

# HOUSE BILL No. 5134

October 2, 2001, Introduced by Reps. Gielegem, Wojno, Bob Brown, Richardville, Stewart, Schermesser, Minore, Basham, Neumann, Dennis, Switalski, Callahan, Faunce, Rocca, Sanborn, Kolb and Bovin and referred to the Committee on Transportation.

A bill to amend 1949 PA 300, entitled  
"Michigan vehicle code,"  
by amending section 667a (MCL 257.667a), as added by 2000  
PA 367.

## 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  
9 identified or a sign shall be placed at the approach to the

1 crossing indicating that the crossing is monitored by an unmanned  
2 traffic monitoring device.

3       (2) Beginning 31 days after the installation of an unmanned  
4 traffic monitoring device at a railroad grade crossing described  
5 in subsection (1), a person is responsible for a civil infraction  
6 as provided in section 667 if the person violates a provision of  
7 that section on the basis of evidence obtained from an unmanned  
8 traffic monitoring device. However, for the first 30 days after  
9 the installation of an unmanned traffic monitoring device, a  
10 person shall be issued a written warning only. It shall be an  
11 affirmative defense to a charge of violating section 667 that the  
12 mechanical warning devices at the crossing were malfunctioning.

13       (3) A sworn statement of a police officer from the state or  
14 local authority having jurisdiction over the highway or street  
15 upon which the railroad grade crossing described in  
16 subsection (1) is located, based upon inspection of photographs,  
17 microphotographs, videotape, or other recorded images produced by  
18 an unmanned traffic monitoring device, shall be prima facie evi-  
19 dence of the facts contained therein. Any photographs, micropho-  
20 tographs, videotape, or other recorded images indicating such a  
21 violation shall be available for inspection in any proceeding to  
22 adjudicate the responsibility for a violation of section 667.  
23 Any photographs, videotape, or digital images evidencing such a  
24 violation shall be destroyed 90 days after final disposition of  
25 the citation.

26       (4) In a prosecution for a violation of section 667  
27 established by an unmanned traffic monitoring device under this

1 section, prima facie evidence that the vehicle described in the  
2 citation issued was operated in violation of section 667,  
3 together with proof that the defendant was at the time of the  
4 violation the registered owner of the vehicle, shall constitute  
5 in evidence a rebuttable presumption that the registered owner of  
6 the vehicle was the person who committed the violation. The pre-  
7 sumption may be rebutted if the registered owner of the vehicle  
8 files an affidavit by regular mail with the clerk of the court  
9 that he or she was not the operator of the vehicle at the time of  
10 the alleged violation or testifies in open court under oath that  
11 he or she was not the operator of the vehicle at the time of the  
12 alleged violation. The presumption also may be rebutted if a  
13 certified copy of a police report, showing that the vehicle had  
14 been reported to the police as stolen before the time of the  
15 alleged violation of this section, is presented before the  
16 appearance date established on the citation. For purposes of  
17 this subsection, the owner of a leased or rental vehicle shall  
18 provide the name and address of the person to whom the vehicle  
19 was leased or rented at the time of the violation.

20 (5) Notwithstanding section 742, a citation for a violation  
21 of section 667 on the basis of evidence obtained from an unmanned  
22 traffic monitoring device may be executed by mailing by  
23 first-class mail a copy to the address of the owner of the vehi-  
24 cle as shown on the records of the secretary of state. If the  
25 summoned person fails to appear on the date of return set out in  
26 the citation previously mailed by first-class mail pursuant to  
27 this subsection, a copy shall be sent by certified mail-return

1 receipt requested. If the summoned person fails to appear on  
2 either of the dates of return set out in the copies of the  
3 citation mailed pursuant to this section, the citation shall be  
4 executed in the manner provided by law for personal service. The  
5 court may issue a warrant for the arrest of a person who fails to  
6 appear within the time limit established on the citation if a  
7 sworn complaint is filed with the court for that purpose as  
8 required for other civil infractions under section 744.

9       (6) If there is a fatality at a railroad grade crossing in a  
10 COUNTY, city, VILLAGE, OR TOWNSHIP with A population of 60,000 or  
11 more, the state transportation department shall undertake a diag-  
12 nostic review. The diagnostic review shall be scheduled within  
13 120 days. If the diagnostic review confirms that warning devices  
14 such as flashing lights and gates are needed, the state transpor-  
15 tation department shall order such improvements. The cost for  
16 the improvements shall be financed consistent with the financing  
17 of similar projects by the state transportation department  
18 according to its annual prioritization of grade crossing safety  
19 improvements.