



April 7, 2009

The Honorable Dan Patrick
Texas State Senator, District 7
Capitol Office 3S.3
P.O. Box 12068
Austin, Texas 78711

Re: Addressing Concerns on Safe Passing Bill CSSB 488

Dear Senator Patrick,

Pursuant to your discussion today with Senator Rodney Ellis on the Senate Floor, and per a request from Senator Ellis' staff, we are providing additional information to address the specific questions you raised today concerning the 2009 Safe Passing Bill, CSSB 488. An Addendum of pertinent Texas Transportation Code (TTC) and other references in Q & A format is attached and used as a reference for this letter. The Addendum also contains an informal transcript of your questions.

BikeTexas believes this bill will serve two very important purposes: address specific safety issues for vulnerable road users, and promote an overall consideration on the road for the safety of all users.

We strongly support calls to institute a "Culture of Safety" on Texas roadways as outlined by state transportation experts in a recent article in the Texas Transportation Institute's Texas Transportation Researcher, 2008, Vol. 4. Addressing standards of driver behavior will result in an overall reduction of death and injury from highway crashes. The "safety culture" developed over the last century in American industry has demonstrated this reduction.

How is this bill going to save lives?

Over a thousand vulnerable road users are killed each year on Texas highways. The greatest value of the Safe Passing Bill is that it provides an opportunity for broad education of Texas motorists and vulnerable road users. Many associations serving vulnerable road users in Texas, including transit agencies, towing associations and bicycle and pedestrian advocacy organizations, are poised to conduct awareness and education campaigns to ensure that the this law is effective in reduction of death and injury among vulnerable road users in Texas.

How can this law be enforced; can 3 feet clearance be effectively determined?

There are a number of references in the TTC to distances to be determined by roadway users and public safety officers. Question 3 in the Q&A addendum addresses stopping for

trains at rail crossings (not less than 15 feet or more than 50 feet,) stopping or parking on the open roadway (200 feet visibility,) and maintaining distance to oncoming vehicles while passing (200 feet.) This main intent of the Safe Passing Bill remains education to prevent crashes that cause injury or death.

Three-foot passing clearance has proven to be a workable distance in at least 12 other states that have passed similar laws. The Texas Commercial Vehicle Driver's Manual already specifies that six (6) feet of clearance for commercial vehicles is necessary when passing a bicyclists to avoid sucking them into the vehicle because of the wind effect.

Will this bill allow vulnerable users to obstruct traffic?

Texas Penal Code Section 42.03 already prohibits a person from obstruction of the highway or other passageway with an offense classified as a Class B misdemeanor. (Q&A: Question 1.) TTC Section 551.103 specifically requires cyclists to ride as near as practicable to the right curb or edge and prohibits cyclists from impeding the normal and reasonable flow of traffic.

As a driver, how do I pass a vulnerable road user without breaking other laws?

There is no exception for passing in a no passing zone (Q&A Question 2.) Motorists must sometimes follow slow moving tractors, trucks and other legal vehicles including bicycles until it is safe and legal to pass.

Organizations and individuals supporting CSSB 488 / CSHB 827

Texas Bicycle Coalition dba BikeTexas
American Association of Retired Persons (AARP)
Texas Towing and Storage Association
Texas Motorcycle Rights Association (TMRA)
Chief Art Acevedo, Austin Police Department
Mr. Mike McDougal, former County Prosecutor, Montgomery County
Mr. Mark Hocker, former Assistant County Prosecutor, Hale County
Citizen's Transportation Coalition (Houston)

Organizations not opposing CSSB 488 / CSHB 827

American Automobile Association (AAA)
Texas Motor Transportation Association (TMTA)
Texas Transit Association

Conclusion

American industry has long-established safety cultures and they save lives. There are already a number of Texas laws fostering roadway safety culture, including school zone speed limits, prohibitions against passing stopped school buses, tougher drunk driving laws, double construction zone fines and the "Move Over Law" protecting public safety officers.

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BikeTexas has heard personal testimony from pedestrians, persons with disabilities, tow truck operators, and other vulnerable users stating the grave importance of passage of the Safe Passing Act.

We respectfully urge you to vote YES on CSSB 488 when it comes up for consideration on the Senate floor.

Please do not hesitate to contact me if BikeTexas can provide any additional information. Thank you for your consideration of this important matter.

Sincerely,

A handwritten signature in black ink that reads "ROBIN STALLINGS". The letters are in all caps and have a cursive, slightly slanted appearance.

