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To: Transportation

HOUSE BILL NO. 1431

1 AN ACT TO REQUIRE RAILROAD COMPANIES TO REMOVE VEGETATION
 2 WITHIN A CERTAIN DISTANCE OF HIGHWAY RAILROAD GRADE CROSSINGS; TO
 3 PROVIDE THAT IN CIVIL ACTIONS TO RECOVER DAMAGES SUSTAINED IN
 4 COLLISIONS OF MOTOR VEHICLES WITH RAILROAD TRAINS, THE QUESTION OF
 5 WHETHER THE RAILROAD COMPANY'S FAILURE TO REMOVE SUCH VEGETATION
 6 WAS THE PROXIMATE CAUSE OF THE INJURY SHALL BE INITIALLY
 7 DETERMINED BY THE JUDGE; TO REQUIRE THE DEPARTMENT OF
 8 TRANSPORTATION TO PERIODICALLY INSPECT AND EVALUATE ALL PUBLIC
 9 HIGHWAY RAILROAD GRADE CROSSINGS TO DETERMINE IF THE RAILROAD
 10 COMPANY IS IN COMPLIANCE WITH THIS ACT AND TO NOTIFY RAILROAD
 11 COMPANIES OF ANY SUCH NONCOMPLIANCE; TO PROVIDE CIVIL FINES FOR
 12 RAILROAD COMPANIES THAT FAIL TO COMPLY WITH THE PROVISIONS OF THIS
 13 ACT; TO PROVIDE THAT THE DEPARTMENT OF TRANSPORTATION SHALL HAVE
 14 EXCLUSIVE AUTHORITY TO BRING A CIVIL ACTION TO ENFORCE THE
 15 PROVISIONS OF THIS ACT; TO AMEND SECTION 77-9-249, MISSISSIPPI
 16 CODE OF 1972, TO CLARIFY THE SAFETY REQUIREMENTS FOR MOTORISTS TO
 17 FOLLOW WHEN APPROACHING A RAILROAD GRADE CROSSING; TO AMEND
 18 SECTIONS 63-3-1007, 63-3-1009, 63-3-1011 AND 63-3-1013,
 19 MISSISSIPPI CODE OF 1972, TO CONFORM THE PROVISIONS PRESCRIBING
 20 THE CLOSEST DISTANCE THAT A VEHICLE IS REQUIRED TO STOP AT A
 21 RAILROAD GRADE CROSSING; AND FOR RELATED PURPOSES.

22 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MISSISSIPPI:

23 **SECTION 1.** (1) At all public highway railroad grade
 24 crossing that do not have automatic flashing lights and/or
 25 gates where vegetation would materially obstruct the view of a
 26 vehicle operator exercising reasonable care of a train approaching
 27 a grade crossing from either direction, every railroad, as is
 28 reasonably practical, shall remove from its right-of-way which it
 29 owns or operates, such vegetation as weeds, brush, climbing vines,
 30 shrubbery and trees, for a distance of not less than three hundred
 31 (300) feet in each direction from the centerline of the public
 32 road or highway, unless the authorized train speed is ten (10)
 33 miles per hour or less, in which case the distance from the
 34 centerline of the public road or highway shall be not less than
 35 one hundred (100) feet. At the outer edges of the public road or
 36 highway, the vegetation shall be removed to a width of twenty-five

37 (25) feet on each side of the centerline of the railroad or to the
38 full width of the railroad's operating right-of-way whichever is
39 shorter. The area cleared of vegetation may be tapered inward
40 from its full width at the involved roadway to the outer limits of
41 the area being cleared so as to create a triangle, or it may be
42 cleared at a constant width so as to form a rectangle.

43 (2) In the trial of all civil actions to recover damages for
44 personal injuries, wrongful death damages and/or property damages
45 sustained by a motorist or passenger in a motor vehicle resulting
46 from a collision of the vehicle and a railroad train or motorized
47 equipment in which action it is alleged the railroad violated any
48 of the provisions of subsection (1) of this section, the question
49 whether or not the railroad violated subsection (1) of this
50 section, and whether the violation was the sole or proximate cause
51 of the accident and injury shall initially be considered by the
52 judge and a determination made as to whether the questions should
53 be submitted to the jury for a decision. The violation of
54 subsection (1) of this section shall not of itself be grounds for
55 recovery, and the comparative negligence statute and prima facie
56 statute of this state shall apply in these cases as in other cases
57 of negligence.

