

SENATE BILL NO. 163

INTRODUCED BY D. MAHLUM

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29
30

A BILL FOR AN ACT ENTITLED: "AN ACT ENACTING THE RAILROAD VANDALISM AND TRESPASS PREVENTION ACT; ESTABLISHING THE OFFENSES OF TRESPASSING ON RAILROAD PROPERTY, STOWING AWAY ON RAILROAD PROPERTY, RECKLESS VANDALISM TO RAILROAD PROPERTY, INTENTIONAL VANDALISM TO RAILROAD PROPERTY, THEFT OF RAILROAD FREIGHT, AND RECEIVING STOLEN RAILROAD FREIGHT; AND ESTABLISHING PENALTIES FOR THE OFFENSES."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

NEW SECTION. **Section 1. Short title.** [Sections 1 through 8] may be cited as the "Railroad Vandalism and Trespass Prevention Act".

NEW SECTION. **Section 2. Purpose.** The purpose of [sections 1 through 8] is:
(1) to prevent accidents and injuries to persons who unlawfully enter upon railroad property;
(2) to prevent acts of vandalism to railroad property that affect the health, safety, and welfare of the traveling public, the neighboring community, and railroad employees;
(3) to protect railroad property and freight in transit; and
(4) to otherwise enhance the safety of transportation by railroad.

NEW SECTION. **Section 3. Definitions.** As used in [sections 1 through 8], the following definitions apply:

- (1) "Bodily injury" means:
 - (a) a cut, abrasion, bruise, burn, or disfigurement;
 - (b) physical pain;
 - (c) illness;
 - (d) impairment of the function of or loss of a bodily member, organ, or mental faculty; or
 - (e) any other injury to the body, no matter how temporary.
- (2) "Enters or remains on railroad property" includes but is not limited to performing any of the following

1 on railroad property:

2 (i) ~~standing, sitting, resting, walking, jogging, running, driving, or operating a recreational or~~
3 ~~nonrecreational vehicle, including but not limited to a bicycle, motorcycle, snowmobile, car, or truck~~ VANDALISM

4 OR OTHER UNLAWFUL ACTIVITY; or

5 (ii) engaging in ~~recreational activity, including but not limited to biking, hiking, fishing, camping, OR~~
6 ~~cross-country skiing, horseback riding, or hunting.~~ OR HORSEBACK RIDING.

7 (3) "Passenger" means a person traveling by train with lawful authority and without participating in the
8 train's operation. A passenger does not include a stowaway.

9 (4) (a) "Railroad" means any form of nonhighway ground transportation that runs on rails or
10 electromagnetic guideways.

11 (b) Railroad does not include rapid transit operations in an urban area that are not connected to the
12 general railroad system of transportation.

13 (5) "Railroad carrier" means an entity that provides rail transportation.

14 (6) (a) "Railroad property" means all tangible real and personal property owned, leased, or operated by
15 a railroad carrier including a right-of-way, track, bridge, yard, shop, station, tunnel, viaduct, trestle, depot,
16 warehouse, terminal, railroad signal system, train control system, centralized dispatching system, or any other
17 structure, appurtenance, or equipment owned, leased, or used in the operation of any railroad carrier, including
18 a train, locomotive, engine, railroad car, work equipment, rolling stock, or safety device.

19 (b) Railroad property does not include a railroad carrier's administrative buildings or offices, office
20 equipment, or intangible property such as computer software or other information.

21 (7) "Right-of-way" means the track or roadbed owned, leased, or operated by a railroad carrier that is
22 located on either side of its tracks and that is readily recognizable to a reasonable person as being railroad
23 property or is reasonably identified as railroad property by fencing or appropriate signs.

24 (8) "Serious bodily injury" means bodily injury that involves:

25 (a) a substantial risk of death;

26 (b) extreme physical pain;

27 (c) protracted and obvious disfigurement; or

28 (d) protracted impairment of the function of or loss of a bodily member, organ, or mental faculty.

