



U.S. Department of Transportation
Federal Railroad Administration

COMPILATION OF STATE LAWS AND REGULATIONS AFFECTING HIGHWAY-RAIL GRADE CROSSINGS

5TH EDITION



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**The Compilation of State Laws and Regulations Affecting Highway-Rail Grade
Crossings 5th Edition was prepared by:**

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DISCLAIMER

This compilation is intended to present the laws of the various jurisdictions as of July 2009. Every effort has been made to ensure accuracy. However, due to the broad scope of this project and the fluid nature of state statutory law, the author cannot guarantee complete accuracy of the material presented. In addition, a number of states have not published all of the updates to their laws from the work of their 2009 legislative sessions.

This compilation is intended to provide a general overview of the laws and regulations contained in all fifty states and the District of Columbia. For more detailed and up-to-date information, the reader is encouraged to review the relevant state statutes and annotations directly.

A great deal of material was reviewed during the preparation of this book, and during the research and preparation process, it is possible that something was omitted or misquoted. Any such omissions or misquotes or typing errors are those of the author and not the responsibility of the U.S. Department of Transportation or the Federal Railroad Administration.

The publishing of this compilation does not constitute the rendering of legal advice in any jurisdiction.

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PREFACE

The *Compilation of State Laws and Regulations on Matters Affecting Highway-Rail Grade Crossings, Fifth Edition* makes a unique contribution to the highway-rail grade crossing safety literature.

This book represents the *Fifth Edition* of the original 1983 publication. Beginning with the *Second Edition*, a portion of the original title was changed from “Rail-Highway Grade Crossings” to “Highway-Rail Grade Crossings.” The *Second Edition*, published in 1995, broadened the scope to include an examination of laws in the various states and the District of Columbia concerning trespassing on railroad facilities, vandalism to railroad property, and the degree of local government control, if any, over private crossings.

In the *Third Edition*, the parameters of the examination were again expanded to include two additional chapters covering vegetation clearance and photographic enforcement. These additional chapters reflect the increased concern among government policy makers, railroads, and state and regional transportation agencies regarding grade crossing safety as we usher in the era of the high-speed train. Additionally, the *Third Edition* added a number of applicable sections from the *Uniform Vehicle Code* (UVC) as an appendix to serve as an additional resource and to provide a means of comparison. The *UVC* was first published in 1926 and designed as a specimen set of motor vehicle laws intended to be used as a model for states to adopt. It has been updated many times and continues to serve as a valuable framework for the development of state legislation.

Each chapter in this book represents a different subject area and each chapter’s contents are summarized in an effort to provide the reader with a brief overview of the subject matter presented. The laws of each individual state and the District of Columbia relative to the subject matter are presented, either verbatim, or, in many instances, paraphrased for clarity and better understanding. Each subject area is addressed from a practical orientation, making it an invaluable resource for a variety of users. Added to this *Fifth Edition* is a quick reference page to facilitate browsing.

Although, in most instances, the book is written in everyday language for use by laymen, it is also intended to serve as a comprehensive legal reference and a practical tool for legislators, policymakers, and lawyers.

This book is available on the Internet at the Federal Railroad Administration’s Office of Railroad Safety Web site.

This book was originally prepared under the sponsorship of the Federal Railroad Administration’s Office of Railroad Safety with technical assistance provided by the Office of Chief Counsel. The author acknowledges with sincere appreciation the contributions of Messrs and Ron Ries and Michail Grizkewitsch with the Federal Railroad Administrations Office of Safety, Highway-Rail Grade Crossing & Trespassing Division. Additional gratitude goes to each of the FRA’s regional Highway-Rail Grade Crossing Safety and Trespass Prevention managers for their help and for a job well done.

INTRODUCTION

BACKGROUND

The Federal Railroad Administration has identified roughly 258,815 public and private highway-rail grade crossings in the United States. Most aspects of jurisdiction over highway-rail grade crossings reside with the states. Within some states, responsibility is divided between several public agencies and the railroad. In other states, jurisdiction over highway-rail grade crossings is assigned to a regulatory agency with various names such as the Public Utility Commission, Public Service Commission, or State Corporation Commission. Still, other states divide the authority among public administrative agencies of the state, county, city, and town, having jurisdiction and responsibility for their respective highway systems.

State and local law enforcement agencies have the responsibility for the enforcement of traffic laws at highway-rail grade crossings. In a number of cases, local government bodies are given responsibility for certain operational matters related to crossings; and this is accomplished through various ordinances.

PURPOSE AND SCOPE

This *Compilation of State Laws and Regulations on Matters Affecting Highway-Rail Crossings, Fifth Edition* is intended to provide an up-to-date and more expansive look at the various state laws and regulations concerning every aspect of the regulation of highway-rail grade crossings, and driver behavior at those crossings. Compiled here are all of the laws and regulations of the 50 states and the District of Columbia into one comprehensive, easy-to-use document. It is intended to provide a one-stop reference for researchers, engineers, students, legal practitioners, and those individuals who make their living working in the field of highway-rail grade crossing safety. The reader will find this *Fifth Edition* useful when assessing differences and similarities in the laws among states, seeking distinctions between desirable and undesirable laws, and when conducting legal research.

The source material collected for this book was obtained from individual state legislative Web sites which contain the laws and regulations published by each state and the District of Columbia. The style of legal citation used in this *Fifth Edition* is obtained from *The Bluebook: A Uniform System of Citation, Seventeenth Edition*, Cambridge, Mass. (Harvard Law Review Association, 2000.)

CHAPTER 1: CROSSING CONSOLIDATIONS AND CLOSURES

CHAPTER OVERVIEW

In the majority of states, the overall authority for highway-rail grade crossing safety, and the authority to order the elimination of at-grade crossings is conferred upon the state agency that regulates and oversees transportation.

In a small number of states, the responsibility for crossing elimination is vested in regulatory bodies. These entities are referred to by various names, such as the public utilities commission and the state corporation commission. A couple of states provide for collective responsibility between a state agency and a unit of local government, while a few more provide for shared responsibility between the state department of transportation and another state agency, such as the highway department.

The agency charged with the responsibility for elimination, or abolishment, as the process is often called, has not changed a great deal since the original publication of this book. In the few instances where the responsible agency is different, it was the result of the powers and functions of the agency being assumed by another agency. For example, in Missouri, the exclusive responsibility for altering or abolishing highway-rail grade crossings is now vested in the highways and transportation commission within the department of transportation. Likewise, the Commonwealth of Massachusetts shifted the responsibility for grade crossing consolidations and closures to an agency called the Department of Telecommunications and Energy. The State of Texas has also shifted responsibility from the railroad commission to the department of transportation.

This chapter provides an overview of the procedures for grade crossing elimination on a state-by-state basis. The state or county agency with statutory authority to order the elimination or consolidation of a grade crossing is identified along with an indication of whether the authority is exclusive or shared and also listed is the statutory responsibility for the costs of replacement or consolidation. Also listed with each state is the appropriate citation(s).

STATE LAWS AND REGULATIONS

ALABAMA

The Alabama Department of Transportation has statutory authority to abandon and discontinue any portion of a state highway or street on a state highway route with the approval of the city council or governing body of any municipality, crossing the tracks or right-of-way of any railroad or street railway within the state, and to close the grade crossings, when, in its judgment, the grade crossing has ceased to be necessary for the public as part of any state highway, because of relocation of the highway or because of the construction of an underpass, overpass, or other provision made for the elimination of the grade crossing. Thereafter, the railroad or street railway shall not be required to maintain the grade crossing for use as a public highway or street.

Whenever the department of transportation orders the closing of a grade crossing, it must enter its order in the department minutes. Notice in writing is given by the department by posting a notice on each side of the railroad or street railway at the grade crossing for a period of 30 days. Thereafter, the railroad or street railway shall not be required to maintain the grade crossing for use as a public highway or street. If the closing is of a crossing on a county or municipal road; prior to issuing the order to close the crossing, the department must also give notice of its intention to close to the affected municipality or county. In addition, the department must publish legal notice of intention to close the crossing in a newspaper of general circulation in the county once a week for 3 consecutive weeks prior to the closure. The notice must outline the required procedure for requesting a hearing. If there is such a request for hearing, the department must give 10 days notice to the requester and the municipality or county.

If, in the judgment of the department of transportation, an at-grade crossing on a municipal or county highway, street, or right-of-way of any railroad within the state is dangerous, redundant, or the enhancement of public safety resulting from the closing outweighs any inconvenience caused by rerouting the vehicular traffic, the department may order the crossing closed. Any such action to be taken by the department of transportation concerning an at-grade crossing on a municipal or county highway must have the approval of the city or governing body of the county. In the event any such closing is deemed by the department to cause substantial inconvenience to vehicular traffic or materially impair the provision of police, fire, or ambulance service, the department may also order a relocation of the crossing or the building of another crossing at another location.

Upon the issuance of the order by the Director of Transportation, it is the responsibility of the railroad or railroads involved to physically remove the crossing from the tracks and it is the responsibility of the municipality or county where the crossing is located to install any signs or barricades that might be appropriate. The costs of any signs or barricades shall be shared equally by the department of transportation and the city or county wherein the crossing is located.

Whenever a railroad crossing or any highway, street, or right-of-way crossing the tracks or right-of-way of any railroad is closed, abandoned, or discontinued pursuant to Section 37-2-84, that action shall not affect any right-of-way for the lines, structures, equipment, and facilities of any utility as defined in Title 37, which cross the tracks or rights-of-way of the railroad at the crossing or along, over, or through the highway, street, or right-of-way abandoned.

Subsection (f) of Section 37 states that the provisions contained herein shall be the exclusive method of closing railroad grade crossings located on any public drive, street, road, or highway in the state. Ala. Code § 37-2-84(a) to (f) (2008).

ALASKA

Alaska statutes are silent as to any authority to abolish highway-rail grade crossings within the state. The authority to alter or establish a highway-rail grade crossing, however, rests with the department of transportation and public facilities. See Chapter 2 (Crossing Treatment Procedures).

ARIZONA

The Arizona Corporation Commission has the exclusive authority to alter or abolish highway-rail grade crossings within the state. This authority extends to those crossings where railroad tracks cross public roads or streets of a town or city. Ariz. Rev. Stat. Ann. § 40-337 (2009).

ARKANSAS

The State Highway Commission has exclusive authority over grade crossings, including the power to determine and prescribe the manner, location, and terms of installation, operation, maintenance, alteration and abolishment, separation of grades, protection, and apportionment of expenses. Ark. Code Ann. §§ 23-12-301-1001-1002 (2008).

CALIFORNIA

The California Public Utilities Commission has exclusive authority to abolish any crossing of a public or publicly used road or highway by a railroad or street railroad and of a street by railroad. Cal. Pub. Util. Code §§ 1201-1202 (2008).

COLORADO

The revised statutes of Colorado provides for a shared responsibility for the abolition of grade crossings, but in the case of any entity other than the public utility commission so ordering, certain conditions must exist. The Colorado Public Utilities Commission has the power, upon its own motion or upon complaint of an interested party, to order the abolishment of a highway-rail grade crossing. The process requires a hearing before which all interested parties, including the owners of any adjacent property, must be given due notice.

(3)(a)(I) The commission also has power upon its own motion or upon complaint and after hearing, of which all the parties in interest including the owners of adjacent property shall have due notice, to order any crossing constructed at grade or at the same or different levels to be relocated, altered, or abolished, according to plans and specifications to be approved and upon just and reasonable terms and conditions to be prescribed by the commission, and to prescribe the terms upon which the separation should be made and the proportion in which the expense of the alteration or abolition of the crossing or the separation of the grade should be divided between the railroad corporations affected or between the corporation and the state, county, municipality, or public authority in interest.

(II) Notwithstanding other provisions of the statute, the affected railroad corporation, the commission, the department of transportation, or the local government responsible for supervising and maintaining the intersection public highway or road may abolish any crossing at grade of an public highway or road over the tracks of a corporation if:

(A) The crossing is without gates, signals, alarm bells, or warning personnel and is located within one-quarter mile of a crossing with gates, signals, alarm bells, or warning personnel or a separated grade crossing;

(B) The crossing is not the only crossing that provides access to property;

(C) No less than sixty days prior to the proposed abolition date, the railroad corporation, commission, department of transportation, or local government posts conspicuous notice of the proposed abolition at the crossing and gives written notice of the proposed abolition to all other entities authorized to initiate abolition of the crossing pursuant to this subparagraph (II); and

(D) Neither any entity given notice nor any other interested party files an objection to the abolition pursuant to subparagraph (III) of this paragraph (a).

(III) A crossing shall not be abolished pursuant to subparagraph (II) of this paragraph (a) if an entity given notice or any other interested party, within sixty days of receiving such notice files with the commission and provides to the entity that gave notice of proposed abolition a written objection to the abolition. The written objection shall include a statement by the professional engineer licensed to practice in Colorado that indicates that the engineer is familiar with the requirements of subparagraph (II) and all relevant aspects of the crossing and has examined the crossing and believes that it is safe as designed. However, nothing in this subparagraph (III) shall preclude the abolition of the crossing pursuant to subparagraph (I) of this paragraph. Colo. Rev. Stat. § 40-4-106 (Inclusive) (2008).

CONNECTICUT

The Commissioner of Transportation has the statutory authority to relocate or close highway-rail grade crossings.

The process may be initiated upon written petition to the Commissioner of Transportation by the selectmen of any town, the mayor, and common council of any city, or the warden and burgesses of any borough within which a highway crosses or is crossed by a railroad, alleging that public safety requires an alteration in such crossing, its approaches, the method of crossing, the location of the highway or crossing, the closing of a highway crossing, and the substitution of another, therefore, not at grade, or the removal of obstructions to the sight at such crossing, and praying that the same may be ordered. The Commissioner appoints a time and place for hearing the petition and gives notice to the petitioners. Conn. Gen. Stat. § 13b-270 (2009).

A similar procedure applies for the elimination of grade crossings by removing the tracks. The directors of any railroad company may bring its petition in writing to the Commissioner, alleging that public safety necessitates the elimination of a crossing. The Commissioner shall appoint a time and place for the hearing of the petition after reasonable notice to all affected parties. Conn. Gen. Stat. § 13b-273 (2009).

The Commissioner may also, in the absence of any application, upon his own motion, when in his opinion public safety requires it, and after notice and proper hearing, order alterations (including removal) of a highway crossed at grade by a railroad or railroads. In the process, he shall determine and direct by whom such alterations shall be made, at whose expense and within what timeframe; but in any case, no more than one-fourth of the expenses is to be borne by the state, and the remainder is to be assessed upon the railroad. Conn. Gen. Stat. § 13b.274 (2009).

If the Commissioner of Transportation finds that a dangerous condition exists at such crossing, except a dangerous condition arising out of improper or inadequate maintenance, he or she shall issue such an order to such municipality or to any public service company directing the removal, change, or relocation of the crossing, highway, tracks, pipes, wires, poles or other fixtures, or tree, building, or other structure; and shall apportion the cost among the public service company or companies, the municipality and the state, and shall determine the conditions and the time and manner of the payment, provided that the portion of the cost to be paid by the public service company shall not exceed 10 percent. Conn. Gen. Stat. § 13b-276 (2009).

DELAWARE

The Delaware Department of Transportation has exclusive authority to order the closing of highway-rail grade crossings.

(a) No public carrier engaged in the transportation of passengers or property shall, without prior order of the Department, construct its facilities across the facilities of any other such public utility or across any public highway at grade or above or below grade, or at the same or different levels; and, without like order, no such crossing heretofore or hereafter constructed shall be altered, relocated or abolished.

(b) The Department is hereby vested with exclusive power to determine and prescribe, by regulation or order, the points at which, and the manner in which, such crossing may be constructed, altered, relocated or abolished, and the manner and conditions, including protective devices, in or under which such crossings shall be maintained, operated and protected to effectuate the prevention of accidents and the promotion of the safety of the public. Del. Code Ann. Tit. 2 § 1804 (a)-(b)-(c) (2009).

DISTRICT OF COLUMBIA

The Mayor of the District of Columbia has statutory authority to order the elimination of a highway-rail grade crossing. Pursuant to this authority, the Mayor may make payments to contractors and payment for other expenses in connection with the costs of surveys, design construction, and inspection pending reimbursement to the District of Columbia by the Federal Highway Administration, Department of Transportation, or other participants. D.C. Official Code § 9-107.04 (2009). See also, D.C. Official Code §§ 9-1201.14, 9-1201.15, 9-1205.03

FLORIDA

The Florida Department of Transportation has regulatory authority over all public highway-rail grade crossings in the state.

A public highway-rail grade crossing is defined in the Florida statute as any location at which a railroad track is crossed at-grade by a public road.

The department is mandated to work with the various railroad companies to develop and initiate a program for the expenditure of funds for the performance of projects aimed at reducing grade crossing hazards. Fla. Stat. Ann. § 335.141 (2009).

The Florida Department of Transportation, in conjunction with other governmental units and the private sector, is tasked with the responsibility of developing and implementing a statewide rail program designed to ensure the proper maintenance, safety, revitalization, and expansion of the rail system. Among the myriad of duties under the statute, the Department is required to administer rail operations and construction, including the regulation of maximum train operating speeds, the opening and closing of public grade crossings, the construction and rehabilitation of public grade crossings, and the installation of traffic control devices at public grade crossings. The administration of the program by the Department includes participation in funding. Fla. Stat. Ann. § 341.302 (2009).

GEORGIA

The Georgia Department of Transportation has authority for final approval of grade crossing eliminations. The statute provides that when necessary, in the interest of public safety, the unit of local government with jurisdiction may authorize and direct the elimination of a grade crossing by construction of an overpass or underpass, provided that no grade crossing shall be eliminated without prior approval from the department of transportation.

(a) The department shall by rule or regulation prescribe uniform criteria for its own use and that of local governing authorities in assessing whether elimination of a grade crossing on a public road by physical removal of the grade crossing and barricading or removing the approaches thereto without construction of an underpass or overpass is reasonably necessary in the interest of public safety. For purposes of this Code section, “reasonably necessary in the interest of public safety” means that the enhancement of public safety resulting from such elimination of the grade crossing will outweigh any inconvenience to the reasonable passage of public traffic, specifically including without limitation emergency vehicle traffic, caused by such rerouting of traffic. Such criteria shall include consideration of each of the following factors:

(1) Number and timetable speeds of passenger trains operated through the crossing;

- (2) Number and timetable speeds of freight trains operated through the crossing;
- (3) Distance to alternate crossings;
- (4) Accident history of the crossing for the immediately preceding five-year period;
- (5) Type of warning device present at the crossing, if any;
- (6) The alignments, horizontal and vertical, of the roadway and the railroad and the angle of the intersection of those alignments;
- (7) The average daily traffic volume in proportion to the population of the municipality if the crossing is located within a municipality or the population of the county if the crossing is located within an unincorporated area of a county;
- (8) The posted speed limit over the crossing;
- (9) The effect of closing the crossing upon access by persons utilizing:

- (A) Hospital or medical facilities and public health departments, specifically including without limitation utilization by medical personnel;
- (B) Facilities of federal, state, or local government, specifically including without limitation court, postal, library, sanitation, and park facilities; and
- (C) Commercial, industrial, and other areas of public commerce;

- (10) Any use of the crossing by:

- (A) Trucks carrying hazardous material;
- (B) Vehicles carrying passengers for hire;
- (C) School buses;
- (D) Emergency vehicles; or
- (E) Public or private utility vehicles, specifically including without limitation water, sewer, natural gas, and electric utility maintenance and repair vehicles; and

- (11) Any other relevant factors as prescribed by the department.

(b) (1) Any railroad may file a written petition requesting an order to eliminate a grade crossing on a public road by physical removal of the grade crossing and barricading or removing the approaches thereto without construction of an underpass or overpass. Any such petition shall be filed by certified mail or statutory overnight delivery, return receipt requested, with the department in respect to the state highway system, a county governing authority in respect to its county road system, or a municipal governing

authority in respect to its municipal street system.

(2) Any petition by a railroad under this subsection shall include without limitation information as to each of the factors set forth in paragraphs (1) through (5) of subsection (a) of this Code section.

(3) The Department or the local governing authority, whichever is applicable, shall conduct a public hearing on the matter prior to deciding whether to grant or deny such a petition.

(4)(A) No railroad shall have a duty to file a petition for elimination of a grade crossing as authorized by this subsection.

(B) Neither the failure of a railroad to file such a petition nor any decision by the Department or any local governing authority regarding such a petition shall give rise to a cause of action against the railroad, the department, or a local governing authority by a person for injuries or damages arising from the existence or use of such crossing.

(C)(1) If the Department in respect to the state highway system, a county governing authority in respect to its county road system, or a municipal governing authority in respect to its municipal street system determines that elimination of a grade crossing in accordance with this Code section is reasonably necessary in the interest of public safety, the department or the local governing authority may issue an order to eliminate the crossing. Such order shall be in writing, and a copy shall be served upon the railroad. If a local governing authority issues such an order, it shall make a record of its findings and transmit a copy of the same along with the order to the Department.

(2) If the Department in respect to the state highway system, a county governing authority in respect to its county road system, or a municipal governing authority in respect to its municipal street system determines that elimination of a grade crossing in accordance with this Code section is not reasonably necessary in the interest of public safety, the Department or the local governing authority may issue an order denying a petition to eliminate the crossing. Such order shall be in writing, and a copy shall be served upon the railroad. If a local governing authority denies a petition, it shall make a written record of its findings and transmit a copy of the same along with the order and petition to the Department.

(3)(A) Any railroad aggrieved by an order of a local governing authority under this subsection may make a written request to the Department for review of such order. Such request shall be accompanied by a \$500.00 filing fee. The department shall within 60 days after the filing of such request review the matter.

(B) Upon review of the order and findings of the local governing authority and any filings by the railroad, if the Department determines that elimination of a grade crossing in accordance with this Code section is not reasonably necessary in the interest of public safety, the department shall order that the crossing shall remain open.

(C) Upon review of the order and findings of the local governing authority and any filings by the railroad, if the Department determines that elimination of a grade crossing in accordance with this Code section is reasonably necessary in the interest of public safety, the department shall issue an order to eliminate the crossing.

(D) Any such order of the Department shall be in writing, and a copy of the order shall be served upon the railroad and the local governing authority. As part of such order, the department shall assess all its costs of investigating and reviewing the matter against the railroad if an order for the crossing to remain open is issued or against the county or municipality if an order to eliminate the crossing is issued, and the party so assessed shall be liable therefore to the department; provided, however, that any filing fee paid to the department by a railroad shall be applied to any such amount assessed against the railroad, and the balance of such filing fee, if any, shall be refunded to the railroad. The Department shall keep detailed records of its costs of investigation and review for purposes of this subparagraph, and such records shall be subject to public inspection as provided by Article 4 of Chapter 18 of Title 50.

(d) If an order to close a grade crossing is issued, the railroad shall at its expense physically remove the crossing from the tracks and for two feet beyond the ends of the crossties on each side and extending four feet beyond the traveled way or flush with the edge of a paved shoulder, whichever is greater, of such crossing and erect a department approved barricade; and the department in respect to the state highway system, the county in respect to its county road system, or the municipality in respect to its municipal street system may at its expense remove approaches to the crossing. The provisions of Code Section 32-6-195 for division of costs of elimination of a grade crossing by construction of an underpass or overpass shall not apply to elimination of any grade crossing under this Code section. Ga. Code Ann § 32-6-193.1 (2009).

When it is reasonably necessary in the interest of public safety, the department, in respect to the state highway system, a county, in respect to its county road system, or a municipality, in respect to its municipal street system, may authorize and direct the elimination of a grade crossing by construction of an underpass or overpass or by physical removal of the grade and barricading or removing the approaches thereto without construction of an underpass or overpass, provided that any grade crossing elimination shall be

in accordance with this part and that no grade crossing on a county road system or municipal street system shall be eliminated by construction of an underpass or overpass upon order of the county or municipality until and unless the department shall approve the plans and specifications of the proposed construction. No grade crossing on a public road shall be permanently closed except by elimination in accordance with this part. Ga. Code Ann. § 32-6-193 (2009).

Nothing in this part shall be construed to prevent the department of transportation, a county, or a municipality from reaching special agreements with a railroad company providing for grade crossing elimination by means of relocation of either the railroad or public road involved, or by other means not expressly provided for in this part and from arranging joint participation in the cost of such elimination in accordance with the procedures in Section 32-6-195. Ga. Code Ann. § 32-6-198 (2009).

HAWAII

There is no applicable statute relating to this topic.

IDAHO

There is somewhat of a shared responsibility in Idaho for determining crossing elimination. The Idaho Transportation Department has statutory authority to negotiate and enter into an agreement with the railroad companies to provide for grade crossing elimination on state highways. Local authorities and railroads have the same authority with respect to crossings not on state highways. The Idaho Public Utility Commission also may hear a complaint from the transportation department, the railroad or railroads, or upon its own motion, and is empowered to hear such complaint, to rule upon it, and to determine the cost. Additionally, the Idaho Transportation Board must approve, in writing, any new highway-rail crossing at grade.

Whenever a state highway crosses or shall hereafter cross one or more railroads, and whenever the Idaho transportation department shall determine that the elimination of a grade crossing, whether by separation of grades or by relocation of the highway or railroad or both, or the reconstruction of an existing structure under or over the railroad or railroads, is necessary for public safety and convenience or for the proper construction or reconstruction of said state highway, the said Idaho Transportation Department shall have full authority to negotiate with and enter into an agreement with the railroad company or companies, and with any other persons and authorities concerned, to provide for the method of elimination or alteration and for the division of the cost thereof between the state and the railroad company or companies and any other parties to such agreement, such cost to include all changes of highway or railroads made necessary by the existence of the crossing and by the elimination or alteration thereof, and the acquisition of any right of way required. Idaho Code § 62-301 (2008).

If the Idaho transportation department shall be unable to agree with the railroad company or companies upon the elimination or alteration to be made or upon the division of the cost of such elimination or alteration, said department, or railroad company or companies, shall make written complaint to the public utilities commission, setting forth the changes and alteration desired and the necessity therefor. Idaho Code § 62-302 (2008)

Whenever a highway not a state highway crosses one or more railroads, the local authorities in their respective jurisdictions, or railroad company or companies, shall have the same authority and perform the same duties with respect to the elimination or alteration of such crossing as are granted to and required of the Idaho transportation department and railroad company or companies by this chapter. Idaho Code § 62-303 (2008).

No new railroad and no alteration or extension of an existing railroad shall hereafter cross any highway at grade, and no new highway shall hereafter cross any railroad at grade without the written permission of the Idaho transportation board first having been obtained. Idaho Code § 62-307 (2008).

[The Public Utility Commission also has authority to review petitions from all parties.] Any order made by said commission concerning said matter shall be enforceable and subject to review in the same manner as other orders of the commission. Upon any order of closing and abandonment becoming final, the grade crossing may be closed either by the public authority having jurisdiction over the street, road or highway or by the owner, operator or lessee of such railroad. Idaho Code § 62-305 (2008).

ILLINOIS

The Illinois Commerce Commission has statutory authority to order the elimination of a highway-rail grade crossing. After a hearing, the commission has the power to require major alterations of, or to abolish any crossing heretofore or hereafter established when, in its opinion, the public safety demands it. This authority does not extend to grade crossings in cities, villages, and incorporated towns of one million or more inhabitants.

The commission, after a hearing of all the parties, can prescribe the terms upon which any separation is to be made, and the proportion in which the expense of any alteration or abolition of such crossings or the separation of such grades is to be divided between the affected rail carrier(s) or between the carrier(s) and the state, county, municipality, or other public authority in interest.

The commission also has the power to order the reconstruction, minor alteration, minor relocation, or improvement of any crossing, including all necessary highway approaches, thereto, of any railroad across any highway or public road, regardless of whether the crossing is at grade

or by overhead structure or by subway, whenever the commission finds, after a hearing or without a hearing as otherwise provided, that any such reconstruction, alteration, relocation or improvement is necessary to preserve or promote the safety or convenience of the public or of the employees or passengers of such rail carrier or carriers.

The statute also provides that no highway-rail at-grade crossing is to be permanently closed without first convening a public hearing with notice of such hearing being published in an area newspaper of local general circulation.

The following factors are to be considered by the Illinois Commerce Commission in developing the specific criteria for opening and abolishing grade crossings:

- (a) timetable speed of passenger trains.
- (b) distance to an alternate crossing.
- (c) accident history for the last 5 years.
- (d) number of vehicular traffic and posted speed limits.
- (e) number of freight trains and their timetable speeds.
- (f) the type of warning device present at the grade crossing.
- (g) alignments of the roadway and railroad, and the angle of intersection of those alignments.
- (h) use of the grade crossing by trucks carrying hazardous material, vehicles carrying passengers for hire, and school buses; and
- (i) use of the grade crossing by emergency vehicles. 625 ILCS 5/18c-7401 (2008).

Editor's Note. The State of Illinois has created some additional statutes pertaining to grade crossings since the last printing of this compilation. These laws are under a section entitled Special Districts. They all concern the legislative creation of various authorities which are being established to facilitate the relocation of tracks and the consolidation or abolition of tracks and grade crossings as well as the removal or relocation of railroad facilities; all within the Chicago Terminal Network. They are listed here in no particular order of importance.

(1) Southwest Suburban Railroad Redevelopment Authority Act. 70 ILCS 1930/1 (2008). The General Assembly, declaring, among other things, that motor vehicle traffic, pedestrian travel, and the safety of both motorists and pedestrians are substantially aggravated by the location of railroad grade crossings. That the presence of the railroad grade crossings are detrimental to the orderly expansion of industry and commerce and to progress of the region. To alleviate this situation it is necessary to relocate the railroad tracks, to separate the grades at crossings, to acquire property for relocation or submergence of the railroad or highways and, to create an agency to facilitate and accomplish that relocation, and to direct infrastructure and development improvements in the Southwest Suburban area. 70 ILCS 1930/5 (2008)

(2) Grand Avenue Railroad Relocation Authority Act. 70 ILCS 1915/10 (2008). This act has essentially the same language and targets the relocation of railroad tracks at Grand Avenue and the grade separation of railroads from the right of way and along with

necessary, related improvements of right of way and at-grade crossings closures within the Village of Franklin Park.

(3) West Cook Railroad and Development Authority Act. 70 ILCS 1920/5 (2008). This act has similar language. The General Assembly, declaring that the presence of the railroad right of way at the 25th Avenue grade crossing is detrimental to the orderly expansion of industry and commerce and progress of the region, created this Authority. Its purpose is to alleviate the situation by accomplishing whatever is necessary to relocate the railroad tracks and right of way on 25th Avenue and First Avenue, the grade separation of railroads from the right-of- way and at-grade crossings closures within the Village of Bellwood and the Village of Melrose Park, the grade separation of railroads from the right-of-way and at-grade crossings in the First Avenue vicinity between Lake Street, Oak Street, the Des Plaines River, and Fifth Avenue, and the establishment of a transit-oriented inter-surface modal development facility in the development area.

(4) Railroad Terminal Authority Act. 70 ICLS 1905/2 (2008). This act declares that their exists within the State of Illinois, cities of 500,00 or more inhabitants that are “Railroad Terminal Areas” (areas that have terminals, terminal facilities, and freight facilities), and that these Railroad Terminal Areas are a blight to development, depress land values, and create congestion. The Act allows for the relocation of the railroad facilities to outlying areas, and the consolidation of railroad terminals and terminal facilities.

(5) Dixon Railroad Relocation Authority Law. 70 ICLS 1925/5-5 (2008). This act creates a mechanism to accomplish the relocation of a railroad spur line in the City of Dixon.

INDIANA

Indiana statute gives the Indiana Department of Transportation the authority to order closed and abolished as a public way, within the limits of a railroad right-of-way, any grade crossing then in existence at the time the department assumes jurisdiction of the matter. The department’s order must be based on a determination that the enhancement of public safety resulting from the closing will outweigh any inconvenience caused by rerouting traffic.

The authority of the department to legally close and abolish grade crossings is in addition to any authority by law granted to other state agencies or units of local government. Units of local government have the authority to abolish a public railroad crossing, if the unit determines that the crossing meets the criteria adopted by the department of transportation.

Upon the issuance of an order by the department, the railroad or railroads involved shall physically remove the crossing from the tracks, and the governmental unit maintaining the highway shall remove or barricade the approaches to the crossing. Ind. Code Ann. § 8-6- 7.7 -3 (2009).

The Department is required to develop criteria for use in determining whether to open a new public highway-rail grade crossing, and to develop criteria which the Department and unit

of local government can use in determining whether to abolish a public highway-rail grade crossing.

In the application of the criteria, the department or unit of local government will consider the following:

- (1) Timetable speed of passenger trains operated through the crossing.
- (2) Distance to an alternate crossing.
- (3) Accident history of the crossing for the five (5) years preceding the department's or the unit's consideration.
- (4) Amount of vehicular traffic and posted speed limits for the crossing.
- (5) Amount of freight trains and their timetable speeds operated through the crossing.
- (6) Type of warning device present at the crossing, if any.
- (7) Alignment of the roadway and the railroad, and the angle of the intersection of an alignment at the crossing.
- (8) Use of the crossing by:
 - (a) trucks carrying hazardous materials;
 - (b) vehicles carrying passengers for hire;
 - (c) school buses; and
 - (d) emergency vehicles.
- (9) Other appropriate criteria as determined by the department.
Ind. Code Ann. § 8-6-7.7-3.1 (2009).

A person may petition a unit of local government under whose jurisdiction a public railroad crossing lies for closure of the crossing. The unit is then required to conduct a public hearing. The unit has three options: (1) if it determines that the crossing in question meets the criteria adopted by the Indiana Department of Transportation under the previous Section 3.1 for closure of the crossing, the unit may approve the petition and issue an order to close the crossing. The unit's findings must be made available to the Indiana Department of Transportation; (2) if the unit determines that the crossing meets the criteria, but a compelling reason has been shown to exist for the crossing to remain open, it may then deny the petition to close with a copy of findings to the Indiana Department of Transportation; and (3) the unit may determine that the crossing in question does not meet the criteria established by the Department of Transportation and deny the petition for closure.

Nothing in this chapter, however, is intended to preclude a unit and a railroad from agreeing on their own to close a crossing within the jurisdiction of the unit. Ind. Code Ann. § 8-6-7.7-3.2 (2009).

A decision to deny a petition to close a crossing may be reviewed by the Indiana Department of Transportation and a determination made whether to schedule an appeal. The decision to schedule or not schedule an appeal is: (1) In the sole discretion of the Department; (2) Final and conclusive; and (3) Not subject to review. Upon review of the findings of the unit, the Department may determine that the crossing meets the criteria for closure, opening, or denial of a closure and that a compelling reason has been shown for the crossing to remain open, in which case the Department shall issue written findings that the crossing may remain open. If, on the

other hand, the Department determines that the crossing meets the criteria for closure and that a compelling reason has not been shown for the crossing to remain open, the Department may issue an order abolishing the crossing. Ind. Code Ann. § 8-6-7.7-3.3 (2009).

The Indiana Department of Transportation also has the authority to approve a petition to open a crossing. If it finds that the proposed crossing meets the criteria required to open a new grade crossing and that a compelling reason has been shown for the crossing to exist, it may issue an order approving the petition. Ind. Code Ann. § 8-6-7.7-4 (2009).

IOWA

There is a shared authority process provided for in the Iowa Code.

Whenever a railway track crosses or is planned to cross a highway, street or alley, the affected railroad and the Iowa Transportation Department, in the case of a primary highway, the board of supervisors of the county in which the crossing at issue is located, in the case of secondary roads, or the city council, in the case of streets and alleys located within a city, may agree upon the location, manner, vacation, physical structure, characteristics and maintenance of the crossing. Iowa Code § 327G.15 (2008).

If any of the parties cannot agree upon the location, manner, vacation, physical structure, characteristics and maintenance of the crossing, either party may make written application to the Iowa Department of Transportation requesting a solution. The Department of Transportation is required to request the Department of Inspections and Appeals to set a date for hearing and give ten days written notice of the date. Iowa Code § 327G.16 (2008).

In the construction, improvement, operation or maintenance of any highway, or highway system, the agency which has control and jurisdiction over such highway or highway system, shall have power, on its own motion, to alter or vacate and close any such highway or railroad crossing thereon, and to establish new highways or railroad crossing thereon which are or are

intended to become part of the highway system over which agency has jurisdiction and control. Iowa Code § 306.10 (2008).

KANSAS

The statutes of Kansas provide for a shared responsibility for both closures and consolidations, depending on which type of highway the railroad crosses at grade. The Secretary of Transportation's authority covers state roads. The county engineer and board of county commissioners have the authority to request the elimination of grade crossings of all steam or electric railroads, subject to the determination of necessity by the secretary of transportation. Likewise, the governing bodies of first and second class cities and first and second class cities in counties with populations of over 90,000 have similar authority to require railroad companies owning or operating any railroad or street-railway to erect, construct, reconstruct, complete and keep in repair any viaduct or viaducts upon or over or tunnels under such street or streets and

over or under any such track or tracks, including the approaches of such viaduct, viaducts or tunnels as may be deemed and declared by the governing body to be necessary for the convenience, safety or protection of the public.

The Secretary of Transportation, in the construction, improvement, reconstruction or maintenance of the state highway system, shall have the power and authority to compel all railroad companies operating steam or electric railroad in the state to construct, improve, reconstruct or maintain in a manner to be approved by the Secretary, viaducts, tunnels, underpasses, bridges, or grade crossings where the lines of said railroad companies intersect state highways, in the judgment of the secretary such viaducts, tunnels, underpasses, bridges or grade crossings are necessary for the proper construction of the state highway system, for the safety of the general public, or for the elimination of a dangerous grade crossing. The expense of such construction, improvement, reconstruction or maintenance may be divided between the railroad company and the Secretary of Transportation in a fair and equitable proportion to be determined by the Secretary. However, the Secretary shall not pay more than 50 percent of the cost, but any 50 percent limitation shall not apply to express highway or freeways. Otherwise, grade crossings shall be constructed and maintained at the expense of the railroad company.

If, after due notice to the railroad company that in the judgment of the Secretary, the construction, improvement, reconstruction or maintenance of a viaduct, tunnel, underpass, bridge or grade crossing is necessary, and the affected railroad company fails to comply with the Secretary's order, the Secretary is then empowered and authorized to immediately begin to construct, improve, reconstruct or maintain such viaduct, tunnel, underpass, bridge or grade crossing and submit a bill for the work to the railroad company. If the railroad company refuses to submit payment, the Secretary shall forward the information to the Attorney General of the state, who may immediately institute a suit in the name of the Secretary for recovery.

The Secretary, when he or she deems it advisable, may require the railroad company to install and maintain suitable safety devices or warning signals at dangerous or obscure crossings to indicate the approach of trains. Kan. Stat. Ann. § 68 414 (2008).

The governing body of all cities of the first and second class also has the power to regulate the crossings of railway and street-railway tracks and provide precautions and adopt ordinances regulating the same. This includes the power to require all railway companies to erect viaducts over or tunnels under their tracks at the crossing of streets. The governing body shall have power to require any railroad company or companies owning or operating any railroad or street-railway tracks or tracks upon or across any public street or streets of the city to erect, construct, reconstruct, complete and keep in repair any viaduct or viaducts upon or over or tunnels under such street or streets and over or under any such track or tracks, including the approaches of such viaduct, viaducts or tunnels as may be deemed and declared by the governing body to be necessary for the convenience, safety or protection of the public. Kan. Stat. Ann. § 12-1633 (2008).

The governing body of all cities of the first and second class in a county having a population of over 90,000 has the power to require any railroad company or

companies owning or operating any railroad or street-railway track or tracks upon or across any public streets of the city to erect, construct, reconstruct, complete and keep in repair any viaduct or viaducts upon or over or tunnels under such street or streets and over or under such tracks, including the approaches of such viaducts, viaducts or tunnels as may be deemed and declared by ordinance to be necessary for the convenience, safety or protection of the public. Kan. Stat. Ann. §§ 12-1634 (2008).

KENTUCKY

The Department of Highways has the authority to order any railroad company owning or operating a railroad in the state to eliminate any grade crossing or change any existing overhead or underpass structure where any public road crosses the railroad tracks of the railroad company when it considers it necessary for public safety. In the process, the Department may determine whether a substitute crossing should be established and if so, the location, and whether it shall pass over or under the railroad tracks or intersect them at grade.

The Department is responsible for the promulgation of administrative regulations containing standards that govern the closure of public grade crossings. The standards reflect the intent of the legislation, i.e. that public safety will be enhanced by reducing the number of redundant and inherently dangerous grade crossings. On or before July 1, 1993, and on or before July 1 of each of the following four years, and as necessary thereafter, the Department is required to compose a list of grade crossings to be closed. The Department must notify the public officials having the necessary authority and the railway companies operating the railroads of the proposed closures. The affected parties may request a public hearing and, if it is requested, the Department is required to hold the hearing and apply in its determination the information gained at the public hearing. If after the hearing the Department determines that closure is warranted, it may order the crossing closed. If a request for a hearing is not received by the Department within thirty days of notice of the opportunity, the Department shall order the crossing closed. Ky. Rev. Stat. Ann. § 177.120 (1)(2)(3) (2009).

Any railroad company dissatisfied with a final order of the Department directing the elimination of any grade crossing or change of existing overhead or underpass structure, or any order modifying or amending the final order, may appeal by filing in circuit court. The court has the authority to affirm or to overrule the order of the Department. Ky. Rev. Stat. Ann. § 177.190 (2009).

There is a different procedure for ordering elimination of grade crossing or modifications to grade crossings when the crossing is on a county road in counties containing a city of the first class.

The Fiscal Court, when it considers it reasonably necessary for the public safety, may order any railroad company, either steam or electric, owning or operating a railroad in its county, to eliminate any existing grade crossing or change any existing overhead

or underpass structure where any county road crossed the railroad tracks of such company. Ky. Rev. Stat. Ann. § 178.355(1) (2009).

Editor's Note: The Fiscal Court is a county government agency in Kentucky. It is empowered to exercise all the corporate powers of the county unless otherwise provided by law. Ky. Rev. Stat. Ann. §§ 67.080-67.040 (2009).

The Fiscal Court is required to give at least ten days notice by certified mail of a hearing. At any such hearing it shall consider whether or not the proposed grade separation or change is reasonably necessary and the most advantageous method of effecting the grade separation or change. In determining whether the proposed grade separation or change is reasonably necessary, the Fiscal Court shall receive evidence of, and consider all relevant facts, including the present and prospective density of highway traffic and the present and prospective frequency and speed of train movements over the crossing, the adequacy of existing or proposed signals or warning devices for the protection of highway traffic at the grade crossing, the possibility and probability of personal injury to the public using the highway and to employee and passengers of the railroad company and damage to property, and the cost of the grade separation or change in relation to benefits resulting from the proposed construction. Ky. Rev. Stat. Ann § 178.355(2) (2009).

LOUISIANA

A. The secretary shall complete a study of all public railroad grade crossings to establish priorities for improvement, relocation, or closure in compliance with federal guidelines and shall develop a prioritized plan for implementing railroad grade crossing improvements, relocations or closures pursuant to 23 USC 130, known as the Federal Railroad Crossing Safety Program. The priority list shall be annually revised to reflect any changes made under the provisions of this Section. The department's plan shall be conducted in accordance with federal guidelines and Title 23 of the Code of Federal Regulations Part 646 relative to railroad-highway projects.

