

**FIRST ENGROSSMENT
with Senate Amendments**

Sixty-first
Legislative Assembly
of North Dakota

ENGROSSED HOUSE BILL NO. 1342

Introduced by

Representatives Weisz, DeKrey, Delmore, R. Kelsch

Senators Cook, Fiebiger

1 A BILL for an Act to create and enact a new section to chapters 49-10 and 49-11 of the North
2 Dakota Century Code, relating to public and private railroad crossings; to amend and reenact
3 sections 49-11-21 and 49-11-22 of the North Dakota Century Code, relating to warning devices
4 at railroad crossings; and to provide an effective date.

5 **BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:**

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

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

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

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

15 1. "Public railroad crossing" means a location where a public highway, road, or street,
16 including associated sidewalks or pathways, crosses one or more railroad tracks at
17 grade. The term includes a crossing if a public authority maintains the roadway on
18 both sides of the crossing.

19 2. "Private railroad crossing" means any railroad at grade crossing of a roadway
20 which is not a public railroad crossing.

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

23 **49-11-21. Warning device sounded at crossing by locomotive - ~~Exception~~**
24 **Exceptions.**

- 1 1. ~~A warning device must be placed on each locomotive engine and the device on the~~
2 ~~lead locomotive must be sounded at a distance of at least eighty rods [402.34~~
3 ~~meters] from the place where the railroad crosses any other road or street when~~
4 ~~approaching a public railroad crossing, and must continue to be sounded until it~~
5 ~~has crossed the road or street locomotive enters the public railroad crossing.~~
- 6 2. The warning device may not be sounded at a private railroad crossing. However,
7 a party may petition the commission to request that a horn be sounded at a private
8 railroad crossing. The commission shall review the request and issue an order
9 approving or denying the request based on the safety concerns of the public. A
10 party may not be subject to any liability as a result of not making a request.
- 11 3. The governing body of a city may adopt a quiet zone ordinance, as allowed by
12 federal law and implemented under the federal railroad administration's
13 supplemental safety measures for at-grade crossings, prohibiting a locomotive
14 engine from sounding a warning device at crossings within the quiet zone under
15 regular crossing conditions.
- 16 4. ~~A crew member may sound a warning device as determined appropriate by that~~
17 ~~crew member~~ Notwithstanding any other provision of this section, a locomotive
18 engineer may sound a locomotive horn at any crossing to provide a warning to
19 animals, vehicle operators, pedestrians, trespassers, or crews on other trains in an
20 emergency situation if in the locomotive engineer's judgment the action is
21 appropriate to prevent imminent injury, death, or property damage.

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

24 **49-11-22. Liability for failure of locomotive to sound bell, horn, or whistle at**
25 **crossing.**

- 26 1. ~~A person~~ railroad that ~~owns or has a leasehold interest in~~ has operational control
27 of a locomotive that fails to sound its warning device at any road or street crossing
28 as required by section 49-11-21 is guilty of an infraction and is liable for all
29 damages that are sustained by any person by reason of the neglect.
- 30 2. If a crew member of a locomotive does not sound a warning device at a crossing
31 for which the sounding of a warning device is ~~prohibited under a city ordinance~~ not

1 required, any crew member or ~~person~~ railroad with ~~any interest in operational~~
2 control of the locomotive ~~is~~ may not be liable for any damages sustained by a
3 person by reason of the failure to sound a warning device.

4 3. This section does not exempt a railroad corporation from any liability created under
5 chapter 49-16 or the Federal Employers' Liability Act [45 U.S.C. 51 et seq.] for
6 injuries to its employees or agents.

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