

## **SECTION-BY-SECTION ANALYSIS OF MODEL STATE RAILROAD VANDALISM PREVENTION ACT**

Section 1. Section one provides that the Act may be cited as the “Railroad Vandalism Prevention Act.”

Section 2. Section two provides that the purpose of the Act is to prevent acts of vandalism to railroad property which affect the health, safety, and welfare of the traveling public, the neighboring community, and railroad employees; to protect railroad property and freight in transportation by railroad; and otherwise to enhance the safety of transportation by railroad.

Section 3. Section three would permit, under stated conditions, prosecution of a broad range of acts of vandalism of railroad property. Section three is divided into five subsections, (a) through (e). Subsection (a) covers reckless acts of vandalism. Violations of subsection (a) that do not cause railroad property damage exceeding \$500 or bodily injury to another are misdemeanors punishable within the range of penalties provided. A violation of subsection (a) that causes railroad property damage exceeding \$500 or cause bodily injury to another is a felony subject to enhanced maximum penalties. The language “to another” makes it clear that if the only person injured as a result of the vandalism is the vandal himself or herself, such a circumstance, in the absence of causing railroad property damage in excess of \$500, would not subject the injured vandal to an enhanced penalty. Subsection (b) covers willful acts of vandalism. All violations of subsection (b) are felonies punishable within the range of penalties provided. A violation of subsection (b) that causes railroad property damage exceeding \$500 or causes bodily injury to another is subject to enhanced maximum penalties. All of the enumerated acts in subsection (a) are duplicated in subsection (b) except for paragraph (1) of subsection (a). Paragraph (1) of subsection (a) is omitted from subsection (b) because acts such as placing a coin on a track or throwing an egg at a train are unlikely to be committed with the intent to cause railroad property damage in excess of \$500 or to cause bodily injury to another. Unlike paragraph (1), the remaining enumerated acts described in subsection (a), paragraphs (2) through (8), may be committed recklessly or willfully. Accordingly, those acts are described in both subsections. Subsection (c) covers theft of railroad freight, and subsection (d) covers the corollary crime of receiving such stolen railroad freight. Subsection (e) provides definitions.

Paragraph (1) of subsection (a) prohibits usually harmless yet nevertheless reckless behavior often described as indiscretions of youth. These acts include taping a coin to a rail to watch it get flattened by an oncoming train, placing other small objects on the railway to create similar mementos, and dropping an egg from a bridge or throwing it at a passing train. Since such behavior generally poses more of a risk to the individual who commits the act than to another, such acts should be subject to the least amount of punishment prescribed in the range of punishment provided. The maximum punishment of 120 hours of community service where available, or a \$500 fine, or both, is not harsh in these circumstances. For example, even a seemingly innocuous act such as taping a coin to a track can result in the person being struck by a train, or can cause an engineer to make an emergency brake application to try to prevent such tragedy.

Paragraph (2) of subsection (a) prohibits reckless activities such as “tagging.” This is a slang term used by gangs to describe the act of marking gang territories with graffiti. If, for example, a person paints his or her gang name on a sign thereby defacing it, the crime may be prosecuted under subsection (a). The second paragraph also covers taking placards or other railroad signs which have been known to turn up in college dormitories or other similar places. If, for example, the person was trying to collect signs, the crime may be prosecuted under subsection (a) rather than subsection (b).

Paragraph (3) of subsection (a) prohibits reckless activities such as throwing rocks, baseballs, or other objects at trains. If, for example, a person uses a moving box car for target practice, but does not intend to damage it, such a crime may be prosecuted under subsection (a) rather than subsection (b).

Paragraph (4) of subsection (a) prohibits the reckless act of dropping a brick or other dangerous object from bridges. If, for example, a person drops a shopping cart from a bridge onto the middle of a moving freight train to see what would happen to the shopping cart, such a crime may be prosecuted under subsection (a).

Paragraph (5) prohibits the reckless act of shooting a firearm or other dangerous weapon at a locomotive or train. If, for example, a person pretending to rob a train, fires blanks at an oncoming locomotive, such a crime may be prosecuted under subsection (a).

