## **HOUSE BILL No. 6368**

August 30, 2006, Introduced by Reps. Angerer, Wojno, Clemente, Sak, Spade, Vagnozzi, Miller, Leland, Cushingberry, Bieda, Alma Smith, Lemmons, Jr., Bennett and Cheeks 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 amended by 2002 PA 534.

## 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, board 3 of county road commissioners, or county sheriff; or other local 4 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 jurisdictions. Each device shall be sufficiently marked or identified or a sign 8 shall be placed at the approach to the crossing indicating that the

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- 1 crossing is monitored by an unmanned traffic monitoring device.
- 2 (2) Beginning 31 days after the installation of an unmanned
- 3 traffic monitoring device at a railroad grade crossing described in
- 4 subsection (1), a person is responsible for a civil infraction as
- 5 provided in section 667 if the person violates a provision of that
- 6 section on the basis of evidence obtained from an unmanned traffic
- 7 monitoring device. However, for the first 30 days after the
- 8 installation of an unmanned traffic monitoring device, a person
- 9 shall be issued a written warning only. It -shall be- IS an
- 10 affirmative defense to a charge of violating section 667 that the
- 11 mechanical warning devices at the crossing were malfunctioning.
- 12 (3) A sworn statement of a police officer from the state or
- 13 local authority having jurisdiction over the highway or street upon
- 14 which the railroad grade crossing described in subsection (1) is
- 15 located, based upon inspection of photographs, microphotographs,
- 16 videotape, or other recorded images produced by an unmanned traffic
- 17 monitoring device, -shall be- IS prima facie evidence of the facts
- 18 contained therein. Any photographs, microphotographs, videotape, or
- 19 other recorded images indicating such a violation shall be
- 20 available for inspection in any proceeding to adjudicate the
- 21 responsibility for a violation of section 667. Any photographs,
- 22 videotape, or digital images <u>evidencing such a</u> **OF THE** violation
- 23 shall be destroyed 90 days after final disposition of the citation.
- 24 (4) In a prosecution for a violation of section 667
- 25 established by an unmanned traffic monitoring device under this
- 26 section, prima facie evidence that the vehicle described in the
- 27 citation issued was operated in violation of section 667, together

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- 1 with proof that the defendant was at the time of the violation the
- 2 registered owner of the vehicle, shall constitute in evidence a
- 3 rebuttable presumption that the registered owner of the vehicle was
- 4 the person who committed the violation. The presumption is rebutted
- 5 if the registered owner of the vehicle files an affidavit by
- 6 regular mail with the clerk of the court that he or she was not the
- 7 operator of the vehicle at the time of the alleged violation or
- 8 testifies in open court under oath that he or she was not the
- 9 operator of the vehicle at the time of the alleged violation. The
- 10 presumption also is rebutted if a certified copy of a police
- 11 report, showing that the vehicle had been reported to the police as
- 12 stolen before the time of the alleged violation of this section, is
- 13 presented before the appearance date established on the citation.
- 14 For purposes of this subsection, the owner of a leased or rental
- 15 vehicle shall provide the name and address of the person to whom
- 16 the vehicle was leased or rented at the time of the violation.
- 17 (5) Notwithstanding section 742, a citation for a violation of
- 18 section 667 on the basis of evidence obtained from an unmanned
- 19 traffic monitoring device may be executed by mailing by first-class
- 20 mail a copy to the address of the owner of the vehicle as shown on
- 21 the records of the secretary of state. If the summoned person fails
- 22 to appear on the date of return set out in the citation previously
- 23 mailed by first-class mail pursuant to UNDER this subsection, a
- 24 copy shall be sent by certified mail-return receipt requested. If
- 25 the summoned person fails to appear on either of the dates of
- 26 return set out in the copies of the citation mailed <del>pursuant to</del>
- 27 UNDER this section, the citation shall be executed in the manner

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- 1 provided by law for personal service. The court may issue a warrant
- 2 for the arrest of a person who fails to appear within the time
- 3 limit established on the citation if a sworn complaint is filed
- 4 with the court for that purpose.
- 5 (6) If there is a fatality RESULTING FROM A TRAIN-VEHICLE
- 6 CRASH at a PUBLIC railroad grade crossing, in a city, village, or
- 7 township with population of 60,000 or more, or in a county with
- 8 population of 150,000 or more, the state transportation department
- 9 shall -undertake- CONVENE a diagnostic STUDY TEAM review, if there
- 10 has not been a diagnostic STUDY TEAM review at the crossing in the
- 11 last 2 years. HOWEVER, A DIAGNOSTIC STUDY TEAM REVIEW IS NOT
- 12 REQUIRED IF THE INITIAL LAW ENFORCEMENT INVESTIGATION OF THE
- 13 FATALITY INDICATES THAT THE MOTORIST'S CONSUMPTION OF ALCOHOL OR A
- 14 CONTROLLED SUBSTANCE OR HIS OR HER DISREGARD OF AN EXISTING TRAFFIC
- 15 CONTROL DEVICE CONVEYING A "STOP" MESSAGE CONTRIBUTED TO THE
- 16 FATALITY, OR THAT THE FATALITY WAS A SUICIDE. The diagnostic STUDY
- 17 TEAM review shall be -scheduled CONDUCTED within 120 days AFTER
- 18 THE STATE TRANSPORTATION DEPARTMENT IS MADE AWARE OF THE FATALITY.
- 19 If the diagnostic STUDY TEAM review —confirms— REACHES CONSENSUS
- 20 that warning -devices such as flashing lights and gates DEVICE
- 21 ENHANCEMENTS are needed, the state transportation department shall
- 22 order -such THOSE improvements. The cost for the improvements
- 23 shall be financed consistent with the financing of similar projects
- 24 by the state transportation department according to its annual
- 25 prioritization of grade crossing safety improvements.