources outside the Senate Fiscal Agency. The Senate Fiscal Agency neither supports nor opposes legislation.)

Supporting Argument

According to MDOT's five-year crash statistics, there were 90 incidents of car/train crashes and pedestrian accidents in 1999 that occurred at public grade crossings. The accidents resulted in 14 fatalities, including two at a private crossing and one involving a pedestrian, and 32 injuries, including one at a private crossing. While the number of incidents has dropped since 1994 when there were 159 accidents, which resulted in 28 fatalities and 90 injuries, the number remains too high. In fact, MDOT estimates that 60% of these crashes occurred at crossings where both warning lights and gates had been activated, which is above the national average of 50%. While police agencies enforce the law when they witness drivers ignoring railroad crossing gates and signals, patrolling approximately 5,300 public grade crossings located across the State is difficult.

By permitting the installation of unmanned traffic

A9900s859a

This analysis was prepared by nonpartisan Senate staff for use by the Senate in its deliberations and does not constitute an official statement of legislative intent.

monitoring devices to record whether a driver failed to stop at a crossing, the bill would aid efforts of police agencies to enforce the law. Since the bill would require that each monitoring device be identified or a sign be placed at the approach to a crossing indicating that it was being monitored, the bill could help to deter drivers from disregarding warning signals and gates. Greater enforcement could increase respect for railroad grade crossing warning devices and, thus, reduce the number of car/train crashes. As a result, the bill would help protect drivers and passengers of both motor vehicles and locomotives.

Response: Taking images of vehicles with photographs, microphotographs, videotape, and other devices could be considered a violation of motorists' privacy rights. In addition, the bill would assume that the registered owner of a vehicle at the time a violation occurred was the person who committed the violation. While the bill would allow a vehicle owner to rebut this presumption, the owner would have the burden of proving his or her innocence. The bill also would not account for the proportion of railroad crossing fatalities resulting when pedestrians and trespassers ignore warning signals and gates.

Legislative Analyst: L. Arasim

FISCAL IMPACT

The bill would have an indeterminate impact on the State and local units of government. There would be administrative costs associated with the installation, operation, and maintenance of unmanned traffic monitoring devices at railroad grade crossings on highways or streets. Additional costs would result from the issuance of citations associated with the prohibited activity. These administrative costs would be borne by the State or local agency electing to install and operate the traffic monitoring devices.

If this bill resulted in additional civil infraction determinations for violations of the Michigan Vehicle Code, it would generate additional revenues for local libraries.

Fiscal Analyst: C. Thiel