



1-1-1995

Transportation

University of the Pacific; McGeorge School of Law

Follow this and additional works at: <https://scholarlycommons.pacific.edu/mlr>

 Part of the [Legislation Commons](#)

Recommended Citation

University of the Pacific; McGeorge School of Law, *Transportation*, 26 PAC. L. J. 733 (1995).

Available at: <https://scholarlycommons.pacific.edu/mlr/vol26/iss2/36>

This Greensheet is brought to you for free and open access by the Journals and Law Reviews at Scholarly Commons. It has been accepted for inclusion in McGeorge Law Review by an authorized editor of Scholarly Commons. For more information, please contact mgibney@pacific.edu.

Transportation

Transportation and Motor Vehicles; automated rail crossing enforcement system

Vehicle Code §§ 210, 21362.5, 40518 (new); 22451, 40509 (amended).
SB 1802 (Rosenthal); 1994 STAT. Ch. 1216

Existing law requires that, under certain circumstances, any vehicle approaching a railroad grade crossing must stop not less than fifteen feet from the nearest rail and the driver must not proceed until he or she can do so safely.¹

Chapter 1216 specifies that this restriction applies to rail transit grades, and authorizes the equipping by governmental agencies, in collaboration with law enforcement agencies, of automated rail crossing enforcement systems.² Chapter 1216 also provides that when a notice to appear is issued and mailed in connection with certain alleged violations, recorded by an automated rail crossing enforcement system, the defendant can enter a plea.³

1. CAL. VEH. CODE § 22451(a) (amended by Chapter 1216); *see id.* (prohibiting the driver of any vehicle approaching a railroad crossing from proceeding whenever the following conditions exist: (1) A clearly visible electric or mechanical signal device or flagman gives warning of the approach or passage of a train or car; (2) an approaching train or car is plainly visible or is emitting an audible signal and, by reason of its speed or nearness, is an immediate hazard); *id.* § 22451(b) (amended by Chapter 1216) (prohibiting any driver from proceeding through, around, or under any railroad or rail transit crossing gate while the gate is closed); *id.* § 22451(c) (amended by Chapter 1216) (providing that whenever a railroad or rail transit crossing is equipped with an automated rail crossing enforcement system, a notice of a violation of this section is subject to the procedures provided in California Vehicle Code § 40518); *see also id.* § 21110 (West 1971) (allowing local authorities to adopt rules and regulations regarding highway railroad grade crossings when signs are in place giving notice thereof); *id.* § 21362 (West 1971) (describing the necessary warning approach signs for railroads); *id.* § 22352(a)(1) (West Supp. 1994) (regulating speed limits while traversing railway grade crossings); *id.* § 22452 (West 1971) (listing the vehicles that must stop at railroad crossings). *See generally* 65 AM. JUR. 2D *Railroads* § 548 (1972) (discussing absolute and qualified duties to look and listen before crossing railroad tracks).

2. CAL. VEH. CODE § 22451(a) (amended by Chapter 1216); *see id.* (adding transit grades as another required place to stop); *id.* § 21362.5(A) (enacted by Chapter 1216) (allowing railroad and rail transit grade crossings to be equipped with an automated rail crossing enforcement system if the system is identified by signs clearly indicating the system's presence and is visible to traffic approaching from each direction, and declaring that only a governmental agency, in cooperation with a law enforcement agency, may operate an automated rail crossing enforcement system); *see also id.* § 210 (enacted by Chapter 1216) (defining an automated rail crossing enforcement system as any system operated by a governmental agency, in cooperation with a law enforcement agency, that photographically records a driver's responses to a rail or rail transit signal or crossing gate, or both, and is designed to obtain a clear photograph of a vehicle's license plate and the driver of the vehicle); *id.* § 21362.5(B) (enacted by Chapter 1216) (specifying that photographic records made by automated rail crossing enforcement systems are confidential).