58 (3) This section does not change or modify the duties of the
59 operator of a vehicle as set forth in Section 77-9-249 or its
60 application.

61 (4) The Department of Transportation may periodically inspect
62 and evaluate all public highway railroad grade crossings to
63 determine whether such grade crossings are maintained in
64 compliance with the provisions of this section. If the department
65 determines that a particular grade crossing is not in compliance,
66 the department shall notify the railroad company which owns or
67 operates the right-of-way that a grade crossing is not in
68 compliance with this section.

69 (5) Every notification to a railroad company, as authorized
70 under the provisions of this section shall be in writing
71 transmitted by certified mail, return receipt requested, to the
72 person listed as the registered agent of the railroad company for
73 service of process. Upon receipt of the notice, the railroad
74 company shall have thirty (30) days to comply with the notice
75 before any civil action may be taken by the Department of
76 Transportation.

77 (6) Any railroad company that fails to comply with the
78 provisions of this section shall be subject to a civil fine of not
79 to exceed Five Hundred Dollars (\$500.00) per violation. The
80 Department of Transportation shall have the exclusive authority to
81 bring a civil action to enforce the provisions of this section.
82 The fines shall be payable to the Department of Transportation.

83 (7) In any civil action to recover damages arising from or
84 out of a highway railroad grade crossing accident, the failure of
85 the Department of Transportation to inspect and evaluate a public
86 highway railroad grade crossing and notify a railroad company of
87 noncompliance, as provided in subsections (4) and (5) of this
88 section, shall not be considered as comparative negligence and
89 shall not be discoverable or admissible as evidence in any civil
90 trial.

91 **SECTION 2.** Section 77-9-249, Mississippi Code of 1972, is
92 amended as follows:

93 77-9-249. (1) Whenever any person driving a vehicle
94 approaches a railroad grade crossing under any of the
95 circumstances stated in this subsection, the driver of such
96 vehicle shall stop within fifty (50) feet but not less than
97 fifteen (15) feet from the nearest rail of such railroad, and
98 shall not proceed until he can do so safely. The foregoing
99 requirements shall apply when one or more of the following
100 circumstances exists:

101 (a) A clearly visible electric or mechanical signal
102 device gives warning of the immediate approach of a railroad
103 train; or

104 (b) A crossing gate is lowered or when a human flagman
105 gives or continues to give a signal of the approach or passage of
106 a railroad train; or

107 (c) A railroad train approaching within approximately
108 nine hundred (900) feet of the highway crossing emits a signal in
109 accordance with Section 77-9-225, and such railroad train, by
110 reason of its speed or nearness to such crossing, is an immediate
111 hazard; or

112 (d) An approaching railroad train is plainly visible
113 and is in hazardous proximity to such crossing.

114 (2) No person shall drive any vehicle through, around or
115 under any crossing gate or barrier at a railroad crossing while
116 such gate or barrier is closed or is being opened or closed.

117 (3) In the trial of all actions to recover personal injury
118 or property damages, sustained by any driver of such vehicles for
119 collision of said vehicle and train in which action it may appear
120 that the said driver may have violated any of the provisions
121 hereof, the question of whether or not the said violation was the
122 sole or approximate cause of the accident and injury shall be for
123 the jury to determine. The violation of this section shall not of
124 itself defeat recovery, and the question of negligence or the
125 violation aforesaid shall be left to the jury; and the comparative
126 negligence statutes and prima facie statute of this state shall
127 apply in these cases as in other cases of negligence.

128 (4) At any railroad grade crossing provided with visible
129 railroad crossbuck signs without automatic electric or mechanical
130 signal devices, crossing gates or a human flagman giving a signal
131 of the approach or passage of a train, the driver of a vehicle
132 shall, in obedience to such railroad crossbuck sign, yield the
133 right-of-way and slow to a speed reasonable for the existing

134 conditions, and shall stop if required for safety at a clearly
135 marked stop line, or if no stop line, within fifty (50) feet, but
136 not less than fifteen (15) feet, from the nearest rail of the
137 railroad, and shall not proceed until he can do so safely.