B. The department, when it determines that it is necessary for the safety of the public, may improve, change the location of or abolish any existing public grade crossing on any state-maintained highway. No provisions of this Section shall impose any liabilities of any nature upon the state of Louisiana or any agency thereof, nor shall any action or omission of the department be discoverable or admissible in any state court in Louisiana, and no record or document of the department compiled or prepared in connection with actions taken by the department pursuant to this Section, R.S. 48:390.1 or 23 USC 130 shall be discoverable or admissible in any state court in Louisiana.

F. No railroad company operating in this state shall be authorized to close any public railroad grade crossing along Louisiana Highway 23 in Jefferson and Plaquemines parishes before December 31, 2006, and no such closure of a public railroad grade crossing along this route shall be closed unless the closure of such crossing has been

deemed necessary by the Department of Transportation and Development pursuant to an evaluation conducted in accordance with the provisions of this Section or R.S. 48:390.1.

G.(1) Notwithstanding the provisions of this Section, R.S. 48:390.1, or any other provision of law or rule to the contrary, the closing of a railroad grade crossing by a railroad company shall not be considered interruption for purposes of acquisitive prescription, and any crossing closed by a railroad since January 1, 2006, shall be reopened upon the attainment of thirty years peaceful and otherwise uninterrupted use or possession of servitude of use or passage across the railroad grade crossing with or without just title.

(2) For the purposes of this Subsection, a crossing shall include a private rural residence or agricultural crossing or other means of access over the railroad right-of-way.

H.(1) A railroad corporation owning or operating a railway in this state, which is constructed across the land of any person leaving a portion of the land of such person on either side of its right-of-way, shall, when ordered to by the commissioner of the Department of Agriculture and Forestry, allow said crossing to remain open at a private rural residence or agricultural crossing or other means of access over its right-of-way.

(2) The Department of Agriculture and Forestry shall promulgate rules and regulations for the implementation of this Subsection no later than January 1, 2009. La. Rev. Stat. Ann. § 48:390 (2008)

MAINE

The Maine Department of Transportation has the authority to close or discontinue a crossing. The municipal officers, in instances of town ways crossing or crossed by a railroad, whether the crossing be at-grade or otherwise, or any railroad corporation may petition the Department of Transportation alleging that public safety or public convenience either to the traveling public or in the operation of railroad services requires abolishment of or reconstruction of or alteration of crossings or its approaches; or change in the method of crossing a public way; or the closing of a crossing and the substitution of another; or the removal of obstructions to the sight at the crossing and requesting the situation be remedied.

After the notice and hearing, if the department finds that the crossing is no longer required by the public, it may order that the crossing be closed or discontinued. The department may close or discontinue railroad crossings, after notice of not less than 10 days to the railroad and municipality, or after hearing if requested within the 10 days either by the railroad or the municipality. Me. Rev. Stat. Ann. Tit. 23 § 7207 (2008).

MARYLAND

The Maryland Highway Administration may abandon, relocate, construct, or reconstruct any railroad grade crossing or railroad grade separation that is dangerous or inconvenient for public travel. If a railroad grade crossing is dangerous or inconvenient for public travel, the Administration may construct a railroad grade separation. Md. Code Ann., Transp. § 8-640(b)(2) (2008).

The Maryland Secretary of Transportation has general authority to approve the construction or modification of a railroad grade crossing or a change of crossing protection equipment and to impose conditions necessary to insure public safety at the crossing. No other approval, safety condition, or protective measure may be required by any public authority.

Except for an industrial track spur or siding, a railroad may not construct, reconstruct, improve, widen, relocate, or otherwise alter a railroad grade crossing over a state, county, or municipal highway, except in Baltimore City or over a private road, or change the crossing protection at such a crossing unless approved by the Secretary.

This same section provides that a person may not construct, reconstruct, improve, widen, relocate, or otherwise alter either a railroad grade crossing over a public highway or a private road over a railroad or, change the crossing protection at such a crossing unless approved by the Secretary. Md. Code Ann., Transp. § 8-639 (2009).

MASSACHUSETTS

The department of telecommunications and energy has the authority to order grade crossing closure.

The department of highways plays a supporting role by investigating crossings where a public or private way and a railroad cross each other at grade. The department of highways receives petitions for the abolition of grade crossings from the aldermen of a city, the selectmen of a town, the commissioners of the county where such a crossing exists, or the board of directors of the railroad corporation operating the railroad crossed. After a hearing, due notice of which is given to the railroad corporation, city or town, and county, the department may, in its discretion, place a crossing on a list of crossings, the abolition of which be given early consideration. The department is required to file the list annually on or before October 1 with the department of telecommunications and energy.

The department of highways shall proceed to make an investigation of crossings where a public or private way and a railroad cross each other at grade, in sections sixty-five to eighty-two, inclusive, referred to as grade crossings. Said department shall annually on or before October first file with the department of telecommunications and energy lists of grade crossings the abolition of which it suggests for early consideration, to which lists

such crossings are located. The department of highways shall receive all petitions for the abolition of grade crossings from the aldermen of the city, the selectmen of the town, or the county commissioners of the county, where such a crossing exists, or the board of directors of the railroad corporation operating the railroad crossed, and after a hearing, due notice of which shall have been given to said railroad corporation, city or town and county, may in its discretion place said crossing on one of said lists. The department of telecommunications and energy, after due notice to the department of highways, the counties and municipalities in which such crossings are located and the railroad corporations operating the railroads crossed, shall proceed to hold public hearings upon such lists and such additional grade crossings as the department of highways shall have notified it to include. Upon the completion of such hearings the department of telecommunications and energy by order shall designate a program of grade crossings the abolition of which shall be considered; provided, that such program order may be amended or revised from time to time by the department of telecommunications and energy on request of the department of highways. In establishing such program the department of telecommunications and energy shall take into consideration the relative security and convenience of the public likely to result from the abolition of each particular grade crossing included therein as compared with the abolition of other grade crossings. Such program order shall state with respect to each grade crossing the name of the crossing, the name of the railroad corporation operating the railroad crossed, and the names of the counties, cities and towns in which the crossing is located. A copy of such program order and amendments and revisions thereof shall be filed in the office of the department of telecommunications and energy and of the department of highways. Mass. Gen. Laws Ann. Ch. 159 § 65 (2009).

MICHIGAN

The Michigan Department of Transportation has exclusive authority to order the elimination of highway-rail grade crossings.

(1) A new public street, highway, or a new nonmotorized trail shall not be constructed across the tracks of any railroad, or the new tracks of any railroad shall not be constructed across a public street, highway, or nonmotorized trail until approval is granted by the department. Upon application, the department shall investigate the location of the proposed crossing.

(2) The department, when it determines necessary for the safety of the public, may change the location of or abolish any existing public grade crossing after not less than 30 days' notice in the area affected by the crossing. A public hearing shall be held by the department if requested by any affected party. Within 30 days after the date of the hearing, the department may issue an order to close the existing grade crossing. Any person, local unit of government, or road authority having an interest in the abolishment of an existing grade crossing, within 30 days after the closure order of the department, may commence an action in the circuit court for the county of Ingham against the department as defendant to vacate or set aside the order.

(3) Commencing with the date of the federal designation of a high-speed rail corridor, a public or private at-grade street or highway or a farm, bicycle, or pedestrian crossing shall not be constructed across the railroad tracks of that corridor except for a crossing consolidation or relocation approved by the department.

(4) If the location of a proposed crossing is found to be necessary, feasible, and may be made reasonably safe for a crossing at grade, the department shall grant permission for the crossing. The department shall require installation of such traffic control devices as in its judgment may be appropriate. When a crossing necessitated by a new roadway across an existing track is permitted, the department shall simultaneously, after investigation and hearing, order the abolishment of one or more existing grade crossings having less than 100 vehicles a day within the same road authority jurisdiction, if the involved road authority and railroad may waive hearing thereon.

(5) If the department determines that the proposed location may not be made reasonably safe for a grade crossing, it shall deny permission for the crossing and require the crossing to be redesigned, if constructed at that location, or to be made other than at grade in accordance with section 319. If the department determines that it is impractical to secure a safe crossing at the point in question, either at grade or otherwise, it shall deny the grade crossing.

(6) The full cost of constructing a new street or highway across an existing railroad, or of a new railroad track or tracks across an existing street or highway, shall be borne by the party requesting the crossing. The following shall apply to a new or relocated grade crossing:

(a) The plans for the grade crossing shall be approved by both railroad and road authority. If there is a failure to agree, the department shall settle the points of disagreement by the terms of its order.

(b) The relocation of an existing grade crossing or the establishment of a new grade crossing at which the existing public highway grade crossing is completely abandoned, shall be constructed and the cost borne in the same manner as in the case of a new grade crossing. The maintenance responsibility of the relocated crossing shall be the same as the removed crossing unless otherwise agreed to by the parties.

(c) Temporary grade crossings shall be constructed, maintained, and removed at the sole expense of the parties requesting the same.

(d) The cost of construction shall include the direct construction cost of the roadbed, track structure, grade crossing surface, pavement, traffic control devices and drainage, including all material, labor, and services and other costs of construction.

(e) After construction, the grade crossing and traffic control devices shall be maintained as provided in this act.

(7) Upon approval of any new grade crossing project requested by a road authority, the road authority shall notify the railroad, in writing, to furnish a competent inspector and other necessary persons to inspect the construction of the grade crossing which shall be constructed according to the order of the department. The road authority shall pay to the railroad the actual costs incurred by the railroad for the time actually and necessarily spent in inspecting construction. Upon approval of any new grade crossing project requested by a railroad, the railroad shall notify the road authority, in writing, to furnish a competent inspector and other necessary persons to inspect the construction of the grade crossing which shall be constructed according to the order of the department. The railroad shall pay to the road authority the actual costs incurred by the road authority for the time actually and necessarily spent in inspecting construction.

(8) A road authority may request a railroad or a railroad may request a road authority, in writing, to reconstruct, change, widen, or alter that portion of an existing grade crossing with a public street or highway for which they are responsible to accommodate the requesting party's plans for reconstruction, change, widening, or alteration of their crossing related facility. The requesting party shall notify the other party to conform to the change simultaneously with the requesting party's work. However, if the party requested to make changes refuses, the requesting party may make application to the Department for a determination. The Department, after due hearing on the issue, shall determine the matters in dispute by order. The full cost of the reconstructing, change, widening, or alteration shall be borne by the party requesting it, unless otherwise agreed to.

(9) If a track through any grade crossing is abandoned through legal proceedings, the railroad, at its cost as part of routine maintenance, shall remove the tracks and any active traffic control devices and then shall restore the street or highway surface in a manner satisfactory to the road authority. The road authority, at its cost as part of routine maintenance, shall remove all passive traffic control devices. The track and all traffic control devices shall be removed within 1 year of the abandonment. Until such removal is complete, the railroad and road authority shall maintain it in accordance with this act.

(10) If a track through any grade crossing becomes unnecessary for the conduct of railroad services, the railroad, at its cost as part of routine maintenance, shall remove the track and any active traffic control devices and then shall restore the street or highway surface in a manner satisfactory to the road authority. The road authority, at its cost as part of routine maintenance, shall remove all passive traffic control devices. The Department may order the railroad to remove the track and any traffic control devices if there is not a likelihood of continued use. Until the track and all traffic control devices are removed, the railroad and road authority shall maintain it in accordance with this act. Mich. Comp. Laws § 462-307 (2009).

MINNESOTA

The authority to order closure, vacation, relocation, consolidation, or separation lies with the commissioner of transportation. The commissioner has the further responsibility for the adoption of rules containing standards governing the vacation and separation of public at-grade crossings.

In adopting standards, the commissioner shall consider that the number of grade crossings in this state should be reduced and that public safety will be enhanced by reducing the number of grade crossings. Minn. Stat. Ann. § 219.073 (2008).

Public officials having the necessary authority and a railway company operating the railroad may agree to the vacation, relocation, consolidation, or separation of grades at grade crossings. If agreement cannot be reached concerning the location, manner of construction, or a reasonable division of expense, either party may file a petition with the commissioner, setting forth the facts and submitting the matter to it for determination. The commissioner shall then conduct a hearing under chapter 14 and shall apply the rules developed under section 219.073 in coming to a determination. The commissioner may also bring matters concerning vacation, relocation, consolidation, or separation of grades at public grade crossings to the commissioner for determination. If the commissioner determines that the vacation, relocation, consolidation, or separation is consistent with the standards adopted under section 219.073, the commissioner may order the crossing vacated, relocated, consolidated, or separated. Minn. Stat. Ann. § 219.074 (2008).

The establishment of all new grade crossings must be approved by the Commissioner. When establishment of a new grade crossing is desired, either by the public officials having the necessary authority or by the railroad company, and the public officials and the railroad company cannot agree as to need, location, or type of warning devices required, either party may file a petition with the Commissioner setting forth the facts and submitting the matter for determination. The Commissioner, after notice as the commissioner deems reasonable, shall conduct a hearing and issue an order determining the matters submitted. If the Commissioner approves the establishment of a new grade crossing, the commissioner may in the same order direct that the costs, including the costs of the type of warning devices required, be divided between the railroad company and the public authority involved as the parties may agree, or, if they fail to agree, then as determined by the Commissioner on the basis of benefit to the users of each. However, the Commissioner may defer determination of the division of costs to a subsequent order to be made. Minn. Stat. Ann. § 219.072 (2008).

MISSISSIPPI

The jurisdiction of the Mississippi Department of Transportation is exclusive with respect to public highway-rail grade crossings, either at grade or otherwise, except to the extent that its jurisdiction is preempted by valid federal statute, regulation, or order.

The Mississippi Department of Transportation has the power, upon its own motion or upon complaint filed, after having made proper investigation, and after notice and hearing, if requested, to abolish any public highway-rail grade crossing heretofore or hereafter established, to vacate and close that part of the roadway on such crossing abolished, and to erect barricades across the roadway in such a manner as to prevent the use of such crossing as a roadway, when, in the opinion of the department, the public convenience served by the crossing in question is the subject of closure proceedings, both the local governmental entity and the rail carrier shall be given formal written notice by the department before any hearing is conducted by the department. Miss. Code Ann. § 65-1-175(2) (2008).

[The Mississippi Transportation Commission has statutory authority] to regulate and abandon grade crossings on any road fixed as a part of the state highway system, and whenever the commission, in order to avoid a grade crossing with the railroad, locates or constructs said road on one side of the railroad, the commission shall have the power to abandon and close such grade crossing, and whenever an underpass or overhead bridge is substituted for a grade crossing, the commission shall have power to abandon such grade crossing and any other crossing adjacent thereto.. Miss. Code Ann. § 65-1-8(2)(f) (2008).

The State Highway Commission also has authority to remove crossings:

Whenever any railroad and state highway or part of a state highway shall cross each other at grade, and in the opinion of the State Highway Commission, that such crossing is dangerous to public safety or traffic is unreasonably impeded thereby, and that the crossing should be removed, the State Highway Commission may order the crossing in question eliminated by having the State Highway Department carry the highway either under or over the tracks of the railroad.

The plans covering such proposed changes may be made either by the director of the State Highway Department, subject to the approval of the highway commission or the railroad company affected, but shall in either event be approved by both the highway commission and the railroad company before contract is awarded. The state highway commission and the railroad company shall pay equal parts of the cost of any underpass or overpass across the right-of-way of the railroad company. Miss. Code Ann. § 65-1-69 (2008).

MISSOURI

The responsibility for grade crossings in Missouri has shifted from the Division of Motor Carrier and Railroad Safety of the Department of Economic Development to the State Highways and Transportation Commission and Department of Transportation (Division of Motor Carrier and Railroad Safety was abolished). See Mo. Rev. Statutes § 226.008. This exclusive power of the State Highways and Transportation Commission is reviewable however by the Administrative Hearing Commission. See paragraph 9 of this section.

1. No public road, highway or street shall be constructed across the track of any railroad corporation, nor shall the track of any railroad corporation be constructed across a public road, highway or street, nor shall the track of any railroad corporation be constructed across the track of any other railroad or street railroad corporation at grade nor shall the track of a street railroad corporation be constructed across the tracks of a railroad corporation at grade, without having first secured the permission of the state Highways and Transportation Commission, except that this subsection shall not apply to the replacement of lawfully existing tracks. The Commission shall have the right to refuse its permission or to grant it upon such terms and conditions as it may prescribe.

2. Every railroad corporation shall construct and maintain good and sufficient crossings and crosswalks where its railroad crosses public roads, highways, streets or sidewalks now or hereafter to be opened.

3. The state Highways and Transportation Commission shall make and enforce reasonable rules and regulations pertaining to the construction and maintenance of all public grade crossings. These rules and regulations shall establish minimum standards for:

(1) The materials to be used in the crossing surface;

(2) The length and width of the crossing;

(3) The approach grades;

(4) The party or parties responsible for maintenance of the approaches and the crossing surfaces.

4. The state Highways and Transportation Commission shall have the exclusive power to determine and prescribe the manner, including the particular point of crossing, and the terms of installation, operation, maintenance, apportionment of expenses, use and warning devices of each crossing of a public road, street or highway by a railroad or street railroad, and of one railroad or street railroad by another railroad or street railroad. In order to facilitate such determinations, the state Highways and Transportation Commission may adopt pertinent provisions of The Manual on Uniform Traffic Control Devices for Streets and Highways or other national standards.

5. The state Highways and Transportation Commission shall have the exclusive power to alter or abolish any crossing, at grade or otherwise, of a railroad or street railroad by a public road, highway or street whenever the state Highways and Transportation commission finds that public necessity will not be adversely affected and public safety will be promoted by so altering or abolishing such crossing, and to require, where, in its judgment it would be practicable, a separation of grades at any crossing heretofore or hereafter established, and to prescribe the terms upon which such separation shall be made. When a road authority lawfully closes or vacates a roadway which provided access to a railroad crossing, the Commission shall issue an order authorizing removal of the

crossing by the railroad within thirty days of being notified of such action by the roadway authority or railroad.

6. The Commission shall have the exclusive power to prescribe the proportion in which the expense of the construction, installation, alteration or abolition of such crossings, the separation of grades, and the continued maintenance thereof, shall be divided between the railroad, street railroad, and the state, county, municipality or other public authority in interest.

7. Any agreement entered into after October 13, 1963, between a railroad or street railroad and the state, county, municipality or other public authority in interest, as to the apportionment of any cost mentioned in this section shall be final and binding upon the filing with the state Commission of an executed copy of such agreement. If such parties are unable to agree upon the apportionment of the cost, the Commission shall apportion the cost among the parties according to the benefits accruing to each. In determining such benefits, the Commission shall consider all relevant factors including volume, speed and type of vehicular traffic, volume, speed and type of train traffic, and advantages to the public and to such railroad or street railroad resulting from the elimination of delays and the reduction of hazard at the crossing.

8. Upon application of any person, firm or corporation, the Commission shall determine if an existing private crossing has become or a proposed private crossing will become utilized by the public to the extent that it is necessary to protect or promote the public safety. The Commission shall consider all relevant factors including but not limited to volume, speed, and type of vehicular traffic, and volume, speed, and type of train traffic. If it be determined that it is necessary to protect and promote the public safety, the Commission shall prescribe the nature and type of crossing protection or warning device for such crossing, the cost of which shall be apportioned by the Commission among the parties according to the benefits accruing to each. In the event such crossing protection or warning device as prescribed by the Commission is not installed, maintained or operated, the crossing shall be closed to the public.

9. The exclusive power of the Commission pursuant to this section shall be subject to review, determination, and prescription by the administrative hearing commission, upon application to the Administrative Hearing Commission by any interested party in accordance with section 621.040. Upon filing of an application pursuant to this subsection, the Administrative Hearing Commission is vested with the exclusive power of the state Highways and Transportation Commission otherwise provided in this section, with reference to matters reviewed, determined or prescribed by the Administrative Hearing Commission. Mo. Rev. Stat. § 389.610 (2008).

MONTANA

Montana law does not specifically mention the closure of highway-rail grade crossings within the code. But general authority over highway-rail grade crossings is vested in the Montana Public Service Commission. Local authority in unincorporated villages or towns to construct new highway-rail grade crossings is provided for in the code. “Local authority” means the Board of County Commissioners. No railroad crossing, other than a grade crossing, shall be ordered by any board of county commissioners. The Public Service Commission may, however, upon petition or request in writing of any board of county commissioners, order an overhead or underground crossing at any place where a railroad crossing has not been constructed and is required, provided, in its judgment, the safety, necessity, and convenience of the traveling public require such a crossing. (Adapted from Mont. Code Ann. §§ 69-14-606, 69-14-607(2)(a)(b), and 69-14-603 (2007)).

NEBRASKA

In 1997, the Nebraska legislature passed the Nebraska Highway-Rail Grade Crossing Safety and Consolidation Act. The legislation placed exclusive jurisdiction over all crossings outside of incorporated villages, towns, and cities, both public and private, across, over, or under all railroads in the state with the Department of Roads. It was the intent of the legislature that any state role regarding highway-rail grade crossings, including public safety, Operation Lifesaver, maintenance, design, consolidation, separation, signalization, improvement, or relocation, be consolidated under one agency. (Adapted from Neb. Rev. Stat. §§ 74-1329, -1330, and -1332 (2009)).

The Department of Roads, which possesses the requisite engineering expertise, highway and rail planning function, and highway safety mission and is the repository for state and federal funding for both rail and highway projects, shall be the agency responsible for grade crossing safety. Neb. Rev. Stat. § 74-1341 (2009)

The Department of Roads becomes the final arbitrator whenever a complaint is filed in writing with the Department of Roads by the duly authorized officers of any incorporated village or city, concerning any crossing within such village or city, praying for relief from the matters complained of. The Department is required to hold a hearing and shall make such order as the facts warrant. The findings of the Department, subject to the right of appeal, are binding on the parties to the suit. Neb. Rev. Stat. § 74-1336(1) (2009).

Whenever railroad tracks cross a public highway at grade, outside of incorporated cities and villages, the owner of the railroad tracks and the county board of the county in which such crossing is located may agree upon any change, alteration, or construction of any crossing as will promote the public convenience or safety, and they may also agree upon the relocation of any highway so as to eliminate such crossings entirely or so as to carry them over or under such railroad and upon the apportionment of the expenses incident to any such change, alteration, relocation, or

construction between the owner of the railroad tracks and the county or other public authority in interest. Neb. Rev. Stat. §74-1337 (2009).

If the owner of the railroad track and the county board or other public authority in interest fail to agree...either the owner or the county board or other public authority in interest, in the name of the county or other public authority in interest, in the name of the county or other public authority in interest, may file an application with the Department of Roads, setting forth such fact together with a statement of the change, alteration, relocation, or construction it wants, the estimated cost thereof, and such other facts as may be relevant and asking the department to enter an order directing that the change, alteration, relocation, or construction be made. The department shall proceed to hear the application in the manner provided by law, and if it finds that the application should be granted, it shall enter an order accordingly, designating in the order what portion of the expense of complying with the order shall be paid by the railroad carrier and what portion shall be paid by the county or other public authority in interest, if any. Neb. Rev. Stat. § 74-1338 (2009).

When the owner of railroad tracks fails, neglects, or refuses promptly to comply with any order of the Department of Roads issued under sections 74-1332 to 74-1339 or fails, refuses, or neglects to comply with such sections after the department has issued an order, the owner shall be guilty of a Class V misdemeanor and shall be fined in any sum not more than one hundred dollars for each such offense. Each week of such neglect, refusal, or failure, shall constitute a separate offense. Neb. Rev. Stat. § 74-1340 (2009).

NEVADA

The Nevada Public Utilities Commission has statutory authority for closure of existing highway-rail grade crossings.

After an investigation and hearing, which may be initiated either upon the Commission's own motion, or as the result of the filing of a formal application or complaint by the Department of Transportation, the Board of County Commissioners of any county, the town board or council of any town or municipality, or any railroad company, the Commission may order the elimination, alteration, addition or change of a highway crossing or crossings over any railroad at grade, or above or below grade, including its approaches and surface. Adapted from Nev. Rev. Stat. §§ 704.300(2)–704.305 (2009).

NEW HAMPSHIRE

The Department of Transportation has statutory authority to order closure in New Hampshire.

Whenever, after hearing upon petition or upon its own motion, the department of transportation shall be of the opinion that the public safety requires the closing of any

public or private crossing over a railroad, at grade or above or below such railroad, it shall order the same to be closed. N.H. Rev. Stat. Ann. § 373:22 (2008).

No railroad hereafter constructed shall cross another railroad, a highway or other way, at grade, unless the consent in writing of the department of transportation is first obtained. N.H. Rev. Stat. Ann. § 373:4 (2008).

NEW JERSEY

The Commissioner and the Department of Transportation both have statutory authority to order the construction of new crossings along with and alterations and separations to existing ones.

When in the judgment of the Commissioner and the Department, crossings are dangerous to public safety or impede public travel, the Department may order the railroad(s) to alter such crossings within such time as the Department specifies by grade separating the crossing. If in the judgment of the Department, the owners of the public or private property will be unduly injured by the elimination of the crossing. The Department can order the railroad(s) to relocate the tracks. Adapted from N.J. Stat. Ann. § 27:1A-62 (2008). (See also, Sections 48:2-28 and 48:2-29.)

NEW MEXICO

State statutes do not specifically mention any authority for closure. However, there is a provision for a grade separation procedure.

Whenever a state, county, municipal or other street or highway, including a highway that may be designated as a part of the federal aid highway system, which may be constructed or reconstructed in such manner that it crosses or intersects any railroad, the state transportation commission, or other governing body, may, if in its opinion it is practicable and reasonably necessary for the protection of the traveling public, separate the grades at such crossing and, if unable to agree with the railroad as to the grade separation and the method of accomplishing the separation, may apply to the district court of the county in which the separation is located by verified petition praying for the separation of grades at the crossing and shall accompany the petition with plans and specifications of the proposed grade separation. N.M. Stat. Ann. § 63-3-37 (2008).

NEW YORK

The authority to order elimination of a highway-rail grade crossings lies with the commissioner of transportation.

Any railroad company or governing body of a municipality which contains a highway-rail grade crossing can petition the commissioner to institute grade crossing elimination procedures.

The Commissioner may hold public hearings on any elimination requested by petition after giving due notice to the parties in interest. At the conclusion of the hearing, the Commissioner shall by order, determine whether it is in the public interest to require the elimination of the highway-rail grade crossing. In any elimination order, the procedures for elimination are to be specified. N.Y. Transp. Law § 222 (2009).

NORTH CAROLINA

[The North Carolina Department of Transportation] has statutory authority to regulate, abandon and close to use, grade crossings on any road designated as part of the state highway system, and whenever a public highway has been designated as part of the state highway system and the department of transportation, in order to avoid a grade crossing or crossings with a railroad or railroads, continues or constructs the said road on one side of the railroad or railroads, the department of transportation shall have power to abandon and close to use such grade crossings; and whenever an underpass or overhead bridge is substituted for a grade crossing, the department of transportation shall have power to close to use and abandon any such grade crossing and any other crossing adjacent to it. N.C. Gen. Stat. § 136-18(11) (2008).

The Department has statutory authority to order crossing closure on roads or streets forming a link in part of the state highway system. If, in the opinion of the Secretary the crossing is dangerous to the traveling public or unreasonably interferes with or impedes traffic on the state highway, the Department of Transportation is required to issue notice requiring the person or company operating the affected railroad to appear before the Secretary at an appointed time not less than ten days or more than twenty days from the date of the notice and show cause if any why the railroad should not be required to make adjustment to the crossing or close it. After hearing the matter, the Secretary will determine whether a crossing is dangerous to public safety or unreasonably interferes with traffic. If a conclusion is reached that a crossing is dangerous, the Secretary can order either closure or separation. Adapted from N.C. Gen. Stat. § 136-20 (2008).

NORTH DAKOTA

Declaring that it is in the interest of public safety to eliminate unnecessary railroad grade crossings whenever reasonable access can be safely provided at another crossing, the North Dakota Code places authority with the Public Service Commission to vacate, establish, or relocate crossings, or to separate the grades, if no agreement can be reached by the public officials having the necessary authority and the railroad. Either party to the dispute can file a petition with the Commission, thereby submitting the matter for determination.

The commission, after giving notice as it shall deem reasonable, shall conduct a hearing and shall issue its order determining whether there should be an establishment, vacation, or relocation of the crossing in question, or a separation of grades, and dividing the expense of the establishment, relocation, or separation of grades. N.D. Cent. Code § 24-09-10 (2009).

OHIO

Statutory authority for the alteration or elimination of highway-rail grade crossings lies with local governmental units.

Both the legislative authorities of municipal corporations and the boards of county commissioners are vested with the authority to institute proceedings necessary for the abolition of grade crossings.

Both entities are given authority to meet with the affected railroad corporation to devise a plan for altering, abolishing and changing the approaches to or the location of the railroad, public way or the grades so as to avoid an at-grade crossing.

The board of county commissioners is granted the same powers as are conferred upon municipal corporations to alter or require to be altered, any railroad crossing for that part of a state, county or township road which lies within the limits of a municipal corporation.

When a grade crossing exists on a county line road, the respective boards of county commissioners are allowed to join in all the proceedings necessary for grade crossing elimination.

When it does become necessary, on the part of a municipal corporation or county, to join with a railroad company, the legislative authority of the municipal corporation by a two-thirds vote of all the members, or the board of county commissioners by a unanimous vote, can declare a necessity and intent to abolish a grade crossing. The resolutions of both entities may contain the manner in which the eliminations are to be made, the method of constructing any new crossings, which party is responsible for the construction, and how the costs are to be apportioned.

Any time a resolution is passed by either entity, it must be published. Notice of its passage must be given to the affected parties and the owners of the property adjacent to the proposed improvement. Adapted from Ohio Rev. Code Ann. §§ 4957.01, 4957.02, 4957.09 (2009).

OKLAHOMA

The Oklahoma Corporation Commission has statutory authority over all public highway-rail crossings. This authority is inclusive of the right to order elimination and, where practicable, a separation of grade. Okla. Stat. tit. 17, § 84 (2008).

OREGON

The Oregon Department of Transportation has statutory authority to eliminate highway-rail grade crossings.

The Department, either upon its own motion or upon an application by a railroad, or the public authority in interest, may find, subsequent to a hearing, that elimination is required in the interest of public safety, necessity, convenience and the general welfare. Or. Rev. Stat. § 824.206 (2008).

PENNSYLVANIA

The Pennsylvania Public Utility Commission has exclusive authority to eliminate highway-rail grade crossings. After due notice and proper hearing to all parties in interest, the Commission may order any crossing relocated, altered, suspended, protected or abolished.

Upon a finding of immediate danger to the safety and welfare of the public, the Commission may order an immediate alteration, improvement or suspension. Any order for suspension must include the following for protection of the motoring public:

- (1) Removal or covering of crossing warning devices.
- (2) (a) Paving over the tracks.
(b) Removing the tracks and paving over the area formerly occupied by the tracks.
(c) Barricading the crossing.

Within a township, borough or city, the Court of Quarter Sessions of the county may close a crossing upon petition of the railroad company and declare as a public highway any over grade or under grade substitution that is to then be maintained by the proper authorities. 66 Pa. Cons. Stat. Ann. § 2702 (2009).

A unique feature of the Pennsylvania law provides that the Commission may order the work of crossing abolition of any crossing in whole or in part, including any future obligations, to be performed by a municipal authority created to advance recreation or conservation purposes or a nonprofit organization with a recreation or conservation if the following criteria are met:

- (1) The municipal authority or nonprofit organization provides adequate security for the work or demonstrates financial responsibility to the satisfaction of the Commission.
- (2) The Commission does not order any Commonwealth agency to bear ancillary responsibility for the work of abolition of any crossing, or the cost associated with the work, without the prior written consent of the head of the Commonwealth agency.

In accordance with the provisions of Section 2704 (relating to compensation for damages occasioned by construction, relocation or abolition of crossings), the Commission may order the municipal authority or nonprofit organization assuming responsibility for the abolition of the crossing to bear all or a portion of the costs associated with the work. This section shall not apply to any proceeding wherein the Commission has issues a final order prior to the effective date of its enactment. 66 Pa. Con. Stat. Ann. § 2702 (2009)

RHODE ISLAND

In the exercise of the police power of the state for the safety of its inhabitants, the state legislature vests in the Public Utilities Commission the authority to eliminate highway-rail grade crossings. The statute further states that the Commission shall have this authority even if, by its order, it effectively deprives a municipality of control of its streets. R.I. Gen. Laws §§ 39-8-1.1 - 8-3 (2008).

SOUTH CAROLINA

It would appear that the legal authority to order grade crossing closure rests with a number of State agencies.

The Public Service Commission of South Carolina may provide rules and regulations with reference to crossing of railroad tracks by public highways as in its judgment will be conducive to the public safety. In exercising this authority, the Commission, upon complaint shall investigate and may require that any necessary crossing be made either above or below grade, so as to avoid, as far as possible, any grade crossings. S.C. Code Ann. §58-15-1510- 1520 (2008).

If the Commission shall decide that such a crossing should be eliminated or relocated, it shall apportion, assess, and require the payment by the affected railroad company of its proper pro rata share of the expense incident to the construction and grading any highway or road appurtenant to such elimination or relocation, but the cost to be assessed against the railroad company shall not exceed its proper pro rata share for more than one fourth of one mile and, in the case of railroads independently operated having less than eight miles of road within the state,

shall not exceed its proper pro rata share for more than one-eighth of a mile. S.C. Code Ann. § 58-15-1530 (2008)

All crossings eliminated by virtue of the forgoing code sections shall be closed as public highways or travel places. S.C. Code Ann. § 58-15-1540 (2008).

One article in the state code seems to indicate that a number of entities have the authority to order the elimination of grade crossings:

The provisions of this article (reference is to Article 17) shall apply throughout the state to the elimination of grade crossings, whether such elimination be made upon the order or request of the State Highway Commission, counties, cities, drainage districts or other subdivisions or departments of state government. S.C. Code Ann. § 58-15-1610- 1620 (2008)

Another provision of the code gives the Department of Transportation the authority to order legally closed and abolished as a public way, within the limits of a railroad right-of-way, a grade crossing then in existence at the time the department assumes jurisdiction of the matter, upon a finding that the enhancement of public safety resulting from such closing outweighs any

inconvenience caused by increased circuitry of highway routes. This order may be issued either in connection with, or independent of, an order relating to automatic train-activated warning signals. The authority of the Department legally to close and abolish grade crossings is in addition to authority granted by law to other state agencies or to local units of government to close and abolish grade crossings. Upon the issuance of the order by the Department, the railroad or railroads involved shall physically remove the crossing from the tracks, and the governmental unit maintaining the highway shall remove or barricade the approaches to the crossing. S.C. Code Ann. § 58-15-1625 (2008).

Whenever any such subdivision or department of the state government as is mentioned in Section 58-15-1620, having jurisdiction, may determine upon the elimination of any grade crossing by means of grade separation structure, prompt notice shall be given to the railroad company owning or operating the railroad involved. Within ten days thereafter the representatives of the department and of the railroad involved shall meet and adopt a layout, with the grades and alignments mutually satisfactory. S.C. Code Ann. § 58-15-1630- 1690 (2002).

Failing to agree, the department or subdivision may order the railroad involved to proceed with the construction of such a structure as it may require as indicated in plans and specifications accompanying its order. The railroad shall begin work within sixty days after receipt of such order and shall complete the structure within a reasonable time. S.C. Code Ann. § 1640 (2008).

SOUTH DAKOTA

The South Dakota Department of Transportation has the statutory authority for determining the necessity of eliminating grade crossings.

The Department can order that any existing or planned crossing be relocated, altered or abolished upon its own motion or upon complaint, and after a hearing and notice to all interested parties, including the owners of adjacent property and the affected railroad company. S.D. Codified Laws Ann. §§ 31-27-1-2 (2008).

Where a new right-of-way is necessary for the building of a subway or overhead crossing on a state or county highway, the governing body having jurisdiction of the highway may determine when it is necessary to eliminate the dangerous crossing. S.D. Codified Laws Ann. §§ 31-27-12 (2008).

TENNESSEE

The Department of Transportation, through the discretion of the Commissioner or the Commissioner's designee, has the authority to eliminate grade crossings whenever the crossing elimination is necessary for the protection of persons traveling on the highway or railroad.

When any such grade crossing is ordered to be eliminated, the Commissioner or the Commissioner's designee shall determine the location of the crossing to be substituted and the

grade thereof, and whether it shall pass over or under the railroad tracks; provided, that on appeal from any such order by the affected railroad company to the chancery court in the judicial district in which the new grade crossing would be located, such chancery court shall have the power to make any change in the order appealed from with regard to the location and grade of the crossing to be constructed which may appear to the court to be necessary to adequately protect the safety of passenger and freight traffic on the railroad; and provided, further, that the appeal must be made within thirty days of the date of the order appealed from is certified to the affected railroad company. Tenn. Code Ann. §§ 65-11-107-108-109- 11 (2008).

TEXAS

The statutes in Texas are unclear as to which governmental entity has the authority and responsibility to order the closure of existing highway-rail grade crossings. Title 112, Article 6445, of the Revised Civil Statutes confers upon the Department of Transportation power and authority over all railroads; suburban, belt, and terminal railroads, as well as public wharves, docks, piers, elevators, warehouses, sheds, tracks and other property used in connection with railroads. The statute goes on to say that the power of the Department extends over all persons, associations, and corporations, private or municipal, owning or operating railroads in the state. Tex. Rev. Civ. Stat. Ann. art. 6445 (2008).

There also exists within the Texas Revised Civil Statutes, a provision for grade crossing elimination within every incorporated city or town having a population of more than one hundred thousand inhabitants. Tex. Transp. Code Ann..317.003 (2008).

The statute says: (a) To decrease hazards to life or property, promote public safety or convenience, improve traffic conditions, or encourage the orderly development of the municipality, a municipality may acquire, construct, improve, enlarge, extend, maintain, repair,

or replace a facility. The statute defines “facility” as property that the governing body of a municipality considers necessary for the elimination of a grade-level crossing by a railroad line from a street of the municipality, or for the relocation of a railroad line within the municipality including:

- (1) land;
- (2) a right-of-way;
- (3) an elevated structure;
- (4) a grade separation;
- (5) an underpass or over pass;
- (6) a passenger station, depot, or other building;
- (7) an interchange yard;
- (8) a railroad track; and
- (9) any other improvement.

Texas Transp. Code Ann § 317.002 (West Supp. 2008)

The activities authorized by the statute include:

- (1) removing and relocating railroad tracks, a utility line or pipe, or another improvement;
 - (2) removing or demolishing a building or another improvement;
 - (3) paying for damage to other property in connection with an activity described by that subsection; or
 - (4) improving a street in connection with an activity described by that subsection.
- Tex. Transp. Code Ann. § 317.003 (2008)

UTAH

The Utah Department of Transportation has exclusive authority to order the closure of highway-rail grade crossings. Utah Code Ann. § 54-4-15 (2009).

VERMONT

The Vermont Transportation Board has statutory authority to determine what alterations, changes or removals, if any, shall be made to highway-rail grade crossings, and by whom. Vt. Stat. Ann. tit.5 §§ 3783-84-85-88 (2008).

VIRGINIA

The Commonwealth Transportation Board upon petition by the public road authority or the affected railroad has statutory authority to order the elimination of a grade crossing or the consolidation of multiple grade crossings. Va. Code Ann. § 56-365.1 (2009).

WASHINGTON

The Washington State Utilities and Transportation Commission has authority to order closure of existing crossings. Wash. Rev. Code §§ 81.53.030-060 (2008).

WEST VIRGINIA

The Road Commissioner may require any railroad company, owning, controlling or operating a railroad in the state to eliminate at-grade highway-rail crossings on existing highways, relocated highways and extensions of existing highways by separating the grades or by relocating an existing highway. The Commissioner may determine the location, design and grade for any project or structure for the elimination or avoidance of at-grade highway-rail crossings and may determine whether a new, relocated or extended highway shall pass over or under the railroad right-of-way or tracks. W.Va. Code § 17-4-10 (2008).

WISCONSIN

The Office of the Commissioner of Railroads has the authority to abolish highway-rail grade crossings. Wis. Stat. §195.29(1)(4)(5) (2009).

WYOMING

The Transportation Commission of Wyoming has the authority to close or establish at-grade crossings on public highways as specified and those over the track(s) of any railroad corporation or street railway corporation in the state.

Upon application to the Commission from the authorized agents of the city, counties or other government entities or the affected railroads, or upon its own motion when public interest indicates action should be taken, the Commission must consider the need for closure based on evidence presented, availed or adduced. The Commission must establish a priority rating from the applications or evidence, assigning priority first to the most hazardous railroad crossing location, giving proper weight to increased rail traffic and to the volume of traffic over the crossing with due consideration being given for school buses and dangerous commodities. If the Commission determines a need for grade crossing warning devices, they will determine the type of crossing warning devices required, including whether the crossing is to be made at-grade or with a grade separation structure. Wyo. Stat. § 37-10-102 (a)-(b) (2009).

CHAPTER 2: CROSSING TREATMENT PROCEDURES

CHAPTER OVERVIEW

Chapter 2 presents a description of the processes and procedures required, along with the roles to be played by the respective parties (units of government, whether state or local, and the railroads), when undertaking elimination, relocation, construction, repair, and/or improvement of grade crossings.

In most states, the designated agency having authority to order improvements is also the one with statutory authority to order outright elimination. But, there exists a distinction in some states in that an agency may have the authority to eliminate a highway-rail grade crossing, but only for the purposes of creating a grade separation. For purposes of clarity and ease of reference, the two processes are described in separate chapters. The applicable sections of the statutes are included with each state. In most of the entries, a discussion of the division of the costs for elimination, relocation, construction, repair, and/or improvements of grade crossings is included.

STATE LAWS AND REGULATIONS

ALABAMA

Whenever the funds of the state are being expended for the construction, maintenance, or repair of a public highway, the State Department of Transportation shall have the power and authority to compel all railways operating in this state to construct viaducts, tunnels, underpasses, or bridges to the full extent of the width of the right-of-way and over the tracks as owned or operated by any railway when, in the judgment of the State Department of Transportation, such viaducts, tunnels, underpasses or bridges are necessary for the safety of the general public and whereby a dangerous grade crossing is eliminated. The State Department of Transportation may appropriate out of the funds credited to the State Department of Transportation for the construction and maintenance of highways an amount not to exceed 50 percent of the cost to construct said viaducts, tunnels, underpasses, or bridges to the full extent of the width of the right-of-way and over the tracks as owned or operated by any railway in this state.

If after due notice to a railroad that such a viaduct, tunnel, underpass, or bridge, in the judgment of the State Department of Transportation, is necessary to be built or constructed across the width of the right-of-way and over the tracks of the railway and such railway fails or refuses to comply with the order of the State Department of Transportation as provided in this section, the State Department of Transportation is empowered and authorized to forthwith build or construct such viaducts, tunnels, underpasses, or bridges, and the amounts so expended for such construction as provided in this section, shall constitute a charge against such railway and the State

Department of Transportation shall render a bill to such railway stating the amounts expended and for what purpose. Ala. Code § 23-1-9 (2008).

ALASKA

There is, within the Alaska Administrative Code (AAC), a section titled Railroad accommodation policy. This section mandates that grade separation is required for all railroad crossings on controlled-access highways. At-grade railroad crossings on rural highways and roads, and urban highways and streets, will normally be allowed. However, the department of transportation and public facilities will, at its discretion, require grade separation where warranted by conditions of topography and traffic density. The section does not mention any power on behalf of the department to order closure. The chief bridge engineer is responsible for approving clearances proposed for new grade separation structures or for modifications of existing grade separation structures. Adapted from 17 AAC 15.481 (g) (2008).

