



April 5, 2009

The Honorable Florence Shapiro
Texas State Senator, District 8
Capitol Office 1E.3
P.O. Box 12068
Austin, Texas 78711

Sent By E-Mail

Re: Safe Passing Bill CSSB 488 / CSHB 827

Dear Senator Shapiro,

Thank you for inviting BikeTexas to respond to your statement outlining your concerns on the 2009 Safe Passing Bill, CSSB 488 authored by Senators Rodney Ellis, D-Houston, John Carona, R-Dallas and Wendy Davis, D-Fort Worth, and the companion bill, CSHB 827 authored by Representatives Linda Harper-Brown, R-Irving, Carol Kent, D-Dallas, and Ellen Cohen, D-Houston.

In the past 100 years, traffic laws in Texas and other states have expanded from focus on punishing persons who cause traffic crashes to setting standards for behavior to defuse situations more likely to result in such crashes. Now, Texas state transportation experts are further expanding on this trend by calling for a "Culture of Safety" (Texas Transportation Researcher, 2008, Vol. 4) on Texas roadways with the goal of significant and substantial reduction of injury and death rates similar to those achieved through the "safety culture" movement in American industry over the past century.

The recent "Move Over Law" provides additional consideration above current law for Texas public safety officers by setting a standard of clearance and speed and mandating a behavior change by drivers. Driver compliance for enforcement purposes can be measured from on the roadside by professionally-trained officers. Many drivers may not be in exact compliance. But most officers with whom BikeTexas has communicated have indicated that they are grateful if the drivers just demonstrate a little bit more care as the officers risk their lives to make Texas roadways safer for all of us.

Like the "Move Over Law," the 2009 Safe Passing Bill also seeks to provide the next level of road safety with the express purpose of reducing death and injury on the roadway. The bill seeks to protect vulnerable road users including but not limited to pedestrians, bicyclists, physically disabled persons, equestrians, utility workers, stranded motorists, tow truck drivers, motorcyclists and other persons with legitimate business on the road or roadside.

CSSB 488 seeks to achieve three purposes.

1. Ensure that a penalty can be assessed if a motorist is at fault in striking a vulnerable road user. This penalty is not increased beyond general penalty provisions in Texas Transportation Code (TTC) Section 542.401. Such penalty does assign fault in a crash. Often, fault is not assigned to motorists who hit bicyclists and other vulnerable road users operating lawfully on the roadway.

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2. Ensure that gross neglect or willful endangerment can be assigned fault. All persons with legal right to be on the road or roadside are entitled to protection from such actions.
3. Most importantly, provide an opportunity for broad education of Texas motorists and vulnerable road users. Many associations serving vulnerable road users in Texas are poised to conduct awareness and education campaigns to ensure that the new law achieves its highest goal: to reduce death and injury among vulnerable road users in Texas.

Conditions on Texas roads and streets are moving in just one direction: more congested. We need to grow the Texas Roadway Safety Culture with passage of the 2009 Safe Passing Bill. 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" described above.

BikeTexas, cyclists and vulnerable road users across the state view the Vulnerable Road User bill as a reasonable, practical and important step to strengthen the Texas Roadway Safety Culture.

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

I am attaching an addendum of (1) organizations and others supporting the 2009 Safe Passing Act and (2) analysis by staff of the Texas Transportation Code and the proposed Safe Passing Bill.

Please contact me if I can provide any additional information. Thank you for your consideration of this important matter.

Sincerely,



Robin Stallings
Executive Director

Attachment

Addendum 1

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

Addendum 2

Staff Review of Texas Transportation Code and CSSB 488 / CSHB 827

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. CSSB 488 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 is in violation of Section 545.418.

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

(1) open the door of a motor vehicle 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.

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.