

Enclosure

BACKGROUND ON THE FEDERAL RAILROAD ADMINISTRATION'S DRAFT OF MODEL STATE LEGISLATION ON HIGHWAY-RAIL GRADE CROSSING VIOLATIONS BY MOTORISTS

There are 137,659¹ public highway-rail grade crossings located throughout the United States, where the potential exists for a collision between a train and vehicle. A motorist is 20² times more likely to die from a collision with a train than any other crash. In 2009, 246³ people were killed and 701 were seriously injured at highway-rail grade crossings. Fatalities and injuries from grade crossing collisions were up 12.6⁴ percent for the first two quarters of 2010, compared with the same period in 2009.

As part of the continuing effort to reduce the number of deaths and injuries occurring at highway-rail grade crossings, the U.S. Department of Transportation's 2004 Highway-Rail Grade Crossing Safety and Trespass Prevention Action Plan included initiatives to develop model State legislation for consideration by State legislatures.⁵ Congress affirmed the validity of these initiatives by passing the Rail Safety Improvement Act of 2008 (Public Law No. 110-432, Division A, 122 Stat. 4848) (Oct. 16, 2008) (RSIA), which requires that the Secretary of Transportation, in consultation with State and local governments and railroad carriers, develop and make available to State and local governments model State legislation covering highway-rail grade crossing violations by motorists. The Secretary has delegated this responsibility to the Administrator of the Federal Railroad Administration (FRA). 49 C.F.R. §§ 1.49(m),(oo). The following is a summary of the development of the draft model State legislation and highlights of the draft bill.

Review of Existing Laws

As required by the RSIA, the Department reviewed and evaluated current local, State, and Federal laws regarding violations at highway-rail grade crossings.⁶ FRA contracted with an independent firm to conduct the necessary preliminary legal research. Its findings on the existence of relevant State railroad laws were placed in a book titled, "Compilation of State Laws and Regulations Affecting Highway-Rail Grade Crossings, 5th Edition,"⁷ with various chapters

¹ See FRA "Summary of Inventory Data Crossings Counts" (2008), available online at: <http://www.fra.dot.gov/downloads/safety/SummaryInventoryDataCounts41209.pdf>.

² See Operation Lifesaver "Crossing Collisions Per Year Statistics Overview," available online at: http://www.oli.org/statistics/collisions_casualties_year.htm.

³ See FRA Office of Safety Analysis Safety Data Web site, available online at: <http://safetydata.fra.dot.gov/officeofsafety>.

⁴ See FRA Office of Safety Analysis Safety Data Web site, available online at: <http://safetydata.fra.dot.gov/officeofsafety>.

⁵ See U.S. Department of Transportation "Highway-Rail Crossing Safety Action Plan" (2004) available online at: http://www.fra.dot.gov/downloads/safety/action_plan_2004.pdf.

⁶ To date, no Federal statute exists pertaining to violations at highway-rail grade crossings, although a statute against wrecking trains is found at 18 U.S.C. § 1992.

⁷ See "Compilation of State Laws and Regulations Affecting Highway-Rail Grade Crossings, 5th Edition," available online at: <http://www.fra.dot.gov/Pages/2305.shtml>.

pertaining to different railroad subjects. Chapter 8 specifically addresses laws governing motorist responsibility at highway-rail grade crossings.

As noted in the findings, many current State laws and regulations cover conduct such as reducing speed when approaching and traversing highway-rail grade crossings; standing, stopping, or parking near tracks at highway-rail grade crossings; limiting driving left of the center of the roadway near crossings; and stopping completely at certain highway-rail grade crossings. FRA believes that some of these laws should go further. For example, FRA proposes that before proceeding through a crossing, motorists must ensure that there is sufficient space on the other side for the entire vehicle to clear the tracks, and FRA also proposes to strengthen penalties for driving around a lowered crossing gate, or noncompliance with another crossing warning device. The model legislation would remedy these deficiencies.