(a) Upon written application, the department will, in its discretion, issue a permit authorizing the applicant to construct or install railroad facilities [grade crossings are considered within the meaning of facilities] within a department right-of-way.

(b) No permit is required for the reconstruction of existing crossings, structures, or other facilities or for the construction of additional crossings, structures, or other facilities in areas where a railroad holds a fee title or an easement for a railroad right-of-way.

(c) An application for a railroad permit must specifically describe the proposed facility and its proposed location within the department's right-of-way. The application must include plans and specifications so that the department can evaluate the engineering design and proposed location.

(d) All railroad permits will be issued in accordance with this section and 17 AAC 15.011–17 AAC 15.111 (2008).

(e) Whether or not a railroad facility permit is required, the railroad shall notify the department in writing not less than 15 days before any construction or major maintenance activity in an area boarding on, adjacent to, or crossing a department right-of-way. 17 AAC 15.471 (2008).

(a) Upon completion of a railroad crossing on a highway, the railroad is responsible for the maintenance and repair of all track bed and rail components and any state property located within the width of the railway ties occupying the crossing area. The department is responsible for the maintenance and repair of all state property located outside the area within the railroad ties. Allocation of the costs of all maintenance and repairs must be included in the railroad permit issued under 17 AAC 15.471 (2008).

(b) The railroad must operate and maintain all railroad crossing signals or other protective devices.

(c) Unless otherwise specified in the railroad permit, upon completion of a grade-separation structure, the department is responsible for the maintenance and repair of the structure and approaches and the railroad is responsible for the maintenance and repair of the track bed and rail components. 17 AAC 15.491 (2008).

ARIZONA

The Arizona Corporation Commission has exclusive power to prescribe the manner, the particular point of crossing, and the terms of installation, operation, maintenance, use and equipping of each crossing in the state. The commission has the exclusive power to prescribe the character of crossings to be constructed and maintained by railroads where their lines cross public roads or streets of a town or city.

On or before February 15 of each year, the commission is required to submit to the affected railroad, city, county, and department of transportation, a list of crossings where installation of automatic warning signals or devices should be considered during the year, or in a reasonable time frame depending upon the availability of funds, materials, labor, and other factors involved in the installation process.

The commission prepares an annual budget request in which 10 percent, up to two hundred thousand dollars, of the total amount approved for the same year by the Federal Highway Administration for highway-rail projects within the state, is set aside from the general or any other fund for installation or improvement of automatic warning signals or devices at public railroad grade crossings.

After a public hearing, the commission may determine that a particular railroad crossing at a public highway or street requires the installation of automatic warning signals. If the interested parties are unable to agree on the apportionment of cost, 50 percent will be covered by the railroad and the remaining 50 percent by the respective city, county, or state. City, county, or state highway funds can be used to finance the cost of installation in greater amounts than those that are set forth in the statute, provided that federal funds are available for the reimbursement of the city, county, or state highway fund. Adapted from Ariz. Rev. Stat. Ann. §§ 40-337, -337.01, -337.02, -337.03 (2009).

ARKANSAS

The State Highway Commission administers the railroad crossing safety program in Arkansas and has heretofore been designated by the General Assembly as the sole public body to deal with and has been given exclusive jurisdiction concerning the location, construction, improvement, and protection of railroad crossings in Arkansas. It is in the public's interest and safety that uniformity be established in other matters pertaining to the maintenance of railroad crossings and the operation and movement of trains in this state. Ark. Code Ann. §§ 23-12-1002, -1003, -1004 (2008).

CALIFORNIA

The California Public Utility Commission has exclusive power to determine and prescribe the manner, the particular point of crossing and the terms of installation, operation, maintenance, use, and equipping of each crossing of one railroad by another railroad or street railroad, a public or publicly used road or highway by a railroad or street railroad, or of a street by a railroad or street railroad.

The commission may, where practicable, require a grade separation at any crossing. The commission may also prescribe the terms upon which the separation is to be made, and the type of structure required. Adapted from the Cal. Pub. Util Code §§ 1201-1202 (2008).

COLORADO

The Colorado Public Utilities Commission has the power to determine order and prescribe the terms and conditions of installation, operation, maintenance and equipping of highway-rail crossings which may be constructed. This includes the placement of watchmen at the crossing and the installation and regulation of lights, blocks, interlocking, other signaling systems, safety appliance devices, or other such means as are reasonable and necessary to promote public safety.

The commission may order that automatic or other safety appliance signals or devices be installed, reconstructed, improved and/or operated at any grade crossing of any public highway or road by any railroad. The commission must also determine and order, after notice and hearing, how the cost of installing, reconstructing, or improving such signals or devices shall be divided between the affected railroads, the highway operations and maintenance division, and the affected city, city and county, town, county or other political subdivision of the state. In determining how much of the cost is to be borne by the railroad, consideration will be given to the benefit, if any, which will accrue from those signals or devices to the railroad. In every case, the portion to be paid by the railroad is to be not less than 20 percent of the total cost of the signals or devices. In order to compensate for the use of such crossings by the public, the commission will generally order that any part of the total not paid by the railroad will be divided between the state highway crossing fund and the city, town, city and county, county, or other political subdivision in which the crossing is located; in which case, the commission shall also fix the amount to be paid. Adapted from the Colo. Rev. Stat. § 40-4-106 (2008).

The commission shall not order the abolition of any crossing for which a grade separation is determined to be necessary until the separation is constructed. Adapted from Colo. Rev Stat. § 40-4-06(3)(d) (2008).

CONNECTICUT

Connecticut law prohibits the construction of a public railroad crossing at grade, on or after October 1, 1989, unless authorized by special act of the General Assembly. The Commissioner of Transportation, either upon his own initiative or upon request of the joint standing committee on transportation is empowered to investigate and make recommendations

concerning the creation of such a crossing. Adapted from Conn. Gen. Stat. § 13b-268-267 (2009).

In the case where the tracks cross a state highway at grade, the state traffic commissioner has authority to prescribe the nature of any traffic control devices or measures that are to be installed. The commissioner of transportation is to furnish and install such devices or measures.

The commissioner shall require each railroad company, at all of its at-grade crossings with gates or signals, to erect and maintain, within their rights-of-way, a sign advising the public to call the 911 emergency telecommunication number upon the malfunctioning of any grade crossing gates or signals.

The commissioner shall also require each railroad company to maintain logs, subject to the inspection of the transportation department, that list all reports of malfunctioning grade crossing gates or signals. Each log must contain information concerning all investigations and actions taken by the company to repair the malfunctioning gates and signals. Each railroad must report to the municipality all actions taken to repair the gate or signals within the municipality. Adapted from the Conn. Gen. Stat. § 13b-345 (2009).

The Commissioner on the application in writing of the selectmen of any town, the mayor and common council of any city or the warden and burgesses of any borough or on the commissioner's own motion, may make all necessary orders concerning the establishment of a temporary grade crossing over the tracks of any railway during the period of construction of a permanent grade separation structure which will carry a highway over or under such tracks, provided the state, town, city or borough making such application shall bear the cost of any necessary signs, signals, gates, flagmen or other protective devices. Adapted from the Conn. Gen. Stat. § 13b-271 (2009).

Any public service company or companies whose tracks cross over, under, or upon a state highway or any other main highway leading from one town to another, the municipality within which such crossing is located may bring a petition in writing to the commissioner of transportation for authority to eliminate any dangerous condition that exists at the crossing. Upon receipt of the petition, the commissioner shall appoint a time and place for hearings. Adapted from the Conn. Gen. Stat. § 13b-275 (2009).

If the commissioner finds that a dangerous condition exists at such crossing, except a dangerous condition arising out of improper or inadequate maintenance, he or she shall issue an order to the municipality or to any public service company directing the removal, change or relocation of the crossing, highway, tracks, pipes, wires, poles or other fixtures, or tree or building or other structure; and shall apportion the cost among the public service company or companies, the municipality and the state; and shall determine the conditions and the time and manner of the payment, provided that the portion of the cost to be paid by the public service company shall not exceed 10 percent. Conn. Gen. Stat. § 13b-276 (2009). (See also, Connecticut's entry in Chapter 1 of this document).

The Commissioner of Transportation, on written application of the selectmen of any town, the mayor and common council of any city, or the warden and burgesses of any borough, or on his own motion, may make orders and direct the relocation of an existing grade crossing where it can be shown that the crossing at the alternative location is in the interest of public safety, providing the state, town, city or borough making the request shall bear the cost of the relocation and the maintenance thereafter shall be borne in the same manner as prior to the relocation. Adapted from the Conn. Gen. Stat. § 13b-272 (2009).

DELAWARE

The Delaware Department of Transportation is vested with exclusive power to determine, order, and prescribe the points at and the manner in which any crossing may be constructed, altered, relocated, or abolished, and the manner and conditions in or under which such crossing shall be maintained operated and equipped. The department may order the work of construction, relocation, alteration, protection, or abolition of any crossing to be performed in whole or in part by any public carrier or municipal corporation or county, or, in the case of any crossing on private land, by the owner of the land. Del. Code Ann. Tit. 2 § 1804 (2009).

DISTRICT OF COLUMBIA

Any existing or planned street or highway within the District of Columbia that crosses a railroad, other than a street railroad, is to be located, constructed and maintained either beneath the tracks by a suitable subway or above the tracks by a suitable viaduct bridge.

The cost of any such project, including the cost of constructing the portion of any viaduct bridge within the limits of the railroad company's right-of-way, is to be borne and paid as follows:

- (1) The District of Columbia must apply all federal aid highway-rail grade separation funds available for use by them.
- (2) If the Federal-aid funds are insufficient, the portion not covered shall be paid one-half by the railroad company and one-half by the District of Columbia, provided that in no case shall the obligation of the affected railroad company exceed 10 percent of the total cost and expense of the project.
- (3) After construction, the cost of maintenance shall be wholly borne by the District of Columbia in the case of a highway overpass and by the railroad company in the case of an underpass. D.C. Official Code § 9-1201.14 (2009). See also, §§ 9-1205.03, and 9-1201.15

FLORIDA

The Florida Department of Transportation has regulatory authority over all public highway-rail grade crossings in the state. This includes the responsibility for administering rail operating and construction programs. The programs include the regulation of maximum train operating speeds, the opening and closing of public grade crossings, the construction and

rehabilitation of public grade crossings, and the installation of traffic control devices at public grade crossings.

The department, in conjunction with other governmental units and the private sector, shall develop and implement a rail program of statewide application designed to ensure the proper maintenance, safety, revitalization, and expansion of the rail system to assure its continued and increased availability to respond to statewide mobility needs. Within the resources provided pursuant to chapter 216 and as authorized under [Title 49 Code of Federal Regulations Part 212], the department shall:

- (1) Provide the overall leadership, coordination, and financial and technical assistance necessary to assure the effective responses of the state's rail system to current and anticipated mobility needs.
- (2) Promote and facilitate the implementation of advanced rail systems, including high-speed rail and magnetic levitation systems.
- (3) Develop and periodically update the rail system plan, on the basis of an analysis of statewide transportation needs. The plan shall be consistent with the Florida Transportation Plan developed pursuant to section 339-351. The rail system plan shall include an identification of priorities, programs, and funding levels required to meet statewide needs. The rail system plan shall be developed in a manner that will assure the maximum use of existing facilities and the optimum integration and coordination of the various modes of transportation, public and private, in the most cost-effective manner possible. The rail system plan shall be updated at least every 2 years and include plans for both passenger rail service and freight rail service.
- (4) As part of the work program of the department, formulate a specific program of projects and financing to respond to identified railroad needs.
- (5) Provide technical and financial assistance to units of local government to address identified rail transportation needs.
- (6) Secure and administer federal grants, loans, and apportionments for rail projects within this state when necessary to further the statewide program.
- (7) Develop and administer state standards concerning the safety and performance of rail systems, hazardous material handling, and operations. Such standards shall be developed jointly with representatives of affected rail systems, with full consideration given to nationwide industry norms, and shall define the minimum acceptable standards for safety and performance.
- (8) Conduct, at a minimum, inspections of track and rolling stock; train signals and related equipment; hazardous materials transportation, including the loading, unloading, and labeling of hazardous materials at shippers', receivers', and transfer

points; and train operating practices to determine adherence to state and federal standards. Department personnel may enforce any safety regulation issued under the Federal Government's preemptive authority over interstate commerce.

(9) Assess penalties, in accordance with the applicable federal regulations, for the failure to adhere to the state standards.

(10) Administer rail operating and construction programs, which programs shall include the regulation of maximum train operating speeds, the opening and closing of public grade crossings, the construction and rehabilitation of public grade crossings, and the installation of traffic control devices at public grade crossings, the administering of the programs by the department including participation in the cost of the programs.

(11) Coordinate and facilitate the relocation of railroads from congested urban areas to non urban areas when relocation has been determined feasible and desirable from the standpoint of safety, operational efficiency, and economics.

(12) Implement a program of branch line continuance projects when an analysis of the industrial and economic potential of the line indicates that public involvement is required to preserve essential rail service and facilities.

(13) Provide new rail service and equipment when:

(a) Pursuant to the transportation planning process, a public need has been determined to exist;

(b) The cost of providing such service does not exceed the sum of revenues from fares charged to users, services purchased by other public agencies, local fund participation, and specific legislative appropriation for this purpose; and

(c) Service cannot be reasonably provided by other governmental or privately owned rail systems.

The department may own, lease, and otherwise encumber facilities, equipment, and appurtenances thereto, as necessary to provide new rail services; or the department may provide such service by contracts with privately owned service providers.

(14) Furnish required emergency rail transportation service if no other private or public rail transportation operation is available to supply the required service and such service is clearly in the best interest of the people in the communities being served. Such emergency service may be furnished through contractual arrangement, actual operation of state-owned equipment and facilities, or any other means determined appropriate by the secretary.

(15) Assist in the development and implementation of marketing programs for rail services and of information systems directed toward assisting rail systems users.

(16) Conduct research into innovative or potentially effective rail technologies and methods and maintain expertise in state-of-the-art rail developments.

(17) Exercise such other functions, powers, and duties in connection with the rail system plan as are necessary to develop a safe, efficient, and effective statewide transportation system. Fla. Stat. Ann. § 341-302 (2009).

GEORGIA

Where a new grade crossing results from the construction of a new or relocated railroad line, the railroad shall be responsible for and bear all expenses of the construction of such grade crossing. The department, when such a grade crossing is on the state highway system, a county, when such a grade crossing is on its county road system, or a municipality, when such a grade crossing is on its municipal street system, may impose such terms and conditions on the nature and manner of construction of such a grade crossing, including the installation of protective devices, as may be necessary for the safe and reasonable passage of public traffic. Ga. Code Ann. 32-6-191 (2009).

Whenever the department, a county, or a municipality shall decide to eliminate any grade crossing on its respective public road system by means of an underpass or overpass, prompt notice of such decision shall be given to the railroad or railroads involved; and within 30 days thereafter the representatives of the department, the county, or the municipality and of the railroads involved shall meet and, within 90 days, agree to a plan and specifications for the construction of a grade separation structure. Any such agreement between a county or municipality and a railroad shall be submitted to the department for its approval; and work leading to the elimination of the grade crossing pursuant to the agreement shall not commence until and unless the department approves the same. The department, county, or municipality, by agreement with the railroad or railroads involved, may apportion the work to be done in the construction of such grade separation structure between the railroad or railroads and the department or the county or the municipality. Ga. Code Ann. 32-6-194 (2009).

HAWAII

The department of land and natural resources, with the consent of the governor, may grant a right-of-way, not greater than forty feet in width, through all public lands, to any corporation as aforesaid for the purpose of building the railroad or railroads. With like consent and approval, the department may grant the use of such public lands, lying alongside and abutting such right-of-way, as may be reasonably

necessary for buildings, stations, depots, or other structures, for railroad purposes only. Haw. Rev. Stat. § 273-2 (2008)

The director of transportation and the counties are authorized to designate particularly dangerous highway grade crossings of railroads and to erect stop signs thereat. Haw. Rev. Stat. § 291C-92 (2008).

IDAHO

The Idaho Transportation Department has the authority to administer programs and promote public safety at highway-rail grade crossings.

The department is charged with exclusive administration of the Railroad Grade Crossing Protection Account. The account was created as a dedicated fund in the state treasury in order to promote public safety at railroad grade crossings and public streets, roads, or highways, and to pay for all costs of installing, reconstructing, maintaining, or improving safety appliances, signals, or devices.

The Department must follow federal guidelines on grade crossing improvement projects that are to be funded, in whole or in part, under any federal act. Where the project is not entirely funded by federal funds, the department may use monies in the railroad grade crossing account to pay all or a portion of the matching funds required.

On projects where federal-aid funds are not being utilized in whole or in part, the department shall apportion the entire cost of the engineering installation, reconstruction, or improvement of any signal or device between the railroad and the department or the local authority, in proportion to the respective benefits to be derived.

The railroad company(s) owning the track(s) upon which the improvements are to be made shall perform all construction and maintenance of the signals and devices and shall be reimbursed for that part of the cost not to be borne by it. In allocating and dividing the costs among the parties involved, the department must limit the amount to be charged against the railroad to a maximum of 10 percent of the total cost of the construction, unless the crossing is a new one proposed by the railroad, in which case, the railroad assumes the entire cost of construction. Adapted from the Idaho Code §§ 62-301,-304 (2008).

For crossings not located on state highways, the local authorities and railroad companies have the same authority and duties with respect to the elimination or alteration of such crossings as are granted to and required of the Idaho Transportation Department and railroad companies. Adapted from the Idaho Code § 62-303 (2008).

The Idaho Transportation Board also plays a role in the process:

Wherever and whenever the location of any state highway, or other public street, road or highway, has been or shall be changed, the result of which has changed or will change the location of the place where such street, road or highway crosses any railroad tracks at grade, and a new crossing at grade or an overpass or underpass has been or shall be constructed at such new location, or whenever the closing and abandonment of an existing crossing is in the interest of and reasonably necessary for the public safety, or an existing crossing is no longer reasonably necessary as a public crossing for any reason, then the old grade crossing shall be deemed to be unnecessary and may be eliminated and discontinued.

In the event any objection be made to the elimination and discontinuance of said old grade crossing, the Idaho transportation board or the owners, operators, or lessees of any such railroad, or both, may, upon the completion and placing in operation of said new grade crossing, overpass or underpass, or whenever for any other reason a crossing is to be closed and abandoned, the public authority having jurisdiction over the street, road or highway, or the owners, operators, or lessees of any such railroad, or both, shall petition the public utilities commission for an order eliminating and discontinuing said old grade crossing, whether said change of location has been made or construction of an underpass or overpass completed before or after the passage of this act, and said commission shall be and is hereby authorized and empowered to hear and determine said petition in accordance with the provisions of chapters 1 to 7, inclusive, title 61, Idaho Code, and if upon hearing duly had it shall find and determine that the closing and abandonment of such grade crossing is in the interest of, and reasonably necessary for the public safety, or that said crossing is no longer reasonably needed, it shall make an order authorizing the closing and abandonment of said crossing. Any order made by the commission concerning said matter shall be enforceable and subject to review in the same manner as other orders of the commission. Upon any order of closing and abandonment becoming final, said grade crossing may be closed either by the public authority having jurisdiction over the street, road or highway or by the owner, operator or lessee of such railroad. Idaho Code § 62-305 (2008)

An additional statute allows for a role to be played by the Idaho Transportation Board:

No new railroad and no alteration or extension of an existing railroad shall hereafter cross any highway at grade, and no new highway shall hereafter cross any railroad at grade without the written permission of the Idaho transportation board first having been obtained. Idaho Code § 62-307 (2008).

ILLINOIS

The Illinois Commerce Commission has the power, either upon its own motion, or upon complaint, and after making proper investigation, to require the installation of adequate and

appropriate luminous reflective warning signs, flashing signals, crossing gates, or any other warning devices in order to promote and safeguard the health and safety of the public.

The commission has the authority to determine the number, type, and location of such signs, signals, gates or other warning devices, which shall conform, as close as possible, to generally recognized national standards. The commission has the authority to prescribe the division of the cost of installation and subsequent maintenance of the signs, signals, gates, or other warning devices between the rail carriers, the public highway authority in interest, and, in instances involving the use of the Grade Crossing Protection Fund, the Illinois Department of Transportation, which administers the fund.

No railroad may change or modify the warning device system at a highway-rail grade crossing, including warning systems interconnected with highway traffic control signals, without having first received the approval of the commission. The commission has the power, either upon application, upon its own motion, or upon complaint, to make proper investigation and to require the interconnection of grade crossing warning devices with traffic control signals at highway intersection located at or near railroad crossings within the distances described by the State's *Manual On Uniform Traffic Control Devices* adopted pursuant to Section 11-301 of the Code.

In addition, state and local authorities may not install, remove, modernize, or otherwise modify, traffic control signals at a highway intersection that is interconnected or proposed to be interconnected with grade crossing warning devices when the change affects the number, type, or location of traffic control devices on the track approach leg or legs of the intersection or the timing of the railroad preemption sequence of operation until the Commission has approved the installation, removal, modernization, or modification. The approval of the Commission shall be limited to consideration of issues directly affecting the public safety at the railroad-highway grade crossing. In order to carry out this authority, the Commission shall have the authority to determine the number, type, and location of traffic control devices on the track approach leg or legs of the intersection and the timing of the railroad preemption sequence of operation. The Commission shall prescribe the division of costs for installation and maintenance of all devices required by this paragraph between the railroad or railroads and highway authority in interest, and in instances involving the use of the Grade Crossing Protection Fund on a state highway, the Illinois Department of Transportation. Adapted from the 625 ILCS 5/18c-7401(3) (2008).

In the aftermath of the fatal collision between a school bus and a commuter train at a railroad crossing in the Village of Fox River Grove in October of 1995, the State of Illinois instituted a number of legislative initiatives. One of those was a mandated study by the Illinois Commerce Commission and the Illinois Department of Transportation of the relationship between train speeds and highway-rail grade crossing safety. The commission is required to report the findings of the study to the General Assembly no later than January 5, 1997.

An additional legislative initiative is a Special Speed Limit Pilot Project to be conducted by the Commerce Commission and the Commuter Rail Division of the Regional Transportation Authority within the Village of Fox River Grove.

For this special project, the Commission is required to set the maximum train speed limit for Regional Transportation Authority trains at 50 mph at intersections on the portion of the intrastate rail line located in the Village of Fox River Grove. If the Regional Transportation Authority deliberately fails to comply with this maximum speed limit, then any entity, governmental or otherwise, that provides capital or operational funds to the Regional Transportation Authority, shall appropriately reduce or eliminate that funding. The commission is required to report to the Governor and the General Assembly on the results of this pilot project in January 1999, January 2000, and January 2001. The commission is also required to submit a final report on the pilot project to the Governor and the General Assembly in January 2001.

As a part of the project, every rail carrier is required to report to the commission by the speediest means possible, whether telephone, telegraph, or otherwise, every accident involving its equipment, track, or other property, which resulted in loss of life to any person. The notification is to be accompanied by a written report.

The commission may investigate all railroad accidents reported to it, or of which it acquires knowledge independent of reports made by rail carriers, and shall have the power, consistent with standards and procedures established under the Federal Railroad Safety Act (45 U.S.C.A. § 421 et seq.), to enter such temporary orders as will minimize the risk of future accidents pending notice, hearing, and final action by the commission. 625 ILCS 5/18c-7402(2)(c)(3)(b) (2008).

Except with regard to grade crossing obstructions under Section 18c-7402, and trespass on railroad rights of way and yards under Section 18c-7503, jurisdiction to initiate actions to enforce provisions of Chapter 18c is vested exclusively in the commission. Where a valid federal statute, regulation, or order sets forth procedures or sanctions for violation of safety standards, and such procedures or sanctions are preemptive of state law, the commission shall exercise its enforcement jurisdiction under the article in accordance therewith. Otherwise, the provisions of this chapter regarding enforcement procedures and sanctions shall apply.

The commission may waive any of the safety requirements under the article if continued adherence to the requirement or requirements is not required for the safety of railroad employees or the public. Adapted from the 625 ILCS 5/18c-7403(1)(2) (2008).

INDIANA

Whenever the Indiana Department of Transportation reaches the conclusion, whether on account of the topography of the ground at the crossings, or on account of the great number of travelers using any crossing of a highway and railroad, or for any reason deemed by the department to be sufficient, that the grades of such crossing should be separated, and it shall be found practicable to do so, the department shall serve with notice the railroad company or companies, and also serve with notice the board of commissioners of the county or counties in which such highway crossing is located. If, after conducting a hearing, the department is satisfied that the crossing is dangerous to life and that safety and accommodation of the public requires that the grades be separated and that it is practicable to separate the grades, then the department may issue an order. The costs of the separation shall be borne one-fourth by the county and

counties in which such grade is separated and three-fourths by the railroad(s). The provisions of this section do not apply to cities of over twenty thousand, and to incorporated towns. Adapted from the Ind. Code Ann. §§ 8-6-1-4, 8-6-1-7 (2009).

The board of public works or board of public works and safety of a city may, by resolution, require the separation or alteration of the grade levels of any public highway in the city and of any railroad crossing the public highway, either by carrying the public highway under or over the railroad, or by carrying the railroad under or over the public highway. The Indiana State Highway Commission shall participate in the proceedings and in the cost of any improvements if any improvements involve a highway which is part of the state highway system or a street or highway selected by the commission as a route of a highway in the state highway system. Adapted from the Ind. Code Ann. §§ 8-6-2.1-1, 8-6-2.1-2, 8-6-2.1-3 (2009).

Upon petition by five or more citizens of the state, or a board of county commissioners, the Indiana Department of Transportation has the authority to conduct a hearing to declare as dangerous or extra hazardous, grade crossings in the state, that the department finds require the installation of automatic train-activated warning signals or other crossing safety devices in order to improve the safety of the users.

When the department orders installation, replacement, relocation or improvements of automatic train activated warning signals, it shall divide the costs of equipment, installation, operation, and maintenance between the railroad and the public. Whenever a grade crossing not protected by automatic warning signals is ordered so protected, the department shall prescribe the division of the cost of the equipment, its installation, its operation and maintenance, and its construction between the railroad involved and the public, giving due regard to the net benefits received by the parties, and the causes creating the need for signals at the crossing. Adapted from the Ind. Code Ann. § 8-6-7.7-4 (2009).

IOWA

Wherever a railroad track crosses, or will cross, a highway, street or alley, the railroad company owning the track, and the Iowa Transportation Department in the case of primary highways, the board of supervisors of the county in which the crossing is located in the case of secondary roads, or the city council, in the case of streets and alleys located within a city, may agree upon the location, manner, vacation, physical structure, characteristics, and maintenance of the crossing, flashing lights or gate arm signals at the crossing, and the allocation of costs. The department shall be party to the agreement if grade crossing safety funds are to be used. Up to 75 percent of the maintenance cost of flashing lights or gate arm signals at the crossing may be paid for from the grade crossing safety fund. Adapted from the Iowa Code § 327G.15 (2008).

KANSAS

The Kansas Secretary of Transportation, in the construction, improvement, reconstruction, or maintenance of the state highway system, has the power and authority to compel all railroad companies operating steam or electric railroads in the state to construct, improve, reconstruct, or maintain viaducts, tunnels, underpasses, bridges, or grade crossings,

when in the judgment of the Secretary they are necessary for the proper construction of the state highway system, for the safety of the general public, or for the elimination of a dangerous grade crossing. The expense of any such construction, improvement, reconstruction or maintenance may be divided between the railroad company and the Secretary of Transportation in a fair and equitable proportion to be determined by the Secretary. The Secretary's portion, however, shall not exceed 50 percent of the costs, except that the 50-percent limit does not apply to express highways or freeways. Otherwise, grade crossings shall be constructed and maintained at the expense of the railroad.

When the Secretary deems it advisable, he or she may order the affected railroad to install and maintain suitable safety devices or warning signals at dangerous or obscure crossings to indicate the approach of trains. Kan. Stat. Ann. § 68-414 (2008).

The governing bodies of cities of the first and second class have the power to regulate the crossing of railway and street-railway tracks and to provide precautions and adopt ordinances. This includes the power to require railroad companies to erect, construct, reconstruct, complete and keep in repair any viaduct(s) upon or over tunnels under such street(s) and over or under any such track(s). Adapted from the Kan. Stat. Ann. § 12-1633 (2008).

KENTUCKY

The Kentucky Department of Highways has the authority to order any railroad company owning or operating a railroad in the state to eliminate any grade crossing or change any existing overhead or underpass structure where any public road crosses the railroad tracks of the railroad company when it considers it necessary for public safety. In the process, the department may determine whether a substitute crossing should be established and if so, the location, and whether it shall pass over or under the railroad tracks or intersect them at grade.

The department is responsible for the promulgation of administrative regulations containing standards that govern the closure of public grade crossings. The standards reflect the intent of the legislation, i.e., that public safety will be enhanced by reducing the number of redundant and inherently dangerous grade crossings.

On or before July 1, 1993, and each of the next 4 years; and as necessary thereafter, the department is required to compile a list of grade crossings to be closed. The department must notify the public officials having the necessary authority and the railway companies operating the railroads of the proposed closures. Either of the affected parties may request a public hearing and, should one be requested, the department is required to hold the hearing and apply in its determination the information gained at the public hearing. If, after the hearing, the department determines that closure is warranted, it may order the crossing closed. If a request for a hearing is not received by the department within 30 days notice of the opportunity, the department shall order the crossing closed. Adapted from the Ky. Rev. Stat. Ann. § 177.120(1)(2)(3) (2009).

Any railroad company dissatisfied with a final order of the department directing the elimination of any grade crossing or change of existing overhead or underpass structure, or any order modifying or amending the final order may appeal by filing in Circuit Court. The court has

the authority to affirm or to overrule the order of the department. Ky. Rev. Stat. Ann. § 177.190 (2008).

There is a different procedure for ordering elimination of grade crossing or modifications to grade crossings when the crossing is on a county road in counties containing a city of the first class.

The Fiscal Court, when it considers it reasonably necessary for the public safety, may order any railroad company, either steam or electric, owning or operating a railroad in its county, to eliminate any existing grade crossing or change any existing overhead or underpass structure where any county road crossed the railroad tracks of such company. Ky. Rev. Stat. Ann. § 178.355(1) (2008).

Editor's Note: The Fiscal Court is a county government agency in Kentucky. It is empowered to exercise all the corporate powers of the county unless otherwise provided by law. See Ky. Rev. Stat. Ann. §§ 67.080, 67.040 (2008).

The Fiscal Court is required to give at least 10 days notice, by certified mail, of a hearing. At any such hearing it shall consider whether or not the proposed grade separation or change is reasonably necessary and the most advantageous method of effecting the grade separation or change. In determining whether the proposed grade separation or change is reasonably necessary, the Fiscal Court shall receive evidence of, and consider all relevant facts, including the present and prospective density of highway traffic and the present and prospective frequency and speed of train movements over the crossing, the adequacy of existing or proposed signals or warning devices for the protection of highway traffic at the grade crossing, the possibility and probability of personal injury to the public using the highway, and to employees and passengers of the railroad company and damage to property, and the cost of the grade separation or change in relation to benefits resulting from the proposed construction. See Ky. Rev. Stat. Ann. § 178.355 (2) (2008).

The Transportation Cabinet has the authority to investigate any public grade crossing not equipped with gates and with an average daily traffic of 4,000 or more, at which two or more accidents involving a train and a vehicle traversing a highway-rail grade crossing have occurred in a consecutive 5-year period beginning January 1, 1986. The Cabinet shall request written comments from the affected local government prior to reaching a decision on a particular crossing. After the Cabinet receives a report from the affected local government supporting the installation of gates, the Cabinet, utilizing matching funds available from the Federal Highway Administration's highway-rail grade crossing safety program, shall program the installation of gates at the crossing.

The cost of installing gates shall be the responsibility of the Cabinet and the affected railroad, and shall not be charged to any unit of local government. Ky. Rev. Stat. Ann. § 189.561 (2008).

LOUISIANA

Whenever a highway crosses a railroad track at grade and the crossing is deemed in need of repair by the chief engineer of the department of transportation and development or an authorized representative, the chief engineer or the authorized representative shall give the affected railroad company 15 days notice in writing. If the railroad company fails to make the repairs, the department of transportation and development may make the repairs and bill the railroad.

Whenever a warning device located at a railroad crossing needs repair or is not being maintained in compliance with federal guidelines and should, in the judgment of the chief engineer or his duly authorized representative, be repaired or receive maintenance, written notice of the necessity of such repair or maintenance shall be given to the railroad company owning the track at which the device is located. If the railroad does not proceed with the repair or maintenance within 30 days after receipt of the notice, the department may initiate the performance of the repair or maintenance of the warning device and charge the expenses thereof to the railroad company. Adapted from the La. Rev. Stat. Ann. §§ 48:386(A)(B) (2008).

MAINE

Town ways and highways may be laid out across, over, or under a railroad track, or through or across any land or right-of-way of any railroad corporation if the Maine Department of Transportation, after notice and hearing, so determines. The department may refuse its permission or grant it on terms and conditions as it may prescribe, and the need, if any, for installation, maintenance and operation of signals, gates or other protective measures, and may determine whether the expense of building and maintaining so much of the way as is within the limits of the railroad corporation shall be borne by the corporation or by the municipality in which the way is located, or by the state, or the department of transportation, may apportion the expense between the railroad corporation and the municipality or state. The expense of operating and maintaining any protective device shall be borne by the railroad corporation. The expense of installing protective devices at crossings on state and state aid highways shall be apportioned between the railroad corporation and the state as the department of transportation may determine. The expense of installing protective devices at crossings on town ways shall be apportioned between the railroad corporation and the municipality as the department shall determine. Determinations, orders, or decisions by the department are final and binding on all parties unless appealed to the Superior Court in the county in which the crossing is located. Me. Rev. Stat. Ann. Tit. 23 § 7202 (2008).

The municipal officers, in instances of town ways crossing or crossed by a railroad, whether the crossing be at grade or otherwise, or any railroad corporation, may petition the Department of Transportation alleging that public safety or public convenience, either to the traveling public or in the operation of railroad services, requires abolishment, reconstruction, or alteration of crossings or their approaches; or change in the method of crossing a public way; or the closing of a crossing and the substitution of another; or the removal of obstructions to the sight at the crossing and requesting that the situation be remedied. After proper notice and hearing, the department of transportation shall make its determination to ensure safety or public

convenience and by whom the abolishment, reconstruction, alteration, change or removal shall be made. The jurisdiction of the department of transportation exists whether the change or alterations in the crossing are within or without the limits of a public way.

The county commissioners have the same right of petition under this section, with respect to roads in unorganized places laid out by them, as have municipal officers of a municipality under the provisions of this section. Adapted from the Me. Rev. Stat. Ann. Tit. 23 § 7231(2008).

The Department of Transportation may require each railroad operating within the state to install, operate, and maintain an automatic signal, gates or other protective device, or to require a flagger to be stationed at any highway crossing within the state where, after reasonable notice and hearing, the Department decides that public safety requires a signal, gates or other protective device or flagger as a proper measure of protection. Notice and hearing are not required for automatic grade crossing protection funded and installed under the federal program. The expense of installing, operating and maintaining any signal, gates or other protective device or of providing the flagger shall be borne by the railroad, except that at crossings located on state and state aid highways, the expense of installing the signal, gates or other protective device must be apportioned between the railroad and the state in proportions as the Department determines. Adapted from the Me. Rev. Stat. Ann. Tit. 23 § 7221(2008).

MARYLAND

The Secretary of Transportation has sole authority to approve the construction or modification of a railroad grade crossing or its crossing equipment and to impose the conditions necessary to ensure public safety at the crossing. The powers of the Secretary over all aspects of railroad grade crossings can be found in the Transportation Article of the Annotated Code of Maryland at Section 8-639.

The code section also outlines the process required when making application to the Secretary for approval of the construction or modification of a railroad grade crossing or its crossing equipment. The Secretary, after notice to all parties, including adjacent property owners, will hold a hearing if he or she considers it necessary. A hearing can also be requested by an individual party in interest, if the proposed change might eliminate or diminish any existing crossing device. After conducting any such hearing, the Secretary can either approve or disapprove the application, or impose on the person initiating the crossing projects, under uniform standards and regulations, the conditions necessary to ensure public safety at the crossing, including installing and maintaining equipment, and allocating costs.

When any railroad grade crossing outside the corporate limits of a city is believed to be dangerous, it is the duty of the County Commissioner to notify the railroad company that further safety measures at a crossing are necessary. The railroad must either place a flagger at the crossing or erect a system of electric alarm bells or safety gates within thirty days. The County Commissioner has the option of changing the crossing to an over grade or under grade crossing.

Every railroad company in the State of Maryland has the right, when it considers that the crossing of its tracks by a highway is dangerous, to provide at its own cost, a grade separation.

For constructing the approaches to the grade separation, the railroad may, at its own expense, change the grade of the public highway. Adapted from the Md. Code Ann. Transp. §§8-639-640-642(2009).

MASSACHUSETTS

A railroad corporation is authorized to raise or lower a public way in order to pass over or under a highway-rail grade crossing. However, before doing so, the railroad must obtain from the county commissioners a decree prescribing what alterations may be made in the way, what structures are to be erected, and the manner and time of erection. Before either entering upon, excavating, or altering the way, the railroad must give to the city or town where the crossing is to be situated some form of security, satisfactory to the commissioners, that it will follow the dictates of the decree and that it will indemnify the city or the town against all damages by reason of failure to comply.

If the railroad proceeds with work without having first obtained the decree and given proper security, or neglects to give security for fifteen days, the Supreme Judicial Court may enjoin the railroad from entering upon, altering, excavating, or crossing the way until the decree has been obtained or security given. Mass. Ann. Laws Ch. 160 § 100 (2009).

In every case in which consent or approval of the department of telecommunications and energy has been obtained, the department may, after proper notice to all interested parties, hold a hearing and impose conditions, limitations, restrictions, and regulations concerning the construction and use of the crossing. The department may also change and modify them.

A public road shall not be permitted to cross a railroad at grade unless it is determined that public necessity requires it. Determination may be made by the department of highways if it is a state highway, or the county commissioners in the case of any public way. However, the department of telecommunications and energy must give written consent in every case. Adapted from the Mass. Gen. Laws Ann. Ch. 160 § 104 (2009).

Any railroad laid out across a public way will be so constructed so as not to obstruct that public way; and unless the county commissioners and the department of highways authorize a crossing at the same level, it shall be constructed so as to pass either over or under the way. Adapted from the Mass. Gen. Laws Ann. Ch. 160 § 97 (2009).

A railroad company may be permitted to alter the course of a public way to facilitate the crossing thereof by its railroad or to permit its railroad to pass at the side thereof without crossing, if, after notice to the city or town where the way is situated, and a hearing, the county commissioners decide that such alteration will not essentially injure the way, and make a decree prescribing the time and manner of any alteration. Adapted from the Mass. Gen. Laws Ann. Ch. 160, § 101 (2009).

MICHIGAN

If the location of a proposed highway-rail grade crossing is found by the Michigan Department of Transportation to be necessary, feasible, and reasonably safe, the department is authorized to grant permission for the crossing. The department may then require installation of any traffic control devices it judges appropriate.

The full cost of constructing a new street or highway across an existing railroad track or of a new railroad track across an existing street or highway, is to be borne by the party(s) requesting the crossing. The plans for any such grade crossing must be approved by both the railroad and the road authority. If they are unable to agree, the department will settle the points of the disagreement through its order.

Temporary grade crossings may be constructed, maintained, and removed at the sole expense of the affected parties.

If any new grade crossing project is requested by a road authority and approved by the department of transportation, the road authority must notify the affected railroad in writing requesting that the railroad supply a competent inspector and other necessary persons to inspect the construction. The road authority must pay the railroad for the actual costs incurred by the railroad for inspection. Likewise, if a new grade crossing project is requested by the railroad, the railroad must notify the road authority in writing requesting an inspector and other necessary personnel to inspect the construction. The railroad is then responsible for payment of actual costs for time spent by the road authority inspector and other personnel.

Any railroad owning tracks across a public street or highway at grade is solely responsible for the cost of constructing and thereafter maintaining, removing, and repairing the railroad roadbed, tracks, and culverts within the confines of that street or highway and the streets or sidewalks lying between the rails, and for a distance outside the rail of 1 foot beyond the end of the ties. The road authority, on the other hand, is responsible for the construction, improvement, maintenance, renewal and repair of the remainder of the road surface.

The transportation department, on its own, or upon request by any interested party, may initiate a diagnostic study team review of the physical condition and safety needs of grade crossings of railroad tracks with public streets and highways, or with a non-motorized trail. The department must give all parties 15 days notice of the review and each affected party will provide a representative to participate in the review who is empowered to make decisions on behalf of the party. The diagnostic study team makes its decision concerning the safety needs of a grade crossing based upon current roadway and railroad traffic levels, speeds, and other parameters. Funding arrangements, division of responsibility, and scheduling will be mutually decided to accommodate adjustments or improvements, relocations, closures, grade separations, or other changes reasonably required in the interest of public welfare and safety.

When the diagnostic review is completed, the department issues an order in writing to all parties confirming any agreements reached. If a consensus is not reached during the diagnostic study team review, the department can order any adjustments or improvements, relocations,

closures, or other changes in the interest of the public welfare and safety. The road authority having jurisdiction has the right to a hearing on the department's order.

Funding for any of the improvements, relocations, closures, or grade separations determined necessary by the department may come from the following sources, if available and the work deemed eligible:

- (1) From federal funds obtained through the federal-aid highway-rail grade crossing improvement program.
- (2) From state funds obtained through the railroad grade crossing account of the state trunk line fund. See Mich. Comp. Laws § 462.301(2009).

The department is responsible for the administration of funds for high-speed rail corridor grade crossing improvements. The department administers the funds from a separate account and in an efficient and equitable process by establishing an annual prioritization of grade crossing safety improvements. Items of work that are considered routine maintenance would not be eligible for funding.

The department can, after routine inspections, periodically serve notice to affected parties that existing devices and conditions at public grade crossings need corrective action. Adapted from the Mich. Comp. Laws § 462.307 (2009).

In the State of Michigan, the construction of a new highway-rail grade separation structure, or the total reconstruction of an existing grade separation structure, requires a written agreement between all affected railroads, the road authority, and any other parties required by law to participate in the construction or funding of the grade separation. Adapted from the Mich. Comp. Laws § 462.319 (2009).

MINNESOTA

Chapter 161 of the Minnesota Statutes outlines the general power of the commissioner of transportation with respect to trunk highway-rail grade crossings within the state.

[The commissioner is authorized] to contract on an equitable basis with railroad companies for the installation and reinstallation of safety devices at trunk highway-railroad grade crossings, and for the construction, reconstruction, and maintenance of bridges and approaches existing or necessary for the separation of grades at railroad and trunk highway intersections. Minn. Stat. Ch. 161.20 (2008).

The commissioner of transportation can, upon his own motion, investigate and make a determination as to whether a railroad crossing, over a street or public highway that is or will be opened to public travel, is or will be dangerous to life or property. The Commissioner may order the crossing protected in any manner he or she finds reasonable and proper, including requiring the company to separate the grades. The Commissioner must give to the interested railroad and road authority notice of the investigation as he or she deems reasonable, and an opportunity to be heard before an order is made. Minn. Stat. § 219.14 (2008).