3. CAL. VEH. CODE § 40518(a) (enacted by Chapter 1216); *see id.* § 40509 (amended by Chapter 1216) (providing that when a person who, for 15 or more days, violates a written promise to appear for a violation of codes, including, but not limited to, California Vehicle Code § 40518, the magistrate or clerk of the court may give notice of the failure to appear to the Department of Motor Vehicles for any violation of this code, or any violation that can be heard by a juvenile traffic hearing referee pursuant to California Welfare and Institutions Code § 256 or any violation of any other statute relating to the safe operation of a vehicle, with some exceptions as noted); *see also id.* § 40509(a) (delineating the punishment for failing to appear); CAL. WELF. & INST. CODE § 256 (West Supp. 1994) (governing the disposition of traffic violation hearings, orders, and retention of jurisdiction).

INTERPRETIVE COMMENT

Chapter 1216 was enacted to address the expansion of rail transit systems and the increase in the need for safety programs.⁴ Since most rail-related accidents are caused by motorists ignoring warning signals and crossing gates, there needs to be some deterrence for these motorists.⁵ Chapter 1216 would help decrease these types of violations by encouraging the use of automated rail crossing enforcement systems to deter potential violators.⁶

Kenneth J. Pogue

**Transportation and Motor Vehicles; Department of Motor Vehicles—
disclosure of confidential information**

Vehicle Code § 1808.21 (amended).
AB 3454 (Speier); 1994 STAT. Ch. 395

Existing law specifies that the disclosure of confidential information held within the records of the Department of Motor Vehicles (DMV) is a

4. 1994 Cal. Legis. Serv. ch. 1216, sec. 2(a), at 6167 (enacting CAL. VEH. CODE § 210); *see Metrolink Must Re-Emphasize Safety; Train Service Expands After Quake, but Old Dangers Remain for Drivers and Pedestrians*, L.A. TIMES, Feb. 20, 1994, at B24 (explaining that in Los Angeles County, it is necessary that the Metro lines be expanded and that with this expansion comes the need to re-educate the public regarding train safety); *see also* 45 U.S.C.A. § 433 (West 1987) (requiring the Secretary of Transportation to submit to the President, for transmittal to the Congress, a comprehensive study of the problem of eliminating and protecting railroad grade crossings, including a study of measures to protect pedestrians in densely populated areas along railroad rights-of-way). *See generally* 65 AM. JUR. 2D *Railroads* § 509 (1972) (discussing the statutory requirements that require only a minimum of care for safety devices at railroad crossings).

5. 1994 Cal. Legis. Serv. ch. 1216, sec. 2(b), at 6167 (enacting CAL. VEH. CODE § 210); *see Mimi Ko, Orange County Focus: La Habra; Officials Crack Down at Railroad Crossings*, L.A. TIMES, May 18, 1994, at B2 (revealing that 99% of rail accidents are caused by drivers or pedestrians who ignore flashing warning lights and lowered gates and that the number of railroad accidents has risen fivefold in the past few years); *see id.* (stating that in 1993, 160 people died and 127 people were injured in 491 collisions with trains throughout the state with more than half the accidents stemming from drivers failing to stop, driving around barriers or crashing through gates).

6. 1994 Cal. Legis. Serv. ch. 1216, sec. 2(c), at 6167 (enacting CAL. VEH. CODE § 210); *see id.* (stating that automated rail crossing enforcement systems that photographically record violations occurring at rail crossing signals and rail crossing gates are a significant deterrent to these violations where motorists are aware of the presence of the automated systems). Grade crossing violations were reduced 65% in a demonstration project in Los Angeles using these systems and similar results have been found in Europe and other parts of the United States. *Id.*; *see also* SENATE FLOOR, COMMITTEE ANALYSIS OF SB 1802, at 2 (May 31, 1994) (discussing Los Angeles' success with the system with which the city decreased violations by 65% in only three months).

misdemeanor, and may lead to civil liability.¹ Under existing law, however, certain entities are exempt from such disclosure restrictions.²

Existing law also establishes certain criteria for the civil tort of stalking, and further provides criminal liability for the offense of stalking.³

Chapter 395 allows an individual to prevent the release of registration and licensing records as long as that person submits proper verification to the DMV that he or she is the subject of stalking, or in fear of death or great bodily injury.⁴

INTERPRETIVE COMMENT

Chapter 395 reflects the continued concern of the Legislature and media over the threat of stalkers who may obtain access to an individual's personal

1. CAL. VEH. CODE § 1808.45 (West Supp. 1994); *see id.* (prohibiting willful disclosure of confidential information held within DMV records and specifying that a violation of its provisions is a misdemeanor offense subject to possible incarceration and a civil fine payable to the DMV of no more than \$5000).