FRA has evaluated existing traffic infraction and misdemeanor monetary penalties, and has found the penalties proposed below to be in line with those found in many States. However, in addition to monetary penalties, FRA proposes below that more serious violations would be prosecuted as felonies and misdemeanors, with convictions for such violations resulting in more severe criminal penalties. Further, FRA encourages States, at their own discretion, to create alternative sentences for persons guilty of crossing violations, such as attendance at traffic schools with highway-rail grade crossing subject matter areas.

DRAFT MODEL STATE HIGHWAY–RAIL GRADE CROSSING SAFETY ACT

Portions of the language in the model State Highway-Rail Grade Crossing Safety Act were incorporated from existing State statutes. Combined, these provisions address the relevant issues related to highway-rail grade crossing safety. In formulating this draft, FRA also took into consideration applicable provisions of Part 8 of the Federal Highway Administration’s Manual on Uniform Traffic Control Devices and reviewed previously published model grade crossing legislation.

If adopted, the draft model State Highway-Rail Grade Crossing Safety Act would accomplish the following:

- Make it a traffic infraction for a motorist to fail to reduce motor vehicle speed to a reasonable rate beginning 100 feet from a highway-rail grade crossing, and proceed through the highway-rail grade crossing with caution.
- Make it a traffic infraction for a motorist to operate a motor vehicle left of center of the highway (passing) when approaching or traversing a highway-rail grade crossing.
- Make it a traffic infraction for a motorist to park a motor vehicle within 50 feet of a highway-rail grade crossing.
- Make it a misdemeanor for a driver to proceed through a highway-rail grade crossing or to fail to stop at least 15 feet from the nearest rail at a highway-rail grade crossing when: (1) an audible or visible warning device gives warning of an approaching train; (2) a

crossing gate is lowered or a flagger signals the approach of a train; (3) a train is within 1,500 feet of a crossing and is emitting an audible signal; (4) an approaching train is visible and is in hazardous proximity to a crossing; (5) there is not adequate space on the other side of the crossing to accommodate the motorist's vehicle without obstructing the passage of another vehicle or a train; and (6) it is otherwise unsafe to proceed.

- Elevate certain of the above-listed violations to misdemeanors and felonies based on whether the violations resulted in bodily injury or death to other persons.

A BILL

To amend [State or Commonwealth Code], and for other purposes.

Be it enacted by [] legislature [State or Commonwealth of] assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the “Highway-Rail Grade Crossing Safety Act”.

SEC. 2. PURPOSE.

The purpose of this Act is to prevent collisions and casualties to motorists and their passengers at public highway-rail grade crossings and to otherwise enhance the safety of transportation by railroad and highway.

SEC. 3. AMENDMENTS TO THE TRANSPORTATION LAWS.

Section [] of chapter [], of title [], [State or Commonwealth General Laws] [Motor Vehicle Code], is amended [to read as follows:] [Chapter [] of title [], [State or Commonwealth General Laws], is amended by adding at the end thereof the following new section:]

“§ []. Highway-rail grade crossing violations

“(a) APPROACHING AND STOPPING AT A PUBLIC HIGHWAY-RAIL GRADE CROSSING.--

“(1) AT CROSSINGS GOVERNED BY A STOP SIGN.--Whenever a motorist approaches a crossing that has a stop sign located within 50 feet of the approach side of the crossing (as measured from the rail closest to the sign), the motorist shall—

“(A) stop at the stop sign or at its corresponding stop line, stopping at least 15 feet from the nearest rail of the crossing (as measured from the rail closest to the motorist’s vehicle), and

“(B) shall not proceed onto or through the crossing in any one or more of the following circumstances, regardless of any traffic control indication to proceed:

“(i) when a flagger signals the approach of a train to the crossing;

“(ii) when an approaching train is within 1,500 feet of the crossing and is emitting an audible signal;

“(iii) when an approaching train is plainly visible and is in hazardous proximity to the crossing;

“(iv) when there is not adequate space on the other side of the crossing to accommodate the motorist’s vehicle without obstructing the passage of another motor vehicle or a train; or

“(v) when it is otherwise unsafe to proceed.