Upon written complaint, authorized by the governing body of a city or county, by the board of supervisors of a town, or by authorized officers of an affected railroad, alleging that a railroad crossing a street, road, or highway in the city, town, or county, is dangerous to life and property, and giving the reasons for the allegations, the commissioner shall investigate the matters contained in the complaint, and, when necessary, initiate a hearing. Adapted from the Minn. Stat. Ch. 219.39 (2008).

The statute provides that public officials having the necessary authority and a railroad company may agree to the vacation, relocation, consolidation, or separation of grades at grade crossings. If an agreement cannot be reached, either party may file a petition with the commissioner, who then may order the crossing vacated, relocated, consolidated, or separated. Adapted from the Minn. Stat. § 219.074 (2008).

MISSISSIPPI

Title 65, Chapter 1, Section 8 of the Mississippi Code grants the department of transportation the authority to regulate and abandon grade crossings on any road fixed as a part of the state highway system. Whenever the department, in order to avoid a grade crossing with the railroad, builds a road on one side of the railroad, it has the power to abandon and close the grade crossing whenever an underpass or an overhead bridge is substituted for a grade crossing. The department is also granted the authority to require the railroad to install signal posts with lights or other warning devices at the expense of the railroad, and to regulate and abandon an underpass or overhead bridge. Where the underpass or bridge was abandoned because of the building of a new underpass or bridge, the department can close the old underpass, or bridge or, in its discretion, return jurisdiction for the underpass or bridge back to the county board of supervisors. Adapted from the Miss. Code Ann. § 65-1-8 (2008).

The state highway commission also has the authority to order the closing of a highway-rail grade crossing and replace it with a separation. Whenever any railroad and state highway or part thereof shall cross each other at the same level and, in the opinion of the state highway commission, such crossing is dangerous to public safety or traffic is unreasonably impeded and such crossing should be removed, the state highway commission may order such crossing eliminated either by having the state highway department carry such state highway under or over the tracks of such railroad.

The plans covering the proposed changes may be made either by the director of the state highway department, subject to the approval of the highway commission, or the affected railroad company, but shall in either event be approved by both the highway commission and the railroad company before the contract is awarded.

Joint supervision of construction may be had by both the state highway department and the railroad company. The state highway department and the railroad company shall pay equal parts of the cost of any underpass or overpass.

Appeals from decisions or determinations of the state highway commission can be made by any affected party, and the procedure for such appeal shall be the same as is provided by law for appeals from decisions and determinations of the boards of supervisors. Adapted from the Miss. Code Ann. § 65-1-69 (2008).

Municipal government authorities in Mississippi also have the authority to regulate highway-rail grade crossings and to provide precautions and prescribe rules regulating them. This authority includes the power to require railroad companies to erect viaducts over or gates across their tracks at the crossing of streets. Miss Code Ann. § 21-37-9 (2008).

Mississippi law requires a developer, corporation, individual, or other private entity desiring a new public railroad grade crossing to bear the cost of installing appropriate warning devices at such a crossing, and for installing appropriate crossing surfaces and approaches, for establishing appropriate crossing profiles, and for obtaining easements to maintain sight distance as deemed necessary for such crossing by a diagnostic survey team comprised of the Mississippi Department of Transportation Rails Engineer, a representative from the Federal Highway Administration, a representative of the affected railroad company, and a representative of the affected local governmental jurisdiction.

The law also provides that when an existing private railroad grade crossing is proposed to come under the jurisdiction of a public entity, the party requesting the public crossing shall be responsible for the cost of installing appropriate warning devices and certain other expenses before opening the crossing to the public. Another part of the law requires a private entity requesting or applying for a new public railroad grade crossing or conversion of an existing private grade crossing to a public one to give notice of such request or application to the local roadway authority and the Mississippi Department of Transportation. Adapted from the Miss. Code Ann. § 77-9-252 (2008).

The State of Mississippi, in 2001, established within the Railroad Revitalization Fund a new account to be called the Mississippi Highway-Railroad Grade Crossing Safety Account. The account is administered by the Mississippi Department of Transportation and consists of a) funds transferred from the Mississippi Grade Crossing Closure Account on July 1, 2001, and b) 35 percent of the collection from the locomotive fuel tax for the previous year.

The department of transportation, in cooperation with the railroads operating in the state, shall promulgate rules to ensure equitable allocation of the funds described to projects throughout the state, and shall consider the proportionate number of main track miles of each railroad and the number of public highway-rail grade crossings on each railroad's main line. Expenditure of funds from the account is limited to the following purposes:

- (a) Financial aid for closure of highway-rail grade crossings;
- (b) Realignment of construction costs of roadways being rerouted to facilitate a closure of a public highway-rail grade crossing;
- (c) Monies to match federal or other funds for a grade separation eliminating an at-grade crossing of a public roadway and railroad; and

- (d) Installation or upgrade of highway-rail grade crossing signals, at the discretion of the Mississippi Transportation Commission, based upon the Federal Railroad Administration's ranking of all Mississippi highway-rail grade crossings. Not less than 10 percent of the monies necessary to defray the costs must be federal funds.

The department of transportation shall consider all requests from the state's diagnostic review of public highway-rail grade crossings and from individual railroads for expenditure of funds for the purposes described, and shall establish uniform criteria and guidelines relating to such crossings and the expenditure of funds. Miss. Code Ann. § 57-43-15 (2008).

MISSOURI

The responsibility for grade crossings in Missouri has shifted from the Division of Motor Carrier and Railroad Safety of the Department of Economic Development to the State Highways and Transportation Commission and Department of Transportation (Division of Motor Carrier and Railroad Safety was abolished). See Mo. Rev. Statutes § 226.008. This exclusive power of the State Highways and Transportation Commission is reviewable however by the Administrative Hearing Commission. See paragraph 9 of this section.

1. No public road, highway or street shall be constructed across the track of any railroad corporation, nor shall the track of any railroad corporation be constructed across a public road, highway or street, nor shall the track of any railroad corporation be constructed across the track of any other railroad or street railroad corporation at grade nor shall the track of a street railroad corporation be constructed across the tracks of a railroad corporation at grade, without having first secured the permission of the state highways and transportation commission, except that this subsection shall not apply to the replacement of lawfully existing tracks. The commission shall have the right to refuse its permission or to grant it upon such terms and conditions as it may prescribe.
2. Every railroad corporation shall construct and maintain good and sufficient crossings and crosswalks where its railroad crosses public roads, highways, streets, or sidewalks now or hereafter to be opened.
3. The state highways and transportation commission shall make and enforce reasonable rules and regulations pertaining to the construction and maintenance of all public grade crossings. These rules and regulations shall establish minimum standards for:
 - (1) The materials to be used in the crossing surface;
 - (2) The length and width of the crossing;
 - (3) The approach grades;

(4) The party or parties responsible for maintenance of the approaches and the crossing surfaces.

4. The state highways and transportation commission shall have the exclusive power to determine and prescribe the manner, including the particular point of crossing, and the terms of installation, operation, maintenance, apportionment of expenses, use and warning devices of each crossing of a public road, street, or highway by a railroad or street railroad, and of one railroad or street railroad by another railroad or street railroad. In order to facilitate such determinations, the state highways and transportation commission may adopt pertinent provisions of The Manual on Uniform Traffic Control Devices for Streets and Highways or other national standards.

5. The state highways and transportation commission shall have the exclusive power to alter or abolish any crossing, at grade or otherwise, of a railroad or street railroad by a public road, highway or street whenever the state highways and transportation commission finds that public necessity will not be adversely affected and public safety will be promoted by so altering or abolishing such crossing, and to require, where, in its judgment it would be practicable, a separation of grades at any crossing heretofore or hereafter established, and to prescribe the terms upon which such separation shall be made. When a road authority lawfully closes or vacates a roadway which provided access to a railroad crossing, the state highways and transportation commission shall issue an order authorizing removal of the crossing by the railroad within thirty days of being notified of such action by the roadway authority or railroad.

6. The state highways and transportation commission shall have the exclusive power to prescribe the proportion in which the expense of the construction, installation, alteration or abolition of such crossings, the separation of grades, and the continued maintenance thereof, shall be divided between the railroad, street railroad, and the state, county, municipality or other public authority in interest.

7. Any agreement entered into after October 13, 1963, between a railroad or street railroad and the state, county, municipality or other public authority in interest, as to the apportionment of any cost mentioned in this section shall be final and binding upon the filing with the state highways and transportation commission of an executed copy of such agreement. If such parties are unable to agree upon the apportionment of the cost, the state highways, and transportation commission shall apportion the cost among the parties according to the benefits accruing to each. In determining such benefits, the state highways and transportation commission shall consider all relevant factors including volume, speed, and type of vehicular traffic, volume, speed, and type of train traffic, and advantages to the public and to such railroad or street railroad resulting from the elimination of delays and the reduction of hazard at the crossing.

8. Upon application of any person, firm or corporation, the state highways and transportation commission shall determine if an existing private crossing has become or a proposed private crossing will become utilized by the public to the extent that it

is necessary to protect or promote the public safety. The state highways and transportation commission shall consider all relevant factors including but not limited to volume, speed, and type of vehicular traffic, and volume, speed, and type of train traffic. If it be determined that it is necessary to protect and promote the public safety, the state highways and transportation commission shall prescribe the nature and type of crossing protection or warning device for such crossing, the cost of which shall be apportioned by the state highways and transportation commission among the parties according to the benefits accruing to each. In the event such crossing protection or warning device as prescribed by the state highways and transportation commission is not installed, maintained or operated, the crossing shall be closed to the public.

9. The exclusive power of the state highways and transportation commission pursuant to this section shall be subject to review, determination, and prescription by the administrative hearing commission, upon application to the administrative hearing commission by any interested party in accordance with section 621.040. Upon filing of an application pursuant to this subsection, the administrative hearing commission is vested with the exclusive power of the state highways and transportation commission otherwise provided in this section, with reference to matters reviewed, determined or prescribed by the administrative hearing commission. Mo. Rev. Stat. § 389.610 (2008).

MONTANA

(1) No railroad crossing, other than a grade crossing, can be ordered by any board of county commissioners.

(2) The Montana Public Service Commission may, upon petition or request in writing of any board of county commissioners, order an overhead or an underground crossing, provided, in its judgment, the safety, necessity, and convenience of the traveling public require the crossing. The commission is required to give at least 10 days notice to the board and the owner or operator of the affected railroad of the time fixed for a hearing. In the event an overhead or underground crossing is ordered, the commission may apportion the expense between the railroad company and the county. Adapted from the Mont. Code Ann. § 69-14-607 (2007).

The Montana Annotated Statutes provide for the construction and maintenance of railroad crossings in unincorporated towns or villages. The board of county commissioners can order the construction and maintenance of a highway-rail grade crossing. In any unincorporated community ordinarily known as a village or town where the public necessity and convenience require a railroad crossing at the intersection of the railroad with any street or highway, whether lawfully established or otherwise, which is commonly used by the public, the Board of county commissioners may order such crossing. The public service commission has authority to enforce the orders of any board of county commissioners for the construction of railroad crossings and is empowered to pass upon the reasonableness of any order and modify, change, or annul the order. Adapted from the Mont. Code Ann. §§ 69-14-603, -606 (2007).

At all highway-rail grade crossings of public highways outside incorporated cities and towns, it is the duty of the railroad company owning or operating such railroad to construct and maintain the crossing. Adapted from the Mont. Code Ann. § 69-14-602 (2007).

NEBRASKA

Sections 74-1329 to 74-1343 of the Nebraska Revised statutes is referred to as the Nebraska Highway-Rail Grade Crossing Safety and Consolidation Act. Adapted from the Neb. Rev. Stat. § 74-1329 (2009).

The Nebraska Department of Roads has jurisdiction over all crossings outside of incorporated villages, towns, and cities, both public and private, across, over, or under all railroads in the state. Adapted from the Neb. Rev. Stat. § 74-1332(2009).

In 1997, the Nebraska Legislature declared that the department of roads, having the requisite engineering expertise, highway, and rail planning function, and highway safety mission, and is the repository for state and federal funding for both rail and highway projects, shall be the agency responsible for grade crossing safety. Adapted from the Neb. Rev. Stat. § 74-1341 (2009).

The department of roads is empowered to adopt and promulgate rules and regulations establishing a comprehensive public safety program to deal with problems associated with public and private highway-rail grade crossings. In the design of the public safety program, the department must establish a process for assessing the risk to the public from particular grade crossings and for reducing or eliminating such risk in a cost-effective and timely manner. The grade crossing safety assessment process may include the following factors:

- (a) Volume of trains;
- (b) Volume of motor vehicles, including character, function, and type of vehicular traffic through the crossing;
- (c) Number of tracks at the crossing;
- (d) Geometry of the crossing, including acute angles;
- (e) Sight-distance restrictions, if any;
- (f) Train and motor vehicle speed;
- (g) Accident history;
- (h) Character of proximate road network, including distance and travel time to adjacent crossings;
- (i) Frequency and duration of roadway blockage by trains, including citation history;
- (j) Emergency response routes, including alternatives;
- (k) Economic impact of crossing;
- (l) Current and foreseeable development in the vicinity of the crossing; and
- (m) Location of schools and hospitals. Adapted from the Neb. Rev. Stat § 74-1342 (2009).

The department of roads is required to establish the grade crossing safety assessment process no later than 12 months after September 13, 1997, and shall recommend to the

legislature no later than 18 months after September 13, 1997, an equitable formula for funding grade crossing risk abatement. Adapted from the Neb. Rev. Stat. § 74-1343 (2009).

When railroad tracks cross a public highway at grade outside an incorporated city or village, the owner of the railroad tracks and the county board may agree to any change, alteration, or construction that is in the interest of public convenience or safety. They may agree on relocating the highway so as to eliminate the crossing entirely or to construct a grade separation. They may also agree as to the apportionment of costs. If there is a dispute between the parties and they cannot agree, either party can make application to the department of roads for resolution. The department of roads may order the process done, and apportion costs. Adapted from the Neb. Rev. Stat. §§ 74-1337- 1338 (2009).

When any railroad track crosses a public road in a cut, on a curve or side of a hill, in timberlands, near buildings, or near any object restricting the view from the road, the department of roads, either on its own motion or upon complaint of interested parties, may order that certain precautions be taken to promote public safety. Each railroad carrier must provide and maintain whatever the department may direct, including gates, crossings, signs, alarm bells, and warning personnel. The department has the authority to adopt a uniform crossing sign design and direct that it be used at any crossing or other place. It may also direct the placement of special signs where the physical conditions of the crossing warrant, except with regard to automatic grade crossing warning devices. Neb. Rev. Stat. § 75-1334 (2009).

Whenever a complaint is filed in writing with the department of roads by duly authorized officers of any incorporated village or city, relative to any crossing within the village or city, praying for relief from the matters complained of, the department must hold a hearing and is required to make such order as the facts warrant. The findings of the department, subject to the right of appeal, are binding on the parties to the suit. Adapted from the Neb. Rev. Stat. § 74-1336 (2009).

NEVADA

Chapter 704 of Title 58 of Nevada Revised Statutes describes the powers of the public utilities commission, including exclusive power over railroad crossings.

The public utilities commission, after an investigation and hearing, may make a determination and order any of the options below for the safety of the traveling public. The investigation and hearing ensue out of the filing of a formal complaint by the department of transportation, the board of county commissioners, the town board or council, or any railroad company.

After a formal hearing the Commission may order:

- (1) The elimination, alteration, addition, or change of a highway crossing(s) over any railroad at grade or grade separated, including its approaches and surface.
- (2) Changes in the method of crossing at, above, or below grade.
- (3) The closing of a crossing and the substitution of another therefore.

- (4) The removal of obstacles to the public view upon approach.
- (5) Any other changes and improvements for the safety of the public.

The commission is also empowered to order the costs for any such work to be divided and paid by the railroad and the state, county, town or municipality. Adapted from the Nev. Rev. Stat. § 704.300 (2007).

The entire cost of a new grade crossing or separation, including any automatic warning devices, shall be the responsibility of the government unit affected, if they initiated the proceeding, or the railroad, if it initiated the proceeding; provided that the crossing is not at or near the location of a previous grade crossing elimination project.

Where a new grade separation results in the elimination or reconstruction of an existing grade crossing, the railroad will be responsible for 13 percent of the costs; the remainder is to be the responsibility of the affected governmental unit.

Where automatic warning devices are added or materially altered at an existing grade crossing, 87 percent of the costs shall be the responsibility of the railroad.

The affected railroads will pay 50 percent of the maintenance costs for any new or altered automatic crossing warning device, with the remaining 50 percent being paid by the affected governmental units. Adapted from the Nev. Rev. Stat. § 704-305 (2007).

NEW HAMPSHIRE

New Hampshire law declares that The Department of Transportation, after receipt of a petition from a railroad, the selectmen of a town, or the mayor and council of a city, and after proper notice and a hearing, has authority in the interest of safety to the railroad and the public to require a railroad to separate grades, change the location of a highway or a railroad in order to avoid or improve a grade crossing, reconstruct or otherwise alter any existing bridge or underpass, and improve the approaches to any grade crossing so they will be as level as possible. Adapted from the N.H. Rev. Stat. Ann. § 373:2 (2008).

No railroad may be constructed across another railroad, highway, or other way at grade, without first obtaining written consent from the New Hampshire Department of Transportation (see Section 373:4). Likewise, no highway may be constructed at grade across a railroad without consent of the department of transportation. Adapted from the N.H. Rev. Stat. Ann. §§ 373:4–6 (2008).

All railroads in New Hampshire have a statutory duty to provide suitable crossings, stations, and other facilities for public accommodation and suitable gates, crossings, cattle passes, and other facilities for the accommodation of persons whose lands are divided or are separated from a highway by a railroad. Adapted from the N.H. Rev. Stat. Ann. § 373:1 (2008).

Another provision in the statute provides that the state shall have the same duties to provide suitable crossings and other facilities for the accommodation of the public and to provide

suitable gates, crossings, and other facilities for the accommodation of persons whose lands are divided or are separated from a highway, by the state-owned railway.

Any party or landowner seeking crossing or other facilities pursuant to paragraph I shall make application for such crossing or other facility to the New Hampshire Department of Transportation.

The commissioner shall adopt rules establishing procedures and criteria for review of such applications and issuance of agreements for crossings or other facilities on state-owned rail property, including establishment of reasonable application and annual renewal fees.

Such agreements shall include provision for apportionment of cost for construction and protection, including insurance requirements and installation of appropriate safety devices.

The state shall provide such warning signs as are required for governmental authorities maintaining public crossings over state-owned railroad lines. Adapted from the N.H. Rev. Stat. Ann § 373:1-a (2008)

NEW JERSEY

When a public highway crosses railroad tracks at the same level and it appears to the Commissioner and the Department of Transportation that the crossing(s) are dangerous to public safety, the Department may order the railroad(s) to alter the crossing, within a set time limit, according to plans approved by the Department.

The types of alterations that may be made are:

- (1) Grade separations.
- (2) Vacations, relocations, or changes in the line, width, direction or location of the highway and the opening of anew crossing in place of the vacated one.
- (3) Relocation of the railroad tracks where, in the judgement of the owner of the property will be unduly injured by the elimination of the crossing. Adapted from the N.J. Rev. Stat. § 48:12-61(2008).

Any railroad company(s) whose tracks are crossed at grade by a public highway, or a body having charge of the finances of any municipality or county having jurisdiction over any such highway, may present a petition in writing to the department setting forth the facts upon which relief is sought concerning alterations to or connected with the crossing(s). The department shall schedule a hearing, determine what alterations should be made, and make an order. Adapted from the N.J. Rev. Stat. § 48:12-64 (2008).

The New Jersey Highway Department, before January 1 of each year, is required to formulate a program covering the work to be started or completed during the ensuing year, for the elimination of railroad crossings at grade on state highways, the improvement, relocation, alteration, and reconstruction of crossings of railroads and state highways not at grade, and the location and construction of new crossings of railroads and state highways not at grade, where

the construction of the new crossings of railroads and state highways not at grade result or will result in the closing, abandonment, or combination of an existing grade crossing at or in the vicinity of the new state highway crossing.

The aggregate estimated cost of the work in such annual program, in which the railroad companies will share, shall not exceed 2 million dollars. Adapted from the N.J. Rev. Stat. Ann. § 48:12-68 (2008).

The cost of the work is to be shared by railroad companies and the New Jersey Highway Department, except for the costs of the surface paving on roadways and the curbing, sidewalk paving, and guardrails on approaches, which shall be borne and paid 5 percent by the railroad company or companies involved, and 95 percent by the state. Adapted from the N.J. Rev. Stat. Ann. § 48:12-70 (2008).

The New Jersey Highway Department and any railroad company or companies may enter into an agreement on the basis of the division of the costs covering the work in the annual program, or the eliminations of any crossing at grade, or the improvement, relocation, alteration, or reconstruction of any crossing not at grade on any state highway, in addition to the work provided for in such program. Adapted from the N.J. Rev. Stat. Ann. § 48:12-71 (2008).

The municipal authorities of any city, except any city of the first class, may permit any railroad company to lay and construct its tracks along and upon any street or highway, or above the street or highway by means of an elevated structure, and may contract with the railroad company, fixing the terms and conditions as to maintenance of crossings, speed of trains and payment of consideration for such use, and may do all things necessary to carry out such contract. Adapted from the N.J. Rev. Stat. Ann. § 48:12-53 (2008).

Every railroad operating in New Jersey on a fixed track or tracks, freight or passenger trains or cars, is required to provide protection to pedestrians and the traveling public at every crossing of its tracks by a public road. Such protection may be in the form of safety gates, flagmen, electric bell, electric signs, or other recognized system of alarm or protection approved by the department of transportation. When several crossings lie so close together that an audible signal at one crossing may be sufficiently heard at others near it, such crossings may be protected by any device or signals that will sufficiently protect all crossings in the group. Adapted from the N.J. Rev. Stat. Ann. § 48:12-54 (2008).

The department of transportation, either upon its own initiative or upon the application of any municipality or citizen dissatisfied with the protection provided or the failure to provide any or sufficient protection on any crossing with such municipality or used by such citizen may by order compel proper compliance with Section 48:12-54. N.J. Rev. Stat. Ann. § 48:12-55 (2008).

NEW MEXICO

When a state, county, municipal, or other street or highway, including a highway that has been or may be designated as part of the federal-aid highway system, which may hereafter be constructed or reconstructed in such a manner that it crosses over or intersects any railroad, the

New Mexico State Highway Commission, or other governing body, may, if in its opinion it is practicable and reasonably necessary for the safety of the traveling public, separate the grades at such crossings. The separation process involves an application by the commission to the district court of the county requesting that the court order separations of the grades. If the district court determines that grade separation is practicable and necessary for the safety of the traveling public, it can order separation and the permanent closure of the existing grade crossing. When any such separation is made, the railroad company is responsible for an amount up to 10 percent of the cost. Adapted from the N.M. Stat. Ann. § 63-3-37 (2008).

After any such grade separation is constructed, the state highway commission shall be responsible for maintaining the roadbed and structures, and the railroad is responsible for its roadway, the track, and its structures. Adapted from the N.M. Stat. Ann. § 63-3-38 (2008).

NEW YORK

The commissioner of transportation of New York is responsible for reporting to the Governor and appropriate members of the legislature by the first of December each year on grade crossing projects that have been completed, those under construction, those ordered to be completed but not yet started, and the amount of money expended or expected to be expended on the projects.

The governing body of any municipality where a highway-rail grade crossing is located or any railroad that has tracks crossed at-grade by a highway is entitled to petition the Commissioner of Transportation to begin grade crossing elimination procedures. After issuing notice, the Commissioner is required to promulgate rules and regulations concerning the procedure to be followed at the hearing. After the conclusion of the hearing, the Commissioner can order elimination. The Commissioner's order can include any alterations, the location and method of crossing, the character of the structures and approaches, the type and extent of payment, the closing and discontinuance of the crossing and the divergence of traffic from an existing crossing to an existing or new highway, road or street crossing. The Commissioner may also order a change in the location of a railroad.

The mayor, or city manager and common council of any city, the president or mayor and trustees of any village, the town board of any town, or the board of supervisors and county executive of any county, who have jurisdiction over a street, avenue, highway, or road which crosses a railroad track, may bring a petition in writing to the commissioner of transportation, alleging that the public interest requires rehabilitation, an alteration in the manner or location of the crossing, a change in the existing structure, or the closure and discontinuance of a crossing. After proper notice to the affected parties, the commissioner may order that the changes be made. Adapted from the N.Y. Transp. Law § 222 (2008). See also, Section 223, concerning expenses for elimination and railroad improvements.

Whenever a highway crosses a railroad track at grade and such grade crossing is out of repair, if it is the judgment of the commissioner of transportation, the board of supervisors of a county, the board of aldermen of a city, the board of trustees of a village or the town superintendent of highways of a town, that the crossing should be repaired, the commissioner of

transportation, the board of supervisors of the county, the board of aldermen of a city, the board of trustees of a village, or the superintendent of a town, may repair and maintain the crossing and charge the expense to the railroad company, if after 15 days notice in writing to the railroad, the railroad neglects or refuses to make the repairs. Adapted from the N.Y. Highway Law § 51 (2008).

NORTH CAROLINA

The General Statutes of North Carolina, Chapter 136, Section 20, provides guidance on the elimination or safeguarding of at-grade crossings and inadequate underpasses or overpasses.

In addition to the power to order elimination, the Secretary of Transportation is also authorized to order grade separation and the installation and maintenance of gates, alarm signals, and other approved safety devices. Any such orders shall specify that the cost of construction of any underpass or overpass or the installation of safety devices is to be allocated between the railroad company and the department of transportation in the same ratio as the net benefits received by the railroad and the net benefits occurring to the public using the highway; but in no case shall the railroad be responsible for more than 10 percent. After any such order is issued by the Secretary, it will be the responsibility of the railroad to construct the grade separation and to install and maintain all safety devices.

Beginning January 1, 1995, if any railroad refuses to comply with any order of the Secretary, they shall be guilty of a Class 3 misdemeanor and may be fined not less than fifty dollars or more than one hundred dollars for each day in which they fail to comply.

From any order made by the Secretary, the railroad company has the right to appeal to the Superior Court of the county wherein the crossing is located. N.C. Gen. Stat. § 136-20 (e)-(g) (2008). See also, Section 136-18, for general powers of the Department of Transportation including the power to regulate, abandon and close grade crossings on any road designated as part of the state highway system.

Railroad crossings in the cities of North Carolina are regulated by the individual cities. A city has the authority to direct, control and prohibit the laying of railroad tracks and switches in public streets and alleys and to require that all railroad tracks, crossings and bridges be constructed so as not to interfere with ordinary travel or drainage patterns. The costs relating to construction, reconstruction and improvement of such streets and alleys are to be borne equally by the city and the railroad, but the costs of maintenance and repair after construction is the responsibility of the railroad.

A city has the authority to order the installation, construction, erection, reconstruction, and improvements of warning signs, gates, lights and other safety devices at grade crossings. The city is responsible for 90 percent of the cost, with the railroad responsible for the remaining 10 percent.

A city has the authority to order the elimination and separation of a grade crossing if the city council finds that the crossing constitutes an unreasonable hazard to vehicular or pedestrian traffic. N.C. Gen. Stat. § 160A-298 (a), (c), (d) (2008).

NORTH DAKOTA

Statutory authority for changing or eliminating railroad crossings lies with the public service commission. When it is desired, either by the public officials having the necessary authority, or by the railroad, to establish, vacate, or relocate any crossing of a public highway and a railroad or to separate grades, the parties may agree to do so. If they are unable to reach an agreement, either as to the necessity for establishing, vacating, or relocating a crossing, or for grade separation, regarding place, manner of construction or reasonable division of the expenses, either party may file a petition with the public service commission. The commission, after giving proper notice, shall conduct a hearing and issue its order. Adapted from the N.D. Cent. Code § 24-09-10 (2009).

The commission, either by its own motion, or upon written application made to it by the director of transportation, the board of county commissioners, the board of supervisors, or the railroad company, is empowered to investigate and determine whether any railroad grade crossing over any state, county, township, or municipal highway in the state is dangerous to life and property and needs protection. If the commission finds that such is the case, it may order the railroad grade crossing equipped in any manner it may find reasonable and proper, including grade separation. If the railroad company does not agree with the Commission's order, it may appeal, within thirty days of being served a copy of the order, to the district court of the county within which the crossing is located. Adapted from the N.D. Cent. Code § 24-09-08 (2009).

In order to promote public safety at intersections of railroad lines and all classes of highways, the North Dakota Department of Transportation has the authority to apportion costs of automatic grade crossing warning devices. One exception to the process occurs when, if under Section 24-09-08, the public service commission orders that any grade crossing be equipped with automatic grade crossing warning devices, the commission shall, in its order, apportion the cost thereof between the affected railroad, the political subdivision having jurisdiction of the highway involved, and the state of North Dakota. Costs are to be apportioned to any one or more of the parties on the basis of the respective benefit derived by highway users and the railroad from the installation of any crossing device. Adapted from the N.D. Cent. Code § 24-09-08 (2009).

OHIO

Statutory authority to order alterations and grade separations in Ohio lies with the various units of local government.

Ohio law provides that, if the legislative authority of a municipal corporation, or the board of county commissioners, and the board of directors of the railroad company are of the opinion that the security and convenience of the public require alterations to any such crossing, its approaches, or the location of the railroad, crossing or grades so as to avoid a crossing at grade, that crossing should be discontinued with or without building a new one. The board of

county commissioners has the same powers with respect to that part of a state, county, or township road, which lies within the limits of a municipal corporation as are conferred upon municipal corporations to alter or require to be altered, any railroad crossing and to apportion the cost between the county and the railroad.

The land required for an alteration in a street or highway necessitated by a proposed crossing improvement will be purchased by the municipal corporation or county. The land required to make the alteration in the railroad necessitated by the proposed improvement will be purchased by the railroad company. Adapted from the Ohio Rev. Code Ann. § 4957.04 (2009).

Railroad companies are required to build and keep in good repair crossings over or approaches to their tracks, sidetracks, and switches at all points where any public highway, street, land, avenue, alley, road, or pike is intersected by the tracks. The board of township trustees has the power to determine the kind, time and manner of constructing crossings and approaches outside municipal corporations. The legislative authority of a municipal corporation has the same powers with respect to crossings, approaches, and sidewalks within the municipality. Such crossings, approaches, and sidewalks are to be constructed, repaired, and maintained by the railroad companies. Every municipal corporation or other authority building a highway across an existing railroad will construct it above or below the grade of the railroad, unless allowed to build at-grade as provided by Sections 4957.30 to 4957.32. Unless otherwise agreed upon, 85 percent of the costs will be paid by the municipal corporation and 15 percent by the railroad company. In the case of rebuilding bridges or other structures, at or in line with a public street or highway and across a street, the cost of making the streets or highways conform to a new grade, with all damages to property abutting on them, is to be paid by the railroad company when the raising or building of its bridges or structures in the line of a street or highway results in it being at a greater height than was previously required. Ohio Rev. Code Ann. §§ 4955.20, 4957.29 (2009).

A municipal corporation may raise or lower the grade of any street it owns, either within or outside of its municipal limits, above or below railroad tracks and may require any railroad company operating across its streets to raise or lower the grade of its tracks. Municipal corporations may construct crossings above the tracks of a railroad and require the railroad company to construct crossings to be passed under its tracks. A municipal corporation may require the railroad to erect permanent piers, abutments or other appropriate supports in the crossings, streets, roads or alleys when, in the opinion of the legislative authority, raising or lowering is necessary. Adapted from the Ohio Rev. Code Ann. § 4957.10 (2009).

After the completion of crossing alteration within a municipality, crossings and approaches will be maintained as follows:

- (1) When the public road crosses a railroad by an overhead bridge, the cost of maintenance must be borne by the municipal corporation.
- (2) When the road passes under the railroad, the bridge and its abutments will be maintained by the railroad company. The public road and its approaches will be maintained by the municipal corporation. Adapted from the Ohio Rev. Code Ann. § 4957.24 (2009).

The cost of constructing a highway-rail grade crossing improvement, including the building of roads, crossings or viaducts above or below the tracks and the raising or lowering of the grades of the tracks and sidetracks, as required by the municipality, together with the cost of land purchased or appropriated and damages, will be borne 85 percent by the municipal corporation, and 15 percent by the railroad company. The railroad is entitled to deduct from its share of the expense the cost incurred in changing its grade as required by the municipal corporation or made necessary by its specifications; but only if the amount of expense or method for calculating it has been agreed upon in writing by the municipality and the railroad. Adapted from the Ohio Rev. Code Ann. § 4957.18 (2009).

The legislative authority of a municipal corporation may, by ordinance, prescribe the manner and time of payment that proportion of the cost of crossing improvement which the railroad company is required to pay. Adapted from the Ohio Rev. Code Ann. § 4957.19 (2009).

After the completion of a crossing alteration within a county, the crossings and approaches will be maintained as follows:

- (1) When the public road crosses a railroad by overhead bridge, the cost of maintenance must be borne by the county or the state as provided by law.
- (2) When the public road passes under a railroad, the bridge and its abutments will be maintained by the railroad company, in proportions fixed by agreement or the court of common pleas of the county in which the improvement is located. The public road and its approaches will be maintained by the county or the state, as provided by law. Adapted from the Ohio Rev. Code Ann. § 4957.06 (2009).

OKLAHOMA

The Oklahoma Corporation Commission has exclusive jurisdiction to determine and prescribe the particular location of highway-rail crossings, the amount and kind of warning devices required, the removal of all obstructions in view of such crossings, the altering or abolishment of any such crossings; and to require, where practicable, a separation of grade at any such crossing, either current or projected for the future. Adapted from the Okl. Stat. Tit.17 § 84 (2008).

The cost of construction and maintenance of public highway-rail grade crossings is borne by the affected railroad company. For above-grade or under-grade public highway crossings, the apportionment of cost and maintenance is left to the discretion of the corporation commission; but under no circumstances is the city, town, or municipality assessed with more than 50 percent of the actual cost of above grade or under grade crossings.

The corporation commission has the authority to designate certain crossings “extra hazardous” and to order the installation of appropriate warning devices. The installations are performed by the railroad. The Commission prescribes the division of the cost of the installation of signs, signals, gates or other warning devices between the railroad and the state or its political subdivision. In any case, the cost to the railroad will not be less than 10 percent nor more than

25 percent of the total costs. The railroads are responsible for all subsequent maintenance costs. Adapted from the Okl. Stat. Tit. 17 §§ 82-86 (2008).

All costs that become an obligation of the state will be paid from the state highway construction and maintenance fund. All costs that are made the obligation of a municipality or other subdivision will be paid from funds accruing to the various counties of the state under Title 68, Section 5-504(d). See also, Okl. Stat. Tit. 17 § 87 (2008).

Any railroad company may raise or lower any turnpike, plank road or other way in order to pass over or under the way, but they must put the roadway back in good repair as soon as possible. While raising, lowering or making any other alterations to such road which may obstruct it, the railroad must provide temporary ways to enable travelers to pass through the obstructions. Adapted from the Okl. Stat. Tit. 66, §§ 121-122 (2008).

Every railroad corporation must maintain all bridges and abutments, which the railroad constructs, in order to pass over or under any turnpike, road, or other way. Adapted from the Okl. Stat. Tit. 66, § 123 (2008).

OREGON

Oregon Law declares that it is the policy of the State of Oregon to achieve uniform and coordinated regulation of railroad-highway crossings and to eliminate crossings at grade whenever possible. To these ends, the authority to control and regulate the construction, alteration, and protection of highway-rail grade crossings is vested exclusively in the state and in the department of transportation. Adapted from the Or. Rev. Stat. § 824.202 (2008).

The department of transportation may, upon its own motion, or upon application by a railroad, the public authority in interest, subsequent to a hearing, unless a hearing is not required under Section 824.214, and after finding that such action is required by the public safety, necessity, convenience and general welfare:

- (1) Eliminate a grade crossing by relocation of the highway.
- (2) Alter or abolish any grade crossing, change the location thereof or require a separation of grades at any such crossing.
- (3) Alter or change any existing grade separation.
- (4) Require installation or alteration of protective or warning devices.

The department has authority to prescribe the time and manner of any such alteration, change or installation, and the terms and conditions thereof. Or. Rev. Stat § 824.206 (2008).

The permission of the department of transportation must first be secured before any highway is constructed across the tracks of any railroad at grade, or any track or tracks constructed across a highway at grade, except for the repair of lawfully existing roads and highways and the replacement of tracks. In either case, if the railroad company desires to cross any established and existing highway at grade, or any public authority desires to layout and

extend any highway over and across any established and existing railroad at grade, it must first file with the department of transportation its application setting forth the objections and difficulties of making such crossing, either above or below the grade of the existing highway or railroad.

After receiving the application, the department may schedule a hearing, unless one is not required. At a hearing, the department shall determine whether the public safety, public convenience and general welfare require a grade separation, and in the event the grade crossing is not required, determine whether the application should be refused or granted and any terms and conditions. If the grade crossing is approved, the department shall determine and prescribe the manner of its construction, maintenance and use, the kind and location of protective devices to be installed, the allocation of the costs, and the place of the crossing. Adapted from the Or. Rev. Stat. §§ 824.204–210 (2008).

Installation costs of protective devices, unless the parties agree otherwise are to be apportioned as follows:

- (1) At an existing crossing, a crossing relocated, or a crossing previously closed by order of the department of transportation and reopened:
 - (a) For devices to be installed at or in advance of the crossing and which are activated immediately in advance of, and during, each train movement over the crossing: 75 percent to the Grade Crossing Protection Account; 5 percent to the public authority in interest; and 20 percent to the railroad.
 - (b) For devices which are primarily designed for the purpose of illuminating the crossing or its approaches during the hours of darkness: Not less than 90 percent to the Grade Crossing Protection Account; not more than 5 percent to the public authority in interest; and not more than 5 percent to the railroad company.
 - (c) For all other protective devices: 75 percent to the Grade Crossing Protection Account; 25 percent to the public authority in interest for such devices to be installed by it at or in advance of the crossing; and 25 percent to the railroad company for such devices to be installed at the crossing. Adapted from the Or. Rev. Stat. § 824.242 (2008).

The statute requires that 100 percent of the maintenance costs shall be borne by the railroad if the devices were actually installed and maintained by the railroad company. One hundred percent shall be paid by the public authority in interest for devices at or in advance of the crossing actually installed and maintained by the authority. The costs shall be divided evenly between the railroad company and the public authority in interest in the case of devices installed and maintained by the public authority which are primarily designed for the purpose of illuminating the crossing during the hours of darkness and which are not activated immediately in advance of, or during, each train movement. Adapted from the Or. Rev. Stat. § 824.244 (2008). See also, Section 824.250 concerning apportionment where federal funds are available.

PENNSYLVANIA

The Public Service Commission of Pennsylvania is vested with exclusive power to appropriate property for, and regulate crossings. The Commission can determine and prescribe, by regulation or order, the points and manner in which crossings are to be constructed, altered, relocated, suspended, or abolished, and the manner and conditions in or under which such crossings shall be maintained, operated, and equipped, to effectuate the prevention of accidents and the promotion of public safety .

In determining the plans and specifications for any such crossing, the Commission may layout, establish, and open such new highways as, in its opinion, may be necessary to connect such crossing with any existing highway or make such crossing more available to public use. It may abandon or vacate such highways or portions of highways as, in the opinion of the Commission, may be rendered unnecessary for public use by the construction, relocation, or abandonment of any such crossing. The Commission may order the work of construction, relocation, alteration, quipping, suspension, or abolition of any crossing to be performed in whole or in part by any public utility (railroad) or municipal corporation concerned or by the Commonwealth. Adapted from 66 Pa. Cons. Stat. Ann. § 2702(b)-(c) (2009). See also, 52 Pa Code § 33.31 (2009).

Comment [SAM1]: Check this...can't find this statute

When any railroad is, or will be crossed at grade by a public road, street or highway, and the railroad company shall have constructed, or shall have been, or shall be constructed by others, with such company's consent, an under grade subway or an above grade bridge or crossing sufficiently near the public crossing to reasonably accommodate the traveling public, the Court of Quarter Sessions of the county in which the crossing is located, upon petition of the affected railroad company or other persons, may, if satisfied that the under grade subway or above grade bridge or crossing reasonably accommodates the traveling public, after notice to any corporation using or occupying the street proposed to be vacated, with tracks, wires, pipes or conduits, and by rule show cause to the supervisors if the crossing is in a township, or to the burgesses if the crossing is in a borough or city and after testimony, taken either in open court or by deposition, as the court may direct, order that the road, street or highway where it crosses the affected railroad at-grade and its approaches on both sides, shall be vacated and that the under grade crossing or subway or the above grade bridge or crossing and its approaches on both sides, substituted therefore, shall be a public highway and be maintained by the proper authorities. 36 Pa. Cons. Stat. § 2111 (2009).

RHODE ISLAND

The General Assembly of Rhode Island vests authority in the public utility commission to determine the point at, and the manner in which, any grade crossing of a railroad and street is constructed and the jurisdiction to determine whether any crossing should be altered, relocated, abolished, or eliminated, and the manner and conditions under which the crossings shall be maintained; even if the order of the commission has the effect of depriving a municipality of control of its streets. Adapted from the R.I. Gen. Laws § 39-8-1.1 (2008).

All railroads crossing any other railroad at-grade shall be operated at the crossing subject to and in accordance with, rules and regulations as prescribed by the Division of Public Utilities and Carriers of the Public Utility Commission. Adapted from the R.I. Gen. Laws § 39-8-6 (2008).

If a town council is of the opinion that it is necessary for the security of the public, in any town wherein a turnpike or highway is crossed by a railroad at grade, to raise or lower the turnpike or highway so as to separate the grade with the railroad, they may request the corporation owning the railroad to do so. If the railroad corporation neglects or refuses to do so, the town council may apply to the public utility commission. If the commission, after due notice and a hearing with the parties, decides that grade separation is necessary for the safety of the public, the railroad corporation shall comply with the decision. Either party, however, may petition the Rhode Island Supreme Court for relief. The Rhode Island Supreme Court has full authority to decide these issues.

The costs and expense of making the grade change shall be borne by the railroad corporation and the town requesting the change in proportions as may be decided by the court. If the railroad neglects or refuses to make the changes after order of the court, the town council may proceed to make the separation and may, in action against the railroad, recover all charges and expenses. R.I. Gen. Laws § 39-8-2 (2008).

The director of transportation also has statutory authority to improve an existing highway-rail grade crossing by adding automatic warning devices, relocating it, or rebuilding it if the improvements will increase the safety of the crossing and the highway. The director may eliminate the crossing by adjusting track and highway levels and constructing separation structures and connecting roadways, which are suitably located to serve all affected properties. The director may also close the highways at existing crossings so served, subject to approval of the railroad authorities and the Public Utilities and Carriers Division. For highway-rail grade crossings not on the state highway system, the improvements, construction, reconstruction, or closure shall also be subject to the approval of the town or city in which the work is to be performed. R.I. Gen. Laws § 24-8-10 (2008).

SOUTH CAROLINA

The public service commission is empowered to regulate and control, by special order in each case, the manner in which any street, street railway, or other railroad track may cross any railroad track, and the manner of constructing culverts under any railroad, so as to affect proper drainage of adjacent territory. Adapted from the S.C. Code Ann. § 58-17-1310 (2008).

The governing body of a county may authorize the construction of a highway or town way across a railroad previously constructed when it decides that the public convenience and necessity require such a crossing. After due notice to the railroad corporation, and a hearing with all interested parties, the governing body may construct the highway or town way, or may authorize a city or town, on the petition of the mayor and aldermen thereof, to construct a way across a railroad in such manner as not to injure or obstruct the railroad. Adapted from the S.C. Code Ann. § 58-17-1360 (2008).