Robin Stallings
Executive Director
(512) 694-9158 cell

cc: Members, Texas State Senate

Attachment

Addendum
CSSB 488: 2009 Safe Passing Bill
81st Texas Legislative Session

Q & A Response to Questions on CSSB 488

1. What if the vulnerable road user, including a cyclist, is obstructing traffic?

Obstruction of traffic on streets is a crime. Section 42.03 of the Texas Penal Code states:

Sec. 42.03. OBSTRUCTING HIGHWAY OR OTHER PASSAGEWAY. (a) A person commits an offense if, without legal privilege or authority, he intentionally, knowingly, or recklessly:

(1) obstructs a highway, street, sidewalk, railway, waterway, elevator, aisle, hallway, entrance, or exit to which the public or a substantial group of the public has access, or any other place used for the passage of persons, vehicles, or conveyances, regardless of the means of creating the obstruction and whether the obstruction arises from his acts alone or from his acts and the acts of others; or

(2) disobeys a reasonable request or order to move issued by a person the actor knows to be or is informed is a peace officer, a fireman, or a person with authority to control the use of the premises:

(A) to prevent obstruction of a highway or any of those areas mentioned in Subdivision (1); or

(B) to maintain public safety by dispersing those gathered in dangerous proximity to a fire, riot, or other hazard.

(b) For purposes of this section, "obstruct" means to render impassable or to render passage unreasonably inconvenient or hazardous.

(c) An offense under this section is a Class B misdemeanor.

Subsection (k) of CSSB 488 states, "The presumption provided by Subsection (c) does not arise and may not be applied against the operator of the motor vehicle **if at the time of the offense the vulnerable road user was acting in violation of the law.**"

If a vulnerable road user is obstructing traffic, he is acting in violation of the law; thus, the presumption provided by Subsection (c) does not arise and may not be applied against the operator of the motor vehicle

2. Can a motorist pass a vulnerable road user in a no passing zone?

Current Texas law does not provide an exception to allow passing in a no passing zone. A motorist must wait until the no passing zone ends to pass another road user, including a tractor, cyclist, or other slower moving legal road users.

CSSB 488 does not change current Texas law related to passing in a no passing zone. Current Texas law concerning safe passing requires a "safe passing distance" and provides no exception to allow passing in a no passing zone. CSSB 488 defines "safe passing distance" as 3 ft.

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3. How will this law be enforced? Will police be able to determine when a motorist fails to provide 3 feet clearance when passing a vulnerable road user?

Literally hundreds, if not thousands, of current Texas laws require citizens and police officers to make accurate determinations of distance. Listed below are a few of such laws from the Texas Transportation Code.

Law enforcement officers are trained to make these determinations and can, for example, testify to the speed a car is traveling using their naked eye. Numerous attempts have been made to discredit the professionally trained eye of an officer that writes a speeding ticket without capturing a motorist's speed without using a radar gun. Courts consistently uphold an officer's professional opinion related to distances and speeds of moving vehicles when challenged in court. Simply stated, police officers are trained professionals that do indeed have the capacity and skills required to accurately measure the passing distance between a vehicle and bicycle to ensure it is the requisite 3 to 6 feet.

Sec. 545.251. OBEDIENCE TO SIGNAL INDICATING APPROACH OF TRAIN. (a) An operator approaching a railroad grade crossing shall stop not closer than 15 feet or farther than 50 feet from the nearest rail.

Sec. 545.301. STOPPING, STANDING, OR PARKING OUTSIDE A BUSINESS OR RESIDENCE DISTRICT. (a) An operator may not stop, park, or leave standing an attended or unattended vehicle on the main traveled part of a highway outside a business or residence district unless: (1) stopping, parking, or leaving the vehicle off the main traveled part of the highway is not practicable; (2) a width of highway beside the vehicle is unobstructed and open for the passage of other vehicles; and (3) the vehicle is in clear view for at least 200 feet in each direction on the highway.

Sec. 545.302. STOPPING, STANDING, OR PARKING PROHIBITED IN CERTAIN PLACES. (a) An operator may not stop, stand, or park a vehicle: (1) on the roadway side of a vehicle stopped or parked at the edge or curb of a street; (2) on a sidewalk; (3) in an intersection; (4) on a crosswalk; (5) between a safety zone and the adjacent curb or within 30 feet of a place on the curb immediately opposite the ends of a safety zone, unless the governing body of a municipality designates a different length by signs or markings; (6) alongside or opposite a street excavation or obstruction if stopping, standing, or parking the vehicle would obstruct traffic; (7) on a bridge or other elevated structure on a highway or in a highway tunnel; (8) on a railroad track; or (9) where an official sign prohibits stopping. (b) An operator may not, except momentarily to pick up or discharge a passenger, stand or park an occupied or unoccupied vehicle: (1) in front of a public or private driveway; (2) within 15 feet of a fire hydrant; (3) within 20 feet of a crosswalk at an intersection; (4) within 30 feet on the approach to a flashing signal, stop sign, yield sign, or traffic control signal located at the side of a roadway; (5) within 20 feet of the driveway entrance to a fire station and on the side of a street opposite the entrance to a fire station within 75 feet of the entrance, if the entrance is properly marked with a sign; or (6) where an official sign prohibits standing.

