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To: Transportation

HOUSE BILL NO. 1431
 (As Passed the House)

1 AN ACT TO REQUIRE RAILROAD COMPANIES TO REMOVE VEGETATION
 2 WITHIN A CERTAIN DISTANCE OF HIGHWAY RAILROAD GRADE CROSSINGS; TO
 3 REQUIRE THE DEPARTMENT OF TRANSPORTATION TO PERIODICALLY INSPECT
 4 AND EVALUATE ALL PUBLIC HIGHWAY RAILROAD GRADE CROSSINGS TO
 5 DETERMINE IF THE RAILROAD COMPANY IS IN COMPLIANCE WITH THIS ACT
 6 AND TO NOTIFY RAILROAD COMPANIES OF ANY SUCH NONCOMPLIANCE; TO
 7 PROVIDE CIVIL FINES FOR RAILROAD COMPANIES THAT FAIL TO COMPLY
 8 WITH THE PROVISIONS OF THIS ACT; TO PROVIDE THAT THE DEPARTMENT OF
 9 TRANSPORTATION SHALL HAVE EXCLUSIVE AUTHORITY TO BRING A CIVIL
 10 ACTION TO ENFORCE THE PROVISIONS OF THIS ACT; TO AMEND SECTION
 11 77-9-249, MISSISSIPPI CODE OF 1972, TO CLARIFY THE SAFETY
 12 REQUIREMENTS FOR MOTORISTS TO FOLLOW WHEN APPROACHING A RAILROAD
 13 GRADE CROSSING; TO AMEND SECTIONS 63-3-1007, 63-3-1009, 63-3-1011
 14 AND 63-3-1013, MISSISSIPPI CODE OF 1972, TO CONFORM THE PROVISIONS
 15 PRESCRIBING THE CLOSEST DISTANCE THAT A VEHICLE IS REQUIRED TO
 16 STOP AT A RAILROAD GRADE CROSSING; AND FOR RELATED PURPOSES.

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

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

35 from its full width at the involved roadway to the outer limits of
36 the area being cleared so as to create a triangle, or it may be
37 cleared at a constant width so as to form a rectangle.

38 (2) The violation of subsection (1) of this section shall
39 not of itself be grounds for recovery, and the comparative
40 negligence statute and the apportionment statute of this state
41 shall apply in these cases as in other cases of negligence.

42 (3) This section does not change or modify the duties of the
43 operator of a vehicle as set forth in Sections 77-9-249,
44 65-3-1007, 65-3-1009, 65-3-1011 or 65-3-1013, or the application
45 of such sections.

46 (4) The Department of Transportation may periodically
47 inspect and evaluate all public highway railroad grade crossings
48 to determine whether such grade crossings are maintained in
49 compliance with the provisions of this section. If the department
50 determines that a particular grade crossing is not in compliance,
51 the department shall notify the railroad company which owns or
52 operates the right-of-way that a grade crossing is not in
53 compliance with this section.

54 (5) Every notification to a railroad company, as authorized
55 under the provisions of this section shall be in writing
56 transmitted by certified mail, return receipt requested, to the
57 person listed as the registered agent of the railroad company for
58 service of process. Upon receipt of the notice, the railroad
59 company shall have thirty (30) days to comply with the notice
60 before any civil action may be taken by the Department of
61 Transportation.

62 (6) Any railroad company that fails to comply with the
63 provisions of this section shall be subject to a civil fine of not
64 to exceed Five Hundred Dollars (\$500.00) per violation. The
65 Department of Transportation shall have the exclusive authority to
66 bring a civil action to enforce the provisions of this section.
67 The fines shall be payable to the Department of Transportation.

68 (7) In any civil action to recover damages arising from or
69 out of a highway railroad grade crossing accident, the failure of
70 the Department of Transportation to inspect and evaluate a public
71 highway railroad grade crossing and notify a railroad company of
72 noncompliance, as provided in subsections (4) and (5) of this
73 section, shall not be considered as comparative negligence and
74 shall not be discoverable or admissible as evidence in any civil
75 trial.