With the exception of a street in any incorporated city or town, a railroad corporation may alter the course of a highway or other way for the purpose of facilitating crossing by a railroad or permit the railroad to pass at the side without crossing. A decree of the governing body of the county must first be obtained prescribing the manner and time of any such alteration. The railroad shall pay all damages occasioned to private property by the alteration, as in the case of land taken for its road. Adapted from the S.C. Code Ann. § 58-17-1340 (2008).

The South Carolina Department of Transportation is responsible for inspecting railroad crossings on state-maintained highways. The governing body of each county is responsible for inspecting railroad crossings on county-maintained roads. The governing body of each municipality is responsible for inspecting railroad crossings on road and street rights-of-way maintained by municipalities.

If any authorized person from any of these jurisdictions inspecting a railroad crossing finds that the required signs are not in place or maintained, or finds that a motorist's view of approaching trains is unsafely obstructed by vegetation, growth, or objects which are within the right-of-way of the railroad, the inspector must immediately notify the Deputy Director of Engineering with the South Carolina Department of Transportation. The inspector must also inform the state highway engineer if there is a STOP sign at the crossing and, if not, whether, in his opinion, one should be added. After receiving notice from the inspector on his findings, the department must give written notice of the hazard immediately, by certified mail, to any officer or registered agent of the railroad within the state. The department may order the railroad to erect, maintain or properly situate crossbucks, or to cut, or remove the vegetation, growth and objects not permanently affixed to realty that are obstructing a motorist's view. The department must also notify the governing body of any county or municipality of the inspector's opinion that a STOP sign be erected.

Removal or elimination of the obstructions must be made by the responsible railroad within 60 days of receipt of notice. Measures to assure that crossbucks are properly in place and maintained must be taken by the responsible railroad within 30 days of receipt of notice. However, if the crossbucks are not present or have been removed, then the railroad has 10 days from the time of the notice to erect crossbucks.

By January 1 of each year, counties and municipalities must report to the department, all railroad crossings that have been inspected during the preceding year, and at which no obstructions were found. The department must make an annual report of inspections conducted during the preceding year and provide that report to the Transportation Committee of the South Carolina Senate, and the Education and Public Works Committee of the South Carolina House of Representatives. Adapted from the S.C. Code Ann. § 58-17-1450 (2008).

All railroad companies must construct and maintain crossings meeting the requirements of the authorities responsible for such highways. This applies to both crossings at new highways and to crossings replacing those rendered obsolete or unnecessary by the relocation or improvement of existing highways or roads. Adapted from the S.C. Code Ann. § 58-15-2110 (2008).

In the case of highway-rail grade crossings involving state highways, the South Carolina Highway Department, after due notice to the railroad corporation, and a hearing with the affected railroad, shall have the power to specify the character of the crossing. The railroad company shall, at its own cost, construct and maintain the crossing to meet those specifications. Adapted from the S.C. Code Ann. § 58-15- 2120 (2008).

SOUTH DAKOTA

The department of transportation may determine, order, and prescribe the reasonable manner in which the tracks or other facilities of any railroad company(s) may be constructed at, above, or below grade across the track, or facilities of any other railroad company, public highway or street. The department also may determine, order, and prescribe the terms and conditions of installation, operation, maintenance, and equipping of all such crossings which may be constructed, including any watchman thereat, or the installation and regulation of lights, blocks, interlocking or other signaling systems, safety appliance devices, and such other means as determined by the department. Adapted from the S.D. Codified Laws Ann. § 31-27-2 (2008).

If a new right-of-way is necessary for the construction of a grade separation on a state or county highway, the governing body having jurisdiction over the highway is empowered to determine when it is necessary to eliminate the dangerous crossing. Adapted from the S.D. Codified Laws Ann. § 31-27-12 (2008).

If no right-of-way is needed for the building of a subway or overhead crossing on a state or county highway, the governing body having jurisdiction over the highway is empowered to determine when it is necessary to eliminate the crossing. Adapted from the S.D. Codified Laws Ann. § 31-27-7 (2008).

No crossings at, above, or below grade, may be established except under plans and specifications filed with the department of transportation. Plans and specifications for crossings do not require the approval of the department unless a controversy exists between the applicant and the railroad. Adapted from the S.D. Codified Laws Ann. § 31-27-3 (2008).

A railroad can raise or lower a public highway for a railroad crossing, except a highway within the limits of a municipality, for a railroad crossing. The railroad company must petition the board of county commissioners if the crossing is not a part of the state highway system, or the department of transportation, if it is a part of the state system. There must be a guarantee, on the part of the railroad, that the crossing is to be kept in as good repair and condition as before the alteration was made, and the railroad is to do this at its own expense. The grade approaching the crossing shall not exceed 10 percent at any point.

A railroad, while in the process of a grade separation, or while making any other alterations which obstruct a public highway, shall provide and keep suitable such temporary ways as necessary to enable traffic to avoid or pass the obstruction. S.D. Codified Laws Ann. §§ 49-16A-84-85 (2008).

Except within the limits of a municipality, the department of transportation and county commissioners may designate any hazardous railroad crossing as a “stop” crossing. The crossing shall be designated by placing a STOP sign at the point of stop, and such sign is to be preceded by a warning sign. Adapted from the S.D. Codified Laws Ann. § 31-28-17 (2008). See also, Section 32-29-7.

The expense of repairing, replacing, and maintaining all railroad and highway crossings, and all warning and safety devices, is to be determined by the department of transportation on the basis of the proportion of any benefits derived by railroad companies and the public authority in interest. Adapted from the S.D. Codified Laws Ann. § 31-27-19.1 (2008).

Every first or second class municipality has the power to require railroad companies to keep flagmen and maintain lights at railroad crossings of streets, and provide for the safety of persons and property; to compel them to construct, maintain, and operate gates at railroad crossings of streets when the keeping of a flagman is not sufficient protection; to compel them to raise or lower their tracks to conform to any grade which may be established by the municipality, and to keep such tracks on the level with the street or highway surface, so that such tracks may be crossed at any place on such street or highway; to require them to fence their railroads and construct and repair cattle guards, viaducts, or overhead crossings; and to provide for and change the location, grade, and crossing of any railroad; all subject to the powers vested in the public utilities commission. Adapted from the S.D. Codified Laws Ann. § 9-35-9 (2008).

Every municipality has the authority to require the railroad to make, keep open, and repair its crossings of streets and public roads. The municipalities may also require the railroads to make, keep open, and repair ditches, drains, sewers, and culverts along and under their tracks. Adapted from the S.D. Codified Laws Ann. § 9-35-8 (2008).

TENNESSEE

When any grade crossing is ordered to be eliminated by the commissioner of transportation, it is the duty of the affected railroad company to comply with the order within the specified time, by first submitting to the commissioner or the commissioner’s designee detailed plans and specifications along with estimates of the cost for the construction of a grade separation, including its approaches.

The affected railroad company has the right to appeal the order of the commissioner to the public service commission for an extension of time given to begin and complete the actual construction of the grade separation. If it finds that the financial condition of the affected railroad would be adversely affected, the public service commission is empowered to stay the order for any length of time not to exceed 2 years.

If the affected railroad fails to comply with the commissioner’s order for grade separation or fails to avail itself of the opportunity to appeal the order within 60 days from the date of the service of the order, the commissioner is empowered to proceed immediately with the construction of the separation and, upon completion, to assess one half of the cost of preparation of plans and estimates and one half of the cost of the work of construction against the affected

railroad company. All costs assessed in this manner will constitute a lien upon the physical properties of the railroad recoverable by suit. Adapted from the Tenn. Code Ann. § 65-11-109 (2008).

The commissioner of transportation may, by agreement or contract with a railroad company, apportion the work to be done in constructing a grade separation between the railroad company and contractors acting under the control and supervision of the commissioner, provided that, when any of the commissioner's contractors or employees are on the railroad's right-of-way, they are subject to railroad company rules and regulations for safety purposes. Adapted from the Tenn. Code Ann. § 65-11-110 (2008).

When an overpass, or underpass, is constructed on any state highway, the railroad company will maintain it, the approaches on its right-of-way, and any part of a structure not supported by fill; but not the surface of the highway. The flooring of the overpass supporting the surface of the highway, or constituting the surface of the highway, will be considered as a part of the structure to be maintained by and at the expense of the railroad company. The commissioner of transportation will maintain, out of public funds, any fill, approach to any crossing not on the railroad company's right-of-way, and the entire surface of the highway at all points. Adapted from the Tenn. Code Ann. § 65-11-112 (2008).

TEXAS

All railroad corporations in the State of Texas, which have or may fence their right of way, may be required to make openings or crossings through their fence and over their roadbed along their right of way every 1½ miles. Adapted from the Tex. Rev. Civ. Stat. Ann. Art. 6321 (2008).

A railroad must construct a grade crossing at such times and places as may be demanded by any two or more citizens of Texas who either live on or own land within five miles of the place where the crossing is being demanded. The demand must be made in writing to the railroad and must indicate when and where such crossing is desired. Adapted from the Tex. Rev. Civ. Stat. Ann. Art. 6322 (2008).

Every railroad company must place and keep that portion of its roadbed and right-of-way over or across any public county road in proper condition for the use of the traveling public. If it fails to do so for 30 days after written notice, it shall be liable to a penalty of ten dollars for each week the railroad company fails or neglects to comply. Adapted from the Tex. Rev. Civ. Stat. Ann. Art. 6327 (2008).

Every incorporated city or town, having a population of more than one hundred thousand inhabitants, is empowered and authorized to, acquire, construct, improve, enlarge, extend, maintain, repair, and replace any and all properties, improvements and facilities which the governing body deems to be necessary for the elimination of at-grade crossings of the streets in such city by railroad lines and for the relocation of railroad lines within the city so that the hazards to life and property will be decreased, public safety and convenience will be promoted, traffic conditions will be improved, and the orderly development of the city will be encouraged.

Adapted from the Tex. Transp. Code Ann. 317.003 (2008). See complete text of this section in Chapter 1, under “Texas” in this book.

(a) A railway company shall maintain the part of its roadbed and right-of-way that is crossed by a public street of a Type B general-law municipality in proper condition for use by travelers.

(b) A railway company that does not make needed repairs before the 31st day after the date the municipal marshal gives written notice to the section boss of the section where repairs are needed is liable to the municipality for a penalty of 25 dollars for each week the railway company does not make needed repairs. The municipality may sue to recover the penalty. Tex. Transp. Code Ann. § 471.001(2008).

(a) The department, for the purpose of acquiring, constructing, maintaining, and operating freight or passenger rail facilities and systems in [Texas], may:

(1) Use a street, alley, road, highway, or other public way of a municipality, county, or other political subdivision with the consent of that political subdivision; and

(2) At the expense of the department, relocate, raise, reroute, or change the grade of the construction of a street, alley, highway, road, railroad, electric line and facility, and other properties, whether publicly or privately owned, as necessary or useful in the construction, maintenance, and operation of a rail facility or system.

(b) The department shall provide reasonable notice to the owner of the applicable facility of the need for the alteration under Subsection (a)(2) and allow that owner the opportunity to complete the alteration. Tex. Transp. Code Ann. § 91.035(2009).

UTAH

The department of transportation has exclusive authority over highway-rail grade crossings in the state. this authority includes the power to determine and prescribe the manner, including the location, of the crossing, and the terms of installation, operation, maintenance, use and equipping of each crossing of one railroad by another railroad or street railroad, and of each crossing of a street, public road or highway by a railroad. In addition to the authority to abolish crossings, the department may order a separation of grades, the manner and terms upon which such separation shall be made and the division of expenses, whether it is between the affected railroads or between the railroads and the state, county, municipality, or other public authority in interest. Adapted from the Utah Code Ann. § 54-4-15 (2009).

Whenever the department finds that public convenience and necessity demand the establishment, creation or construction of a crossing of a street or highway, over, under, or upon the tracks of lines of any public utility, the department may, by order, decision, rule, or decree require the establishment, construction, or creation of such crossing; and such crossing shall thereupon become a public highway and crossing.

The public utility commission, however, retains exclusive jurisdiction for the resolution of any dispute upon petition by any person aggrieved by any action of the department under this section. Adapted from the Utah Code Ann. § 54-4-15 (2009).

The department of transportation, so as to promote the public safety, shall as prescribed, provide for the installing, maintaining, reconstructing, and improving of automatic and other safety appliances, signals or devices at grade crossings on public highways or roads over the tracks of any railroad or street railroad corporation in the state. Adapted from the Utah Code Ann. § 54-4-15.1 (2009).

VERMONT

The select board of a town within which a public highway crosses or is crossed by a railroad, or the general manager or attorney of a railroad corporation whose road crosses or is crossed by a public highway, may bring their petition in writing to the transportation board, alleging that public safety requires an alteration in such crossing, its approaches, the method of crossing, the location of the public highway, the elimination of such crossing, the closing of such public highway crossing and the substitution of another therefor, not at grade, or the removal of obstructions to the sight at such crossing, and praying that the same may be ordered, or such proceedings may be instituted by the agency of transportation or the board of its own motion and without petition. The board shall thereupon appoint a time and place for hearing the petition on notice of not less than 10 days to the petitioners, the railroad, the municipality in which such crossing is situated, the owners of the land adjoining such crossing, and adjoining that part of the highway to be changed in grade, and to the attorney general, who shall, by himself or herself or through the state's attorney of the county wherein the crossing is located, represent the interests of the state at such hearing. After such notice and hearing, the board shall determine what alterations, changes or removals, if any, shall be made and by whom. Vt. Stat. Ann. Tit. 5 §3783 (2008).

When the transportation board, in the absence of any application therefor, is of the opinion that the public safety requires an alteration in any highway crossed at grade by a railroad, or by railroads belonging to or operated by more than one corporation, or an alteration in lands or buildings thereon adjoining or near such highway at or near such crossing in order to afford proper view from the approaches to such crossing, in each direction, of the track or tracks of such railroad or railroads, after hearing had on notice of not less than 10 days to the corporation or corporations owning or operating such railroad or railroads, to the select board of the town within which such highway is situated, to the owners of the land adjoining such crossing and the owners of such land or buildings thereon adjoining, or near such highway as may be required for or materially affected by a proposed alteration, and to the attorney general, who, by himself or herself or through the state's attorney of the county in which such crossing is located shall represent the interests of the state, it may order

such alterations in such highway, and the removal of such obstructions to the view in each direction of the tracks of such railroads, as it deems best, and shall determine and direct by whom, at whose expense and within what time such alterations and removals shall be made. Vt. Stat. Ann. Tit. 5 § 3785 (2008).

A railroad may be laid out to cross a turnpike or other way if the transportation board judges it necessary. The railroad may raise or lower the turnpike or way, but must restore the turnpike or way as much as practicable so that it remains useful.

When a railroad corporation has constructed a railroad upon, over, or under the path of a town or state highway, the railroad will maintain and rebuild bridges, culverts, crossings, and other constructions, except bridges made for the accommodation, safety and convenience of public travel. Installations of new at-grade crossings, extensions of existing crossings, or the rebuilding of existing crossings required as a result of the building of any such extensions, when required for the accommodation, safety and convenience of the public travel, or for any reason except the accommodation of the railroad, will be done by the railroad corporation at the expense of the state. Adapted from the Vt. Stat. Ann. Tit. 5 § 3571 (2008).

When it becomes necessary to rebuild any existing bridge on a state highway that carries the public over railroad tracks, the state will rebuild the bridge and pay one-half the cost. The railroad whose track lies under the bridge will pay the other half. The state is responsible for maintaining, rebuilding, and repairing the bridge at its expense. If the rebuilding or reconstruction is made at the request of, and for the benefit of the railroad, the railroad is responsible for the entire cost.

Construction of new bridges carrying public highways over railroad tracks, and the rebuilding of existing bridges made necessary by highway improvement, increased usage or speed of motor traffic, shall be made by the state at its own expense, except when the additions and improvements are made at the request of and for the benefit of the railroads, in which case the added cost shall be borne by the railroad. Adapted from the Vt. Stat. Ann. Tit. 5 § 3572 (2008).

When a railroad has constructed its track across a public highway at-grade, the railroad is responsible for keeping the bridge and abutments in good repair and rebuilding them when necessary. If however, the improvement or rebuilding is necessitated by reason of highway improvement incident to increased load, usage or speed of motor vehicle traffic, the improvement or rebuilding shall be made by the railroad at state expense. Adapted from the Vt. Stat. Ann. Tit. 5 § 3573 (2008).

VIRGINIA

The Code of Virginia declares that it is the policy of the commonwealth that all crossings of one railroad by another, or a public highway by a railroad, or a railroad by a public highway, shall, whenever reasonably practicable, pass above or below the existing facility. Every railroad hereafter constructed across another railroad or across a public highway, and every public highway hereafter constructed across a railroad, shall, wherever it is reasonably practicable, and

does not involve an unreasonable expense, all the circumstances of the case considered, pass above or beneath the existing structure at a sufficient elevation or depression, as the case may be, with easy grades, so as to admit of safe speedy travel over each.

If constructing a crossing wither above or below the existing structure is not practical and involves an unreasonable expense, the responsible governing body constructing a new public crossing at grade, in accordance with the laws of the Commonwealth of Virginia, shall take precautions to provide for the safe movement of traffic. It is the declared policy of the Commonwealth to limit the number of new public at grade crossings and to eliminate unnecessary crossings. Adapted from the Va. Code Ann. § 56-363 (2009).

Whenever the public safety requires that an existing crossing of a railroad by a public highway at grade be eliminated, or that multiple grade crossings be consolidated, either the public road authority or the affected railroad may petition the commonwealth transportation board to provide funding for, and to require the elimination of the existing crossing, as a condition of participating in the funding. Upon a finding that the public safety requires elimination of the existing grade crossing, and the commonwealth transportation board funds are available for the improvement, the commonwealth transportation board may order the elimination of the crossing or the consolidation of multiple grade crossings. The affected railroad may contribute to the cost of eliminating or consolidating grade crossings. The commonwealth transportation board may apply for, receive, and contribute, any available federal, or other funds for the elimination or consolidation of grade crossings. Adapted from the Va. Code Ann. § 56-365.1 (2009).

Whenever a road in the state highway system or a public highway maintained by a locality 1) crosses a railroad, 2) is projected across a railroad, or 3) is to be so changed as to cross a railroad, or an existing overpass or underpass crossing of any such road and a railroad is in need of widening, strengthening, remodeling, relocating, or replacing, and funds are (or are to be) allocated by the commonwealth transportation board or public road authority for payment of the locality's or state's portion of the cost of constructing such an overpass or underpass structure or for widening, strengthening, remodeling, relocating or replacing such an existing structure, the commonwealth transportation commissioner or representative of the public road authority may agree with the railroad company or companies involved, on such terms and conditions as he shall deem in the best interests of the commonwealth or locality regarding the plans and specifications, the method and manner of construction and the division of costs and maintenance responsibility of any such separation of grade structure.

In the event the commonwealth transportation commissioner, the public road authority, and the railroad company or companies involved are unable to agree on 1) the necessity for the construction of such underpass or overpass structure or for the widening, strengthening, remodeling, relocating or replacing of any existing overpass or underpass structure, 2) the plans and specifications for and method or manner of construction thereof, or 3) the portion of the work, if any, to be done and the share of the cost of such project, if any, to be borne by each of the railroad company or companies involved, the commonwealth transportation commissioner or the public road authority shall petition the state corporation commission setting forth the plans and specifications for and the method and manner of construction of such projects and the facts

which in his opinion justify the elimination of the crossing, the erection of a new separation of grade structure or the widening, strengthening, remodeling, relocating or replacing of an existing structure and the maintenance responsibility. Copies of the petition and the plans and specifications shall forthwith be served on the railroad company/s by the state corporation commission. Within 20 days after service on it, the railroad company or companies shall file an answer with the state corporation commission setting out its objections to the proposed project and the commission shall hear and determine the matter as other matters are heard and determined by that body. The commission shall consider all the facts and circumstances surrounding the case and shall determine (a) whether public necessity and convenience justifies or requires the construction of such new separation of grade structure or whether an existing structure is so dangerous to or insufficient to take care of traffic on the highway as require the widening, strengthening, remodeling, relocating or replacing proposed, (b) whether he plans and specifications or method and manner of construction are proper and appropriate, and (c) what portion of the work, if any, to be done and what share of the costs of such project, if any, to be borne by each of the railroad company or companies involved (excluding the cost of right-of-way) is fair and reasonable, having regard to the benefits, if any, accruing to such railroad or railroads from the elimination of such grade crossing or the widening, strengthening, remodeling, relocation or replacing any existing overpass or underpass structure, and either dismiss the proceeding as against the railroad company or companies involved or enter an order deciding and disposing of all of the matters hereinbefore submitted to its jurisdiction.

Grade crossings shall be closed when replaced by a new public highway. However, the commonwealth transportation board, or the public road authority, may authorize the continued use of the crossing for a period of two years following the construction of the new highway to familiarize the public with the new route. Adapted from the Va. Code Ann. § 56-366.1 (2009).

At every highway-rail grade crossing, it is the duty of the railroad company to maintain the crossing to the full width of the public road. The railroad must also maintain that portion of the highway located within two feet on either side of the extreme rail. Adapted from the Va. Code Ann. § 56-405 (2009).

Whenever the commonwealth transportation commissioner, or representative of the appropriate public road authority determines that it is in the best interest of the public to assist a railroad in its grade crossing maintenance and repair activities, he or she is authorized to enter into an agreement with the railroad company for the repair or maintenance of any crossing of a railroad and a public highway or for the sale of materials to the railroad company for the repair and maintenance of any such crossing. Any such agreement shall provide for the railroad company to bear the cost of the repair or maintenance or material furnished and such other conditions as the commonwealth transportation commissioner or representative of the appropriate public road authority deems necessary or advisable to protect the interest of the public. Adapted from the Va. Code Ann. § 56-405.1(2009).

WASHINGTON

Washington law provides that when practicable, all railroads and extensions of railroads hereafter constructed shall cross existing railroads and highways by passing either over or under

the same, and shall in no instance cross any railroad or highway at grade without authority first being obtained from the Washington State Utilities and Transportation Commission. In determining whether a separation of grades is practicable, the Commission shall take into consideration the amount and character of travel on the railroad and on the highway; the grade and alignment of the railroad and highway; the costs of separating grades; the topography of the country, and all other circumstances and conditions naturally involved in such inquiry. Adapted from the Wash. Rev. Code § 81.53.020 (2008).

The Washington State Utilities and Transportation Commission shall conduct an investigation of a proposed at-grade crossing upon receipt of a written petition from a railroad company, county or municipal authority, describing why the particular crossing cannot be grade separated upon at least 10 days' notice to the railroad and the county or city affected of the time and place of the investigation. If the highway involved is a state road or parkway, the Secretary of Transportation or the state parks and recreation commission shall be notified of the time and place of the hearing. If the commission finds that it is not practicable to cross the railroad or highway, either above or below grade, it shall enter a written order granting the right to construct a grade crossing at the point in question.

In its order authorizing a grade crossing or at any subsequent time, the commission may also provide that the railroad company install and maintain proper signals, warnings, flagmen, interlocking devices or other means to secure public safety. Adapted from the Wash. Rev. Code § 81.53.030 (2008).

When the Secretary of Transportation, the governing body of any city, town or county, or any railroad company whose track is crossed by any highway determines that public safety requires signals or warning devices other than sawbuck signs (crossbucks) at any at-grade crossing of a railroad by any highway, road, street, alley, avenue, boulevard, parkway, or other public place currently open and in use or to be opened, they may file a petition in writing with the utilities and transportation commission alleging that public safety requires the installation of specified signals, other warning devices, or specified changes in the method and manner of existing crossing warning devices. After receiving any petition, the commission will set the matter for hearing, giving at least twenty days' notice to the parties in interest. As a result of the hearing, the commission may decide for or against the requested changes. If the commission determines that public safety requires the installation of such signals or other warning devices, or some form of modification in the existing warning device is needed, it may enter an order to that effect. The commission may also apportion the entire cost of installation and maintenance of any signals or other warning devices. Adapted from the Wash. Rev. Code §§ 81.53.261-271 (2008).

The petition shall set forth by description the location of the crossing or crossings, the type of signal or other warning device to be installed, the necessity from the standpoint of public safety for such installation, the approximate cost of installation and related work, and the approximate annual cost of maintenance. If the commission directs the installation of a grade crossing protective device and a federal-aid funding program is available to participate in the costs of such installation, both installation and maintenance costs of the device shall be apportioned in accordance with the provisions of Section 81.53.295 of the code.

No railroad shall be required to install any such signal or other warning device until the affected public body has either paid or executed its promise to pay to the railroad its portion of the estimated cost. Adapted from the Wash. Rev. Code § 81.53.261 (2008).

Section 81.53.281 of the Revised Code of Washington provides for the establishment, within the state treasury, of a "Grade Crossing Protective Fund," for installation and maintenance of crossing signals or other warning devices. Wash. Rev. Code § 81.53.281 (2008).

Whenever federal-aid highway funds are available and are used to pay a portion of the cost of installing a grade crossing protective device, and related work, at a railroad crossing of any state highway, city or town street, or county road at the then prevailing federal-aid matching rate, the grade crossing protective fund shall pay 10 percent of the remaining cost of such installation and related work. The state or local authority having jurisdiction of such highway, street, or road shall pay the balance of the remaining cost of such installation and related work. The railroad whose road is crossed by the highway, street, or road shall thereafter pay the entire cost of maintaining the device. Adapted from the Wash. Rev. Code § 81.53.295 (2008).

WEST VIRGINIA

When a railroad crosses any state road, the railroad corporation is required to keep its own roadbed and the bed of the road or highway at such crossing in proper repair or else to construct and maintain an overhead or under grade crossing subject to the approval of the state road commissioner. The tracks at such crossings are to be constructed so as to give a safe approach to the crossing. When the construction of such approaches is made necessary by a change in the railroad grade at the crossing, the cost will be borne by the railroad company. Adapted from the W. Va. Code § 17-4-8 (2008).

After the construction of a grade separation where a state highway is carried over a railroad, the state will maintain the highway and structures supporting it and the railroad will maintain its tracks. Where a state highway passes under a railroad, the state will maintain the highway and the railroad company will maintain its roadbed, the tracks and the structures supporting the same. The state will pay for repair or replacement of any part of the supporting structure which is damaged or destroyed by highway traffic and the railroad company will bear the cost of repairing or replacing any part of the supporting structure which is damaged or destroyed by railroad traffic. Adapted from the W. Va. Code § 17-4-17 (2008).

The state road commissioner has the same authority and may follow the same procedure in the relocation and reconstruction of existing grade separation structures. The cost and maintenance provisions shall be the same. Adapted from the W. Va. Code § 17-4-17a (2008).

Every railroad company that has changed or will change the grade or location of any county-district road is responsible for putting the road in as good condition and repair and on as practical a grade as the road was before its change. If the road, after construction, becomes damaged or is caused to be damaged by reason of the construction of any railroad, the railroad company responsible shall be liable for all damages occasioned thereby and for all costs incurred

in repairing and keeping in repair the road so damaged. Adapted from the W. Va. Code § 17-16-8 (2008).

WISCONSIN

The Wisconsin Department of Transportation, upon petition by the city council, village board, town board, superintendent of highways, five or more electors in any town, village or city or any railroad corporation or railroad historical society, has the authority to determine whether a public highway-rail grade crossing provides for and promotes public safety. The office of the commissioner of railroads may investigate and issue an appropriate order without a public hearing. If any of the parties in interest object to the order, they may request a hearing within twenty days from the order. During the hearing, the office shall determine whether the existing warning devices at such crossing are adequate to protect and provide for public safety. If the office determines, either without or after a hearing, that the existing devices are not adequate, it may order the railroad company or railroad historical society to keep a flagman at the crossing or to install automatic signals or other suitable safety devices at specific locations at such crossing. The office may also order the relocation of existing signals and devices to improve safety at a crossing.

The cost of purchasing and installing any signal or other crossing warning device is to be borne by the department of highways. The cost of maintaining ordered crossing warning devices is the responsibility of the railroad or railroad historical society. However, any railroad or railroad historical society that incurs expenses for maintenance of signals or other safety devices may file a claim for reimbursement with the department of highways regardless of the date of installation of the signals or devices. The department shall, at the close of each fiscal year, reimburse claimants for 50 percent of the costs as determined by the office, incurred for maintenance of railroad crossing warning devices. Adapted from the Wis. Stat. §195.28 (2009).

If the department of highways determines that the construction or reconstruction of a grade separation or the rearrangement or elimination of a crossing is necessary in the interest of public safety or convenience, it will make a plan for the proposed construction, make an estimate of the costs and try to reach an agreement with all interested parties as to a division of costs. If the Department is unable to agree with the parties as to payment of cost, work or maintenance of the same, it will present the matter to the office of the commissioner of railroads. The commissioner, after proper notice and hearing, shall specify the portion of the cost for construction and maintenance which is to be paid by the persons or corporations concerned and the portion of the cost, if any, to be paid by the public from the transportation fund. The office of the commissioner of railroads shall determine the benefits, if any, to other highways and apportion and charge to the units of government responsible for the construction of such other highways a fair portion of the cost. Adapted from the Wis. Stat §84.05 (2009).

WYOMING

The Wyoming Transportation Commission, after receiving application from duly authorized agents of the cities, counties, other government entities, the affected railroad, or upon its own motion, when public interest clearly indicates that action must be taken, will hear

evidence and, based upon a priority rating from the applications, will assign priority to the most dangerous crossings and order grade crossing safety improvements. The order shall include the type of crossing warning devices required, and whether the crossing is to be at-grade or grade separated. If the crossing is at grade, the commission will determine the kind and type of grade crossing warning signals and devices required. If the crossing is to be grade separated, the commission will determine the type of grade separation structure. Adapted from the Wyo. Stat. § 37-10-102 (2009).

The commission has a duty to apportion the costs and expenses of installing or reconstructing such crossings and safety devices between the railroads and the state highway department or the county, city, or other entity affected in proportion to the respective benefits to be derived. The commission will limit the amount charged against the railroad to a maximum of 33 1/3 percent of the costs of the total project for installing or reconstructing such crossings and safety devices. With respect to the initial installation of grade separation structures at existing railroad public highway crossings, the commission first determines if all federal sources of funding have been exhausted. The commission apportions the remaining costs between the railroad and the state highway department or the county, city or other entity involved, based upon the causes resulting in the need for such grade separation structures. Adapted from the Wyo. Stat. § 37-10-103 (2009).

A railroad company has the authority to raise or lower any county road or other public highway for the purpose creating a grade separation. Repair or reconstruction of roads or highways is to be expeditiously completed. While so engaged in grade separation, or in making any other alteration which may obstruct the public way, the railroad company is responsible for providing and maintaining suitable temporary ways to enable travelers to avoid or pass obstructions. Adapted from the Wyo. Stat. § 1-26-811 (2009).

The transportation commission is charged with the administration of the highway crossing protection program. In order to compensate for the cost of crossings by the public generally, the commission shall also order that the part of the cost of installing, reconstructing or improving signals or devices as will not be paid by the railroad corporation, be divided between the state highway crossing protection account and the department of transportation or the city, town, county, or other political entity in which the crossing is located. The commission shall fix in each case the amount to be paid from the crossing protection account and the amount to be paid by the department or by the city, town, county, or other political entity. The railroads are responsible for all costs of maintaining in good operating condition all such safety devices. The governmental agency or city, town, or other political entity with jurisdiction over the grade separated crossing has the responsibility for all maintenance costs for grade separation structures. Adapted from the Wyo. Stat. § 37-10-104 (2009).

CHAPTER 3: BLOCKED CROSSINGS

CHAPTER OVERVIEW

This chapter provides a state-by-state survey of statutory provisions concerning the blocking of crossings by railroads, exceptions to the law, and the penalties imposed when they are listed. The great majority of states place restrictions on the amount of time a highway-rail grade crossing can be blocked. The time allowed for blocking varies, but in no case does it exceed more than 20 minutes. A number of states list an exception for emergencies or circumstances beyond the control of the railroad company. That is not to say that the individual cities and towns within those states with no relevant statute do not have an ordinance restricting the blocking of highway-rail grade crossings within their jurisdictions because they do. Interested readers should consult the laws and ordinances of the individual counties and municipalities.

STATE LAWS, REGULATIONS AND PENALTIES

ALABAMA

No applicable statute related to this topic.

ALASKA

No applicable statute related to this topic.

ARIZONA

Arizona allows a train to block a crossing for 15 minutes. It makes an exception for emergencies, unavoidable accidents, or circumstances beyond the control of the railroad company. Adapted from the Ariz. Rev. Stat. Ann. Tit. 40-852 (2009).

Penalty

A violation of this section is a Class 2 misdemeanor. See Ariz. Rev. Stat. § 40-852 (2009).

ARKANSAS

No applicable statute related to this topic.

CALIFORNIA

No applicable statute related to this topic

COLORADO

No applicable statute related to this topic.

CONNECTICUT

No applicable statute related to this topic.

DELAWARE

Delaware law allows trains to block crossings for no more than 10 minutes at a time, although exceptions may be made for emergencies. Adapted from the Del. Code Ann. Tit. 17 § 701 (2009).

Penalty

A railroad in violation may receive a fine of not less than \$500 and not more than \$1,000 for the first conviction and not less than \$1,000 nor more than \$2,000 for each subsequent conviction occurring within a year. See Del. Code Ann. Tit.17 § 701(c) (2009).

DISTRICT OF COLUMBIA

District of Columbia law states that the directing officer or operator of any railroad train may not block any street for more than 5 minutes at a time. This does not apply to trains or cars in motion other than those engaged in switching. Adapted from the 18 DCMR § 2211.7 (2009).

No highway or railway crossing in the District of Columbia on which tracks of steam railroad are laid may be obstructed by any train, locomotive, car, or crossing gates for a period longer than 5 minutes, nor shall a train, locomotive, car, or cars, be parked or stored on a street for an unreasonable amount of time. Adapted from the 24 DCMR § 120.7 (2009)

Penalty

The District of Columbia Code of Municipal Regulations does not list a specific penalty; only that the supervisor of tracks, or yardmaster, shall be held liable and subject to prosecution for obstructions by crossing gates when, by his or her order, they are kept down for a longer time than is permitted by the regulations. See 24 DCMR § 120.8 (2009).

FLORIDA

Florida law provides that, whenever a railroad train is engaged in a switching operation or stops so as to block a public highway, street, or road at any time from one-half hour after sunset to one-half hour before sunrise, the crew of the train has the responsibility to place a lighted fusee or other visual warning device in both directions from the train or at the edge of the pavement of the highway, street or road to warn approaching motorists.

This requirement does not apply to grade crossings where automatic warning devices are properly functioning or at which there is adequate lighting. Adapted from the Fla. Stat. Ann. § 351.03(5) (a) (2009).

Another section of the code provides that, except for trains or equipment stopped due to mechanical failure where separation or movement is not possible, any train or equipment that has come to a complete stop and is blocking a railroad-highway grade crossing must be cut, separated, or moved, to clear the crossing upon the approach of any emergency vehicle. Adapted from the Fla. Stat. Ann. § 351.034 (2009).

Penalty

A violation of Section 351.03(5)(a) is a misdemeanor of the second degree, and punishable as provided in Sections 775.082 and 775.083, of Florida Statutes Annotated.

GEORGIA

Georgia law provides that no member of a train, yard, or engine crew of a railroad will be held personally responsible for, or found guilty of, violating any laws or ordinances regarding the blocking of roads or streets upon reasonable proof that any blocking was necessary to comply with the orders or instructions of the employer or supervisory officials of the railroad company. Adapted from the Ga. Code Ann. § 46-8-197 (2009).

HAWAII

No applicable statute related to this topic.

IDAHO

Idaho law provides that no person or government agency operating a train will do so in a manner so as to prevent vehicular use of any highway for a period of time in excess of fifteen consecutive minutes. Idaho Code § 49-1425 (2008).

The specific statute lists a number of exceptions:

- 1) When necessary to comply with signals affecting the safety of the movement of trains.
- 2) When necessary to avoid striking any object or person on the track.
- 3) When the train is stopped to comply with a government safety regulation.
- 4) When the train is disabled.
- 5) When the train is in motion, except while engaged in switching operations.
- 6) When there is no vehicular traffic waiting to use the crossing.

ILLINOIS

It is unlawful in Illinois for a railroad company to permit any train, railroad car, or engine to obstruct public travel at a highway-rail grade crossing for a period in excess of 10 minutes,

except where the train is continuously moving or cannot be moved due to circumstances beyond the railroad's control. Adapted from the 625 ILCS 5/18c-7402 (b) (2008).

Every railroad has the responsibility to operate in such a manner as to minimize obstructions of emergency vehicles at crossings. If any such obstruction occurs and the train crew is aware of the obstruction, the crew is to take immediate action, consistent with safe operating procedures, to remedy the situation. Adapted from the 625 ILCS 5/18c-7402(a) (2008).

In a county with a population of greater than 1 million, as determined by the most recent federal census, during the hours of 7:00 a.m. to 9:00 a.m., and 4:00 p.m. to 6:00 p.m., it is unlawful for a rail carrier to permit any single train or railroad car to obstruct public travel at a highway-rail grade crossing in excess of a total of 10 minutes during a 30-minute period, except where the train or railroad car cannot be moved by reason or circumstances over which the rail carrier has no reasonable control. Under no circumstances will a moving train be stopped for the purposes of issuing a citation related to this Section. Adapted from the 625 ILCS 5/18c-7402 (2008)

Penalty

A violation is a petty offense and a fine is affixed of not less than \$200 hundred nor more than \$500 if the duration of the obstruction is in excess of 10 minutes but no longer than 15 minutes. If the duration exceeds 15 minutes, the violation shall be a business offense and the following fines may be imposed:

- (1) If the duration of the obstruction is in excess of 15 minutes but no longer than 20 minutes, the fine is \$500.
- (2) If the duration is in excess of 20 minutes but no longer than 25 minutes, the fine shall be \$700.
- (3) If the duration is in excess of 25 minutes, but no longer than 30 minutes, the fine shall be \$900 dollars.
- (4) If the duration is in excess of 30 minutes but no longer than 35 minutes, the fine shall be \$1,000.
- (5) If the duration of the obstruction is in excess of 35 minutes, the fine shall be \$1,000 plus an additional \$500 for each 5 minutes of obstruction in excess of 25 minutes. See ILCS 5/18c-7402 (2008).

INDIANA

Indiana law prohibits trains from blocking crossings for more than 10 minutes, except in circumstances where the train, railroad car, or engine, cannot be moved and for which the railroad company has no control. Adapted from the Ind. Code Ann. § 8-6-7.5-1 (2009).

Indiana requires that there be vehicular traffic waiting to use the crossing. It is unlawful to permit successive train movements to obstruct vehicular traffic previously delayed by train

movements that has been cleared for a period of 5 minutes between train movements. Adapted from the Ind. Code Ann. § 8-6-7.5-2 (2009).

Penalty

Any railroad corporation, conductor, or engineer who violates the statute commits a Class C infraction. However, no conductor or engineer acting under orders or within the rules of the railroad corporation, may be prosecuted for such a violation. See Ind. Code Ann. § 8-6-7.5-3 (2009). See also, Section 34-4-32, for infraction and ordinance violation enforcement proceedings.

IOWA

Iowa law prohibits the blocking of a crossing by a railroad corporation or its employees for a period of time in excess of 10 minutes except under the following circumstances:

- (1) When necessary to comply with signals affecting the safe movement of trains.
- (2) When necessary to avoid striking an object or person on the track.
- (3) When the train is disabled.
- (4) When necessary to comply with government safety regulations, including but not limited to, speed ordinances and regulations.

Iowa also permits a political subdivision to pass an ordinance regulating the length of time a specific crossing may be blocked provided the political subdivision can demonstrate that such an ordinance is necessary for public safety or convenience. Adapted from the Iowa Code § 327G.32 (2008).

Penalty

Any officer or employee found guilty of violating the section is, upon conviction, subject to a schedule “2” penalty. See Iowa Code § 327G.32 (1999).

KANSAS

Kansas prohibits trains from blocking crossings for more than 10 minutes without leaving an opening in the traveled portion of the roadway of at least 30 feet. Adapted from the Kan. Stat. Ann. § 66-273 (2008).

Penalty

A violation is a misdemeanor and the penalty is as follows:

- (1) Fifty dollars if the blocking is for more than 10 minutes but less than 20 minutes.
- (2) One hundred fifty dollars if the blocking is for more than 20 minutes but less than 30 minutes.
- (3) Three hundred dollars if the blocking is for more than 30 minutes.

The statute provides that no one may be held personally responsible if it can be shown that he was acting due to circumstances beyond his control or as a result of orders issued by a superior or the railroad. See Kan. Stat. Ann. § 66-274 (1999).

KENTUCKY

Kentucky law permits trains to block crossings for no more than 5 minutes at any one time. Moving trains are exempted and other exceptions are made for emergencies or circumstances beyond the control of the railroad. Adapted from the Ky. Rev. Stat. Ann. § 277.200 (2008).

Penalty

Any railroad company that violates the provisions of the section shall be fined not less than \$25 or more than \$100 for each offense. If a grade crossing or drawbridge is obstructed by two or more trains stopping and standing thereon in succession without allowing accumulated highway or water traffic to pass, the obstruction by each successive train constitutes a separate offense. See Ky. Stat. Ann. § 277.990 (7) (2008).

LOUISIANA

Louisiana has two statutes that pertain to blocked crossings. The Louisiana Department of Transportation and Development has full responsibility to promulgate rules and regulations for the implementation and administration of the obstruction statute.

A. (1) It is unlawful in Louisiana for any train, railroad car or equipment, or engine, to obstruct vehicular traffic at a public highway railroad grade crossing for more than twenty consecutive minutes, except when moving or when movement is prevented by any of the following:

- (a) A power brake failure or other mechanical failure.
- (b) Enforcement of the Hours of Service Act.
- (c) Derailment or other accident.
- (d) A directive of the Federal Railroad Administration.
- (e) Circumstances over which the railroad company or carrier has no reasonable control, such as a natural disaster or acts of third parties.

(2) No employee performing his duties under the operating rules or orders of the railroad company or carrier or its supervisory personnel may be prosecuted for any violation of this section.

Penalty

The statute allows for an incremental fine system based on the duration of the obstruction:

- (a) A duration in excess of 20 minutes; but not longer than 25 minutes, the fine shall be not less than \$200 or more than \$500.
- (b) A duration in excess of 25 minutes, but not longer than 30 minutes, the fine shall be \$500.
- (c) A duration in excess of 30 minutes, but no longer than 35 minutes, the fine shall be \$700.
- (d) A duration in excess of 35 minutes, but no longer than 40 minutes, the fine shall be \$900.
- (e) A duration in excess of 40 minutes, but no longer than 45 minutes, the fine shall be \$1,000.
- (f) A duration in excess of 45 minutes will result in a fine of \$1,000 plus an additional \$500 for each 5 minutes of obstruction in excess of 45 minutes. However, the maximum fine can not exceed 5,000 for an obstruction which occurs within a 24-hour period.

B. (1) Every railroad within the state shall be operated in such a manner as to minimize obstruction of emergency vehicles at public grade crossings.

(2) Upon receiving notification from a law enforcement officer, member of a fire department, operator of an emergency vehicle, or a member of an emergency services provider, that emergency circumstances require the clearing of a public highway railroad grade crossing, the member of the train crew of the train, railroad car or equipment, or engine blocking such crossing shall immediately notify the appropriate railroad dispatcher of the pending emergency situation and request the clearing of the crossing, consistent with the safe operation of the train.