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4. Why does CSSB 488 punish a motorist that does not actually cause contact with a vulnerable road user?

Several current Texas laws already provide a penalty for motorists who do not come into contact with cyclist. Current Texas law does not merely protect against harmful contact but also protects against an invasion of the personal security of the victim. Under current Texas law for passing a cyclist, a motorist can be penalized even if he does not cause contact with the cyclist. does not increase penalties for violations that do not cause injury to a person or property. These violations will continue to be punishable under the general penalty provision in Section 542.401. Currently, a motorist violates Section 545.053 if he does not pass at a safe distance. Again, current Texas law does not require contact for there to be a violation.

Sec. 545.053. PASSING TO THE LEFT; RETURN; BEING PASSED. (a) An operator passing another vehicle: (1) shall pass to the left of the other vehicle at a safe distance; and (2) may not move back to the right side of the roadway until safely clear of the passed vehicle.

Regardless of making contact with a cyclist, motorist is in violation of Section 545.054 if he does not return to an authorized lane of travel before coming within 200 ft of an approaching vehicle, including a cyclist.

Sec. 545.054. PASSING TO THE LEFT: SAFE DISTANCE.

(b) An operator passing another vehicle shall return to an authorized lane of travel: (1) before coming within 200 feet of an approaching vehicle, if a lane authorized for vehicles approaching from the opposite direction is used in passing; or otherwise (2) as soon as practicable.

Regardless of making contact with a cyclist, a motorist is in violation of Section 545.062 if a motorist fails to maintain an assured clear distance.

Sec. 545.062. FOLLOWING DISTANCE. (a) An operator shall, if following another vehicle, maintain an assured clear distance between the two vehicles so that, considering the speed of the vehicles, traffic, and the conditions of the highway, the operator can safely stop without colliding with the preceding vehicle or veering into another vehicle, object, or person on or near the highway.

Regardless of making contact with a cyclist, motorist is in violation of Section 545.401 if the motorist drives a vehicle in a willful or wanton disregard for a cyclist's safety.

Sec. 545.401. RECKLESS DRIVING; OFFENSE. (a) A person commits an offense if the person drives a vehicle in willful or wanton disregard for the safety of persons or property. (b) An offense under this section is a misdemeanor punishable (d)Notwithstanding Section 542.004, this section applies to a person, a team, or motor vehicles and other equipment engaged in work on a highway surface.

Regardless of making contact with a cyclist, motorist may be in violation of Section 545.418.

Sec. 545.418. OPENING VEHICLE DOORS. A person may not:

(1) open the door of a motor vehicle (1) on the side available to moving traffic, unless the door may be opened in reasonable safety without interfering with the movement of other traffic; or (2) leave a door on the side of a vehicle next to moving traffic open for longer than is necessary to load or unload a passenger.

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5. Why does CSSB 488 punish motorists that harasses, taunts, or throws objects at vulnerable road users?

Current Texas law does not merely protect against harmful contact but also protects against an invasion of the personal security of the victim. Harassing, taunting, and throwing objects at vulnerable road users are all means of intimidating vulnerable road users with the threat of violence. Vulnerable road users, by definition, face extreme risk and even death when faced with a harassing or taunting driver.

6. What affect does the presumption created by CSSB 488 have in the court room?

A legal presumption can be disproved by evidence to the contrary. If a motorist fails to comply with the 3 ft or 6ft passing distance when passing a vulnerable road user, a presumption arises that the motorist failed to pass the vulnerable road user at a safe distance; however, this legal presumption can be rebutted by presenting evidence to the contrary. For example, a motorist may present evidence that he slowed down to a speed of 10 mph and then passed the vulnerable road user. A judge may find that the motorist has overcome the presumption by presenting persuasive evidence to the contrary.

Informal Transcript of Concerns and Questions
Presented by Senator Dan Patrick in Senate Session
April 7, 2009
Compiled by BikeTexas Staff

Narrow language of 3 feet.

What does a motorist do when there is not 3 feet?

What do I do as a driver without breaking other laws?

How is the bill going to save the lives?

How is the motorist to know 3 feet clearance?

We do not need another law and rules that are difficult for motorists.

How do we address 3 feet in court?

Bill has unintended consequences of impeding traffic

What about taunting?