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

78 77-9-249. (1) Whenever any person driving a vehicle
79 approaches a railroad grade crossing under any of the
80 circumstances stated in this subsection, the driver of such
81 vehicle shall stop within fifty (50) feet but not less than
82 fifteen (15) feet from the nearest rail of such railroad, and
83 shall not proceed until he can do so safely. The foregoing
84 requirements shall apply when one or more of the following
85 circumstances exists:

86 (a) A clearly visible electric or mechanical signal
87 device gives warning of the immediate approach of a railroad
88 train; or

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

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

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

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

102 (3) In the trial of all actions to recover personal injury
103 or property damages, sustained by any driver of such vehicles for
104 collision of said vehicle and train in which action it may appear
105 that the said driver may have violated any of the provisions
106 hereof, the question of whether or not the said violation was the
107 sole or approximate cause of the accident and injury shall be for
108 the jury to determine. The violation of this section shall not of
109 itself defeat recovery, and the question of negligence or the
110 violation aforesaid shall be left to the jury; and the comparative
111 negligence statutes and prima facie statute of this state shall
112 apply in these cases as in other cases of negligence.

113 (4) At any railroad grade crossing provided with visible
114 railroad crossbuck signs without automatic electric or mechanical
115 signal devices, crossing gates or a human flagman giving a signal
116 of the approach or passage of a train, the driver of a vehicle
117 shall, in obedience to such railroad crossbuck sign, yield the
118 right-of-way and slow to a speed reasonable for the existing
119 conditions, and shall stop if required for safety at a clearly
120 marked stop line, or if no stop line, within fifty (50) feet, but
121 not less than fifteen (15) feet, from the nearest rail of the
122 railroad, and shall not proceed until he can do so safely.

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

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

131 63-3-1007. (1) Whenever any person driving a vehicle
132 approaches a railroad grade crossing and a clearly visible
133 electric or mechanical signal device gives warning of the
134 immediate approach of a train, the driver of such vehicle shall
135 stop within fifty (50) feet but not less than fifteen (15) feet
136 from the nearest track of such railroad and shall not proceed
137 until he can do so safely.

138 (2) The driver of a vehicle shall stop and remain standing
139 and not traverse such a grade crossing when a crossing gate is
140 lowered or when a human flagman gives or continues to give a
141 signal of the approach or passage of a train. The violation of
142 this section shall not of itself defeat recovery and the question
143 of negligence or the violation aforesaid, shall be left to the
144 jury and the comparative negligence statute and prima facie
145 statute of this state shall apply in these cases as in other cases
146 of negligence.

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

149 63-3-1009. The Mississippi Transportation Commission is
150 hereby authorized to designate particularly dangerous highway
151 grade crossings of railroads and to erect stop signs thereat.
152 When such stop signs are erected the driver of any vehicle shall
153 stop within fifty (50) feet but not less than fifteen (15) feet
154 from the nearest track of such grade crossing and shall proceed
155 only upon exercise of due care.

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

158 63-3-1011. (1) The driver of any motor vehicle carrying
159 passengers for hire, or of any school bus carrying any school
160 child, or of any vehicle carrying explosive substances of
161 flammable liquids as a cargo or part of a cargo, before crossing
162 at grade any track or tracks of a railroad, shall stop such
163 vehicle within fifty (50) feet but not less than fifteen (15) feet

164 from the nearest rail of such railroad and while so stopped shall
165 listen and look in both directions along such track for any
166 approaching train and for signals indicating the approach of a
167 train, except as hereinafter provided, and shall not proceed until
168 he can do so safely.

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

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

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

175 63-3-1013. No person shall operate or move any caterpillar
176 tractor, steam shovel, derrick, roller, or any equipment or
177 structure having a normal operating speed of six (6) or less miles
178 per hour or a vertical body or load clearance of less than nine
179 (9) inches above the level surface of a roadway upon or across any
180 tracks at a railroad grade crossing without notice of any such
181 intended crossing first being given to a superintendent of such
182 railroad and a reasonable time being given to such railroad to
183 provide proper protection at such crossing.

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

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

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