138 (5) Every person, company or corporation violating the
139 provisions of this section shall be guilty of a misdemeanor and,
140 upon conviction, shall be fined not less than Two Hundred Fifty
141 Dollars (\$250.00) nor more than Five Hundred Dollars (\$500.00), or
142 imprisoned not more than thirty (30) days, or both such fine and
143 imprisonment, in the discretion of the court.

144 **SECTION 3.** Section 63-3-1007, Mississippi Code of 1972, is
145 amended as follows:

146 63-3-1007. (1) Whenever any person driving a vehicle
147 approaches a railroad grade crossing and a clearly visible
148 electric or mechanical signal device gives warning of the
149 immediate approach of a train, the driver of such vehicle shall
150 stop within fifty (50) feet but not less than fifteen (15) feet
151 from the nearest track of such railroad and shall not proceed
152 until he can do so safely.

153 (2) The driver of a vehicle shall stop and remain standing
154 and not traverse such a grade crossing when a crossing gate is
155 lowered or when a human flagman gives or continues to give a
156 signal of the approach or passage of a train. The violation of
157 this section shall not of itself defeat recovery and the question
158 of negligence or the violation aforesaid, shall be left to the
159 jury and the comparative negligence statute and prima facie
160 statute of this state shall apply in these cases as in other cases
161 of negligence.

162 **SECTION 4.** Section 63-3-1009, Mississippi Code of 1972, is
163 amended as follows:

164 63-3-1009. The Mississippi Transportation Commission is
165 hereby authorized to designate particularly dangerous highway
166 grade crossings of railroads and to erect stop signs thereat.

167 When such stop signs are erected the driver of any vehicle shall
168 stop within fifty (50) feet but not less than fifteen (15) feet
169 from the nearest track of such grade crossing and shall proceed
170 only upon exercise of due care.

171 **SECTION 5.** Section 63-3-1011, Mississippi Code of 1972, is
172 amended as follows:

173 63-3-1011. (1) The driver of any motor vehicle carrying
174 passengers for hire, or of any school bus carrying any school
175 child, or of any vehicle carrying explosive substances of
176 flammable liquids as a cargo or part of a cargo, before crossing
177 at grade any track or tracks of a railroad, shall stop such
178 vehicle within fifty (50) feet but not less than fifteen (15) feet
179 from the nearest rail of such railroad and while so stopped shall
180 listen and look in both directions along such track for any
181 approaching train and for signals indicating the approach of a
182 train, except as hereinafter provided, and shall not proceed until
183 he can do so safely.

184 (2) No stop need be made at any such crossing where a police
185 officer or a traffic control signal directs traffic to proceed.

186 (3) This section shall not apply at street railway grade
187 crossings within a business or residence district.

188 **SECTION 6.** Section 63-3-1013, Mississippi Code of 1972, is
189 amended as follows:

190 63-3-1013. No person shall operate or move any caterpillar
191 tractor, steam shovel, derrick, roller, or any equipment or
192 structure having a normal operating speed of six (6) or less miles
193 per hour or a vertical body or load clearance of less than nine
194 (9) inches above the level surface of a roadway upon or across any
195 tracks at a railroad grade crossing without notice of any such
196 intended crossing first being given to a superintendent of such
197 railroad and a reasonable time being given to such railroad to
198 provide proper protection at such crossing.

199 Before making any such crossing the person operating or
200 moving any such vehicle or equipment shall first stop the same not
201 less than fifteen (15) feet nor more than fifty (50) feet from the
202 nearest rail of such railway and while so stopped shall listen and
203 look in both directions along such track for any approaching train
204 and for signals indicating the approach of a train, and shall not
205 proceed until the crossing can be made safely.

206 No such crossing shall be made when warning is given by
207 automatic signal or crossing gates or a flagman or otherwise of
208 the immediate approach of a railroad train or car.

209 **SECTION 7.** This act shall take effect and be in force from
210 and after July 1, 2004.