Every railroad dispatcher or other person responsible for the movement of a train, railroad car or equipment, or engine in a specified area who receives notification that a train, railroad car or equipment, or engine is obstructing the movement of an emergency vehicle at any crossing within such area shall immediately notify the train crew through use of existing communication facilities. Upon notification, the train crew shall take immediate action.

C. (1) Any person riding upon a train, railroad car or equipment, or engine which is running, through or within Louisiana, who is accountable for the movement of the train, car or equipment, or engine, shall keep on his person or upon the train, railroad car or equipment, or engine written identification of the person, corporation, firm, or agent by whom he is employed.

(2) It shall be the responsibility of any railroad company or carrier operating any railroad, engine, or train within Louisiana to inform the chief law enforcement officer of each parish or municipality in which it operates of the telephone numbers of the railroad dispatch center having jurisdiction over such railroad, engine, or train in the parish or municipality. The information shall be updated every six months.

D. Any railroad or public agency may, by formal application to the department of transportation and development, request a variance from the requirements of this section or have different regulations provided in connection with operation over a specific crossing where local

conditions require. The application shall list any public agencies within the geographic area or any railroads which may be affected by the variance and shall detail any previous steps which may have been taken in an attempt to reach an agreement on or alternative to the proposed variance. See La. Rev. Stat. Ann. § 48:391 (2008). See also. Section 48:392 which is essentially the same statute.

MAINE

No applicable statute related to this topic.

MARYLAND

No applicable statute related to this topic.

MASSACHUSETTS

Massachusetts law expressly prohibits trains from blocking crossings for more than 5 minutes. Mass. Ann. Laws Ch. 160 § 151 (2009).

Penalty

A railroad corporation or employee thereof who violates the statute shall forfeit not less than \$200 or more than \$500. See Mass. Ann. Laws Ch. 160 § 151 (1999).

MICHIGAN

Michigan law prohibits trains from obstructing vehicular traffic at a public street or highway for no longer than 5 minutes at any one time. An exception is allowed for continuously moving trains at not less than 10 mph in the same direction for a period up to 7 minutes. Exceptions are also made when the railroad can show that the blocking occurred because of a verifiable accident, mechanical failure or unsafe condition.

The law also does not permit successive train movements to obstruct vehicular traffic on a public street or highway until all vehicular traffic previously delayed by train movements has been cleared.

The statute also prohibits railroad employees from allowing the activation of active traffic control devices at railroad grade crossings for more than 2 minutes if there is no intention to move a train or track equipment through the crossing within 20 seconds to 60 seconds after the activation of the devices. Mich. Comp. Laws Ann. § 462.391 (2009).

Penalty

Each offense under the section is a separate violation, punishable by a fine of not more than \$500 unless the railroad is willfully, deliberately, and negligently blocking the crossing, in

which case the fine shall be not more than 1,000 plus the cost of prosecution. See Mich. Comp. Laws Ann. § 462.391 (2009).

MINNESOTA

No railroad corporation shall permit a public road or street crossing a railroad track to be closed for traffic by a standing car, train, engine, or other railroad equipment, or by switching movement which continuously blocks a crossing for longer than 10 minutes. This section does not apply to cities of the first class which regulate obstruction of streets through ordinances. Adapted from the Minn. Stat. § 219.383 (3) (2008).

Penalty

Any railroad violating this section is guilty of a petty misdemeanor. A second or subsequent violation is a misdemeanor. See Minn. Stat. 219.383(4)(2008).

MISSISSIPPI

Mississippi allows a train to block a highway crossing for a maximum of five minutes. In the case of a street within a city, town or village, blocked crossings are controlled by local ordinance. Miss. Code Ann. § 77-9-235 (2008).

No member of a train crew, yard crew, or engine crew of a railroad shall be held criminally responsible or found guilty of violating any state law or of any municipal ordinances regulating or intended to regulate the blocking of any street, road or highway grade crossings by train or passenger or freight cars if there is reasonable proof that the blocking was necessary to comply with orders or instructions, either written or oral, of his employer or its officers or supervisory officials. Miss. Code Ann. § 77-9-236 (2008).

Penalty

A railroad company may be liable for a fine of \$50 dollars for each offense. The conductor in charge of a train may be liable for a fine of not less than \$25 or more than \$50 if convicted. See Miss. Code Ann. § 77-9-235 (2008).

MISSOURI

No member of a railroad, train, or yard crew shall be held criminally responsible or found guilty of any of violating a state law or any municipal ordinance regulating the occupying or blocking of any street or highway railroad crossing at grade by trains or cars, when there is reasonable proof that the action was necessary either because of written or verbal instructions of his employer. Adapted from the Mo. Rev. Stat. § 71.013 (2008).

Penalty

Every person, firm, company, or corporation, operating a railroad as a common carrier in the State of Missouri and violating the provisions of this section, shall be fined not less than \$50 dollars for each separate offense. See Mo. Rev. Stat. § 71.013(2008).

MONTANA

Montana law permits an operating train to block a crossing for no more than 15 minutes at any one time. Adapted from the Mont. Code Ann. § 69-14-626 (2007).

Penalty

Montana law considers this offense a misdemeanor; and any corporation, association or company, found guilty may be punished by a fine of not less than \$25 or more than \$100. See Mont. Code Ann. § 69-14-626 (2007).

NEBRASKA

No member of a train crew, yard crew, or engine crew of a railroad shall be held personally responsible or found guilty of violating any state law or any municipal ordinances regulating or intended to regulate the occupying or blocking of any street, road, or highway crossing at grade by trains or passenger or freight cars upon reasonable proof that the occupying or blocking was necessary to comply with orders or instructions either written or oral of his or her employer or its officers or supervisory officials. This section shall not relieve the employer or railroad from any responsibility placed upon the employer or railroad by any state laws or municipal ordinances. Adapted from the Neb. Rev. Stat. § 74-594 (West 1998)

NEVADA

No applicable statute relating to this topic.

NEW HAMPSHIRE

New Hampshire permits a train to block a crossing for no more than 5 minutes at one time without authority from the department of transportation. N.H. Rev. Stat Ann. § 373:15 (2008).

The department of transportation, upon petition, notice, and hearing, may fix the maximum time for the occupancy of a highway-rail grade crossing, but in any case it will not exceed 9 minutes. The time for maximum occupancy may also be set by the commissioner of the department of transportation. Adapted from the N.H. Rev. Stat. Ann. § 373:16 (2008).

Penalty

New Hampshire law states: “Any person who violates the provisions of any preceding sections (373:15 and 373:16), or of any order of the Department of Transportation made hereunder, shall be guilty of a violation, if a natural person, or guilty of a misdemeanor if any other person, unless otherwise specifically provided.” See N.H. Rev. Stat. Ann. § 373:17 (2008).

NEW JERSEY

Only one single reference was found concerning blocked crossings. “No employee of a steam or electric railroad company shall operate a locomotive, train or crossing gate in such a manner as to unnecessarily prevent or interfere with the use of a highway for the purpose of travel.” Adapted from the N.J. Rev. Stat. § 39:4-94 (2008).

NEW MEXICO

No applicable statute related to this topic.

NEW YORK

New York permits a train to block a farm and highway-rail grade crossing for no more than 5 consecutive minutes, except in situations where the railroad has no control, or where the train cannot be moved without endangering the safety of the passengers, public, or freight. Adapted from the N.Y. R.R. Law § 53-c (2009).

Penalty

A violation of this statute is punishable by a fine of not more than \$100 or imprisonment for not more than 15 days or both. Provided however, that no owner, officer, or employee of a railroad corporation will be subject to a criminal or civil penalty if he had no control over the situation causing the obstruction or the train could not be moved without endangering the safety of the passengers, public or freight. See N.Y. R.R. Law § 53-c (2009).

NORTH CAROLINA

No applicable statute related to this topic.

NORTH DAKOTA

North Dakota law allows a train to block a crossing for no more than 10 consecutive minutes. Exceptions include the following situations:

- (1) When necessary to comply with safety signals.
- (2) In order to avoid striking any object or person on the track.

- (3) When the train is disabled by accident or otherwise.
 - (4) While in motion, except for switching operations.
 - (5) When no vehicular traffic is waiting to use the crossing.
 - (6) When in compliance with a government statute or regulation.
- N.D. Cent. Code, § 40-11-19 (2009).

Penalty

In North Dakota, any person who violates this statute is guilty of an infraction. The relevant code section has no application to cities having preexisting obstruction ordinances. Adapted from the N.D. Cent. Code § 40-11-19 (2009).

Any person operating a train who shall block or obstruct a public railroad crossing and who has the alternative of blocking or obstructing a crossing with active grade crossing traffic-control devices or crossing without such device shall, where feasible, and subject to the exceptions set forth in Section 49-11-19, leave open the crossing with active grade crossing control. Any person who violates this section is guilty of an infraction. Adapted from the N.D. Cent. Code § 40-11-19.1 (2009).

OHIO

Ohio permits a train to block a crossing for not more than 5 minutes when vehicles are waiting to use the crossing. Ohio exempts moving trains not engaged in switching operations from the blocked crossing rule. Exceptions are also made for emergencies or circumstances beyond the control of the railroad. Adapted from the Ohio Rev. Code Ann. § 5589.21.1 (2009).

Penalty

The code section mentions no specific penalty, but does specify the manner in which summons can be served. See Ohio Rev. Code Ann. § 5589.21 (2009), Ohio Rev. Code Ann. § 2935.10 (2009).

OKLAHOMA

No applicable statute related to this topic.

OREGON

The authority to fix and regulate the length of time a public highway-rail grade crossing may be blocked by railroad equipment is vested exclusively in the state.

Upon petition of the public authority in interest, or of any railroad, or upon the department of transportation's own motion, the department shall, after due investigation and hearing, enter an order fixing and regulating the length of time a public railroad-highway grade crossing may be blocked.

The time limits fixed by the department shall be maximum time limits and shall be commensurate with reasonable requirements of train and vehicular traffic operations. Adapted from the Or. Rev. Stat. § 824.822 (2008).

Penalty

Violators are punishable, if convicted, by a fine of not less than \$100 or more than \$3,000 for each offense. See Or. Rev. Stat. § 824.222 (2008).

PENNSYLVANIA

Penalty

Pennsylvania law makes it a summary offense for any railroad to obstruct or block the passage of a highway or obstruct any crossing with its rolling stock. Adapted from the 18 Pa. Stat. Ann. § 6907 (2009).

It is a summary offense for any railroad to continue to block a private crossing used by nearby occupants of land or farms for work trips. The railroad must be given at least 15 minutes notice to remove its rolling stock. 18 Pa. Stat. Ann. § 6908 (2009).

RHODE ISLAND

Rhode Island law expressly prohibits trains from blocking crossings for more than 5 minutes. Adapted from the R.I. Gen. Laws § 39-8-4 (2008).

Penalty

For each violation, a railroad corporation may be fined not less than \$25 or more than \$100. See R.I. Gen. Laws § 39-8-4 (2008).

SOUTH CAROLINA

South Carolina permits standing trains to block crossing for a maximum of 5 minutes. The person in charge of the train must be notified before the 5 minutes commence. Adapted from the S.C. Code Ann. § 57-7-240 (2008).

Penalty

For every such offense, a person shall pay not less than \$5 or more than \$20. It is considered a new offense for every 24-hour period the blockage continues. See S.C. Code Ann. § 58-17-4080 (2008).

SOUTH DAKOTA

South Dakota law prohibits trains from blocking any street, road, or highway-rail crossing for more than 20 consecutive minutes if it is blocking the path of an emergency vehicle.

The state makes exceptions if the train is disabled by accident or otherwise, or if it cannot be moved without striking an object or a person on the track. Adapted from the S.D. Codified Laws Ann. § 49-16A-119 (2008).

Penalty

South Dakota law considers a violation of this section a Class 2 misdemeanor. See S.D. Codified Laws Ann. § 49-16A-119 (2008).

The state exempts railroad employees from liability if the blockage was necessary under state and federal rules. See S.D. Codified Laws Ann. § 49-16A-94 (2008).

TENNESSEE

No applicable statute related to this topic.

TEXAS

Texas law prohibits a train from blocking a street, railroad crossing, or public highway for more than 10 minutes. Local ordinances may allow passenger trains to stand for the purpose of receiving or discharging passengers, mail, express, or freight, for a longer period than 10 minutes.

An officer charging a railroad company for a blocking offense shall prepare in duplicate a citation to appear in court and attach one copy of the citation to the train or deliver the copy to an employee or other agent of the railway company. The citation must show the name of the railway company, the offense charged, and the time and place that the representative of the railway company is to appear in court. It shall be a defense to prosecution, under this section, that the train obstructs the street, railroad crossing, or public highway because of an act of God or breakdown of the train. Adapted from the Tex. Transp. Code Ann. § 471.007-471.008 (2008).

Penalty

Violators are guilty of a misdemeanor and punishable by a fine of not less than \$100 or more than \$300. See Tex. Transp Code Ann. § 471.007 (2008).

UTAH

Utah law prohibits a crossing from being blocked for more than 5 consecutive minutes. Exceptions are made for the following situations:

- 1) When complying with signals affecting safety of movement.
- 2) When avoiding striking any object or person on the tracks.
- 3) When the train is disabled.
- 4) When the train in motion is engaged in switching operations.
- 5) When there is no vehicular traffic waiting.

6) When complying with government safety regulations.
See Utah Code Ann. § 41-6-95.5 (2009).

VERMONT

Vermont expressly prohibits trains from blocking crossings for more than 5 minutes at a time at a highway or road required for private or farm use. Adapted from the Vt. Stat. Ann. Tit. 5, §3587 (2008).

Vermont has another section in the statute that deals with willful or negligent obstruction of a public highway or farm crossing, but it specifies no time limit. Adapted from the Vt. Stat. Ann. tit.5, §3586 (2008).

Penalty

If convicted of a violation of Section 3587, a person or corporation may be fined not less than \$5 or more than \$50. See Vt. Stat. Ann. Tit.5, § 3587 (2008).

If a violator is convicted of Section 3586, the fine may be not less than \$5 or more than \$20. Vt. Stat. Ann. Tit.5, § 3586 (2008).

VIRGINIA

Virginia law prohibits trains from blocking crossings for more than 5 minutes at a time. It does allow exceptions for breakdown, mechanical failure, or emergencies. Adapted from the Va. Code Ann. § 56- 412-1 (2009).

Penalty

Upon conviction, a railroad company or individual may be fined not less than \$100 or more than \$500, with an additional proviso that the fine could be \$100 for each minute beyond the permitted time. In any case, the total may not exceed \$500. See Va. Code Ann. § 56-412.1 (2009).

WASHINGTON

No applicable statute related to this topic.

WEST VIRGINIA

West Virginia prohibits trains from blocking crossings for longer than 10 minutes, except in an emergency, when the train is continuously moving, or in the event of circumstances beyond the control of the railroad. This rule does not preempt any local ordinances, however. W. Va. Code § 31-2A-2 (2008).

WISCONSIN

Except outside cities, it is unlawful for a railroad train to block a crossing in Wisconsin longer than 10 minutes. Wis. Stat. § 192.292 (2009).

Penalty

A violation of the statute may result in a fine not to exceed \$25 or imprisonment of not more than 15 days. See Wis. Stat. § 192.292 (2009).

WYOMING

No applicable statute related to this topic.

CHAPTER 4: WARNING DEVICES–PASSIVE

CHAPTER OVERVIEW

This chapter presents a state-by-state survey of laws and regulations concerning the use of passive warning devices at highway-rail grade crossings.

Approximately 78 percent of the reported 213,934 (2008 figures FRA) highway-rail grade crossings in the United States have passive warning devices. Passive warning devices within the meaning of the chapter exclude automatic gates and flashing lights or other train activated devices.

These passive devices are designed to direct the attention of the driver to the location of highway-rail grade crossings so they may exercise caution when traversing the crossing. The messages conveyed by these devices provide warning and guidance, but they also may direct some mandatory action by the driver. These devices consist of regulatory, warning, and guide signs, and supplemental pavement markings. Generally, most of the states require that these devices conform to the Manual on Uniform Traffic Control Devices. A number of states publish and follow their own traffic manual.

STATE LAWS AND REGULATIONS

ALABAMA

Alabama statute provides that every railroad company must erect a warning sign that gives notice of the proximity of a railroad crossing. The type of sign is not specified, except to say that it should have large and distinct letters. Adapted from the Ala. Code § 37-2-80 (2007)

ALASKA

Section 17 AAC 15.481 (Railroad accommodation policy), requires that a highway-rail grade crossing sign (crossbuck) be installed on the right-hand side of the roadway on each approach to any crossing, except when, in the discretion of the department, it is determined that local conditions require an alternate location. Where highway-rail grade crossing signals are used, the crossbuck must be an integral part of the signal assembly. A supplemental sign indicating the number of tracks must be used where there are two or more sets of tracks at the crossing. Adapted from the 17 AAC 15.481 (2008).

ARIZONA

The director of the department of transportation and local authorities, with the approval of the director, is authorized to identify and erect STOP signs at particularly dangerous highway-rail grade crossings. Adapted from the Ariz. Rev. Stat. Ann. § 28-852 (1999). See also, “Arizona” in Chapter 9 of this book.

ARKANSAS

The Arkansas Code defines a railroad sign or signal as any sign, signal, or device erected with the authority of a public body of officials by a railroad and intended to give notice of the presence of railroad tracks or the approach of a train. Adapted from the Ark. Code Ann. § 23-12-411 (2008).

The state highway commission and local authorities are authorized to identify and erect STOP signs at particularly dangerous state highway grade crossings. Adapted from the Ark. Code Ann. § 27-51-706 (2008).

CALIFORNIA

At every farm or private grade crossing of a railroad where no automatic grade crossing warning device is in place, there must be installed one or more STOP signs of the type described in Section 21400 of the Vehicle Code, or of such other design as the public utility commission prescribes. Signs will not be required if the commission determines, after a hearing, that the signs would create a dangerous condition which would not otherwise exist. Cal. [Pub. Util.] Code § 7538 (2008).

COLORADO

No applicable statute related to this topic.

CONNECTICUT

Connecticut law requires that each railroad company maintain, at each crossing where there is no gate, warning boards of the type and nature as the commissioner of transportation may approve. Adapted from the Conn. Gen. Stat. § 13b-347 (2009).

The commissioner may require every railroad company to erect and maintain at each of their crossings within their right-of-way, a stop, caution, or other sign of a type approved by the commissioner. If the tracks cross a state highway at grade, the traffic commission is responsible for prescribing the kind and nature of traffic control devices and measures to be installed.

The commissioner may also require every railroad company to erect and maintain a sign advising the public to call 911 to report malfunctioning grade crossing gates or signals. The type of sign must be approved by the commissioner. Adapted from the Conn. Gen. Stat. § 13b.345(a)-(b) (2009).

DELAWARE

No applicable statute related to this topic.

DISTRICT OF COLUMBIA

The persons or persons, or corporation or corporations, using the railroad sidings, switches, and standing tracks are responsible for the construction of the protective devices; and for maintaining them in sound, safe, and serviceable condition once they are approved by the Mayor. Adapted from the 24 DCMR § 120.10 (2008).

FLORIDA

Every railroad company must exercise reasonable care for the safety of the motoring public whenever its tracks cross a highway. The railroad company is responsible for erecting and maintaining crossbuck warning signs in accordance with the uniform system of traffic control devices adopted pursuant to Section 316.745 of the Florida Annotated Statutes. The crossbuck signs must be erected and maintained at all public and private crossings.

Advance railroad warning signs and pavement markings must be installed and maintained at public highway-rail grade crossings in accordance with the uniform system of traffic control devices by the government agency which has jurisdiction over and maintenance responsibility for the highway or street. Adapted from the Fla. Stat. Ann. § 351.03 (2009).

Every railroad company operating or leasing any track intersecting a public road at-grade and upon which railroad trains are operating, is responsible for erecting any traffic control devices which are necessary to conform to the requirements of Section 316.745 of the Florida Annotated Statutes. Pavement markings and advance warning signs are the responsibility of the government entity having jurisdiction over the crossing. Adapted from the Fla. Stat. Ann. § 316.171 (2009).

Every railroad company maintaining a highway-rail grade crossing must, upon reasonable notice from the department of transportation, install, maintain, and operate traffic control devices to warn motorists of approaching trains. Adapted from the Fla. Stat. Ann. § 335.141 (2009).

Every railroad company maintaining a highway-rail grade crossing must, upon reasonable notice from the department of transportation, install, maintain, and operate at the crossing, traffic control devices to warn motorists of the approach of trains.

Advance railroad warning signs and pavement markings must be installed and maintained at public highway-rail grade crossings by the government agency which has jurisdiction over or maintenance responsibility for the highway or street in accordance with the uniform system of traffic control devices.

Pavement markings and advance warning signals are the responsibility of the government entity having jurisdiction over the crossing location. Adapted from the Fla. Stat. Ann. §§ 341.302-351.03 (2009).

GEORGIA

Each railroad company is to erect and maintain a reflectorized railroad crossbuck at each grade crossing where such a sign is required by state law. The signs must conform to standards established by the Georgia Department of Transportation. Adapted from the Ga. Code Ann. § 46-8-194 (2009).

The department of transportation and local authorities are authorized to identify and erect STOP signs at particularly dangerous grade crossings. Adapted from the Ga. Code Ann. § 40-6-141 (2009).

The Georgia Department of Transportation or, with respect to roads under its jurisdiction, the governing authority of a county or an incorporated municipality may bring an action in the appropriate superior court to compel a railroad company from posting reflectorized railroad crossbuck signs, as such duty is imposed by Code Section 46-8-194.

HAWAII

The director of transportation and the individual counties are authorized to identify and erect STOP signs at particularly dangerous highway-rail grade crossings. Adapted from the Haw. Rev. Stat. § 291C-92 (2008).

IDAHO

No applicable statute related to this topic.

ILLINOIS

The Illinois Commerce Commission shall have the power, upon its own motion, or upon complaint, and after having made proper investigation, to require the installation of adequate and appropriate luminous reflective warning signs, luminous flashing signals, and crossing gates illuminated at night, or other protective devices, in order to promote and safeguard the health and safety of the public. The commission shall have authority to determine the number, type, and location of such signs, signals, gates, or other protective devices which, however, shall conform as near as may be with generally recognized standards; and the commission shall have authority to prescribe the division of the cost of the installation and subsequent maintenance of such signs, signals, gates, or other protective devices, between the rail carrier or carriers, the public highway authority in interest, and in instances involving the use of the Grade Crossing Protection Fund, the Illinois Department of Transportation. Adapted from the 625 ILCS 5/18c-7401 (2008).

INDIANA

The Indiana Department of Transportation has the responsibility for determining whether there is a need to install STOP signs at public crossings without automatic warning devices. After consultation with the local highway unit and affected railroad, the department may order the installation of STOP signs. The department of transportation is responsible for sign

installation, maintenance, repair and replacement. The railroad must reimburse the department of transportation for installation costs within 45 days. Adapted from the Ind. Code Ann. § 9-21-4-15 (2009).

Any person who owns or operates any line of steam or interurban railroad is responsible for installing and maintaining at each grade crossing, signs (crossbucks), and any number of other track signs if required. These signs should be placed at right angles with the highway where possible. The signs must conform to the Manual on Uniform Traffic Control Devices, adopted under IC 9-21- 2-1. A violation of this section is a Class C infraction. Adapted from the Ind. Code Ann. § 8 6-6-1 (2009).

IOWA

No applicable statute related to this topic.

KANSAS

The Kansas Secretary of Transportation and local authorities, with the approval of the Secretary, are authorized to identify and erect STOP signs at dangerous highway-rail grade crossings. Adapted from the Kan. Stat. Ann. § 8-1552 (2008). See also, Section 8-2002(16) concerning the power of local authorities.

Every railroad corporation must place crossbucks at highway-rail grade crossings. Each side of the sign shall have a white reflectorized background, with the words “RAILROAD CROSSING” in black lettering. If the crossing consists of two or more tracks, the number of tracks shall be indicated on an auxiliary sign of inverted T-shape mounted below the crossbuck. This section is not applicable to streets in cities unless the railroad is required to do so by local ordinance. Adapted from the Kan. Stat. Ann. § 66-2,121 (2008).

KENTUCKY

The transportation cabinet may identify unsafe crossings, and shall place and maintain on each side of the tracks and on the right side of the highway an octagonal sign of a type and size currently approved for use by the cabinet bearing the word “STOP” in white letters not less than 10 inches in height. The cabinet must install the signs within 60 days after the crossing is declared unsafe. The statute does not apply to those crossings that have gates, automatic audible signals, or electric warning signals. Adapted from the Ky. Rev. Stat. Ann. § 189.560 (2)(3)(4)(5) (2009).

Every railroad company is required to place and maintain signal boards at each public highway where it is crossed by a railroad track. Each side of the board is to contain, in capital letters at least 5 inches high, the words “RAILROAD CROSSING.” Adapted from the Ky. Rev. Stat. Ann. § 277.160 (2009).

LOUISIANA

All railroads must install and maintain at highway-rail grade crossings a reflectorized crossbuck sign, which shall be inscribed “RAILROAD CROSSING,” except at those contained in the maintenance system of the Office of Highways. If there are two or more tracks, that fact shall be indicated by an auxiliary sign of inverted "T" shape mounted below the crossbuck.

A railroad may, with the approval of the Office of Highways, erect STOP signs at any grade crossing on highways not contained in the state maintenance system. Where the STOP signs are erected, the railroads are also responsible for the erection and maintenance of a railroad advance warning sign on the right side of the road not less than 100 feet or more than 300 feet from the nearest rail of the crossing. Adapted from the La. Rev. Stat. Ann. § 32:169(A)–(B) (2008).

MAINE

Every railroad is responsible for the erection and maintenance of warning signs at highway-rail grade crossings. The signs should be of the size, design, and color ordered by the Maine Department of Transportation. Adapted from the Me. Rev. Stat. Ann. Tit. 23 §§ 1251–1252 (2008).

Every railroad shall be responsible for the erection of signboards with the words “RAILROAD CROSSING” painted on each side by the side of highway and town ways where they are crossed at-grade.

The commissioner of transportation may temporarily erect experimental signs at certain grade crossings instead of the signboards required in this section. The erection of the experimental signs by the department relieves the railroad company using the crossing of any liability for damages. Me. Rev. Stat. Ann. Tit. 23 § 7214 (2008).

The department is authorized to designate any highway-rail grade crossing as a “stop intersection” and to install and maintain STOP signs at such crossing. Municipalities, when ordered by the department, are required to install and maintain STOP signs. Me. Rev. Stat. Ann. Tit. 23 § 1253-A (2008).

MARYLAND

The Maryland State Highway Administration, or any local authority, with the approval of the Administration, may place a STOP sign at any highway-rail grade crossing designated as a dangerous crossing. Adapted from the Md. Ann. Code Art. 21 § 702 (2009).

MASSACHUSETTS

Every railroad operating in the state is responsible for placing and maintaining boards (signs) across each crossing of their tracks by a public road. The boards must be clearly visible and contain the inscription: “Railroad Crossing--Look out for the Engine.” The railroad may, if

it chooses, use a substitute board, the size and description of which must be approved by the state department of transportation. Adapted from the Mass. Ann. Laws Ch. 160 § 140 (2009).

The board of aldermen of a city or the selectmen of a town where a traveled place is crossed by a railroad at the same level, if of the opinion that it is necessary for the better security of the public that boards such as are described in the preceding section should be maintained at such traveled place, may in writing request the railroad to erect and maintain them. Adapted from the Mass. Ann. Laws Ch. 160 § 141 (2009).

Every county, city, and town and the department of highways may place and maintain warning signs at public ways which are crossed at grade in its jurisdiction by a railroad. Adapted from the Mass. Ann. Laws Ch. 160 § 142 (2009).

MICHIGAN

The Michigan Transportation Department, the county road commission, and local authorities may designate certain grade crossings as “stop” crossings and place signs there notifying drivers to come to a complete stop before crossing the tracks. The department, the county road commission and local authorities may also designate certain grade crossings as “yield” crossings and erect signs at the crossings notifying drivers of vehicles upon the highway to yield. Adapted from the Mich. Comp. Laws § 257.668. (2009).

The department, at no cost to the freight railroads or adjacent property owners, may order traffic control devices at existing farm, other private, bicycle, and pedestrian crossings of the railroad tracks of a high speed rail corridor including signs, signals, crossing gates, movable barriers, or other devices. Adapted from the Mich. Comp. Laws § 462.303 (2009).

MINNESOTA

Every railroad must maintain a proper and conspicuous sign indicating the presence of a highway-rail grade crossing. If the railroad fails to comply with this section, they shall forfeit to the town or municipality, ten dollars for each day the failure continues. Adapted from the Minn. Stat. § 219.06 (2008).

When any government entity in the state deems it necessary to install STOP signs at a crossing for which they are responsible, they may petition the commissioner of transportation to order the installation of a STOP sign. Adapted from the Minn. Stat. § 219.20 (2008).

The commissioner shall require that uniform warning signs be placed at highway-rail crossings throughout the state. There shall be at least three distinct types: a home warning sign for use in the immediate vicinity of the crossing, an approach crossing sign, and when deemed necessary, a STOP sign. Adapted from the Minn. Stat. § 219.17 (2008).

MISSISSIPPI

The Mississippi Highway Department is authorized to construct protective or warning devices at or in the vicinity of any railroad crossing of a public highway under the jurisdiction of any county or incorporated municipality. Adapted from the Miss. Code Ann. § 65-1-70 (2008).

Every railroad corporation, at the intersection of a public road or street and railroad crossing, must install and maintain the standard sign known as a “railroad crossbuck.” Adapted from the Miss. Code Ann. § 77-9-247 (2008).

MISSOURI

No applicable statute related to this topic.

MONTANA

The department of highways and local authorities may identify dangerous highway-rail grade crossings and install STOP signs at these crossings. Adapted from the Mont. Code Ann. §§ 1-14-602-603 (2007).

Beginning April 9, 1987, and within 2 years from that date, all railroad companies will have installed and will currently be maintaining reflectorized material on the front and back sides of crossbuck blades at all public crossings. Adapted from the Mont. Code Ann. § 69-14-612 (2007).

NEBRASKA

The department of roads, and local authorities, on highways under their jurisdiction, may identify and install STOP signs at dangerous highway-rail grad crossings. Adapted from the Neb. Rev. Stat. § 60-6-171 (2009).

NEVADA

The department of transportation, and local authorities, with the approval of the department of transportation may designate dangerous grade crossings and install official traffic control devices at such crossings. Adapted from the Nev. Rev. Stat. § 484.351 (2009).

NEW HAMPSHIRE

The governmental authority responsible for maintaining a highway shall place and maintain warning signs on every highway approaching a crossing at grade of such highways and the tracks of a railroad. The department of transportation may prescribe the standards for warning signs for highway-rail grade crossings. Adapted from the N.H. Rev. Stat. Ann. § 373.11 (2008).

NEW JERSEY

It is the duty of every railroad to install and maintain at each at-grade crossing a conspicuous sign with an inscription, design, and standard approved by the board of public utility commissioners. Adapted from the N.J. Stat. Ann. § 48:12-58 (2008).

NEW MEXICO

No applicable statute related to this topic.

NEW YORK

Each municipality or political subdivision that has responsibility for maintaining highways at places where they intersect with a railroad at grade, or the department of transportation, in the case of state highways, shall install and maintain an approach warning sign on each side of the crossing. In the event that the municipality, political subdivision, or railroad does not comply with this requirement, the commissioner of transportation may institute proceedings to force compliance.

The design, location, and manner of installation must be in agreement with the manual for a uniform system of traffic control devices adopted by the department of transportation. Adapted from the N.Y.R.R. Law § 53-A (2009).

It is the duty of every Class 1 railroad to install a whistle sign made of retro-reflective material as specified by the commissioner of transportation on the approach to each highway-rail grade crossing. Adapted from the N.Y. R.R. Law § 71-a (2009).

NORTH CAROLINA

No applicable statute relating to this topic.

NORTH DAKOTA

The North Dakota Public Utility Commission prescribes three distinct types of warning signs for use at highway-rail grade crossings: the home crossing sign, the STOP sign, and the approach crossing sign. Adapted from the N.D. Cent. Code § 24-09-02 (2009).

The railroad company is responsible for erecting and maintaining one or more of such uniform crossing signs at each grade crossing in the state. Adapted from the N.D. Cent. Code § 24-09-03 (2009).

The road authority, except as otherwise provided for, is responsible solely for the erection and maintenance of advance warning signs at public grade crossings in accordance with the Manual on Uniform Traffic Control Devices. Adapted from the N.D. Cent. Code § 24-09-04 (2009).

The department of transportation may designate any crossing requiring additional protection as a “stop” crossing and make notification to the appropriate road authority. Within 30 days after notification, the road authority shall erect STOP signs. Adapted from the N.D. Cent. Code § 24-09-05 (2009).

OHIO

All railroad companies operating in Ohio are required to erect crossbuck signs at all highway-rail grade crossings. The director of transportation may install experimental signs at certain crossings in lieu of the above required signs for the purpose of research for the development of better signing systems. The installation of an experimental sign relieves the railroad company of any liability for damages, which might otherwise arise under this section.

Each crossbuck sign shall be accompanied by an additional sign consisting of three panels, with the middle panel bearing the word “yield” spelled vertically. The front and rear faces of the crossbuck sign, and of the three panels of the additional sign, shall be coated or treated with a reflective material; and if the crossbuck sign and additional sign are mounted on a vertical girder or post, the girder or post must be coated or treated with a reflective material.

The railroad may also erect experimental signs and warning devices, with prior approval of the director, for the purpose of conducting research. Such signs or warnings may be erected on an interim or permanent basis. Under these circumstances, the railroad or local authority is relieved from liability. Adapted from the Ohio Rev. Code Ann. § 4955.33 (2009).

OKLAHOMA

The Oklahoma Corporation Commission has the authority, after proper investigation, to identify grade crossings that are extra hazardous. Once a designation is made, the commission can order the installation of appropriate warning devices. The type, location, and number of devices shall be determined by the commission, as is the division of costs. The devices are to conform as near as possible to national standards. Adapted from the Okla. Stat. Tit. 17 § 86 (2008).

Every railroad corporation in the state has a duty to erect suitable warning signs at each crossing of its tracks by a public highway. Adapted from the Okla. Stat. Tit. 66 § 124 (2008).

The Commission is also vested with the authority to promulgate rules and regulations concerning the design, installation, construction, maintenance, inspection, and testing of warning signal devices at highway-rail crossings. Adapted from the Okla. Stat. Tit. 66, § 130 (2008).

OREGON

All railroads in the state must install and maintain STOP signs at every farm or private grade crossing. The Oregon Department of Transportation has the authority to prescribe the number, type and location of the STOP signs and may exempt a farm or private grade crossing if the department determines that an even more dangerous condition would be created by the installation of the sign. Adapted from the Or. Rev. Stat. § 824.224 (2008).

The department may prescribe the number, kind, and location of advance warning signs to be installed on the highway before each highway-rail crossing. The department shall adopt rules prescribing specifications for the design and location of protective devices. Adapted from the Or. Rev. Stat. § 824.220 (2008).

PENNSYLVANIA

No applicable statute related to this topic.

RHODE ISLAND

Every railroad corporation must install and maintain at every highway-rail grade crossing a suitable signboard for the purpose of warning traffic of approaching trains. Adapted from the R.I. Gen. Laws § 39-813 (2008).

Penalty

Railroad corporations neglecting or refusing to comply with the provisions of § 39-8-13 may be fined an amount not to exceed \$1,000 and may be liable for all damages due to neglect or refusal to comply. See R.I. Gen. Laws § 39-8-15 (2008).

SOUTH CAROLINA

All railroad companies must install and maintain standard crossbuck signs at every crossing in accordance with the requirements of the Manual on Uniform Traffic Control Devices. Adapted from the S.C. Code Ann. § 56-5-1010 (2008).

Every railroad corporation must install and constantly maintain railroad crossing signs. This does not apply to streets in cities, towns and villages unless the railroad is required to do so by the officers in charge of such streets. Adapted from the S.C. Code Ann. § 58-17-1390 (2008).

Every railroad company operating within the state must install and maintain warning boards (signs) near drawbridges and highway-rail grade crossings. Adapted from the S.C. Code Ann. §§ 58-17-3380, -3390 (2008).

SOUTH DAKOTA

Except within the limits of a municipality, the department of transportation and county commissioners have the authority to designate any hazardous highway-rail grade crossing as a “stop” crossing by placing a STOP sign preceded by a warning sign at the crossing. Adapted from the S.D. Codified Laws Ann. § 31-28-17 (2008).

At all points where the railroad tracks cross a public road, the railroad owning the tracks is responsible for the erection of a sign with large and distinct letters warning drivers to use

caution when crossing the upcoming track. Adapted from the S.D. Codified Laws Ann. § 49-16A-87 (2008).

The public board or officer who is responsible for the repair and maintenance of a public highway shall erect and maintain a standard railroad advance warning sign at a distance from the crossings as specified by the department of transportation or other controlling body. Adapted from the S.D. Codified Laws Ann. § 31-28- 7 (2008).

TENNESSEE

The public service commission of the state, and the commissioner of transportation or his designee has the authority to determine the type of railroad crossing sign, which shall be uniform throughout the state. Adapted from the Tenn. Code Ann. § 65-11-105 (2008).

Boards, well supported by posts or otherwise, shall be placed and constantly kept, across each public road, when the same is crossed on the same level by the track of the railway, the boards are to be elevated so as not to obstruct travel and, on each side of such board, there shall be printed in large letters, easily to be seen by the traveler, the words “Railroad Crossing--Look Out for the Cars.” Adapted from the Tenn. Code Ann. § 65-18-104 (2008).

TEXAS

Every railroad in the state is responsible for erecting a sign with large and distinct letters at a railroad to warn drivers to use caution when crossing the upcoming tracks. A railroad company that does not erect a sign required by this subsection is liable for a resulting injury to a person or resulting damage to property. Adapted from the Tex. Transp. Code Ann. § 471.002(a)(b) (2008).

The Texas Department of Highways and Transportation is responsible for the development of guidelines and specifications for the installation and maintenance of retro-reflectorized material at all public grade crossings not provided with active warning devices. The retro-reflectorized material will be affixed to the backs of crossbucks in a manner that reflects right from vehicle headlights to focus attention on the presence of an un-signalized crossing. Adapted from the Tex. Transp. Code. Ann. § 471.004 (2008).

A county or municipality must use standards developed by the Texas Department of Transportation to apply pavement markings or a stop bar at a grade crossing if the cost of the markings or stop bar is paid either entirely or partly from state or federal funds. The department is to develop its standards by following those in the Manual on Uniform Traffic Control Devices issued by the U.S. Department of Transportation Federal Highway Administration. The department may also require the use of retro-reflectorized materials where it deems such materials appropriate. A “stop bar” is defined in this article as the marking that is applied or attached to the surface of a roadway, on either side of a grade crossing, indicating that a vehicle must stop at the grade crossing. Pavement markings are defined as markings applied or attached to the surface of a roadway for the purpose of regulating, warning, or guiding traffic. Adapted from the Tex. Rev. Civ. Stat. Ann. art. 6370c (2008).

UTAH

No applicable statute relating to this topic.

VERMONT

Each railroad must maintain railroad crossing (crossbuck) signs conforming to the Federal Highway Administration's Manual on Uniform Traffic Control Devices at every crossing of a railroad by a public highway. Vt. Stat. Ann. Tit. 5 § 3581 (2008).

Certain crossings may be considered exempt from the requirement in Section 3581. The Transportation Board may determine, upon recommendation of the local transportation agency, that a crossing is exempt and may impose such conditions as the interests of safety dictate. However, a flag person must be present at these exempt crossings whenever a train is traversing the crossing. Within 90 days of any order, the railroad in the case of warning devices and the person having control of the crossing in the case of advance warning signs is required to affix "exempt" signs in accordance with Section 1025 of Title 23. Adapted from the Vt. Stat. Ann. Tit. 5 § 3581 (2008).

At the request of the agency of transportation, the railroad, or the person having control of the highway, and after notice and an opportunity to be heard, the transportation board may rescind an "exempt" crossing designation. Adapted from the Vt. Stat. Ann. Tit. 5 § 3581 (2008).

VIRGINIA

Virginia law requires every railroad company to cause sign boards (crossbucks), well supported by posts or otherwise, and approved by the department of transportation at such heights as to be easily seen by travelers from both directions of the public highway and not obstructing travel, containing in capital letters, at least 5 inches high, the inscription "Railroad Crossing," to be placed, and constantly maintained, at each public highway at or near, and on both sides of, each place where it is crossed by the railroad at the same level. In localities that maintain their own streets, the requirements may be waived upon proper petition to both the commonwealth transportation commissioner and the public road authority. Adapted from the Va. Code Ann. § 56-405.2 (2009).

WASHINGTON

It is the duty of the railroad corporation to install and maintain at every highway-rail grade crossing, a sign known as a saw buck crossing sign with the lettering "Railroad Crossing" and an inscription indicating the number of tracks. Adapted from the Wash. Rev. Code Ann. § 47.36.050 (2008).

The transportation department may install approach and warning signs on the approach of any state highway to a highway-rail grade crossing, situated at a sufficient distance from the crossing as to make the warning effective. Adapted from the Wash. Rev. Code Ann. § 47.36.080 (2008).

WEST VIRGINIA

Every railroad company must erect and maintain suitable signboards or notices at each of its highway-rail grade crossings giving warning of danger in crossing its tracks. All such signs will be of the required design and construction and be placed at the location required by the road commission. Any railroad company that violates this provision shall be fined \$5 for each week the violation continues. Adapted from the W. Va. Code § 31-2-9 (2008).

WISCONSIN

When it is deemed necessary for public safety, any local authority may, by ordinance, install official STOP signs at grade crossings. Wis. Stat. § 349.085 (2009).

Railroads are required to provide to each county in which they operate, a sufficient quantity of advance warning signs. The county will immediately install and maintain such signs in good condition. This section shall not apply to state trunk highways and crossings within the limits of cities and incorporated villages. Wis. Stat. § 195.286(1) (2009).

Penalty

The penalty for violation by a railroad of this section shall be a fine of not less than \$10 or more than \$50 for each violation. Adapted from the Wis. Stat. § 195.286(7) (2009).

WYOMING

No applicable statute related to this topic.

CHAPTER 5: WARNING DEVICES–TRAIN BORNE

CHAPTER OVERVIEW

This chapter presents a state-by-state survey of the legal and regulatory requirements for trains operating within the respective states and the District of Columbia to provide some type of auditory alarm as they approach grade crossings. States may require that a train carry a bell, whistle, or a horn and require the repeated use of that bell, whistle, or horn, at a specified distance from the crossing. Some state laws may also require that trains be equipped with headlights of a certain candlepower while operating at night. As with any law, failure to comply brings penalties.

Since June of 2005, Federal Railroad Administration nationwide regulations on the use of locomotive horns at highway-rail grade crossings (49 CFR Part 222) require trains to sound the locomotive horn at public highway-rail grade crossings and establish minimum and maximum sound levels for the locomotive horn. These regulations also establish standards by which public entities can establish federal quiet zones within which routine locomotive horn sounding practices at grade crossings can be restricted and/or prohibited. For a more detailed review, the reader is directed to the United States Code at 49 U.S.C. 20153 (2009).