“(2) AT CROSSINGS GOVERNED BY A YIELD SIGN OR RAILROAD CROSSBUCKS.--

Whenever a motorist approaches a crossing that has a yield sign or railroad crossbucks located within 50 feet of the approach side of the crossing (as measured from the rail closest to the sign), the motorist shall—

“(A) approach the crossing prepared to stop and yield the right-of-way to a train, and

“(B) in any one or more of the following circumstances, shall stop at the yield sign or crossbucks or their corresponding yield or stop lines, stopping at least 15 feet from the nearest rail of the crossing (as measured from the rail closest to the motorist’s vehicle), and

“(C) shall not proceed onto or through the crossing, regardless of any traffic control indication to proceed:

“(i) when a flagger signals the approach of a train to the crossing;

“(ii) when an approaching train is within 1,500 feet of the crossing and is emitting an audible signal;

“(iii) when an approaching train is plainly visible and is in hazardous proximity to such crossing;

“(iv) when there is not adequate space on the other side of the crossing to accommodate the motorist’s vehicle without obstructing the passage of another motor vehicle or a train; or

“(v) when it is otherwise unsafe to proceed.

“(3) AT CROSSINGS EQUIPPED WITH AN ACTIVE WARNING DEVICE.--Whenever a motorist approaches a crossing equipped with an active warning device, in any one or more of the following circumstances, the motorist shall—

“(A) stop at least 15 feet from the nearest rail of the crossing (as measured from the rail closest to the motorist’s vehicle), and

“(B) shall not proceed onto or through the crossing, regardless of any traffic control indication to proceed:

“(i) when an audible or clearly visible active warning device gives warning of the immediate approach of a train to the crossing;

“(ii) when a crossing gate or barrier is closed or is being opened or closed, unless directed to proceed by a flagger or a uniformed law enforcement officer;

“(iii) when a flagger signals the approach of a train to the crossing;

“(iv) when an approaching train is within 1,500 feet of the crossing and is emitting an audible signal;

“(v) when an approaching train is plainly visible and is in hazardous proximity to such crossing;

“(vi) when there is not adequate space on the other side of the crossing to accommodate the motorist’s vehicle without obstructing the passage of another motor vehicle or a train; or

“(vii) when it is otherwise unsafe to proceed.

“(b) DRIVING THROUGH, AROUND, OR UNDER A CROSSING GATE.--A motorist shall not drive a vehicle through, around, or under a gate or barrier at a crossing while such gate or barrier is closed or is being opened or closed, unless directed to do so by a flagger or a uniformed law enforcement officer.

“(c) PROCEEDING SAFELY ONTO OR THROUGH A CROSSING.--

“(1) IN GENERAL.--A motorist shall reduce to a reasonable speed when traveling within 100 feet of the nearest rail of a crossing and shall not proceed onto or through a crossing until he or she can do so safely.

“(2) KEEPING TO THE RIGHT.--A motorist shall keep to the right side of the highway when approaching within 100 feet of the nearest rail of a crossing and while traversing a crossing, unless the right side of the highway is obstructed or impassable, or where there is a one-way traffic pattern at the crossing.

“(d) PARKING AT A CROSSING.--A motorist shall not park a motor vehicle within 50 feet of the nearest rail of a crossing, except when it is necessary to avoid conflict with other traffic.

“(e) PENALTIES.--

“(1) ORDINARY PENALTIES.--

“(A) Any person convicted of a violation of subsection (a) or (b) shall be guilty of a misdemeanor and shall be subject to a fine of not less than \$300 nor more than \$400, or imprisonment for not more than 30 days, or both. For a conviction of a second or subsequent violation of subsection (a) or (b), both of which were committed within a period of 18 months, such person shall be subject to a fine of not less than \$400 nor more than \$600, or imprisonment for not more than 60 days, or both.