2. *Id.* § 1808.21(a) (amended by Chapter 395); *see id.* (declaring that records containing an individual's residential address are confidential and will not be disclosed except to governmental and law enforcement agencies or other institutions as covered by California Vehicle Code § 1808.22); *id.* § 1808.21(b) (amended by Chapter 395) (specifying that the release of a mailing address may also be restricted to certain purposes and individuals, subject to certain exceptions); *see also id.* § 1808.22 (West Supp. 1994) (specifying requirements which would allow financial institutions, insurance companies, and attorneys to be exempt from the restrictions provided for in California Vehicle Code § 1808.21).

3. CAL. CIV. CODE § 1708.7 (West Supp. 1994); CAL. PENAL CODE § 646.9 (West Supp. 1994); *see* CAL. CIV. CODE § 1708.7(a)(1), (2) (West Supp. 1994) (prescribing civil liability for a defendant whose pattern of conduct is to follow, alarm, or harass an individual with that individual being in reasonable fear for his or her safety, or the safety of an immediate family member); *id.* § 1708.7(a)(3)(A), (B) (West Supp. 1994) (specifying that in a civil action, the plaintiff must prove either that the defendant made a credible threat to the plaintiff and that on at least one occasion the plaintiff demanded that the defendant desist in his objectionable actions or that the defendant violated a restraining order); *see also* CAL. PENAL CODE § 646.9(a) (West Supp. 1994) (defining criminal stalking as the willful, malicious, and repeated following, threatening, or harassment of an individual with the intent to place that person in fear for his or her safety); Jennifer L. Miller, Review of Selected 1993 California Legislation, *Crimes; Stalking*, 25 PAC. L.J. 368, 595 (1994) (discussing California Penal Code § 646.9); Jennifer L. Miller, Review of Selected 1993 California Legislation, *Torts; Stalking*, 25 PAC. L.J. 368, 827 (1994) (discussing California Civil Code § 1708.7); *cf.* ARK. CODE ANN. § 5-71-208(a)(3) (Michie 1993) (defining the offense of harassment as following another in a public place); COLO. REV. STAT. § 18-9-111(4)(a)(I) (Supp. 1993) (providing that in addition to following a person, an individual commits the offense of stalking by making a credible threat to the victim); KY. REV. STAT. ANN. § 525.070(1)(c) (Baldwin 1988) (declaring that one is guilty of harassment when he or she follows a person in a public place with the intent to alarm, annoy, or harass); N.Y. PENAL LAW § 240.25 (McKinney Supp. 1994) (listing the crime of harassment in the first degree). *See generally* Andrea J. Robinson, Note, *A Remedial Approach to Harassment*, 70 VA. L. REV. 507 (1984) (discussing stalking and harassment, as well as existing criminal provisions).

4. CAL. VEH. CODE § 1808.21(d) (amended by Chapter 395); *see id.* § 1808.21(d)(1)(A) (amended by Chapter 395) (adding a provision which allows for the inclusion of registration and driver's license information as protected from disclosure as long as the person seeking the confidential status submits acceptable verification that he or she is the subject of stalking); *id.* § 1808.21(d)(1)(B) (amended by Chapter 395) (providing similar protection for persons under threat of death or great bodily injury); *id.* § 1808.21(e) (amended by Chapter 395) (explaining that acceptable verification is satisfied by the production of recent police reports, court documents, or other law enforcement documentation); *see also* CAL. CIV. CODE § 1708.7 (West Supp. 1994) (listing elements which comprise the tort of stalking); CAL. PENAL CODE § 646.9 (West Supp. 1994) (defining the criminal offense of stalking); *id.* § 12022.7(d) (West Supp. 1994) (describing great bodily injury as a physical injury of substantial or significant magnitude).