Paragraph (6) prohibits reckless acts involving damage to railroad signal systems. If, for example, a railroad buff, who wants to collect a railroad grade crossing sign with flashing lights, and thought the track was not used much anyway, steals such a warning signal, such a crime may be prosecuted under subsection (a).

Paragraph (7) prohibits a wide range of reckless acts which generally interfere or tamper with or obstruct parts of a railroad right-of-way or other railroad property. If, for example, a group of demonstrators obstructs a track by handcuffing themselves to the rail, such a crime may be prosecuted under subsection (a).

Paragraph (8) prohibits a wide range of acts of vandalism which damage railroad moving equipment, particularly the locomotive or cars. If, for example, a railroad buff who is trying to collect railroad paraphernalia, steals a triple valve, such a crime may be prosecuted under subsection (a).

Subsection (b) covers willful and attempted acts of vandalism to railroad property and willful and attempted acts of vandalism intended to endanger the safety of another.

Paragraphs (1) prohibits vandalism of railroad signs, placards, or markers. If, for example, a person removes a hazardous materials placard to confuse emergency responders as to the contents of the tank car, such a crime may be prosecuted under subsection (b).

Paragraph (2) prohibits throwing rocks, baseballs, or other dangerous objects at locomotives, railroad cars, or trains. If, for example, a person throws a rock at close range at an obviously occupied train, such a crime may be prosecuted under subsection (b).

Paragraph (3) prohibits dropping a brick or other dangerous object from a bridge or other overpass. If, for example, a person drops a brick to coincide with the arrival of a locomotive engineer below, such a crime may be prosecuted under subsection (b).

Paragraph (4) prohibits shooting a firearm or other dangerous weapon at a locomotive or train. If, for example, a person fires a loaded shotgun at close range at an obviously occupied train, such a crime may be prosecuted under subsection (b).

Paragraph (5) prohibits willful acts involving damage or attempt to damage railroad signal systems. If, for example, a person willfully enters incorrect data into a computer to create

a false signal, in order to cause a head-on collision, such a crime may be prosecuted under subsection (b).

Paragraph (6) prohibits acts of vandalism to willfully damage or attempt to interfere with, tamper with, or obstruct a railroad right-of-way. If, for example, a person removes bolts from a rail in order to derail the train, such a crime may be prosecuted under subsection (b).

Paragraph (7) prohibits vandalism to a wide range of railroad equipment. If, for example, a disgruntled employee cuts an air hose in order to render a train's air brakes ineffective, in order to cause a train wreck, such a crime may be prosecuted under subsection (b).

Subsection (c) covers acts of theft of freight in transportation by railroad. This is a serious problem in southern border states where bandits will tamper with a signal system to intentionally cause a train to make an emergency brake application. Once the train is stopped, usually in a deserted area, the bandits will approach the train, break open a box car, and steal freight such as televisions and other goods.

Subsection (d) is the corollary provision to subsection (c), and proscribes the receiving of stolen railroad freight.

Subsection (e) defines certain terms. For example, the definition of "railroad" excludes urban rapid transit operations by rail, such as trolleys and subways. "Railroad" is defined as it is in the Federal railroad safety laws and "does not include rapid transit operations in an urban area that are not connected to the general railroad system of transportation." 49 U.S.C. § 20102(B). Therefore, the vandalism bill does not cover vandalism of rapid transit property. The definition of "railroad property" excludes from coverage, a railroad's administrative buildings, offices, and administrative office equipment such as furniture, files, and typewriters. Inclusion of this type of property would not further the [legislature's] primary intent, which is to prevent vandalism that affects safety. Although it is possible that vandalism of this type of property could affect the safety of the public or railroad employees, in most instances it would not do so in a direct way. Also, such acts of vandalism may be covered by existing local, State and Federal laws. Finally, to update railroad vandalism statutes, "railroad property" does include computers and software used in the direct operation of trains or signal systems. Vandalism of such railroad property is proscribed in subsections (a)(6) and (b) (5).