“(B) Any person convicted of a violation of subsections (c) or (d) shall be guilty of a traffic infraction and shall be subject to a fine of not less than \$100 nor more than \$200; for a conviction of a second violation, both of which were committed within a period of 18 months, such person shall be subject to a fine of not less than \$200 nor more than \$300.

“(2) SPECIAL CIRCUMSTANCES RESULTING IN ENHANCED PENALTIES.--

“(A) Any person convicted of a violation of subsections (a)-(d) resulting in a collision that causes bodily injury to another person shall be guilty of a misdemeanor and shall be subject to a fine of not less than \$500 nor more than \$1,000, or imprisonment for not more than 180 days, or both.

“(B) Any person convicted of a violation of subsections (a)-(d) resulting in a collision that causes serious bodily injury or death to another person shall be guilty of a felony and shall be subject to a fine of not less than \$5,000 nor more than \$20,000, or imprisonment for not more than 5 years, or both.

“(f) DEFINITIONS.--For purposes of this section--

“(1) ‘active warning device’ means a traffic control device activated by the approach or presence of a train, such as a flashing light signal, automatic gate, or similar device or a manually operated device or crossing watchman, any of which displays to motorists a positive warning of the approach or presence of a train.

“(2) ‘bodily injury’ means--

“(i) a cut, abrasion, bruise, burn, or disfigurement;

“(ii) physical pain;

“(iii) illness;

“(iv) impairment of the function of a bodily member, organ, or mental faculty; or

“(v) any other injury to the body, no matter how temporary.

“(3) ‘flagger’ means a person who is authorized to temporarily control traffic at a grade crossing.

“(4) ‘highway-rail grade crossing’ means any intersection of one or more railroad tracks and a public highway, road, or street, including associated sidewalks and pathways, that occurs at grade level.

“(5) ‘motorist’ means an operator of a motor vehicle.

“(6) ‘serious bodily injury’ means bodily injury that involves--

“(i) a substantial risk of death;

“(ii) extreme physical pain;

“(iii) protracted and obvious disfigurement; or

“(iv) protracted loss or impairment of the function of a bodily member, organ, or mental faculty.

“(7) ‘train’ means one or more locomotives (or any equivalent equipment, i.e., a rail car without propelling motors but equipped with one or more control stands that is the controlling unit in an urban rapid transit train movement) with or without rail cars or other rolling on-track railroad equipment.

“(g) CONSTRUCTION WITH OTHER VIOLATIONS, CRIMES, OR OTHER OFFENSES.--Nothing contained in this section shall be construed to prohibit or limit the prosecution of a violation, crime, or other offense otherwise required or permitted by law.”.

SECTION-BY-SECTION ANALYSIS

Section 1. This section would provide that the Act may be cited as the “Highway-Rail Grade Crossing Safety Act.”

Section 2. This section would provide that the purpose of the Act would be to prevent highway-rail grade crossing collisions and casualties to motorists and their passengers, and to otherwise enhance the safety of transportation by railroad and highway. The phrase “and otherwise to enhance the safety of transportation by railroad” would be included to recognize that motor vehicle drivers and their passengers are not the only persons at risk when a motor vehicle driver disobeys a highway-rail grade crossing warning device or law. If a train derails or otherwise sustains damage as a result of a highway-rail grade crossing collision, the safety of railroad employees and passengers is also put in jeopardy. Moreover, if a highway-rail grade crossing collision involves the release or explosion of a hazardous material, either carried by the motor vehicle involved or the train involved, additional innocent bystanders and residents may be put in harm’s way. Finally, the Act is intended to provide increasingly severe penalties for drivers depending on the number of violations committed within a period of time, and depending on the level of risk to safety presented by their acts and whether or not a violation causes injury or death to another person.

Section 3. This section would permit, under stated conditions, prosecution of motor vehicle drivers who commit highway-rail grade crossing traffic violations. In addition, Section 3 would provide ordinary and enhanced penalties for special circumstances and define certain terms.