29 (9) "Vandalism to railroad property" means committing an act that may cause damage to railroad
30 property or bodily injury to another person. This includes but is not limited to:

1 (a) taking, removing, defacing, altering, marking with graffiti, or otherwise marking a railroad sign,
2 placard, or marker;

3 (b) throwing a rock, baseball, or other dangerous object at a locomotive, railroad car, or train;

4 (c) dropping a brick or other dangerous object from a bridge or other overpass onto a railroad
5 right-of-way;

6 (d) shooting a firearm or other dangerous weapon at a locomotive, railroad car, or train;

7 (e) removing appurtenances from, damaging, or otherwise impairing the operation of any railroad signal
8 system, including a train control system, centralized dispatching system, or highway-railroad grade crossing
9 warning signal on a railroad owned, leased, or operated by a railroad carrier, without consent of the railroad
10 carrier;

11 (f) interfering or tampering with or obstructing in any way any switch, frog, rail, roadbed, sleeper, viaduct,
12 bridge, trestle, culvert, embankment, structure, or appliance pertaining to or connected with any railroad carrier,
13 without consent of the railroad carrier; or

14 (g) taking, stealing, removing, changing, adding to, altering, or in any manner interfering with any journal
15 bearing, brass, waste, packing, triple valve, pressure cock, brake, air hose, or any other part of the operating
16 mechanism of any locomotive, engine, tender, coach, car, caboose, or motor car used or capable of being used
17 by any railroad carrier, without the consent of the railroad carrier.

18 (10) "Yard" means a system of parallel tracks, crossovers, and switches where railroad cars are switched
19 and made up into trains and where railroad cars, locomotives, and other rolling stock are kept when not in use
20 or when awaiting repairs.

21

22 **NEW SECTION. Section 4. Trespassing on railroad property -- stowing away on railroad property.**

23 (1) Except as provided in [section 5], a person commits the offense of trespassing on railroad property if the
24 person knowingly and without lawful authority or consent enters or remains on railroad property except for the
25 purpose of crossing the property at a public highway or other authorized crossing.

26 (2) Except as provided in [section 5], a person commits the offense of stowing away on railroad property
27 if the person knowingly and without lawful authority or consent is on, occupies, or rides on the outside of a train
28 or on the inside of a passenger car, locomotive, or freight car, including a boxcar, flatbed, or container car.

29 (3) (a) A person convicted of the offense of trespassing on railroad property shall be fined an amount
30 not to exceed \$100 or be incarcerated in the county jail for a term not to exceed 30 days, or both.

1 (b) A person convicted of the offense of stowing away on railroad property shall be fined an amount not
2 to exceed \$1,000 or be incarcerated in the county jail for a term not to exceed 6 months, or both.

3

4 NEW SECTION. Section 5. Persons with lawful authority to be on specified railroad property --
5 **trespass and stowaway exception.** The provisions of [section 4] do not apply to:

6 (1) passengers on trains or employees of a railroad carrier while engaged in the performance of their
7 official duties;

8 (2) police officers, firefighters, peace officers, and emergency response personnel while engaged in the
9 performance of their official duties;

10 (3) a person going upon railroad property in an emergency to rescue a person or animal, such as
11 livestock, pets, or wildlife, from harm's way or to remove an object that the person reasonably believes to pose
12 an imminent threat to life or limb;

13 (4) a person on the station grounds or in the depot of the railroad carrier as a passenger or for the
14 purpose of transacting lawful business;

15 (5) a person, the person's family or invitee, or the person's employee or independent contractor going
16 upon a railroad right-of-way for the purpose of crossing at a private crossing site approved by the railroad carrier
17 to obtain access to land that the person owns, leases, or operates;

18 (6) a person having written permission from the railroad carrier to go upon the railroad property in
19 question;

20 (7) representatives of the department of transportation, THE PUBLIC SERVICE COMMISSION, the federal
21 railroad administration, or the national transportation safety board while engaged in the performance of their
22 official duties; or

23 ~~(8) a representative of a labor organization who is an employee of the railroad carrier and who~~
24 ~~represents or is seeking to represent employees of the railroad carrier while conducting union business.~~

25 (8) AN OFFICIAL OF A RAIL UNION ACTING IN AN OFFICIAL CAPACITY; OR

26 (9) A PERSON IN THE PERFORMANCE OF NORMAL AGRICULTURAL OPERATIONS.

27

28 NEW SECTION. Section 6. Negligent vandalism to railroad property. (1) A person commits the
29 offense of negligent vandalism to railroad property if the person vandalizes railroad property negligently, as
30 defined in 45-2-101.

1 (2) A person convicted of negligent vandalism to railroad property must be ordered to make restitution
2 to the railroad carrier in the amount of the cost to repair any railroad property damaged, the cost of any train or
3 shipment delay, and the cost of any accident or damage resulting from the vandalism.

4 (3) (a) A person convicted of the offense of negligent vandalism to railroad property in which the damage
5 to railroad property does not exceed \$500 and in which there is no bodily injury to another person as a result of
6 the offender's actions shall be ordered to perform community service for not more than 120 hours. If community
7 service is not available in the jurisdiction where the offense was committed, the person shall be fined an amount
8 not to exceed \$500 or be incarcerated in the county jail for a term not to exceed 6 months, or both.

9 (b) A person convicted of the offense of negligent vandalism to railroad property in which the damage
10 to railroad property exceeds \$500 or in which there is bodily injury to another person as a result of the offender's
11 actions shall be fined an amount not to exceed \$10,000 or be incarcerated for a term not to exceed 10 years, or
12 both.

13 (c) A person convicted of the offense of negligent vandalism to railroad property that results in serious
14 bodily injury to another person or death of another person as a result of the offender's actions shall be fined an
15 amount not to exceed \$20,000 or be incarcerated for a term not to exceed 20 years, or both.

16

17 **NEW SECTION. Section 7. Intentional vandalism to railroad property.** (1) A person commits the
18 offense of intentional vandalism to railroad property if the person knowingly or purposely vandalizes railroad
19 property.

20 (2) A person convicted of intentional vandalism to railroad property must be ordered to make restitution
21 to the railroad carrier in the amount of the cost to repair any railroad property damaged, the cost of any train or
22 shipment delay, and the cost of any accident or damage resulting from the vandalism.

23 (3) (a) A person convicted of the offense of intentional vandalism to railroad property in which the
24 damage to railroad property does not exceed \$500 and in which there is no bodily injury to another person as a
25 result of the offender's actions shall be fined an amount not to exceed \$10,000 or be incarcerated for a term not
26 to exceed 10 years, or both.

27 (b) A person convicted of the offense of intentional vandalism to railroad property in which the damage
28 to railroad property exceeds \$500 or in which there is bodily injury to another person as a result of the offender's
29 actions shall be fined an amount not to exceed \$20,000 or be incarcerated for a term not to exceed 20 years, or
30 both.

1 (c) A person convicted of the offense of intentional vandalism to railroad property that results in serious
2 bodily injury to another person as a result of the offender's actions shall be incarcerated in a state prison for any
3 term of years or for life or fined an amount not to exceed \$25,000, or both, except as provided in 46-18-219 and
4 46-18-222.

5 (d) A person convicted of the offense of intentional vandalism to railroad property that results in the death
6 of another person as a result of the offender's actions shall be fined an amount not to exceed \$100,000 or be
7 incarcerated in a state prison for any term of years or for life, or both, except as provided in 46-18-219 and
8 46-18-222.

9

10 **NEW SECTION. Section 8. Theft of railroad freight -- receiving stolen railroad freight.** (1) A person
11 commits the offense of theft of railroad freight if the person takes railroad freight by theft, as established in
12 45-6-301(1).

13 (2) A person commits the offense of receiving stolen railroad freight if the person takes stolen railroad
14 freight by theft, as established in 45-6-301(3).

15 (3) A person convicted of the offense of theft of railroad freight or the offense of receiving stolen railroad
16 freight shall be fined an amount not to exceed \$5,000 or be incarcerated for a term not to exceed 5 years, or both.
17

18 **NEW SECTION. Section 9. Codification instruction.** [Sections 1 through 8] are intended to be codified
19 as an integral part of Title 69, chapter 14, and the provisions of Title 69, chapter 14, apply to [sections 1 through
20 8].

21

- END -