STATE LAWS, REGULATIONS AND PENALTIES

ALABAMA

Alabama law requires all railroads operating in whole or in part in the state to equip, maintain, and use, upon every locomotive being operated in the nighttime a power headlight of not less than 1,500 candle power brilliancy, measured with the aid of a suitable reflector. Ala. Code § 37-2-90 (2008).

Any operator of a locomotive must blow the horn, whistle, or ring the bell:

- (1) At least one fourth of a mile before reaching any public road crossing or any regular station or stopping place on such railroad and continue with the signal at short intervals, until the crossing or station or stopping place has been passed.
- (2) Immediately before and at the time of leaving a station or stopping place and also immediately before entering any curve crossed by a public road not marked where he cannot see at least one quarter of a mile ahead, and must approach the unmarked crossing at such speed as to prevent an accident in the event of an obstruction at the crossing.
- (3) At short intervals, on entering into, or while moving within or passing through any village, town, or city. Adapted from the Ala. Code § 37-2-81 (2008).

ALASKA

No applicable statute relating to this topic.

ARIZONA

Under Arizona law each railroad must equip its locomotives with a bell weighing not less than 20 pounds.

Penalty

Any railroad which fails to comply with this section is liable for a penalty of one hundred dollars recoverable in an action filed by the attorney general in the name of the state. A separate action may be filed for each violation. In addition to the one hundred dollar penalty, the railroad may be liable for all damages sustained by any person for failure of the corporation to comply with this section. See Ariz. Rev. Stat. Ann. § 40-847 (2009).

It is unlawful for any locomotive not equipped with an automatically operated bell ringer which will cause the bell on the engine to continue to ring after being set in motion by the engineer or fireman to operate in the state. The starting and stopping device for the bell ringer must be placed in a position where it can be operated by the engineer or fireman. A violation of this section makes the railroad guilty of a petty offense for each day the locomotive is used in violation of this section. If the ringer should become inoperable while the engine is in use, the engine may complete its trip. See Ariz. Rev. Stat. Ann. § 40-858 (2009).

Penalty

Any person in charge of a railroad locomotive who, before crossing any traveled way, does not cause the bell to ring or a whistle, siren or other sounding device to sound at a distance of at least eighty rods (1,320 feet or 440 yards) from a crossing until it is reached is guilty of a Class 2 misdemeanor. See Ariz. Rev. Stat. Ann. § 40-854 (2009).

Arizona requires a headlight brilliancy of not less than 1,500 candlepower measured without the aid of a reflector.

Penalty

Failure to comply with this section makes the railroad liable to the state for not less than one hundred or more than one thousand dollars for each offense. See Ariz. Rev. Stat. Ann. § 40-846 (2009).

ARKANSAS

Arkansas law requires locomotives or engines to have a bell of at least 30 pounds weight, or a steam whistle. The bell or whistle must be sounded at a distance of at least 80 rods (1,320 feet or 440 yards) from the place where the track crosses any road or street and shall sound

continuously until through the crossing. A violation of this section will result in a penalty of \$200 for each incident of neglect, plus possible liability for all damages sustained by any person as a result of such neglect. Adapted from the Ark. Code Ann. § 23-12-410 (2008).

Arkansas law requires any company owning or operating a locomotive over 50 miles in length to equip all their locomotives being operated at night with a headlight of power and brilliancy equal to 1,500 candlepower. A violation of this section will subject the offending railroad to a penalty of not less than \$300 or more than \$500 for each separate offense. Adapted from the Ark. Code Ann. § 23-12-402 (2008).

CALIFORNIA

California law requires the installation of an automatic bell ringer apparatus to be in a location which allows operation from either or both sides of the locomotive cab.

Penalty

Violation of this section is punishable by a fine of not less than one hundred or more than one thousand dollars for each offense. See Cal. Pub. Util. Code § 7605 (2008).

Under California law trains are required to give audible warning of their approach to a crossing at a distance of 80 rods (1,320 feet or 440 yards) before the crossing and continuously while passing through it. If a bell is used for audible warning, the bell must weigh 20 pounds.

Penalty

Any railroad corporation violating this section is subject to a penalty of one hundred dollars for every violation. See Cal. Pub. Util. Code § 7604 (2008).

Local Option

The California Legislature has given authority to the public utility commission to authorize on an application-by-application basis, and to supervise the operation of pilot projects to evaluate proposed crossing warning devices, new technology, or other additional safety measures at designated crossings, with the consent of the local jurisdiction, the affected railroad, and other interested parties, including, but not limited to, represented railroad employees.

The legislature finds and declares that for the communities of the state that are traversed by railroads, there is a growing need to mitigate train horn noise without compromising the safety of the public. Therefore, it is the intent of the legislature that the commission may authorize the following pilot projects, after an application is filed and approved by the commission:

To test the utility and safety of stationary, automated audible warning devices as an alternative to trains having to sound their horns as they approach highway-rail grade crossings in the communities of Roseville, Fremont, Newark, and Lathrop, and in any

other location determined to be suitable by the commission. The commission may also authorize supplementary safety measures, as defined in Section 20153(a)(3) of 49 U.S.C., for use on rail crossings.

No new pilot project may be authorized after January 1, 2003. The commission shall report to the legislature by March 31, 2004, on the outcome of this pilot project. Adapted from the Cal. Pub. Util. Code § 1202 (2008).

Trains operating at night are to be equipped with headlights. The headlights should project sufficient light to enable the engineer to see an object the size of a man at a distance of 800 feet on a dark night when the train is traveling at least 30 mph. A violation of this section results in a penalty of not less than \$100 or more than \$1,000 for each offense. Adapted from the Cal. Pub. Util. Code § 7607 (2008).

Penalty

A person in charge of a locomotive, who, before crossing any traveled public way, fails to give an audible warning at least 1,320 feet from the crossing and continuously up to it, is guilty of a misdemeanor. Adapted from the Cal. Pub. Util. § 7607 (2008).

COLORADO

The Colorado statutes do not require any audible warning upon the approach to a highway-rail grade crossing.

State law does require locomotives operating at night to be equipped with headlights of such construction and with sufficient candlepower to render plainly visible at a distance of not less than 300 feet in advance, any track obstruction or grade crossing, and a red rear electric light of sufficient strength as to be visible at a distance of 300 feet.

Penalty

Violation of this section will result in a penalty of \$100 for each violation, recovered in suits brought by the attorney general. Adapted from the Colo. Rev. Stat. §§ 40-29-108 -109 (2008).

CONNECTICUT

Connecticut law requires an audible signal of sufficient amplification for existing circumstances. The audible signal is to be sounded when the engine is approaching within 80 rods (1320 feet or 440 yards) of a crossing and is to be sounded occasionally until the engine is through the crossing. In cities and towns, if the public safety requires it, the distance may be adjusted, but in no case be less than 27 rods (445½ feet or 148½ yards) from the crossing.

The state commissioner of transportation may establish the maximum decibel levels, which may be emitted by the audible signal, provided that such level is more than 87 decibels.

Any railroad operating a train with an audible signal that produces noise emissions in excess of the maximum is in violation of this section. Adapted from the Conn. Gen. Stat. § 13b-329(a), (b), (c) (2009).

When the selectmen of any town, the mayor and common council of any city, or the warden and burgesses of any borough bring their petition in writing to the commissioner of transportation, representing that the public interest requires that the blowing of the engine whistle at a certain point within the limits of such town, city, or borough shall be dispensed with, the commissioner shall appoint a time and place for hearing such petition and shall give reasonable notice thereof to the petitioners and the company operating such railroad. If, after such hearing, the commissioner is of the opinion that the sounding of the whistle can be safely dispensed with, he shall direct such company to omit such signal and require any other signal in lieu thereof which he judges best. The commissioner may, at any time, modify or annul any such order. Conn. Gen. Stat. §13b-334 (2009).

Connecticut has another statute dealing with lights on track motor cars. Each railroad operating in the state must equip each of its track motor cars with an electric headlight of such construction and with sufficient candlepower to render plainly visible, at a distance of not less than three hundred feet in advance of such track motor car, any track obstruction, landmark, warning sign or grade crossing, and shall equip such track motor car with a red rear electric light plainly visible at a distance of 300 feet.

Penalty

Violations of the provisions of this section are punishable by a fine of one hundred dollars for each violation. Adapted from the Conn. Gen. Stat. 13b-336 (2009).

DELAWARE

No applicable statute relating to this topic.

DISTRICT OF COLUMBIA

It is unlawful in the District of Columbia for any railroad corporation to move, cause to be moved, or take part in moving, a railway locomotive, car, or train of cars on or upon a street or other public space between sunset and sunrise, unless a headlight or other equivalent reflecting lantern, or a hand lantern in the hands of an attendant, is displayed upon the most advanced approaching part of the locomotive, car, or train of cars, to give due warning of its approach to persons near or crossing the tracks. Adapted from the 24 DCMR § 120.6 (2009).

FLORIDA

(1) Every railroad company shall exercise reasonable care for the safety of motorists whenever its track crosses a highway and shall be responsible for erecting and maintaining crossbuck grade-crossing warning signs in accordance with the uniform system of traffic control

devices adopted pursuant to section 316.0745 of the Florida Statutes. Such crossbuck signs shall be erected and maintained at all public or private railroad-highway grade crossings.

(2) Advance railroad warning signs and pavement markings shall be installed and maintained at public railroad-highway grade crossings in accordance with the uniform system of traffic control devices by the governmental entity having jurisdiction over or maintenance responsibility for the highway or street. All persons approaching a railroad-highway grade crossing shall exercise reasonable care for their own safety and for the safety of railroad train crews as well as for the safety of train or vehicle passengers.

(3) Except as provided in subsection (4), any railroad train approaching within 1,500 feet of a public railroad-highway grade crossing shall emit a signal audible for such distance.

(4)(a) The Department of Transportation and the Federal Railroad Administration may authorize a municipality or county to implement a whistle ban provided the following conditions are met:

1. A traffic operations system is implemented to secure railroad-highway grade crossings for the purpose of preventing vehicles from going around, under, or through lowered railroad gates.

2. The municipality or county has in effect an ordinance that unconditionally prohibits the sounding of railroad train horns and whistles during the hours of 10 p.m. and 6 a.m. at all public railroad-highway grade crossings within the municipality or county and where the municipality, county, or state has erected signs at the crossing announcing that railroad train horns and whistles may not be sounded during such hours. Signs so erected shall be in conformance with the uniform system of traffic control devices as specified in section 316.0745

(4)(b) Upon final approval and verification by the department and the Federal Railroad Administration that such traffic operations system meets all state and federal safety and traffic regulations and that such railroad-highway grade crossings can be secured, the municipality or county may pass an ordinance prohibiting the sounding of audible warning devices by trains upon approaching such railroad-highway grade crossings between the hours of 10 p.m. and 6 a.m.

(5)(a) Whenever a railroad train engages in a switching operation or stops so as to block a public highway, street, or road at any time from one-half hour after sunset to one-half hour before sunrise, the crew of the railroad train shall cause to be placed a lighted fusee or other visual warning device in both directions from the railroad train upon or at the edge of the pavement of the highway, street, or road to warn approaching motorists of the railroad train blocking the highway, street, or road. However, this subsection does not apply to railroad-highway grade crossings at which there are automatic warning devices properly functioning or at which there is adequate lighting. See 49 U.S.C. 20153 (2009).

(5)(b) A person who violates any provision of paragraph (a) is guilty of a misdemeanor of the second degree, punishable as provided in sections 777.082 or 777.083. Fla. Stat. Ann 353.01 (2009)

GEORGIA

No applicable statute relating to this topic.

HAWAII

No applicable statute relating to this topic.

IDAHO

Every individual, firm or corporation, operating or controlling any railroad which is a common carrier shall equip each of its track motor cars operated during the period 30 minutes before sunset to 30 minutes after sunrise with:

(1) An electric headlight of sufficient candle power to enable the operator of the car to plainly discern any track obstruction, landmark, warning sign. or grade crossing at a distance not less than 300 feet.

(2) A red rear electric light of sufficient candle power to be plainly visible at a distance not less than 300 feet. Adapted from the Idaho Code § 62-421 (2008).

The operator of a train or locomotive is not required to sound the locomotive's bell, horn or whistle when approaching any location at which the railroad crosses a private highway, private road or private street or grade. Adapted from the Idaho Code § 62-412 (2008)

ILLINOIS

Illinois requires trains to give audible warning by bell, whistle, or horn, of the approach of a train at least 1,320 feet before the crossing. The warning must be sounded until the highway is reached, provided that at crossings where the Illinois Commerce Commission shall by order direct that, only after a hearing has been held to determine the public is reasonably and sufficiently protected, the rail carrier may be excused from giving warning required by statute. Adapted from the ILCS 5/18c-7402 (2)(a) (2008).

INDIANA

1. (a) A railroad company operating in this state shall equip every locomotive engine with a whistle and a bell, maintained in good working order, such as are used by other railroad companies. Except when approaching a crossing to which an ordinance adopted under subsection (c) applies, the engineer or other person in charge of or operating an engine upon the line of a railroad shall, when the engine approaches the

crossing of a turnpike, public highway, or street in this state, beginning not less than one-fourth (1/4) mile from the crossings:

(1) Sound the whistle on the engine distinctly not less than four times, which sounding shall be prolonged or repeated until the crossing is reached; and

(2) Ring the bell attached to the engine continuously from the time of sounding the whistle until the engine has fully passed the crossing.

(c) It is unlawful for an engineer or other person in charge of a locomotive to move the locomotive, or allow it to be moved, over or across a turnpike, public highway, or street crossing if the whistle and bell are not in good working order. It is unlawful for a railroad company to order or permit a locomotive to be moved over or across a turnpike, public highway, or street crossing if the whistle and bell are not in good working order. When a whistle or bell is not in good working order, the locomotive must stop before each crossing and proceed only after manual protection is provided at the crossing by a member of the crew unless manual protection is known to be provided. Ind. Code Ann. §8-6-4-1 (2009).

IOWA

Iowa law requires an audible warning to be sounded 1,000 feet from the crossing, and the continuous use of such warning between the initial signal point and the crossing. The statutes do not specify the number of blasts; only that use of the whistle or horn is required at the initial signal point.

Iowa law forbids the use of any audible signal within city or town limits unless local ordinances require it. Adapted from the Iowa Code § 327G.13 (2008).

Penalty

Any officer or employee of the railroad that violates any part of Section 327G.13 shall be subject to a schedule “2” penalty. See Iowa Code § 327G.14 (2008).

KANSAS

All trains operating in Kansas are required to give an audible warning (air whistle) at least four times (two long, one short, and one long blast) beginning at least 80 rods (1,320 feet or 440 yards) from the crossing. The warning is to be prolonged or repeated until the crossing is occupied by the train. This requirement does not apply in cities or villages.

Penalty

The penalty is a fine to be paid by the railroad of not more than \$20 for every violation. The suit is to be brought by the county attorney, with one half of the penalty going to the informer and the other half to the county treasurer. See Kan. Stat. Ann. § 66-2-120 (2008).

KENTUCKY

(1) Railroad companies operating within the State of Kentucky must provide each locomotive with a whistle and a bell of ordinary size. The whistle and bell must be sounded at a distance of at least 50 rods (753 feet), and either the whistle or bell shall be sounded continuously or alternately until the engine has reached the crossing.

A city, county, urban-county, or charter county government may regulate the sounding of train whistles at night if any such body enacts an ordinance adopting the provisions of Emergency Order Number 15, Notice Number 4, issued by the Federal Railroad Administration on August 31, 1993. If the Federal Railroad Administration updates the requirements of Emergency Order 15, a city, county, urban-county, or charter county governments that have adopted the provisions of Emergency Order 15 shall by ordinance adopt the most recent federal requirements governing the sounding of train whistles. Adapted from the Ky. Rev. Stat. Ann. § 277.190(1)-(2) (2008).

LOUISIANA

Louisiana law requires trains to use an audible warning (either a bell or a whistle) at a distance of 300 yards from a highway-rail grade crossing up to the crossing itself. Adapted from the La. Rev. Stat. Ann. § 32:168 (2008).

MAINE

Maine law requires a train to give an audible warning 990 feet from a highway-rail grade crossing. The state requires the continuous use of a bell between the initial signal point and the crossing, although it allows repeated use of either the horn or the whistle instead. Maine does not specify the number of blasts, only that use of the whistle or horn is required at the initial signal point. Adapted from the Me. Rev. Stat. Ann. Tit. 23 § 7214 (2008).

MARYLAND

No applicable statute relating to this topic.

MASSACHUSETTS

Massachusetts law requires a whistle and a bell of at least 35 pounds in weight be placed on each locomotive. The whistle is to be sounded, or the bell is to be rung for at least three separate and distinct blasts at the distance of at least 80 rods (1320 ft.) from the crossing. The whistle and bell shall be sounded continuously or alternately until the engine has passed through the crossing. Adapted from the Mass. Ann. Laws Ch. 160 § 138 (2009).

The department, upon petition, and after notice to the railroad and a public hearing, may, for good cause shown, recommend to the railroad such changes as it considers proper in the manner of making up and shifting freight trains or freight cars, and of sounding of whistles on

locomotives; and it may by written order forbid or regulate the sounding of whistles on the locomotives at any specified grade crossing of the tracks and any public way. Adapted from the Mass. Ann. Laws Ch.160 § 139 (2009).

Massachusetts has an additional statute requiring a railroad train approaching within approximately 1,500 feet of a highway crossing to emit a warning signal audible from such distance. Mass. Ann. Laws Ch. 90, § 15 (2009).

Penalty

Whoever violates any provision of Section 15 shall be punished by a fine of not less than \$100 or more than \$200. Mass. Ann. Laws Ch. 90 § 15 (2009).

MICHIGAN

No applicable statute relating to this topic.

MINNESOTA

Penalty

An engineer driving a locomotive on a railway who fails: (1) to ring the bell or sound the whistle on the locomotive, or have rung or sounded, at a distance of at least 80 rods from a place where the railway crosses a traveled road or street on the same level, except in cities, or (2) to continue ringing the bell or sounding the whistle at intervals until the locomotive and attached train have completely crossed the road or street, is guilty of a misdemeanor. Adapted from the Minn. Stat. § 219.567 (2008).

MISSISSIPPI

Mississippi law requires the use of an audible warning, such as a whistle, horn, or 30-pound bell, at an initial signal point 300 hundred yards from the crossing. The law allows repeated blasts of the horn or whistle if a continuous bell is not used. Adapted from the Miss. Code Ann. § 77-9-225 (2008).

MISSOURI

Penalty

Missouri law requires trains to begin to give audible warnings of their approach to a crossing 80 rods (1,320 feet or 440 yards) before the crossing is reached, and at regular intervals until the train is through the crossing.

Penalty

Failure to comply brings a penalty of \$20 for each violation. See Mo. Rev. Stat. § 389.990 (2008).

All railroad companies operating within the state are required to equip, maintain, and use, upon every locomotive operating at night, an electric headlight of 1,500 candlepower brilliancy, measured with the aid of a reflector. The provisions of this law do not apply to independent lines of railroad less than 75 miles in length; and during the first 90 days of a strike of the particular employees whose duties are to repair and maintain electric headlights. See Mo. Rev. Stat. § 389.900 (2008).

MONTANA

Montana does not specify when locomotive headlights or other lights must be used, but it requires headlights that have at least 1,500 candlepower measured without the aid of a reflector.

Penalty

A violation of this section is a misdemeanor and carries a fine of not less than \$100 or more than \$1,000 for each offense. See Mont. Code Ann. § 69-14-236 (2007).

Local Option

Montana has a code section dealing with “quiet zones.”

(1) Such a zone is described as a segment of a railroad within which is situated one or a number of consecutive railroad crossings at which locomotive horns and bells are not routinely sounded.

(2) A governing body of a municipality or a board of county commissioners may petition to the Secretary of the U.S. Department of Transportation to establish quiet zones at railroad crossing that meet the requirements established in the rules adopted to implement 49 U.S.C. 20153(c). In developing the petition, the governing body of the municipality or the board of county commissioners shall consult with the railroad corporations that operate the rail lines through crossings that are within the proposed quiet zone. The petition must include how the municipality or county intends to implement the supplemental safety measures that are required by the U.S. Department of Transportation at railroad crossings within quiet zones.

(3) A quiet zone may not be established at a railroad crossing unless the governing body of a municipality or board of county commissioners follows the procedure in subsection (2) and receives the approval of the Secretary of the U.S. Department of Transportation or the Secretary’s designee. See Mont. Code Ann. See § 69-14-620 (2009).

NEBRASKA

Nebraska law requires locomotives operating at night to be equipped with headlights. The headlight must be of sufficient candlepower to render plainly visible a grade crossing, warning sign, landmark, or track obstruction at a distance of not less than 300 feet. Adapted from the Neb. Rev. Stat. § 74-592 (2009).

NEVADA

Nevada law requires locomotives operating at night to be equipped with headlights. The headlight must have at least 1,500 candlepower measured without the aid of a reflector.

Penalty

Any railroad that violates this section is liable to the Nevada Public Utilities Commission for a penalty of not more than \$1,000 for each violation. Adapted from the Nev. Rev. Stat. § 705.360 (2009).

NEW HAMPSHIRE

New Hampshire law requires locomotives operating at night to be equipped with an electric headlight with sufficient candlepower to be able to render anything plainly visible at a distance of 300 feet. Adapted from the N.H. Rev. Stat. Ann. § 367:57 (2008).

NEW JERSEY

New Jersey specifies a distance of 300 yards from a highway-rail grade crossing as the point at which a train must begin to give audible warning of its approach. If a bell is used for this purpose, it must weigh 30 pounds. New Jersey law also requires continuous use of the whistle or horn, if the continuous bell is not used, from the initial signal point to the crossing.

Penalty

If in default, the railroad company shall pay a penalty of \$100 to be sued for by any informer within 10 days after the infraction. See N.J. Rev. Stat. § 48:12-57 (2008).

New Jersey law requires headlights on trains but does not specify size or illumination. See N.J. Rev. Stat. § 48:12-90.1 (2008).

NEW MEXICO

New Mexico law requires trains to give audible warnings of their approach to a highway-rail grade crossing 80 rods (1,320 feet or 440 yards) before the crossing. If a bell is used for this purpose, the weight of the bell must be 20 pounds.

Trains operating within the state are required to use headlights with sufficient power to permit visibility of an object the size of a man from a distance of at least 800 feet with the aid of a reflector. No time period for headlight use is specified. Adapted from the N.M. Stat. Ann. §§ 63-3-29-34 (2008).

Penalty

A violation of these sections will result in a penalty of \$100 and liability for damages. See N.M. Stat. Ann. § 63-3-29-34 (2008).

NEW YORK

New York law requires a person acting as an engineer, driving a locomotive on any railway to ring the bell or sound the whistle at least 80 rods (1320 feet or 440 yards) from any place where the railway crosses a traveled road or street at grade, except in cities; and to continue to ring the bell or sound the whistle at intervals until the entire train has completely crossed the road or street. Adapted from the N.Y. Railroad Law § 53b (2009).

Penalty

A violation of this section is a misdemeanor. See N.Y. Railroad Law § 53b (2009).

NORTH CAROLINA

No applicable statute relating to this topic.

NORTH DAKOTA

North Dakota requires trains to give audible warning of their approach to a highway-rail grade crossing 80 rods (1320 feet or 440 yards) before the crossing. If a bell is used for this purpose, North Dakota requires the bell to weigh 30 pounds. The law requires continuous use of the whistle or horn, if a continuous bell is not used, from the initial signal point to the highway-rail grade crossing. Adapted from the N.D. Cent. Code § 49-11-21 (2009).

Penalty

A violation of the preceding section by either the owner of the railroad or the locomotive engineer is an infraction. See N.D. Cent. Code §§ 49-11-22 -23 (2009).

OHIO

State law in Ohio requires locomotives to be equipped with a bell of ordinary size in use on such engines and a steam or compressed air whistle. When approaching a crossing, the engineer or person in charge of the train shall sound the whistle at a distance of at least 80 rods (1,320 ft or 440 yards) and ring the bell continuously until the engine passes the crossing.

This section shall not interfere with the proper observance of an ordinance passed by the legislative authority of a municipal corporation regulating the management of railroads, locomotives, and steam whistles on locomotives, within the limits of such municipal corporation. Adapted from the Ohio Rev. Code Ann. § 4955.32(A), (B) (2009).

Penalty

If a person in charge of a locomotive fails to sound the locomotive whistle at frequent intervals beginning not less than 1,320 feet from a crossing, that person is guilty of a misdemeanor of the fourth degree. If the violation causes physical harm to any person, then the offender is guilty of a misdemeanor of the third degree. See Ohio Rev. Code Ann. § 4999.04 (2009).

Alternative Audible Warning Systems

In October of 2000, a new law took effect in Ohio allowing for the evaluation of alternative audible warning systems. The public utility commission was given the authority to evaluate alternative systems for providing audible warnings of an approaching locomotive engine. The commission may approve the use of an audible warning system as an alternative to the whistle and bell required only if it determines that the alternative audible warning system complies with applicable federal requirements for an audible warning of an approaching train, and only if train-activated warning devices also are present at any crossing at which the alternative audible warning system is installed. The commission shall establish guidelines for the use and operation of any alternative audible warning system it approves. See Ohio Rev. Code Ann. § 4955.32.1 (2009)

OKLAHOMA

A bell of at least 30 pounds weight, or a whistle, shall be placed on each locomotive engine, and shall be rung or whistled at the distance of at least 80 rods (1320 feet or 440 yards) from the place where the railroad shall cross any other road or street, under a penalty of \$50 for every neglect, to be paid by the corporation owning the railroad, one-half thereof to go to the informer, and the other half to the state, and shall also be liable for all damages which shall be sustained by any person by reason of such neglect. Adapted from the Okla. Stat. Ann. Tit. 66 § 126 (2008).

Penalty

Every person in charge, as engineer of a locomotive engine, who omits to cause a bell to ring or a steam whistle to sound at the distance of at least 80 rods (1320 feet or 440 yards) from the place where the track crosses, on the same level, any traveled public way, is punishable by a fine not exceeding \$50 or by imprisonment in the county jail not exceeding 60 days. Okla. Stat. Ann. Tit. 21 § 1253 (2008).

OREGON

No applicable statute relating to this topic.

PENNSYLVANIA

No applicable statute relating to this topic.

RHODE ISLAND

Rhode Island requires that trains have a bell weighing 32 pounds. The operator must ring the bell at a distance of at least 80 rods (1,320 feet or 440 yards) from the grade crossing and continue ringing the bell through the crossing.

Penalty

Failure to comply with this section may bring a fine not exceeding \$1,000; and the railroad shall be liable for all damages as a result of failure to comply. See R.I. Gen. Laws §§ 39-8-14, -15 (2008).

SOUTH CAROLINA

The law requires the continuous use of a warning sound, such as a bell, steam, or air whistle starting at a distance of at least 500 yards from the crossing and until the engine is through the crossing. South Carolina law requires that the bell weigh 30 pounds. Adapted from the S.C. Code Ann. § 58-15- 910 (Law. Co-op. 1999).

SOUTH DAKOTA

No applicable statute relating to this topic.

TENNESSEE

(1) The officials having jurisdiction over every public road crossed by a railroad shall place at each crossing a sign, marked as provided by § 65-11-105. The county legislative body shall appropriate money to defray the expenses of the signs. The failure of any engine driver to blow the whistle or ring the bell at any public crossing so designated by either the railroad company or the public official shall constitute negligence with the effect and all as set forth in section 65-12-109;

(2) On approaching every crossing so distinguished, the whistle or bell of the locomotive shall be sounded at the distance of one-fourth of a mile from the crossing, and at short intervals until the train has passed the crossing;

(3) Every railroad company shall keep the engineer, fireman, or some other person upon the locomotive, always upon the lookout ahead; and when any person, animal, or other

obstruction appears upon the road, the alarm whistle shall be sounded, the brakes put down, and every possible means employed to stop the train and prevent an accident; and

Penalty

(4) It is unlawful for any person operating a railroad to use road engines without having them equipped with an electric light placed on the rear of the engine, tank, or tender, which light shall be a bull's eye lens of not less than four inches in diameter with a bulb of not less than 60watts power, so that such road engine can be operated with safety when backing and the light so placed shall be burning while any such engine may be used in any backing movement. Such lights shall be operated at night; and any person violating any of these provisions shall be fined the sum of not less than \$25, and not more than \$100 for each offense. See Tenn. Code Ann. § 65-12-108 (2008).

TEXAS

- (a) A railway company shall place on each locomotive:
 - (1) a bell weighing at least 30pounds; and
 - (2) a steam whistle, air whistle, or air siren.
- (b) The engineer in charge of the locomotive shall ring the bell and blow the whistle or siren at least one-quarter mile from the place where the railroad crosses a public road or street. The engineer shall continue to ring the bell until the locomotive has crossed the road or stopped.
- (c) The railway company is liable for any damages sustained by a person because of a violation of Subsection (a) or (b).

Penalty

- (d) The engineer in charge of the locomotive commits an offense if the engineer violates Subsection (b). An offense under this subsection is a misdemeanor punishable by a fine of not less than five dollars or more than one hundred. See Tex. Transp. Code § 471.006 (2007)

Local Option

Notwithstanding these subsections, the governing body of a municipality having a population of at least 5,000 may regulate by ordinance the ringing of bells and blowing of whistles and sirens within its limits. Compliance with the ordinance is compliance with these subsections and a sufficient warning to the public at a crossing the ordinance affects. See Tex. Transp. Code § 471.006(e) (2007).

UTAH

Utah law requires continuous use of a bell or other audible warning between an initial signal point and the crossing.

Every locomotive shall be provided with a bell which shall be rung continuously from a point not less than eighty rods (1320 ft or 440 yards) from any city or town street or public highway grade crossing until such city or town street or public highway grade crossing shall be crossed, but, except in towns and at terminal points, the sounding of the locomotive whistle or siren at least one-fourth of a mile before reaching any such grade crossing shall be deemed equivalent to ringing the bell as aforesaid; during the prevalence of fogs, snow, and dust storms, the locomotive whistle shall be sounded before each street crossing while passing through cities and towns. All locomotives with or without trains before crossing the main track at grade of any other railroad must come to a full stop at a distance not exceeding 400 feet from the crossing, and must not proceed until the way is known to be clear; two blasts of the whistle or two sounds of the siren shall be sounded at the moment of starting; provided, that whenever interlocking signal apparatus and derailing switches or any other crossing protective device approved by the department of transportation is adopted such stop shall not be required.

Local Option

Provided, that local authorities in their respective jurisdiction may by ordinance approved by the department of transportation provide more restricted sounding of bells or whistles or sirens than is provided herein and may prescribe points different from those herein set forth at which such signals shall be given and may further restrict such ringing of bells or sounding of whistles or sirens so as to provide for either the ringing of a bell or the sounding of a whistle or of a siren or the elimination of the sounding of such bells or whistles or sirens or either of them, except in case of emergency.

The term locomotive as used herein shall mean every self-propelled steam engine, electrically propelled interurban car and so-called diesel operated locomotive. Adapted from the Utah Code Ann. § 56-1-14 (2009).

Penalty

Every person in charge of a locomotive violating the provisions of this section is guilty of a misdemeanor, and the railroad company shall be liable for all damages which any person may sustain by reason of such violation. See Utah Code Ann. § 56-1-14 (2009).

VERMONT

(a) An audible warning device meeting standards prescribed by the Federal Railroad Administration shall be sounded sufficiently in advance of each public highway grade crossing to give warning of a train's approach and shall be kept sounding until the train has crossed the highway. Adapted from the Vt. Stat. Ann. Tit. 5 § 3582 (2008).

Local Option

(b) Notwithstanding subsection (a) of this section, the agency of transportation, following the procedures set forth in 3 V.S.A. chapter 25, may prohibit the sounding of audible warning devices at public and private grade crossings equipped with the following safety features or other safety features of similar effect:

- (1) Flashing lights in each direction which are automatically activated by approaching trains.
- (2) Two gates, one on each side of the crossing, both of which are automatically lowered by the approaching train and both extended across approximately half the width of the lanes of traffic so that the entire width of the lanes of traffic is blocked when the gates are lowered.
- (3) A bell that is automatically activated by the approaching train.
- (4) Overhead street lights.
- (5) Signs posted before the crossing in each direction warning motorists and pedestrians of the crossing ahead.
- (6) Posted speed limits for traffic of not more than 40 mph.
- (7) Not more than two lanes of vehicular traffic in each direction at the crossing.

(c) No prohibition by the agency under subsection (b) of this section shall become effective until the Federal Railroad Administration grants a waiver or exemption under 49 U.S.C. § 20153. The agency shall promptly notify all affected railroads when a waiver or exemption is granted.

(d) A railroad operating a train over a crossing at which the agency has prohibited the sounding of audible warning devices shall not, on the basis of its omission to sound an audible warning device, be liable to any person for death, personal injury or property damage resulting from use of the crossing.

(e) Nothing in this section shall prohibit a railroad's use of an audible warning device in emergency circumstances.

(f) A municipality in which a crossing is located shall not, on the basis of the railroad's omission to sound an audible warning device because of a prohibition by the agency under subsection (b) of this section, incur liability to any person for death, personal injury or property damage resulting from use of the crossing. See Vt. Stat. Ann. tit. 5, § 3582 (2008).

VIRGINIA

Every railroad company must provide each locomotive passing upon its road with a bell of ordinary size and steam whistle or horn, and such whistle or horn shall be sharply sounded outside cities and towns at least twice at a distance of not less than 300 yards nor more than 600 yards from the place where the railroad crosses upon the same level any public highway or crossing, and such bell shall be rung or whistle or horn sounded continuously or alternately until the locomotive has reached such highway crossing, and shall give such signals in cities and towns as their local governing bodies may require.

The governing body of any county, city, or town may by ordinance require locomotives to sound their whistle upon approaching designated railroad trestles or bridges having lengths of 100 feet or more. Notice of any such requirement shall be given by registered mail to the registered agent of the railroad operating in the affected county, city, or town. Affected railroads shall comply with any such ordinance within thirty days of receiving the notice.

The governing body of any county, city, or town may, by ordinance adopted following a public hearing, petition the state corporation commission to enter an order, pursuant to the Commission's Rules of Practice and Procedure, requiring locomotives to sound their whistle or horn at specifically identified private crossings in the same manner as required for public crossings. If the commission should deem the blowing of the locomotive whistle at such private crossings to be necessary in the interest of safety under all relevant circumstances, then it shall enter an order. The affected railroad shall comply with the order within ninety days of receipt by its registered agent of notice sent by registered mail and the locality must first install stop signs on both sides of such private crossing, to be paid for by the locality or the landowner. The commission may establish and collect a fee, not to exceed its actual costs, from applicants for an order to sound locomotive whistles pursuant to this section. Adapted from the Va. Code Ann. § 56-414 (2009)

Penalty

Every officer or employee of any railway company, whose duty it shall be to carry out any of the provisions of section 56-414 and shall fail to do so, shall be punished by a fine not exceeding \$10 for each offense. See Va. Code Ann. § 56-415 (2009).

WASHINGTON

No applicable statute relating to this topic.

WEST VIRGINIA

West Virginia law requires the continuous use of a bell, horn, or whistle for a distance of at least 60 rods (990 ft. or 330 yards) from a crossing and up to and through the crossing.

Penalty

Failure to do so is a misdemeanor and is punishable by a fine not to exceed \$100. See W. Va. Code § 31-2-8 (2008).

WISCONSIN

State law requires that locomotive engines be equipped with whistles or horns mounted to face the direction in which the engine is moving. Such whistles or horns must be placed to emit warning sounds at sound levels, which are in accord with established practices to warn employees and the public of the approach of the engine. Adapted from the Wis. Stat. § 192.15 (11) (2009).

No railroad train or locomotive shall run over any public traveled grade crossing within any city or village, except when gates are operated, or a flagman is stationed, unless the engine bell shall be rung continuously within 330 feet of the crossing and until the crossing is reached. Adapted from the Wis. Stat. §129.29 (2009)

No railroad train or locomotive shall run over any public traveled grade crossing outside of the limits of municipalities unless the engine bell shall be rung continuously from 1,320 feet before the crossing until the crossing is reached. Adapted from the Wis. Stat. § 192.29 (4) (2009).

Penalty

Any railroad which violates section 193.15 shall forfeit to the state \$100 for each violation and each day that the violation continues shall be deemed a separate offense. See Wis. Stat. § 192.54 (7) (2009)

WYOMING

No applicable statute relating to this topic.

CHAPTER 6: WARNING DEVICES – ACTIVE

CHAPTER OVERVIEW

This chapter surveys the various state laws and regulations concerning active warning devices. Not all states have laws or regulations covering these devices. “Active warning devices” as used in the various states means those warning devices located at highway-rail grade crossings that are activated automatically upon the approach of a train.

STATE LAWS AND REGULATIONS

ALABAMA

No applicable statute related to this topic.

ALASKA

The Department of Transportation and Public Facilities can, in its discretion, require railroad crossing signals which indicate the approach or presence of trains to be installed at those railroad crossings where there is a need for protection beyond that provided by signs. On multiple-lane highways, cantilever-mounted signals will, in the discretion of the department, be required. For railroad crossings at highway intersections, additional signal-light units may be used to supplement the normal complement of lights. At crossings where multiple train movements may occur simultaneously or at crossings in congested urban areas, the use of gates will, in the discretion of the department, be required. 17 AAC 15.481 (e) (2008).

ARIZONA

The Arizona State Corporation Commission is authorized to determine, after a public hearing, whether any particular crossing of a railroad and a public highway or street is sufficiently hazardous as to require the installation of automatic warning signals or devices, provided, that a public hearing shall not be required if the parties in interest have entered into an agreement for the construction of such crossing and for the apportionment between them of the cost of acquiring and installing such automatic warning signals or devices.

If the Commission finds that any crossing requires the installation of automatic warning signals or devices, it may order the installation. If the parties in interest are unable to agree as to the apportionment of the cost of acquisition and installation, then the costs shall be borne as follows:

- (1) The railroad, fifty percent.
 - (2) Where a city street is involved: the city, fifty percent.
 - (3) If a county highway: the county, fifty percent.
 - (4) If a state highway: the state highway fund, fifty percent.
- Ariz. Rev. Stat. Ann. § 40-337.01 (2009).

On or before February 15 of each year, the Commission shall submit to the railroad involved and the city, county and Department of Transportation in which jurisdiction a public railroad grade crossing is located, an array of such crossings where the installation of automatic warning signals or devices should be considered during the year, or within a reasonable time thereafter depending upon the availability of monies, materials, labor and other factors involved in such installation. Ariz. Rec. Stat. 40-337.03 (2009)

ARKANSAS

No applicable statute related to this topic.

CALIFORNIA

The Public Utility Commission, in apportioning the cost of maintenance of automatic grade crossing protection, shall divide the maintenance costs in the same proportion as the cost of constructing such automatic grade crossing protection is divided. The railroad or street railroad corporations and the public agencies affected may agree on a different division of maintenance costs. If the public agency affected agrees to assume a greater proportion of the cost of maintenance than the apportionment of the cost of construction, the difference shall be paid by the public agency from funds other than the State Highway Fund or any other state fund. Cal. Pub. Util. Code § 1202.2 (2008).

COLORADO

The Colorado Public Utilities Commission has the power to determine, order, and prescribe the terms and conditions of installation, operation, maintenance and equipping of highway-rail crossings which may be constructed. This includes the placement of watchmen at the crossing and the installation and regulation of lights, blocks, interlocking, other signaling systems, safety appliance devices, or other such means as appear reasonable and necessary to promote public safety.

The Commission may order that automatic or other safety appliance signals or devices be installed, reconstructed, improved, and/or operated at any grade crossing of any public highway or road by any railroad. The Commission must also determine and order, after notice and hearing, how the cost of installing, reconstructing, or improving such signals or devices shall be divided between the affected railroads, the highway operations and maintenance division and the affected city, city and county, town, county or other political subdivision of the state. In determining how much of the cost is to be borne by the railroad, consideration will be given to the benefit, if any, which will accrue from those signals or devices to the railroad. In every case, the part to be paid by the railroad is to be not less than 20 percent of the total cost of the signals or devices. In order to compensate for the use of such crossings by the public, the Commission will generally order that such part of the total not paid by the railroad will be divided between the state highway crossing fund and the city, town, city and county, county or other political

subdivision in which the crossing is located; in which case, the Commission shall also fix the amount to be paid. Colo. Rev. Stat. § 40- 4-106 (2008).

CONNECTICUT

The Commissioner of Transportation, when requested in writing by the selectmen of any town, the mayor and common council of any city, or the warden and burgesses of any borough, may order gates, a flagman or electric signals or other signal device to be installed and maintained at any railroad crossing where a railroad crosses a public highway at grade. After reasonable notice and a hearing, and a finding that public safety requires it, the Commissioner shall order the railroad company to install and maintain at the crossing, gates, a flagman, or such electric signals or other signal device as may be approved by the Commissioner. Conn. Gen. Stat. § 13b-343 (2009).

Each town, city or borough, upon receipt of a report of a malfunctioning grade crossing gate or signal, is required by law to dispatch local police or firemen to the crossing to direct traffic across the crossing or to an alternate route until such time as the railroad company repairs the gate or signal or assumes responsibility for directing traffic. Conn. Gen. Stat. § 13b-344 (2009).

DELAWARE

No applicable statute related to this topic.

DISTRICT OF COLUMBIA

The District of Columbia Municipal Regulations require that if, in the opinion of the Mayor, the volume of pedestrian or vehicular traffic at any intersection at grade sufficient to justify additional safeguards, the intersection shall, if ordered by the Mayor, be guarded also by a standard railway cross-arm warning sign, gate, electric bells, electric automatic flashing red signal lights, or other appliance, or combination of appliances, to be approved by the Mayor. The safeguarding appliances shall be constructed, operated, and maintained by and at the cost of the company operating the railway. 24 DCMR 120.5 (2007).

FLORIDA

The Florida Department of Transportation, in conjunction with other governmental units, and the private sector, is tasked with the responsibility of developing and implementing a state-wide rail program designed to ensure the proper maintenance, safety, revitalization, and expansion of the rail system. Among the myriad duties under the statute, the department shall administer rail operations and construction, including the regulation of maximum train operating speeds, the opening and closing of public grade crossings, the construction and rehabilitation of public grade crossings, and the installation of traffic control devices at public grade crossings. The administration of the program by the Department includes participation in funding. Fla. Stat. Ann. § 341.302 (2009).

GEORGIA

No applicable statute related to this topic.

HAWAII

No applicable statute related to this topic.

IDAHO

In order to promote the public safety at railroad grade crossings and public streets, roads or highways and to provide for the payment of all or part of the costs of installing, reconstructing, maintaining, or improving automatic or other safety appliances, signals or devices at railroad grade crossings of public streets, roads or highways over the tracks of any railroad company, there is hereby created in the dedicated fund in the state treasury an account to be known as the railroad grade crossing protection fund.

The Idaho Transportation Department is responsible for the administration of the grade crossing protection fund. The Department is required to establish a priority rating for railroad crossings, assigning priority first to the most hazardous locations, giving proper weight to traffic volumes over the crossing by school buses and vehicles transporting dangerous commodities, and if the public safety does not require installation of protective signals or devices at a crossing under consideration, it may refuse to order the installation of signals or devices or may defer their installation until more hazardous crossings have been protected. Every railroad company is required to file with the Idaho Transportation Department a copy of each report of accident which is filed with the Idaho Public Utilities Commission, for the Transportation Department to consider in making its determination. Idaho Code §§ 304 A-B-C-D (2008).

