

**SUBSTITUTE FOR
SENATE BILL NO. 859**

A bill to amend 1949 PA 300, entitled
"Michigan vehicle code,"
(MCL 257.1 to 257.923) by adding section 667a.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 SEC. 667A. (1) THE DEPARTMENT OF STATE POLICE OR THE STATE
2 TRANSPORTATION DEPARTMENT; THE COUNTY BOARD OF COMMISSIONERS,
3 BOARD OF COUNTY ROAD COMMISSIONERS, OR COUNTY SHERIFF; OR OTHER
4 LOCAL AUTHORITY HAVING JURISDICTION OVER A HIGHWAY OR STREET MAY
5 AUTHORIZE THE INSTALLATION AND USE OF UNMANNED TRAFFIC MONITORING
6 DEVICES AT A RAILROAD GRADE CROSSING WITH FLASHING SIGNALS AND
7 GATES ON A HIGHWAY OR STREET UNDER THEIR RESPECTIVE
8 JURISDICTIONS. EACH DEVICE SHALL BE SUFFICIENTLY MARKED OR IDEN-
9 TIFIED OR A SIGN SHALL BE PLACED AT THE APPROACH TO THE CROSSING
10 INDICATING THAT THE CROSSING IS MONITORED BY AN UNMANNED TRAFFIC
11 MONITORING DEVICE.

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1 (2) BEGINNING 31 DAYS AFTER THE INSTALLATION OF AN UNMANNED
2 TRAFFIC MONITORING DEVICE AT A RAILROAD GRADE CROSSING DESCRIBED
3 IN SUBSECTION (1), A PERSON IS RESPONSIBLE FOR A CIVIL INFRACTION
4 AS PROVIDED IN SECTION 667 IF THE PERSON VIOLATES A PROVISION OF
5 THAT SECTION ON THE BASIS OF EVIDENCE OBTAINED FROM AN UNMANNED
6 TRAFFIC MONITORING DEVICE. HOWEVER, FOR THE FIRST 30 DAYS AFTER
7 A PERSON IS RESPONSIBLE FOR A CIVIL INFRACTION UNDER THIS SUBSEC-
8 TION. A PERSON SHALL BE ISSUED A WRITTEN WARNING ONLY. IT SHALL BE
9 AN AFFIRMATIVE DEFENSE TO A CHARGE OF VIOLATING SECTION 667 THAT THE
MECHANICAL WARNING DEVICES AT THE CROSSING WERE MALFUNCTIONING.

10 (3) A SWORN STATEMENT OF A POLICE OFFICER FROM THE STATE OR
11 LOCAL AUTHORITY HAVING JURISDICTION OVER THE HIGHWAY OR STREET
12 UPON WHICH THE RAILROAD GRADE CROSSING DESCRIBED IN
13 SUBSECTION (1) IS LOCATED, BASED UPON INSPECTION OF PHOTOGRAPHS,
14 MICROPHOTOGRAPHS, VIDEOTAPE, OR OTHER RECORDED IMAGES PRODUCED BY
15 AN UNMANNED TRAFFIC MONITORING DEVICE, SHALL BE PRIMA FACIE EVI-
16 DENCE OF THE FACTS CONTAINED THEREIN. ANY PHOTOGRAPHS, MICROPHO-
17 TOGRAPHS, VIDEOTAPE, OR OTHER RECORDED IMAGES INDICATING SUCH A
18 VIOLATION SHALL BE AVAILABLE FOR INSPECTION IN ANY PROCEEDING TO
19 ADJUDICATE THE RESPONSIBILITY FOR A VIOLATION OF SECTION 667.

20 (4) IN A PROSECUTION FOR A VIOLATION OF SECTION 667 ESTAB-
21 LISHED BY AN UNMANNED TRAFFIC MONITORING DEVICE UNDER THIS SEC-
22 TION, PRIMA FACIE EVIDENCE THAT THE VEHICLE DESCRIBED IN THE
23 CITATION ISSUED WAS OPERATED IN VIOLATION OF SECTION 667,
24 TOGETHER WITH PROOF THAT THE DEFENDANT WAS AT THE TIME OF THE
25 VIOLATION THE REGISTERED OWNER OF THE VEHICLE, SHALL CONSTITUTE
26 IN EVIDENCE A REBUTTABLE PRESUMPTION THAT THE REGISTERED OWNER OF
27 THE VEHICLE WAS THE PERSON WHO COMMITTED THE VIOLATION. THE
PRESUMPTION MAY BE REBUTTED IF THE REGISTERED OWNER OF THE

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1 VEHICLE FILES AN AFFIDAVIT BY REGULAR MAIL WITH THE CLERK OF THE
2 COURT THAT HE OR SHE WAS NOT THE OPERATOR OF THE VEHICLE AT THE
3 TIME OF THE ALLEGED VIOLATION OR TESTIFIES IN OPEN COURT UNDER
4 OATH THAT HE OR SHE WAS NOT THE OPERATOR OF THE VEHICLE AT THE
5 TIME OF THE ALLEGED VIOLATION. THE PRESUMPTION ALSO MAY BE
6 REBUTTED IF A CERTIFIED COPY OF A POLICE REPORT, SHOWING THAT THE
7 VEHICLE HAD BEEN REPORTED TO THE POLICE AS STOLEN BEFORE THE TIME
8 OF THE ALLEGED VIOLATION OF THIS SECTION, IS PRESENTED BEFORE THE
9 APPEARANCE DATE ESTABLISHED ON THE CITATION.

10 (5) NOTWITHSTANDING SECTION 742, A CITATION FOR A VIOLATION
11 OF SECTION 667 ON THE BASIS OF EVIDENCE OBTAINED FROM AN UNMANNED
12 TRAFFIC MONITORING DEVICE MAY BE EXECUTED BY MAILING BY
13 FIRST-CLASS MAIL A COPY TO THE ADDRESS OF THE OWNER OF THE VEHI-
14 CLE AS SHOWN ON THE RECORDS OF THE SECRETARY OF STATE. IF THE
15 SUMMONED PERSON FAILS TO APPEAR ON THE DATE OF RETURN SET OUT IN
16 THE CITATION PREVIOUSLY MAILED BY FIRST-CLASS MAIL PURSUANT TO
17 THIS SUBSECTION, A COPY SHALL BE SENT BY CERTIFIED MAIL-RETURN
18 RECEIPT REQUESTED. IF THE SUMMONED PERSON FAILS TO APPEAR ON
19 EITHER OF THE DATES OF RETURN SET OUT IN THE COPIES OF THE
20 CITATION MAILED PURSUANT TO THIS SECTION, THE CITATION SHALL BE
21 EXECUTED IN THE MANNER PROVIDED BY LAW FOR PERSONAL SERVICE. THE
22 COURT MAY ISSUE A WARRANT FOR THE ARREST OF A PERSON WHO FAILS TO
23 APPEAR WITHIN THE TIME LIMIT ESTABLISHED ON THE CITATION.

(6) IF THERE IS A FATALITY AT A RAILROAD GRADE CROSSING IN A
CITY WITH POPULATION OF 60,000 OR MORE, THE STATE TRANSPORTATION
DEPARTMENT SHALL UNDERTAKE A DIAGNOSTIC REVIEW. THE DIAGNOSTIC
REVIEW SHALL BE SCHEDULED WITHIN 120 DAYS. IF THE DIAGNOSTIC REVIEW
CONFIRMS THAT WARNING DEVICES SUCH AS FLASHING LIGHTS AND GATES ARE
NEEDED, THE STATE TRANSPORTATION DEPARTMENT SHALL ORDER SUCH
IMPROVEMENTS.