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**SFA**



**BILL ANALYSIS**

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Senate Bill 859 (as enrolled)  
Sponsor: Senator Shirley Johnson  
Senate Committee: Transportation and Tourism  
House Committee: Transportation

**PUBLIC ACT 367 of 2000**

Date Completed: 1-29-01

### **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 is an affirmative defense that the mechanical warning devices at a crossing were malfunctioning.**
- **Require MDOT to undertake a diagnostic review of a railroad crossing located in a city with a population of at least 60,000, if there is 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, may 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 must be marked or identified sufficiently or a sign must be placed at the approach to the crossing indicating that the crossing is monitored by an unmanned traffic monitoring device.

#### Diagnostic Review

The Department of Transportation must 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 confirms that warning devices such as flashing lights and gates are needed, the Department must order the improvements. The cost for the improvements must be financed consistent with the financing of similar projects by the Department according to its annual prioritization of grade crossing safety improvements.

#### Violation

Beginning 31 days after the installation of an unmanned traffic monitoring device at a railroad crossing, an individual is responsible for a civil infraction as provided in Section 667 of the Code, if he or she violates a provision of that section on the

### **CONTENT**

**The bill amended 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 is 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.**

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.)

For the first 30 days after the installation of an unmanned traffic monitoring device, an individual must be issued a written warning only. The bill specifies that it is 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 is located, based on inspection of photographs, microphotographs, videotape, or other recorded images produced by an unmanned traffic monitoring device, is 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 must be available for inspection in any proceeding to adjudicate the responsibility for a violation of Section 667. Any photographs, videotape, or digital images evidencing a violation must be destroyed 90 days after final disposition of the citation.

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, constitutes in evidence a rebuttable presumption that the registered owner of the vehicle is the person who committed the violation. The presumption may be rebutted if the registered owner of the vehicle files 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 testifies 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 may 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, is presented before the return date established on the citation. For purposes of this provision, the owner of a leased or rental vehicle must provide the name and address of the person to whom the vehicle was leased or rented at the time of the violation.

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 may 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 fails to appear on the date of return set out in the citation, a copy must be sent by certified mail-return receipt requested. If the summoned person fails to appear on either of the dates of return set out in the copies of the mailed citation, the citation must be executed in the manner provided by law for personal service. The court may issue a warrant for the arrest of a person who fails to appear within the time limit established on the citation if a sworn complaint is filed with the court for that purpose as required for other civil infractions under Section 744.

(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.

Under Section 744 (MCL 257.744), if an officer issues a citation under the Code for a parking or standing violation, the court may accept an admission with explanation or an admission or denial of responsibility upon the citation without a sworn complaint. If the individual denies responsibility for the civil infraction, there can be no further proceedings until a sworn complaint is filed with the court. A warrant for arrest under the Code for failure to appear on the civil infraction citation cannot be issued until a sworn complaint relative to the civil infraction is filed with the court.)

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, in 1999 there were 90 incidents of car/train crashes and pedestrian accidents 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 monitoring devices to record whether a driver fails to stop at a crossing, the bill will aid efforts of police agencies to enforce the law. Since the bill requires that each monitoring device be identified or a sign be placed at the approach to a crossing indicating that it is being monitored, the bill may help to deter drivers from disregarding warning signals and gates. Greater enforcement may increase respect for railroad grade crossing warning devices and, thus, reduce the number of car/train crashes. As a result, the bill will help protect drivers and passengers of both motor vehicles and locomotives.

**Response:** Taking images of vehicles with photographs, microphotographs, videotape, and other devices may be considered a violation of motorists' privacy rights. In addition, the bill assumes that the registered owner of a vehicle at the time a violation occurred was the person who committed the violation. While the bill allows a vehicle owner to rebut this presumption, the owner has the burden of proving his or her innocence. The bill also does 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 will have an indeterminate impact on the State and local units of government. There will 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 will result from the issuance of citations associated with the prohibited activity. These administrative costs will be borne by the State or local agency electing to install and operate the traffic monitoring devices.

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

Fiscal Analyst: C. Thiel

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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.