ILLINOIS

The Illinois Commerce Commission shall have the power, upon its own motion, or upon complaint, and after having made proper investigation, to require the installation of adequate and appropriate luminous reflective warning signs, luminous flashing signals, crossing gates illuminated at night, or other protective devices in order to promote and safeguard the health and safety of the public. The Commission shall have authority to determine the number, type, and location of such signs, signals, gates, or other protective devices which, however, shall conform as near as may be with generally recognized standards, and the Commission shall have authority to prescribe the division of the cost of the installation and subsequent maintenance of such signs, signals, gates, or other protective devices between the rail carrier or carriers, the public highway authority in interest, and in instances involving the use of the Grade Crossing Protection Fund, the Illinois Department of Transportation. 625 ILCS 5/18c- 7401 (2008).

INDIANA

The Indiana Department of Transportation, in authorizing the construction of new highway-rail crossings under the provisions of IC 8-6-1-7, has statutory authority to order the installation of automatic train-activated warning devices at the crossing. The Department also has authority to order the installation, replacement, relocation, modernization or improvement of automatic train-activated warning devices at any highway-rail crossing in the state. This authority is exclusive of and supersedes the power of any other state or local government agency. Ind. Code Ann. § 8-6-7.7-2 (2009).

The Indiana Department of Transportation shall, upon proper petition by five or more citizens of the state, or a board of county commissioners, conduct a hearing to declare as dangerous or extra hazardous any grade crossing in the state that the Department finds to be of such a character that the safety of the users of the highway requires the installation of automatic train-activated warning signals or other crossing safety devices. Ind. Code Ann. § 8-6-7-1 (2009).

IOWA

Whenever a railroad track crosses, or is planned to cross a highway, street or alley, the affected railroad and the Department of Transportation in the case of a primary highway, the board of supervisors of the county in the case of secondary roads, or the city council in the case of streets or alleys, may agree upon the location, manner, vacation, physical structure, characteristics, and maintenance of the crossing and flasher lights or gate arm signals, as well as the allocation of costs. The Iowa Department of Transportation may be a party to any agreement if grade crossing safety funds are to be used. Up to seventy-five percent of the maintenance cost of flasher lights or gate arm signals and an unlimited portion of the costs associated with installation may be paid from the grade crossing safety fund. Iowa Code § 327G.15 (2008). Also see Iowa's entries in Chapters 1 and 2 in this book.

KANSAS

No applicable statute related to this topic.

KENTUCKY

If, at any time, a warning device at a highway-rail crossing is activated for thirty minutes or more in the absence of an approaching train and this activation is due to track maintenance or train movements in the vicinity, and the affected railroad is unable to disengage the device, then the railroad must position a flagman at the crossing. Ky. Rev. Stat. Ann. § 189.562 (2009).

The Transportation Cabinet has the power to investigate any public grade crossing not equipped with gates and with an average daily traffic (ADT) of four thousand or more, at which two or more accidents involving a train and a vehicle traversing a highway-rail crossing have

occurred in a consecutive five-year period beginning January 1, 1986. The Cabinet shall request written comments from the affected local government prior to reaching a decision on a particular crossing. After the Cabinet receives a report from the affected local government supporting the installation of gates, the cabinet, utilizing matching funds available from the Federal Highway Administration's highway-rail grade crossing safety program, shall program the installation of gates at the crossing. The cost of installing gates shall be the responsibility of the Cabinet and the affected railroad, and shall not be charged to any unit of local government. Ky. Rev. Stat. Ann. § 189.561 (2009).

LOUISIANA

A. Whenever a highway crosses a railroad track at grade, and the grade crossing needs repair and should, in the judgment of the chief engineer or his duly authorized representative, be repaired, and if, after fifteen days' notice in writing, the railroad company whose tracks are crossed thereby fails to repair it, the Department of Transportation and Development may make the repairs and maintain the crossing and charge the expenses thereof to the railroad company.

B. Whenever a warning device located at a railroad crossing needs repair or is not being maintained in compliance with federal guidelines and should, in the judgment of the chief engineer or his duly authorized representative, be repaired or receive maintenance, written notice of the necessity of such repair or maintenance shall be given to the railroad company owning the track at which the device is located. If the railroad does not proceed with the repair or maintenance within thirty days after receipt of the notice, the Department may initiate the performance of the repair or maintenance of the warning device and charge the expenses thereof to the railroad company. La. Rev. Stat. Ann. § 48:386 (2008).

The Department of Transportation and Development may, to the extent that the legislature appropriates funds therefore, make payments to railroads, whose railroad grade crossings across state highways are or shall hereafter be marked by the installation of flashing light signals, for not more than one-half the cost of maintenance of such flashing light signals during the fiscal year for which the funds are appropriated. La. Rev. Stat. Ann. § 48:387 (2008).

MAINE

The Maine Department of Transportation may require each railroad to install, operate and maintain an automatic signal, crossing gate or other protective device at any highway-rail crossing if, after proper notice and hearing, the Department decides that public safety concerns warrant such action. Notice and hearing are not required if such automatic grade crossing protection is funded and installed under the federal program. The affected railroad will pay all costs, except at any crossing with state highways and state-aid highways, where the installation costs are to be split between the railroad and the state as determined by the Department of Transportation. Me. Rev. Stat. Ann. tit. 23, § 7221 (2008).

MARYLAND

The Maryland Secretary of Transportation has general authority to approve the construction or modification of a railroad grade crossing or a change of crossing protection equipment and to impose conditions necessary to ensure public safety at the crossing. No other approval, safety condition, or protective measure may be required by any other public authority.

Except for an industrial track spur or siding, a railroad may not construct, reconstruct, improve, widen, relocate, or otherwise alter a railroad grade crossing over a state, county, or municipal highway, except in Baltimore City or over a private road, or change the crossing protection at such a crossing unless approved by the Secretary.

This same section provides that a person may not construct, reconstruct, improve, widen, relocate, or otherwise alter either a railroad grade crossing over a public highway or a private road over a railroad or, change the crossing protection at such a crossing unless approved by the Secretary. Md. Ann. Code art. 8 § 639 (2009).

MASSACHUSETTS

The law in Massachusetts requires a railroad whose track is intersected by a public way, to install at the railroad's expense, a hand-activated warning device which is capable of audibly or visibly warning an approaching train of danger at any crossing so designated by the Massachusetts Department of Transportation. Mass. Ann. Laws ch. 160 § 138A (2009).

The Department, upon petition, and after notice to the railroad corporation and a public hearing, may, for good cause shown, recommend to such railroad corporation such changes as it considers proper in the manner of making up and shifting freight trains or freight cars, and of sounding of whistles on locomotives, and it may by written order forbid or regulate the sounding of whistles on the locomotives of such corporation at any specified grade crossings of the tracks of such corporation with any public way. The corporation which is subject to such order shall, until the order has been modified or annulled by the Department, conform in all respects to the terms thereof. Mass. Ann. Laws ch. 160 § 139 (2009).

MICHIGAN

(1) The Department of Transportation, by order, in accordance with section 301, may prescribe active traffic control devices to warn of the approach of trains about to cross a street or highway at public railroad grade crossings consisting of signals with signs, circuitry, or crossing gates and other appurtenances as depicted in the Michigan Manual of Uniform Traffic Control Devices. A determination shall detail the number, type, and location of signals with signs, circuitry, or gates and appurtenances, which, however, shall conform as closely as possible to generally recognized national standards.

(2) Except as otherwise provided for in this act, the cost of any installation, alteration, or modernization of active traffic control devices shall be at equal expense of the railroad and road authority.

(3) After initial installation, all active traffic control devices, circuitry, and appurtenances at crossings shall be maintained, enhanced, renewed, and replaced by the railroad at its own expense, except that the road authority shall pay \$760.00 for flashing signals on a single track, \$830.00 for flashing signals and gates on a single track, \$895.00 for flashing signals with cantilever arm on a single track, \$1,215.00 for flashing signals with cantilever arm with gates on a single track, \$1,230.00 for flashing signals and gates on multiple tracks, \$1,630.00 for flashing signals with cantilever arms and gates on a multiple track, \$725.00 for flashing signals on a multiple track, and \$1,005.00 for flashing signals with cantilever arms on a multiple track annually for maintenance to the railroad for each crossing with active traffic control devices not covered by existing or future railroad-road authority agreements. The railroad shall furnish standard equipment uniform for all railroads at a cost and installation basis consistent for all railroads. By January 1, 2010 and every 10 years after 2010, the Department shall complete a study to determine the cost of maintenance of active traffic control devices and shall forward a copy of the study to the members of the house and senate committees that consider railroad legislation.

(4) Standard active railroad-highway traffic control devices consisting of side of street flashing light signals with or without half-roadway gates and cantilevers shall include the railroad crossing (crossbuck) sign, "stop on red signal" sign, and number of tracks sign located, designed, and maintained on the signal support as prescribed by the Michigan Manual of Uniform Traffic Control Devices. The railroad shall perform actual installation and maintenance of these signs. The railroad shall also install, renew, and maintain any signs placed on cantilevered signal supports. Whenever active traffic control devices are installed at any crossing, they shall be so arranged that for every train or switching movement over the grade crossing, the active traffic control device shall be in operation for a period of not less than twenty seconds or more than sixty seconds in advance of the train movement reaching the nearest established curb line or highway shoulder and the devices shall continue to operate until the train movement has passed the established curb line or shoulder on the far side of the highway.

(5) The Department may order a railroad, at the railroad's expense, to stop and flag a crossing for normal train service or when active traffic control devices may become inoperable. Mich. Comp. Laws Ann. § 462.315 (2009).

MINNESOTA

If the Commissioner of Transportation finds in an investigation instituted upon the Commissioner's own motion or upon complaint and after notice and hearing, that conditions at a grade crossing require additional safeguards to protect life and property, such as crossing gates or other suitable devices, the Commissioner shall specify the nature of the devices required and

may order the railway company operating the railroad at the crossing to install them. Minn. Stat. § 219.24 (2009).

MISSISSIPPI

Title 65, Chapter 1, Section 8 of the Mississippi Code grants the Transportation Commission the authority to regulate and abandon grade crossings on any road fixed as a part of the state highway system. Whenever the Commission, in order to avoid a grade crossing with the railroad, builds a road on one side of the railroad, it shall have the power to abandon and close the grade crossing whenever an underpass or an overhead bridge is substituted for a grade crossing. The Commission is also granted the authority to require the railroad to install signal posts with lights or other warning devices, at the expense of the railroad, and to regulate and abandon an underpass or overhead bridge. Where the underpass or bridge was abandoned because of the building of a new underpass or bridge, the Commission can close the old underpass or bridge or, in its discretion, return jurisdiction for the underpass or bridge back to the county board of supervisors. Miss. Code Ann. § 65-1-8 (2008).

(1) There is established within the Railroad Revitalization Fund a new account to be entitled the Mississippi Highway-Railroad Grade Crossing Safety Account. The account shall be administered by the Mississippi Department of Transportation and shall consist of (a) such monies as are transferred to it on July 1, 2001, from the Mississippi Grade Crossing Closure Account; and (b) thirty-five percent of collections from the locomotive fuel tax imposed under Section 27-59-307 for the previous year. Unexpended amounts remaining in the account at the end of a fiscal year shall not lapse into the state general fund; and any interest earned on amounts in the account shall be deposited to the credit of the account.

(2) The Mississippi Department of Transportation, in cooperation with the railroads operating in Mississippi, shall promulgate rules to ensure equitable allocation of the funds described in subsection (1) of this section to projects throughout the state, and shall consider the proportionate number of main line track miles of each railroad and the number of public roadway/railroad grade crossings on each railroad's main line. Expenditure of monies from the Mississippi Highway-Railroad Grade Crossing Safety Account shall be limited to the following purposes:

- (a) Financial aid for closure of public roadway/railroad grade crossings;
- (b) Realignment of construction costs of roadways being rerouted to facilitate a closure of a public roadway/railroad grade crossing;
- (c) Monies to match federal or other funds for a grade separation eliminating an at-grade crossing of a public roadway and railroad;
- (d) Installation, maintenance or upgrade of highway-railroad grade crossing signals, at the discretion of the Mississippi Transportation Commission, based upon the Federal

Railroad Administration ranking of all Mississippi highway-railroad grade crossings. Not less than ten percent of the monies necessary to defray the costs of such installations must be federal funds;

- (e) Separation of grades of highway/railroad crossings;
- (f) Improvement of any grade crossing including the necessary roadway approaches thereto of any railroad across a public road highway;
- (g) Construction, reconstruction, repair or replacement of the grade crossing surface structure; and
- (h) Installation of an automatic advance warning signal alerting a motorist that a grade crossing is ahead.

(3) The Mississippi Department of Transportation shall consider all requests from the state's diagnostic review of public roadway/railroad grade crossings and from individual railroads for expenditure of funds for the purposes described in subsection (2) of this section, and shall establish uniform criteria and guidelines relating to such crossings and the expenditure of funds. Miss. Code Ann. § 57-43-15 (2009).

MISSOURI

The Missouri State Highways and Transportation Commission has exclusive authority to determine the use and type of warning devices at each crossing of a public road by a railroad. The same is true at any private crossing where the Commission has determined that the crossing is or will be utilized by the public to the extent that it is necessary to protect the safety of the public. Mo. Rev. Stat. § 389.610 (2008). See also, Missouri's entries in chapters 1 and 2 in this book.

(1) The owner of a motor vehicle shall pay a railroad crossing safety fee of twenty-five cents when such person registers or renews the registration of a motor vehicle. All revenue collected by the Director of Revenue pursuant to this section shall be deposited in the state treasury to the credit of the state highways and transportation department fund in an account to be known as the "Grade Crossing Safety Account," which is hereby created.

(2) Funds from the grade crossing safety account shall be used for installation, construction or reconstruction of automatic signals or other safety devices or other safety improvements at crossings of railroads and public roads, streets or highways. That portion of the costs proportioned to the state, county, municipality or other public authority in interest, for installation, construction or reconstruction of automatic signals or other safety devices or other safety improvements at crossings of railroads and public roads, streets or highways which the State Highways and Transportation Commission orders pursuant to section 389.610 shall be paid out of the grade crossing safety account, except that when any part of such costs can be paid

from funds available under any federal program or the Federal-Aid Highway Act, such part shall not be paid from the grade crossing safety account. No more than ninety percent of the cost of improving any grade crossing shall be paid out of the grade crossing safety account. The Commission shall, in cooperation with other governmental agencies of the state, determine if any portion of the cost can be paid from funds available pursuant to any federal program or the Federal-Aid Highway Act. The Commission may order the payment of the amount determined pursuant to section 389.610 to the person, firm, or corporation entitled thereto from the grade crossing safety account. Notwithstanding any other provision of this section to the contrary, the Commission may expend annually out of the grade crossing safety account an amount not greater than one hundred thousand dollars of the total annual receipts deposited in the state treasury to the credit of such account to pay for administrative expenses of the division incurred in carrying out the division's railroad grade crossing closure program. The provisions of this section shall not limit or enlarge the Commission's expenditures out of the grade crossing safety account for any other purposes or the Commission's expenditures out of any other account or fund.

(3) Notwithstanding the provisions of Section 33.080, RSMO, to the contrary, moneys in the grade crossing safety account shall not be transferred and placed to the credit of the state road fund until the amount in the account at the end of the biennium exceeds two times the amount encumbered from the account to carry out the purposes of this section in the preceding fiscal year. The amount, if any, in the account which shall be transferred to the credit of the state road fund shall be that amount in the account which exceeds two times the amount encumbered from the account to carry out the purposes of this section in the preceding fiscal year. Mo. Rev. Stat. § 389.612.1 (2008).

MONTANA

No applicable statute related to this topic.

NEBRASKA

When any political subdivision of this state determines that public safety will be improved by eliminating a crossing, by the installation, substantial modification, or improvement of automatic railroad grade crossing protection, or by construction of an overpass or underpass where a street, road, or highway intersects with a line of the railroad company within its jurisdiction, and demand is made upon the railroad company concerned, the political subdivision shall inform the Department of Roads of such fact. Neb. Rev. Stat. § 74-1314 (2009).

When any railroad track crosses a public road in a cut, on a curve or side hill, in timberlands, near buildings or near any object restricting the view from the road, the Department of Roads, either on its own motion or upon complaint of interested parties, may order that certain precautions be taken to promote public safety. Each railroad carrier must provide and maintain whatever the Department may direct, including gates, crossings, signs, alarm bells and warning personnel. The Department has the authority to adopt a uniform crossing sign design and direct that it be used at any crossing or other place. It may also direct the placement of special signs

where the physical conditions of the crossing warrant, except with regard to automatic grade crossing warning devices. Neb. Rev. Stat. § 75-1334 (2009).

The Department shall have authority to determine that (1) a railroad crossing shall be eliminated, (2) automatic railroad grade crossing protection devices shall be installed, modified, or improved, (3) an overpass or underpass is needed at a railroad crossing, or (4) other measures are necessary to improve public safety at railroad crossings. Neb. Rev. Stat. § 74-1311 (2009).

The Department shall establish and update, as needed, a priority list for improving the safety of railroad crossings in Nebraska. The list shall identify all crossings in need of safety improvements and the relative order of need. Neb. Rev. Stat. § 74-1312 (2009).

NEVADA

Chapter 704 of Title 58 of Nevada Revised Statutes sets forth the powers of the Public Utilities Commission, which include exclusive power over railroad crossings.

The Public Utilities Commission, after an investigation and hearing, may determine and order any of the options below for the safety of the traveling public. The investigation and hearing result from the filing of a formal complaint by the Department of Transportation, the board of county commissioners, the town board or councilor any railroad company.

After a formal hearing the Commission may determine and order:

- (1) The elimination, alteration, addition or change of a highway crossing(s) over any railroad at-grade or grade separated, including its approaches and surface.
- (2) Changes In the method of crossing at, above or below grade.
- (3) The closing of a crossing and the substitution of another therefore.
- (4) The removal of obstacles to the public view upon approach.
- (5) Any other changes and improvements for the safety of the public.

The Commission is also empowered to order the costs for any such work to be divided and laid by the railroad and the state, county, town or municipality. Nev. Rev. Stat. § 704.300 (2007).

The entire cost of a new grade crossing or separation, including any automatic warning devices, is the responsibility of the government unit affected if they initiated the proceeding or the railroad if it initiated the proceeding, provided that the crossing is not at or near the location of a previous grade crossing elimination project.

Where a new grade separation results in the elimination or reconstruction of an existing grade crossing, the railroad will be responsible for 13 percent of the costs, the remainder is to be borne by the affected government unit.

Where automatic warning devices are added or materially altered at an existing grade crossing, 87 percent of the costs shall be the responsibility of the railroad.

The affected railroads will pay 50 percent of the maintenance costs for any new or altered automatic crossing warning device, with the remaining 50 percent being paid by the affected government units. Nev. Rev. Stat. § 704-305 (2007).

NEW HAMPSHIRE

Every railroad operating in New Hampshire is required to construct, or improve, and operate and maintain at every grade crossing of its railroad with another railroad or highway such warning signs, gates or other protection as the Department of Transportation, after notice and hearing, may find necessary in the interest of safety of the railroad or of the public. After installation, the railroad is required to maintain signs, signals, gates or other equipment installed within the limits of its right-of-way. N.H. Rev. Stat. Ann. § 373:10 (2008). See also, Section 373:3 regarding apportionment of cost.

NEW JERSEY

Every company operating on a fixed track or tracks, freight or passenger trains or cars, shall provide protection to pedestrians and the traveling public at every crossing of its tracks by any public road. Such protection may be in the form of safety gates, flagmen, electric bell, electric signs or other recognized system of alarm or protection approved by the Board of Public Utility Commissioners.

When several crossings lie so close together that an audible signal at one crossing may be sufficiently heard at others near it, such crossings may be protected by such device or signals as will sufficiently protect all crossings in the group.

When on any line or part thereof all traffic is discontinued for any part of the night, no crossing guards need be operated while traffic is so discontinued.

This section shall not apply to street car lines or tracks used principally for street car purposes.

The provisions of this section shall be construed to be mandatory and shall be operative without order or direction of the Board. N.J. Rev. Stat. § 48:12-54 (2008).

The Board of Public Utility Commissioners, upon its own initiative or upon the application of any municipality or citizen dissatisfied with the protection provided or the failure to provide any or sufficient protection at any crossing within such municipality or used by such citizen may, by order compel proper compliance with Section 48:12-54 of this title. Such application shall be considered and acted upon in accordance with the board's rules of practice. N.J. Rev. Stat. § 48:12-55 (2008).

NEW MEXICO

No applicable statute related to this topic.

NEW YORK

No applicable statute related to this topic.

NORTH CAROLINA

The General Statutes of North Carolina, Chapter 136, Section 20, provides guidance on the elimination or safeguarding of at-grade crossings and inadequate underpasses or overpasses.

The Secretary of Transportation is empowered to order grade separation and the installation and maintenance of gates, alarm signals and other approved safety devices. Any such orders shall specify that the cost of construction of any underpass or overpass or the installation of safety devices is to be allocated between the railroad company and the Department of Transportation in the same ratio as the net benefits received by the railroad and the net benefits occurring to the public using the highway, but in no case shall the railroad be responsible for more than 10 percent. After any such order is issued by the Secretary, it will be the responsibility of the railroad to construct the grade separation and to install and maintain all safety devices.

Beginning January 1, 1995, if any railroad refuses to comply with any order of the Secretary, they shall be guilty of a Class 3 misdemeanor and may be fined not less than fifty or more than one hundred dollars for each day in which they fail to comply.

From any order made by the Secretary, the railroad company has the right to appeal to the superior court of the county wherein the crossing is located. N.C. Gen. Stat. § 136-20 (e)-(g) (2008). See also, Section 136-18 for general powers of the Department of Transportation including the power to regulate, abandon, and close grade crossings on any road designated as part of the State highway system.

Railroad crossings in the cities of North Carolina are regulated by individual cities. Cities have the authority to direct, control and prohibit the laying of railroad tracks and switches in public streets and alleys and to require that all railroad tracks, crossings and bridges be constructed so as not to interfere with ordinary travel or drainage patterns. The costs relating to construction, reconstruction and improvement of such streets and alleys are to be borne equally by the city and the railroad, but the costs of maintenance and repair after construction is the responsibility of the railroad.

Cities have the authority to order the installation, construction, erection, reconstruction and improvements of warning signs, gates, lights and other safety devices at grade crossings. The city is responsible for 90 percent of the cost and the railroad is responsible for 10 percent. N.C. Gen. Stat. § 160A-298(a), (c),(d) (2008).

NORTH DAKOTA

The North Dakota Public Service Commission, upon written application made to it by the Director, the board of county commissioners of any county, the board of supervisors of any township, any municipality, the railroad company or upon its own motion, shall investigate and determine whether any highway-rail crossing over any state, county, township or municipal highway in the state is a danger to life and property and needs protection beyond what is set out in this chapter (crossbucks, advance warning signs and STOP signs). The Commission may then order that the protection be carried out. N.D. Cent. Code § 24-09-08 (2009).

Generally, the North Dakota Department of Transportation has authority to apportion the cost of automatic grade crossing protection devices. However, in the event such protection devices are ordered by the Public Service Commission in accordance with § 24-09-08, the Commission, as a part of its order may apportion the costs of installation between the affected railroad, the political subdivision having jurisdiction of the highway involved and the state of North Dakota. Such costs must be apportioned to such parties or to anyone or more of the parties on the basis of the benefit derived respectively by highway users and the railroad from the installation of such crossing protection device. The costs attributable to the benefit of the highway users must be apportioned to the State of North Dakota. N.D. Cent. Code § 24-09-08.1 (2009).

OHIO

The Ohio Public Utility Commission is required to conduct a survey and devise a formula for the classification of all public crossings, and using such formula, will prioritize crossings, giving highest priority to the crossings at which the Commission finds the highest probability of accidents occurring. Applying the formula, the Commission may then designate as dangerous and hazardous any highway-rail crossing it deems to be in need of additional protective devices. Once a crossing has been designated “high priority,” the Commission may negotiate with the affected railroad and with the state agency or political subdivision having jurisdiction over the crossing in question for the installation of such devices as luminous reflecting warning signs, luminous flashing signals, crossing gates illuminated at night or other protective devices. The number, type and location of the signs, signals, gates or other devices will be determined by agreement among the Commission, the affected railroad and the state agency or political subdivision.

The Commission may assign the costs among all parties in any proportion it determines proper. In doing so, it will take into consideration such things as volume of vehicular traffic, volume of train traffic, train type and speed, limitations of view, savings, if any, which will inure to the railroad as a result of the installation, benefits to the public, the cost of initial installation and maintenance costs over time.

The affected railroad may disagree as to the need for installation of additional protective devices, or to the type or location. In the event that an agreement cannot be reached with the railroad, the Commission may hold a public hearing with written notice being given to the

railroad at least thirty days in advance. If the Commission determines that the safety of the public requires additional protective devices, it may order the railroad to comply. The railroad may, if acceptable to the Commission, offer its agreement to maintain the protective devices as its share of the costs. Ohio Rev. Code Ann. § 4907.471(A)(B)(C) (2009).

Any gates, bells, or devices ordered erected by the Public Utility Commission must be built within the time, in the manner, and of materials approved by the Commission. If the Commission has ordered automatic bells at any crossing, the bells must be constructed to ring in advance of the approach of a train within three hundred or more feet of the crossing and continue to ring until a train has reached the crossing. Ohio Rev. Code Ann. § 4907.48 (2009).

OKLAHOMA

The Oklahoma Corporation Commission has exclusive jurisdiction to determine and prescribe the particular location of highway-rail crossings, the amount and kind of warning devices required, the removal of all obstructions in view of such crossings, the altering or abolishment of any such crossings and to require, where practicable, a separation of grade at any such crossing, either current or projected for the future. Okl. Stat. Tit. 17, § 84 (2008).

The cost of construction and maintenance of public highway-rail crossings is borne by the affected railroad company. For above grade, or under grade public highway crossings, the apportionment of cost and maintenance is left to the discretion of the Corporation Commission, but under no circumstances is the city, town or municipality assessed more than 50 percent of the actual cost of above grade or under grade crossings.

The Corporation Commission has the authority to designate certain crossings “extra hazardous” and to order the installation of appropriate warning devices. The installations are performed by the railroad. The Commission prescribes the division of the cost of the installation of signs, signals, gates, or other warning devices between the railroad and the state or its political subdivision. In any case, the cost to the railroad will not be less than 10 percent or more than 25 percent of the total costs. The railroads are responsible for all subsequent maintenance costs. Okla. Stat. Tit. 17, §§ 82-86 (2008).

In the State of Oklahoma, a public authority having jurisdiction and control over any public highway or street in the state may determine that the safety of lives and property requires the installation of an automatic or mechanically operated barricading device; and any such public authority with appropriate jurisdiction, may construct and install such a barrier or they may order the affected railroad to construct, install and maintain the barrier. Before any such construction or installation begins, the detained plans, including the proposed mode of operation of the devices and a map showing the proposed location, must be submitted to and approved by the State Highway Commission of Oklahoma. Okla. Stat. Tit. 66 § 125a (2008).

OREGON

The State of Oregon declares it policy to achieve uniform and coordinated regulation of railroad-highway crossings and to eliminate crossings at grade whenever possible. To these ends, the authority to control and regulate the construction, alteration, and protection of railroad-highway crossings is vested exclusively in the state, and in the Department of Transportation. Or. Rev. Stat. § 824.202(2008).

The Department of Transportation may, upon its own motion, upon application by a railroad, the public authority in interest, subsequent to a hearing, unless a hearing is not required under section 824.214, and after finding that such action is required by the public safety, necessity, convenience and general welfare:

- (1) Eliminate a grade crossing by relocation of the highway.
- (2) Alter or abolish any grade crossing, change the location thereof or require a separation of grades at any such crossing.
- (3) Alter or change any existing grade separation.
- (4) Require installation or alteration of protective or warning devices.

The Department has the authority to prescribe the time and manner of any such alteration, change, or installation and the terms and conditions thereof. Or. Rev. Stat § 824.206 (2008).

After receiving the application, the Department may schedule a hearing, unless one is not required. At the hearing the Department must determine whether the public safety, public convenience, and general welfare require a grade separation, and in the event the grade crossing is not required, determine whether the application should be refused or granted and any terms and conditions. If the grade crossing is approved, the Department shall determine and prescribe the manner of its construction, maintenance and use, the kind and location of protective devices to be installed, the allocation of the costs and the place of the crossing. Or. Rev. Stat. §§ 824.204-210 (2008).

Installation costs of protective devices, unless the parties agree otherwise shall be apportioned as follows:

- (1) At an existing crossing, a crossing relocated, or a crossing previously closed by order of the Department of Transportation and reopened:
 - (a) For devices to be installed at or in advance of the crossing and which are activated immediately in advance of, and during, each train movement over the crossing: seventy five percent to the Grade Crossing Protection Account; 5 percent to the public authority in interest; and twenty percent to the railroad
 - (b) For devices which are primarily designed for the purpose of illuminating the crossing or its approaches during the hours of darkness: Not less than 90 percent to the Grade Crossing Protection Account; not more than 5 percent to the public authority in interest; and not more than 5 percent to the railroad company.

(c) For all other protective devices: 75 percent to the Grade Crossing Protection Account; 25 percent to the public authority in interest for such devices to be installed by it at or in advance of the crossing; and 25 five percent to the railroad company for such devices to be installed at the crossing. Or. Rev. Stat. § 824.242 (2008).

One hundred percent of the maintenance costs is to be borne by the railroad if the devices were actually installed and maintained by the railroad company. One hundred percent shall be paid by the public authority in interest for devices at or in advance of the crossing actually installed and maintained by the authority. The costs shall be divided evenly between the railroad company and the public authority in interest in the case of devices installed and maintained by the public authority which are primarily designed for the purpose of illuminating the crossing during the hours of darkness and which are not activated immediately in advance of, or during, each train movement. Or. Rev. Stat. § 824.244 (2008). See also, Section 824.250 concerning apportionment where Federal funds are available.

PENNSYLVANIA

(b) No carrier shall, without Pennsylvania Public Utility Commission approval, remove the protection afforded by interlocking signals, crossing gates, watchmen, automatic crossing signals, or any other protection against accidents, or reduce the number of hours that manual protection is maintained, or substitute or alter any existing form of protection at crossings, at grade, of the tracks of a carrier across a public highway, or the tracks of another carrier.

(c) Prior to installing automatic crossing signals at any unprotected crossing of a public highway, at grade, across its track or tracks, or at such a crossing, which is protected by fixed signs only, a carrier shall submit to the Commission plans of such proposed installation and receive approval of such plans.

(d) This section and §§ 33.21—33.23 and 33.31 (relating to state-aid for protective devices; aid from the Commission; and regulation and procedure) may not prevent the placing of watchmen or gates at any public highway crossing, at grade, or an increase by a carrier of the number of hours, daily, during which any public highway crossing, at grade, shall be protected, nor prevent the temporary use of watchmen or increased protection during emergencies, nor limit the trial installation of experimental protection devices. However, the Commission shall be notified promptly of such experimental signal installations or temporary manual protection. Commission approval of such additional temporary or experimental protection will not be required nor will such approval be required for removal of such additional temporary or experimental protection. 52 Pa. Code § 33.21 (2008). See also, Sections 33.23 and 33.31 relating to state-aid for protective devices, aid from the commission, and regulation and procedure.

RHODE ISLAND

At any highway-rail crossing not protected by a gate or flagman, the Public Utilities Commission may, after proper notice and hearing, direct that the crossing be furnished with an electric signal(s). If any affected railroad refuses or neglects to comply with the order of the Commission within three months from the date of the order, the railroad may be fined twenty-five dollars for each day that the refusal or neglect continues, unless the railroad can furnish a satisfactory explanation to the Commission for the refusal or neglect. R.I. Gen. Laws § 39-8-11 (2008).

Every railroad corporation which has at-grade crossings within the City of Providence must, on receiving notice from the city council, install, maintain and operate gates and must fence its track within the city limits according to council requirements . Any violation of the provisions of this section carries a fine of fifty dollars for each day of neglect after twenty days' from notice, one-half for the use of the state and the other half for the use of the complainant. R.I. Gen. Laws § 39-8-12 (2008).

SOUTH CAROLINA

No applicable statute related to this topic.

SOUTH DAKOTA

The Department of Transportation may determine, order and prescribe the reasonable manner in which the tracks or other facilities of any railroad company(s) may be constructed at, above or below grade across the track or facilities of any other railroad company, public highway or street. The Department also may determine order and prescribe the terms and conditions of installation, operation, maintenance, and equipping of all such crossings which may be constructed, including any watchman thereat or the installation and regulation of lights, blocks, interlocking or other signaling systems, safety appliance devices and such other means as determined by the Department. S.D. Codified Laws Ann. § 31-27-2 (2009).

Every first or second class municipality in South Dakota has the power to require railroad companies to keep flagmen and maintain lights at railroad crossings of streets and provide for the safety of persons and property; to compel them to construct, maintain, and operate gates at railroad crossings of streets when the keeping of a flagmen is not sufficient protection; to compel them to raise or lower their tracks to conform to any grade which may be established by the municipality and to keep such tracks on the level with the street or highway surface, so that such tracks may be crossed at any place on such street or highway; to require them to fence their railroads and construct and repair cattle guards, viaducts, or overhead crossings, and to provide for and change the location, grade, and crossing of any railroad; all subject to the powers vested in the Public Utilities Commission. S.D. Codified Laws Ann. § 9-35-9 (2009).

If, in the opinion of the Department of Transportation, it is necessary for the safety and protection of the public that street crossings over railroad tracks be lighted or street crossing

alarms be installed to notify the public of approaching trains, the Department shall order the railroad to install crossing alarms or order the crossing to be lighted, or order both alarms and lighting by the railroad in a manner and method as, in the opinion of the Department, will be the most suitable for the protection of the public. S.D. Codified Laws Ann. § 49-16A-89 (2009).

Any railroad tracks over which an operating train travels which crosses a portion of the state trunk highway system shall have a crossing alarm or a lighting device, or both, to alert the public of approaching trains and to notify the public of trains crossing the highway. The crossing alarm or lighting device is required to be in place by December 31, 1998. The Department of Transportation shall decide the method which is most suitable for the protection of the public and shall use any federal highway safety funds to pay for the crossing alarms and lighting devices. However, if federal funds are not available, the railroad owning or operating the tracks is liable for the expenses of the crossing alarm or lighting device. S.D. Codified Laws Ann. § 49-16A-89.2 (2009).

TENNESSEE

Tennessee law requires that, within six months after the occurrence of a fatality resulting from a collision between a train and a vehicle or pedestrian at an unmarked highway-rail crossing where there are regularly scheduled trains, one hundred or more vehicles cross daily, and a regular school bus crossing, and/or upon the order of the Commissioner of Transportation, the affected railroad company install a marker with automatic flashing signal lights and a bell on either side of the tracks along the street, road or highway crossing the tracks. Installation costs are to be apportioned equally to the railroad company, the State of Tennessee and the county, municipality or the metropolitan government in accordance with the fiscal procedures of each unit. Tenn. Code Ann. § 65-11-113 (2008).

TEXAS

The Texas Department of Public Safety is required to maintain a statewide toll-free telephone service to receive and report of a malfunction of a device, including a signal or crossbar, placed at an intersection of a railroad track and a public road to promote safety.

At each intersection of a railroad track and a public road that is maintained by the state or a municipality and at which a mechanical safety device is placed, the Texas Department of Transportation is required to affix on the crossbars of the device the telephone number, an explanation for its purpose, and the crossing number. At each intersection that is maintained by a political subdivision other than a municipality at which a mechanical safety device is placed, the political subdivision is required to affix on the crossbars of the device the number, an explanation of its purpose and the crossing number.

The Department of Public Safety must notify the identified railway company-of each report of a malfunction received through the telephone service.

The Department is required to maintain a computerized list of each intersection and of the railroad crossing safety equipment located at each, using crossing numbers compiled by the Texas Department of Transportation.

Not later than the fifth day after the date it places railroad crossing safety equipment in operation at an intersection, a state agency or a political subdivision of the state other than a municipality shall notify the Department of Public Safety of the location and type of equipment installed, and the date it was placed in operation. Tex. Transp. Code 471.003 (2009).

UTAH

The Department of Transportation, so as to promote the public safety, has a duty to provide for the installing, maintaining, reconstructing, and improving of automatic and other safety appliances, signals or devices at grade crossing on public highways or roads over the tracks of any railroad or street railroad in the state. Utah Code Ann. § 54-4-15.1 (1999).

The Department shall apportion the costs of the installation, maintenance, reconstruction or improvement of any signals or devices between the railroad and the public agency involved. Utah Code Ann. § 54-4-15.3 (2009).

VERMONT

When three or more freeholders or registered voters of a city, town or village request in writing that a gate or electric signal be installed or a flagman be stationed at any highway-rail crossing within their city, town or village, the Transportation Board will visit the location and give notice to all concerned. If the public safety requires it, the Board will order the affected railroad to install the needed device and direct the state, municipality and the railroad to pay costs as the Board finds equitable. Vt. Stat. Ann. Tit.5 § 3584 (2008).

When making an order under Section 3584 of this title, the Transportation Board shall require the submission of an itemized statement of the cost incurred by the state agency, municipality, corporation or person responsible for compliance with the order, with an affidavit of an appropriate officer or person that the costs shown on the statement were incurred and are reasonable to the best of the officer's or person's knowledge and belief, upon approval by the board of the statement and its certification to the commissioner of finance and management, the state treasurer shall issue a warrant to pay the state's portion of the cost in accordance with the order of the board. Vt. Stat. Ann. Tit 5 § 3585 (2008).

VIRGINIA

Railroads shall cooperate with the Virginia Department of Transportation and the Department of Rail and Public Transportation in furnishing information and technical assistance to enable the Commonwealth to develop plans and project priorities for the elimination of hazardous conditions at any crossing of a public highway which crosses at-grade including, but not limited to, grade crossing elimination, reconstruction of existing grade crossings, and grade

crossing improvements. The Commonwealth shall provide each locality a listing of grade crossing safety needs for its consideration. Information collected and analyses undertaken by the designated state agencies are subject to 23 U.S.C. § 409. A railroad shall not unilaterally select or determine the type of grade crossing warning system to be installed at any crossing of a public highway and railroad at grade. The railroad shall only install or upgrade a grade crossing warning system at any crossing of a public highway and railroad at grade pursuant to an agreement with the Virginia Department of Transportation or representative of the appropriate public road authority authorized to enter into such agreements. A railroad is not required but is permitted to upgrade, at its own expense, components of any public highway at grade warning system when such upgrade is incidental to a railroad improvement project relating to track structures or train control systems.

When required by the Commonwealth Transportation Commissioner or representative of the appropriate public road authority, every railroad company shall cause a grade crossing warning device including flashing lights approved by the Department of Transportation at such heights as to be easily seen by travelers, and not obstructing travel, to be placed, and maintained at each public highway at or near each place where it is crossed by the railroad at the same level.

Such warning devices shall be automatically activated by the approaching train so as to be clearly discernible to travelers approaching the railroad crossing from each direction at a distance of 200 feet. Such warning devices shall be erected at the initiative of the appropriate public road authority only when required by ordinance or resolution adopted by the Commissioner or the appropriate public road authority thereof stating that such political subdivision will pay the full initial installation cost of such warning devices and that maintenance costs will be fixed as provided in Section 56-406.2. A certified copy of such ordinance or resolution shall be delivered to such railroad company, and such railroad company shall forthwith install such warning devices at the full initial cost of such public road authority. The cost of such installation and maintenance of such warning devices may be shared by agreement between such railroad company and the Commonwealth Transportation Commissioner or the appropriate public road authority, when initiating such installation. The railroad shall be responsible for the continuing maintenance of the warning devices.

In the event that the Commissioner or representative of the appropriate public road authority and the railroad company or companies involved are unable to agree on (1) the necessity for such grade crossing warning device, or (2) the plans and specifications for and the method and manner of construction or operation thereof, or (3) the share of the cost of construction, if any, to be borne by the railroad company or companies involved, then the Commonwealth Transportation Commissioner or representative of the appropriate public road authority, as the case may be, shall petition the State Corporation Commission setting forth the grade crossing warning devices desired and the plans and specifications for and the method and manner of construction and operation of the devices desired and the facts which, in the opinion of the petitioner, justify the requiring of the same. Copies of the petition and plans and specifications shall be forthwith served by the State Corporation Commission on the railroad company or companies involved. Within twenty days after service on it of such petition and

plans and specifications, each such railroad company shall file an answer with the State Corporation Commission setting out its objections to the proposed project, and the Commission shall hear and determine the matter as other matters are heard and determined by that body. The Commission shall consider all the facts and circumstances surrounding the case and shall determine (a) whether public necessity justifies or requires the proposed warning devices, (b) whether the plans and specifications or the method and manner of construction and operation be proper and appropriate, and (c) what share of the cost of the project, if any, to be borne by any railroad company involved is fair and reasonable, having regard to the benefits, if any, accruing to such railroad company from providing such grade crossing warning devices, and either dismiss the proceeding as against such railroad company or enter an order deciding and disposing of all of the matters hereinbefore submitted to its jurisdiction. Va. Code Ann. § 56-406.1 (2009).

Whenever any automatically operated gate, signal or other automatic crossing warning device has been or may hereafter be installed at any highway, road or street grade crossing by any railroad company, the Commonwealth Transportation Commissioner or the public road authority may agree with the railroad company involved as to the division of the cost of the future maintenance of any such device or devices. The basis for the division of costs shall be determined by the Department of Rail and Public Transportation utilizing the calculated average maintenance costs of all previous warning device maintenance performed and documented by all railroads operating in Virginia. In the event that the Commissioner or the public road authority and the railroad company involved are unable to agree upon the share of the cost of maintenance of any such device or devices to be borne by the railroad company, if any, then such railroad company may file a petition with the State Corporation Commission setting forth the crossing protection provided at such crossing, the terms of the contract and/or the conditions of the order of said Commission or the public road authority under which it was constructed and installed and the estimated future annual cost of maintaining the same. Copies of such petition shall forthwith be served by the State Corporation Commission upon the Commonwealth Transportation Commissioner or the public road authority who shall, within twenty days after service of such petition, file an answer thereto setting out reasons for declining to participate in the future cost of maintaining such warning device or devices as requested by the railroad company, and the Commission shall thereupon hear and determine the matter as other matters are heard and determined by that body. The Commission shall consider all the facts and circumstances surrounding the case and shall determine what share of the cost of the future maintenance of such warning device or devices, if any, shall be borne by the railroad company and/or the Commonwealth Transportation Board or the public road authority, having regard to the benefits, if any, accruing to such railroad company from the continued maintenance of such protection of said public highway, road or street grade crossing, and either dismiss the proceeding or enter an order deciding and disposing of the matters therein submitted to its jurisdiction. Va. Code Ann. § 56-406.2 (2009).

WASHINGTON

When the Secretary of Transportation, or the governing body of any city, town, or county, or any railroad company, deems that the public safety requires signals or other warning devices, other than sawbuck signs, at any highway-rail crossing (state, city, town or county highway, road, street, alley, avenue, boulevard, parkway or other), it may petition the Utilities and Transportation Commission. The Commission will decide on the necessity for such protection and apportion the entire cost of installation and maintenance. No railroad is required to install any signal or other warning device until the public body involved has either paid or executed its promise to pay its portion of the estimated cost to the railroad. