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## THE GRADE CROSSING SPEED LIMIT STATUTE

In 1926 the Virginia General Assembly passed Senate Bill 104 pertaining to operation of vehicles on the state highways.<sup>1</sup> As amended, it now appears in the Code as Section 46-254, which reads in part as follows:

Except in cities and towns every person driving any vehicle on a highway, on approaching a place where a railway crosses such highway at grade, at which crossing no railway gates are maintained and no flagman is stationed and on duty at the time, shall bring his vehicle to a speed not exceeding five miles per hour before passing over such crossing, at a distance of not less than fifty feet from the nearest rail . . .

The bill was introduced by Senators C. C. Vaughan, Jr. and J. A. Lesner.<sup>2</sup> As originally drafted, it called for a complete stop by motorists at all railway grade crossings. There were, of course, exceptions, and they were noted in the bill. However, when it went to the House of Delegates, the "complete stop" provision was objected to by the members of the House. A conference committee was appointed to attempt to reach a suitable agreement, the end result of which was the five-mile-per-hour requirement now in force. The act in its original form did not apply to railway lines on which purely local trains were operated. In 1934 the General Assembly amended the statute to include local trains.<sup>3</sup> With the exception of a few minor changes dealing with interpretation, this act has remained the Virginia law on the subject since March 25, 1926.

In an effort to find out just how antiquated the law is, the author checked fifteen other jurisdictions, including all but one of those adjacent to Virginia. The only states in this group having laws similar to Virginia's have repealed them. Arizona had a requirement to slow to 15 miles per hour when the view was obstructed within 400 feet either way at a grade crossing, and to slow to 25 miles per hour where the view was unobstructed.<sup>4</sup> In 1950, the state legislature repealed this law and replaced it with a provision that "the driver of every vehicle shall, consistent with the requirements of [safe driving practice], drive at an appropriate

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1. Acts of Assembly 1926, p. 763.  
2. Virginia Senate Journal 1926, p. 99.  
3. Acts of Assembly 1934, p. 401.  
4. Sec. 66-101, A.C.A. 1939.

reduced speed when approaching and crossing an intersection or railway grade crossing. . . .” West Virginia had had essentially the same law, but it was amended in 1951 to read essentially the same as the present Arizona statute.<sup>5</sup> Thus, of fifteen states checked, only two at any time had laws like the Virginia law. At present seven states, Arkansas,<sup>7</sup> Kentucky,<sup>8</sup> North Carolina,<sup>9</sup> Tennessee,<sup>10</sup> Mississippi,<sup>11</sup> Alabama,<sup>12</sup> and Colorado<sup>13</sup> have statutes that allow the road-governing body of the state or other specified authority the right to designate certain grade crossings as hazardous. At such crossings, the motorist is required to come to a complete stop before proceeding across the tracks. Violation of this provision constitutes a misdemeanor and is punishable by fines varying generally from 10 to 50 dollars. The motorist, at all other crossings, is required to drive at a speed which is appropriate in view of road conditions at grade crossings. Massachusetts,<sup>14</sup> Florida,<sup>15</sup> South Carolina,<sup>16</sup> and New York<sup>17</sup> have similar statutes that require the motorist, upon approaching a railroad crossing, to reduce the speed of the vehicle to a reasonable and proper rate and proceed cautiously over the crossing. Illinois apparently has no statute directed specifically at grade crossings where there is not a signal or a flagman, but its general provision<sup>18</sup> seems to imply a requirement of reasonable speed under the circumstances. The State of Louisiana goes further than other states checked and requires the motorist to come to a complete stop at all crossings.<sup>19</sup> An analysis of the statutes mentioned reveals that probably the most prevalent law is the one designating certain crossings as hazardous and requiring a complete stop by motorists.

The following provision in Section 46-254 should be particularly noted:

.. and failure to comply with the provisions of this section on the part of the driver of the vehicle shall not be considered contributory negligence in an action against the railway company for damages to persons or property,

5. Sec. 66-157c, A.C.A. 1939 (Cum. Supp. 1952).
6. Code, 1939, 1339 [Cum. Supp., 1953, 1721(333)].
7. Ark. Stat., (1947), 875-640.
8. KRS 189:560.
9. G.S. 20-143.
10. Williams Tenn. Code 1934, §2683.
11. Section 8210, Miss. Code of 1942.
12. Ala. Code 1940, Tit. 36, §47.
13. 35 C.S.A. c.16, §223.
14. General Laws c. 90 §15.
15. Sec. 317:22 F.S. 1949.
16. Section 46-363, Code of 1942 as amended.
17. McKinney's Consolidated Laws, Book 48, Sect. RR 53a.
18. Ill. Rev. Stat. 1949, chap. 95½, par. 146.
19. R.S. 1930, Sec. 32:243.

whether the same be injury to the person or property of the driver or any other person. . .

