

**Sixty-first Legislative Assembly of North Dakota
In Regular Session Commencing Tuesday, January 6, 2009**

HOUSE BILL NO. 1342
(Representatives Weisz, DeKrey, Delmore, R. Kelsch)
(Senators Cook, Fiebiger)

AN ACT to create and enact a new section to chapters 49-10 and 49-11 of the North Dakota Century Code, relating to public and private railroad crossings; to amend and reenact sections 49-11-21 and 49-11-22 of the North Dakota Century Code, relating to warning devices at railroad crossings; and to provide an effective date.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. A new section to chapter 49-10 of the North Dakota Century Code is created and enacted as follows:

Railroad crossing determination. If a dispute arises as to whether a railroad grade crossing should be classified as public or private as defined in section 2 of this Act, the railroad corporation, governmental entity, or private property owner may file with the commission a petition and the commission shall determine whether the crossing is public or private.

SECTION 2. A new section to chapter 49-11 of the North Dakota Century Code is created and enacted as follows:

Definitions. In this chapter, unless the context otherwise requires:

1. "Public railroad crossing" means a location where a public highway, road, or street, including associated sidewalks or pathways, crosses one or more railroad tracks at grade. The term includes a crossing if a public authority maintains the roadway on both sides of the crossing.
2. "Private railroad crossing" means any railroad at grade crossing of a roadway which is not a public railroad crossing.

SECTION 3. AMENDMENT. Section 49-11-21 of the North Dakota Century Code is amended and reenacted as follows:

49-11-21. Warning device sounded at crossing by locomotive - ~~Exception~~ Exceptions.

1. A warning device must be placed on each locomotive engine and the device on the lead locomotive must be sounded at a distance of at least eighty rods [402.34 meters] from the place where the railroad crosses any other road or street when approaching a public railroad crossing, and must continue to be sounded until it has crossed the road or street locomotive enters the public railroad crossing.
2. The warning device may not be sounded at a private railroad crossing. However, a party may petition the commission to request that a horn be sounded at a private railroad crossing. The commission shall review the request and issue an order approving or denying the request based on the safety concerns of the public. A party may not be subject to any liability as a result of not making a request.
3. The governing body of a city may adopt a quiet zone ordinance, as allowed by federal law and implemented under the federal railroad administration's supplemental safety measures for at-grade crossings, prohibiting a locomotive engine from sounding a warning device at crossings within the quiet zone under regular crossing conditions.

- ~~4. A crew member may sound a warning device as determined appropriate by that crew member~~ Notwithstanding any other provision of this section, a locomotive engineer may sound a locomotive horn at any crossing to provide a warning to animals, vehicle operators, pedestrians, trespassers, or crews on other trains in an emergency situation if in the locomotive engineer's judgment the action is appropriate to prevent imminent injury, death, or property damage.

SECTION 4. AMENDMENT. Section 49-11-22 of the North Dakota Century Code is amended and reenacted as follows:

49-11-22. Liability for failure of locomotive to sound bell, horn, or whistle at crossing.

- ~~1. A person railroad that owns or has a leasehold interest in~~ has operational control of a locomotive that fails to sound its warning device at any road or street crossing as required by section 49-11-21 is guilty of an infraction and is liable for all damages that are sustained by any person by reason of the neglect.
- ~~2. If a crew member of a locomotive does not sound a warning device at a crossing for which the sounding of a warning device is prohibited under a city ordinance not required,~~ any crew member or person railroad with any interest in operational control of the locomotive is may not be liable for any damages sustained by a person by reason of the failure to sound a warning device.
- ~~3. This section does not exempt a railroad corporation from any liability created under chapter 49-16 or the Federal Employers' Liability Act [45 U.S.C. 51 et seq.] for injuries to its employees or agents.~~

SECTION 5. EFFECTIVE DATE. This Act becomes effective on January 1, 2010.

Speaker of the House

President of the Senate

Chief Clerk of the House

Secretary of the Senate

This certifies that the within bill originated in the House of Representatives of the Sixty-first Legislative Assembly of North Dakota and is known on the records of that body as House Bill No. 1342.

House Vote: Yeas 89 Nays 0 Absent 5

Senate Vote: Yeas 47 Nays 0 Absent 0

Chief Clerk of the House

Received by the Governor at _____ M. on _____, 2009.

Approved at _____ M. on _____, 2009.

Governor

Filed in this office this _____ day of _____, 2009,

at _____ o'clock _____ M.

Secretary of State