Subsection (a)(1) would require that at crossings with a corresponding nearby stop sign motorists shall stop, and shall not proceed through the crossing if any of five enumerated

conditions apply. It should be noted that even if none of the five conditions exist, a motorist would still otherwise be required to abide by all other traffic laws. The first condition would occur when a flagger gives or continues to give a signal of the approach of a railroad train. Such condition may arise if a highway-rail grade crossing warning system is temporarily inoperative and a flagger has been placed at the scene to provide alternate warning of approaching trains to motorists. The second condition would occur when a train is approaching within approximately 1,500 feet of the highway-rail grade crossing and emits a signal audible from such distance, such as a bell or whistle. The third condition would occur when an approaching train is plainly visible and is in hazardous proximity to such a crossing. The fourth condition would occur when there is not adequate space to accommodate a vehicle on the other side of the crossing, or when an attempt to traverse a crossing would obstruct the passage of other motor vehicles or a train. The final condition is meant to encompass any other situations that might occur that would make it unsafe to attempt to traverse a crossing. Examples could include instances where grade crossings may wash out in severe storms or where crossings have been closed due to road work and where obvious visual indicators announce such closings.

Subsection (a)(2) would address crossings governed by yield signs or railroad crossbucks. It would require that whenever a motorist approaches such a crossing that the motorist shall approach the crossing prepared to stop at the applicable sign or its corresponding yield or stop lines, but in any event not less than 15 feet from the crossing. The motorist shall stop and shall not proceed onto or through the crossing if any of the same five conditions listed in subsection (a)(1) occurs, or until it is otherwise safe to do so.

Subsection (a)(3) would address crossings equipped with active warning devices, and requires that whenever a motorist approaches such a crossing that the motorist shall not proceed

onto or through the crossing when any one of seven listed circumstances are present. Five of the circumstances are the same as those listed in subsections (a)(1) and (a)(2) above, with the additional two circumstances being that motorists would be prohibited from proceeding onto or through a crossing when an active warning device gives warning of the immediate approach of a train to the crossing and when crossing gates or barriers are closed or are being opened or closed. Subsection (a)(3)(B)(ii) would provide an exception allowing motorists to proceed in instances where crossing gates are closed. The exception would establish that a motorist may proceed onto or through a crossing even when crossing gates are closed if directed to do so by a flagger or a uniformed law enforcement officer. This exception applies to instances where a crossing gate malfunction has occurred and a flagger or law enforcement officer is tasked with controlling traffic at the crossing. In the event of active warning device malfunctions at crossings *not* equipped with gates or barriers, motorists may still proceed onto or through a crossing after stopping and determining that none of the circumstances listed in subsection (a)(3) are present and there is no immediate approach of a train to the crossing as described in subsection (a)(3)(B)(i).

Subsections (a)(1)-(a)(3) would all establish that motorists are not permitted to proceed onto or through a grade crossing, regardless of any traffic control indication to proceed, if any of the listed circumstances were present. This would mean, for example, that even if a traffic signal in the vicinity of the grade crossing might indicate that if a motorist were to proceed, the motorist may not traverse the grade crossing until he or she can safely do so, and, in particular, until after he or she determines that there is sufficient space adjacent to the crossing for the motorist's vehicle to clear the railroad tracks. While this provision may appear to be redundant, as subsections (a)(1)-(a)(3) already state that there must be sufficient space on the other side of a

crossing before a motorist may proceed, this requirement establishes that actual conditions at the crossing supersede any traffic control indications to proceed in the vicinity and will dictate whether or not a motorist can safely proceed through a crossing with sufficient space for his or her vehicle to clear it.

Subsection (b) would permit prosecution of motor vehicle drivers who drive through, around, or under any crossing gate or barrier at a highway-rail grade crossing while such gate or barrier is closed or is being opened or closed. Along with the violations described in subsection (a) of this section, violations of this subsection present particularly dangerous situations. This subsection is not redundant to subsection (a)(3)(B)(ii), as that subsection only prohibits proceeding onto or through a crossing when a gate is closed or is being open or closed. This subsection establishes that a violation has occurred merely by the act of going through, around, or under the gate itself, regardless of whether a motorist has actually proceeded onto or through the crossing. This subsection also establishes that at the direction of a uniformed law enforcement officer or a flagger that motorists may proceed even if crossing gates are closed or opening or closing. As discussed above, this exception would be provided to accommodate instances where crossing gate malfunctions occur.