In this connection, Virginia has another statute to the effect that the contributory negligence of a motorist does not bar him from recovery if he can prove that the railway company's employee failed to sound the required signals.<sup>20</sup> He must also prove that the failure to do this was the negligence that caused his injury.<sup>21</sup> In interpreting this latter statute, the court said in *Southern Ry. Co. v. Johnson*,<sup>22</sup> "If the failure to give the signals in any way contributed to the accident, then, however grossly negligent the traveler was, he is entitled. . .to recover, subject to mitigation of his damages in proportion to his negligence."<sup>23</sup> Interpretation such as this certainly makes any defense on the part of the railroad companies very difficult. The two statutes, Section 56-416 and Section 46-254 insofar as it applies to negligence, grant a great advantage to the motorist, even when he is negligent. As a general rule, it is negligence *per se* to violate a statute, and several of those jurisdictions checked specifically so stated. This principle makes it even less understandable why there should be a statutory exception immunizing the motorist against the effects of his own negligence.

It should be remembered that the rules regarding crossings grew up "when railroads were daring economic ventures, and when pioneer morality not only insisted that every man look out for himself, but when a traveler had some assurance that by looking out for himself he could protect himself."<sup>24</sup> Today railroad revenues have been reduced by the competition of motor transport and airlines. The railroads are finding it increasingly difficult to compete with these other methods of transportation. The state should recognize that railroads can not spread the loss placed on them by large recoveries, arising from crossing accidents, as well as they could in past years. In adopting the view it now maintains on negligence, by statute<sup>25</sup> and decision,<sup>26</sup> Virginia has in effect changed the parties' bargaining position just because one of them is a railroad. This certainly is not consistent with sound legal principles; the parties should be able to enter court and argue their case on even terms. The doctrine of comparative negligence,

20. Virginia Code of 1950, §56-416.

21. *Gregory v. Seaboard Air Line Ry. Co.*, 142 Va. 750, 128 S.E. 272 (1925); *Etheridge v. Norfolk Southern R. Co.*, 143 Va. 789, 129 S.E. 680 (1925).

22. 151 Va. 345, 146 S.E. 363 (1928).

23. *Id.* at 354, 146 S.E. 363, 365.

24. 29 Col.L.Rev. 255, 275 (1929).

25. Virginia Code of 1950, §46-254.

26. 151 Va. 345, 146 S.E. 363 (1928).

which Virginia has adopted in railway crossing accidents, has not turned out the way that the General Assembly had hoped, and the result has been that railroads are looked upon with disfavor by juries. This has forced the judges to substitute their judgment for that of the jury to insure a proper decision.<sup>27</sup>

While the risk at crossings will never be entirely eliminated by a statute designed to prevent accidents, the statute should be readily enforceable and reasonable, to go as far as possible in protecting property and lives; but such a statute to be fair must not change the strength of the parties' position just because one of them is a railroad.

The five-mile-per-hour limit at crossings applies equally to those crossings where the motorist has an unobstructed view for hundreds of yards and those where the view is seriously obstructed. It applies to those crossings with a heavy volume of traffic and also to those on local lines seldom used. This statute possibly was acceptable when enacted twenty-eight years ago. Automobiles and trucks were much slower, and the roads in the state were fewer and of inferior quality, being in many instances dirt-surfaced. Today, with a speed limit of 55 miles per hour as compared with 35 miles per hour in 1926<sup>28</sup> and with a greater number of vehicles using the highway system, this law is far from appropriate.

It is a well-recognized legal maxim that "reason is the soul of the law, and when the reason of any particular law ceases, so does the law itself."<sup>29</sup> It is submitted that the General Assembly should adopt a law similar to the one presently in force in those states which require the motorist to stop at designated hazardous crossings and permit him to drive at an appropriate speed at all others. The requirement of a full stop lends itself readily to enforcement, as does the command of stop signs placed at highway intersections. In any event, the General Assembly should either enact a more modern law with regard to crossings or at least strike from the Code a statute which apparently is not enforced in a criminal action<sup>30</sup> and has an unjustified effect on civil actions.

It is suggested that a statute such as the following be enacted, to replace at least so much of Section 46-254 as applies to the five-mile-per-hour limit for automobiles:

27. For a more detailed analysis of this problem see 5 Wash.&Lee L.Rev. 147 (1948).

28. Virginia Code of 1926, §2145 (4).

29. Broom, *Legal Maxims*, p. 123 (6th ed. 1868).

30. See Virginia Code of 1950, §46-18.

When vehicles to slow down or stop at railway crossings.—The road-governing body, whether State or county, is hereby authorized to designate particularly dangerous highway grade crossings of railroads at which vehicles are required to stop, and to erect stop signs thereat. When such stop signs are erected, the driver of every vehicle shall stop within fifty feet, but not less than ten feet, from the nearest rail of such grade crossing and shall proceed, with due care, only after ascertaining that it is safe to do so.

And every person shall stop at such crossing where gates are maintained when such gates are closed down, or being lowered, and where a flagman is stationed and on duty at the time, whenever signalled, by such flagman, to stop.

At any other grade crossing not designated as particularly dangerous, the driver of any motor vehicle shall drive at that speed which is reasonable and prudent under the conditions then and there existing.

Any person violating the provisions of this statute shall be guilty of a misdemeanor and upon conviction shall be punished in accordance with the provisions of Section 46-18.

C. G. Moore