information through the DMV.⁵ The enactment of Chapter 395 demonstrates the Legislature's intent to further protect the privacy of those subject to stalking or to the threat of death or great bodily harm.⁶

Sean P. Lafferty

5. ASSEMBLY COMMITTEE ON GOVERNMENTAL ORGANIZATION, COMMITTEE ANALYSIS OF AB 3454, at 2 (May 17, 1994); *see id.* (stating that the purpose of Chapter 395 is to protect the privacy of those being stalked); ASSEMBLY FLOOR, COMMITTEE ANALYSIS OF AB 3454, at 1 (Aug. 8, 1994) (indicating that the purpose of Chapter 395 is to protect those who reasonably believe that they are being stalked, and noting that there have been a number of situations where a stalker, or similar type of criminal, has accessed a victim's residential address or phone number through public records); Jerry Gillam, *Senate Panel Favors Curb on Public Use of DMV Data*, L.A. TIMES, Aug. 30, 1989, at 3 (discussing the status of a pending bill which would restrict releasing home addresses); Marsha Ginsburg, *Tougher Law Takes New Aim at Stalkers; Another Attempt to Protect Victims After 3-Year-Old State Statute Was Found Ineffective*, S.F. EXAMINER, Jan. 2, 1994, at A1 (citing difficulty in prosecuting alleged stalkers under a statute that specified that a person must make a "credible threat" to be convicted under stalking laws and praising a new law that now defines credible threat as fear felt by a reasonable person); Paul Jacobs, *Addresses at DMV Remain Accessible*, L.A. TIMES, Aug. 19, 1991, at A3 (citing limitations and loopholes of 1989 statute that supposedly made home addresses recorded with the DMV confidential); Telephone Interview with Stacy Dwelley, Legislative Consultant to Assemblymember Jackie Speier on AB 3454 (Aug. 12, 1994) (notes on file with the *Pacific Law Journal*) (confirming Assemblywoman Speier's intent to safeguard a stalking victim's privacy by introducing AB 3454); *cf.* Josh Meyer & Jim Newton, *LAPD Probes Alleged Sale of Private Files*, L.A. TIMES, Aug. 21, 1993, at A1 (stating that a police department veteran had allegedly sold confidential information about almost 500 people obtained through LAPD computer systems which has access to DMV records); Susan Sward, *Ex-S.F. Cop Pleads No Contest in Spying, End of Criminal Case Against Inspector Accused of Leaking* (sic), S.F. CHRON., May 28, 1994, at A23 (noting that a former police officer had pled no contest to stealing records from police and DMV computer files); Jim H. Zamora, *S.F. Cops Leaked Data To Accused Stalker, Chief Ribera Vows to Revise Computer System to Create More Accountability*, S.F. EXAMINER, Mar. 31, 1994, at A1 (describing a stalking case where an individual had received police assistance six times over a 15 month span in accessing DMV records through police computers); *id.* (noting that due to the absence of a personalized password system, police officials are unable to identify the person who assisted the stalker in accessing DMV files).

6. ASSEMBLY FLOOR, COMMITTEE ANALYSIS OF AB 3454, at 1 (Aug. 8, 1994); *see id.* (noting that while the California Assembly approved protecting DMV information from stalkers, the California Senate amended AB 3454 to include protection for those under the threat of great physical harm as well); Telephone Interview with Stacy Dwelley, Legislative Consultant to Assemblymember Speier on AB 3454 (Aug. 12, 1994) (notes on file with the *Pacific Law Journal*) (discussing Assemblywoman Speier's intention to enact AB 3454); *see also* CAL. VEH. CODE § 1808.21(a), (b), and (d) (amended by Chapter 395) (protecting an individual's residential address, mailing address, registration and driver's license information, respectively).