Subsection (c) would require that motorists keep to the right when approaching and traversing a crossing (except in certain enumerated circumstances), reduce to a reasonable speed within 100 feet of a crossing, and not proceed onto or through a crossing until it can be done in a safe manner. Finally, subsection (d) would provide that motorists shall not park vehicles within 50 feet of a highway-rail grade crossing. Subsection (d) would be included in this legislation as parking on or along a roadway within 50 feet of a crossing detracts from the ability of other motorists (or pedestrians) to detect trains approaching a crossing, and may also affect the normal

flow of traffic through a crossing. Parking so near a crossing may also put any occupants of the parked vehicle at extreme risk were a train derailment to occur near the crossing. Subsections (c) and (d) would assist in fulfilling the mandate of 49 U.S.C. § 20151(d)(4), which requires that FRA include in this legislation violations by motorists in the vicinity of the grade crossings who create a hazard of accident involving injury or property damage.

Subsection (e) would provide ordinary and enhanced penalties for motorists who violate subsections (a)-(d). These penalties would include a range of mandatory minimum and maximum penalties. Subsection (e)(2) would address special circumstances that would result in enhanced penalties. These special circumstances would include violations that cause bodily injury or death to others. These enhanced penalties would be justified because of harm caused to others by the motorist's risky behavior. For example, the March 1999 collision between a tractor trailer and Amtrak's City of New Orleans train at Bourbonnais, Illinois claimed the lives of 11 people. The National Transportation Safety Board found the probable cause of the accident was the truck driver's inappropriate response to grade crossing warning devices and his judgment that he could traverse the crossing before the train's arrival.

Subsection (f) would define certain terms. For example, "highway-rail grade crossing" would mean any intersection of a railroad track and a public highway, road, or street, including associated sidewalks and pathways, that occurs at grade level. In an effort to provide safety enforcement measures at all public highway-rail grade crossings, this definition would also include at-grade crossings of public highways and urban rapid transit railroad tracks. The definition of "train" for purposes of this model legislation would also be an expansive one, making any rail equipment powered by locomotive (or any equivalent controlling equipment in a train, i.e., the controlling unit on a subway train) a train. For consistency purposes, this model

legislation would adopt the singular version of the Federal Highway Administration’s definition at 23 C.F.R. § 646.204 of the term “active warning device.” The term “flagger” for purposes of this model legislation is only defined as a person who is authorized to temporarily control traffic at a grade crossing. However, for additional guidance on the appropriate apparel, equipment, and qualifications for flaggers, FRA directs States to Part 6 of the Federal Highway Administration’s Manual on Uniform Traffic Control Devices, and also to FRA’s existing definition for “appropriately equipped flagger” at 49 C.F.R. § 234.5. FRA anticipates that States would require that an authorized flagger be a railroad employee or a government agency employee who has been trained in safe grade crossing traffic control practices, or an employee of a contractor performing work at or near a grade crossing who has been similarly trained. This model legislation would also propose definitions for the terms “bodily injury”, “serious bodily injury”, and “motorist”. FRA is aware that many States may already have statutory definitions for these or similar terms used in the context of traffic, criminal, or other statutes covering various topics, but offers these definitions as an alternative. FRA encourages States to consider expanding these definitions and adding other definitions as necessary to best accommodate crossing safety if any of the provisions of this legislation are adopted.

Subsection (g) would make it clear that nothing contained in this section shall be construed to prohibit or limit the prosecution of any violation, crime, or other offense otherwise required or permitted by law. Accordingly, if a motor vehicle driver is both driving at excessive speed in violation of the posted speed limit and also disregards governing grade crossing signals, that driver may be prosecuted for both of these violations.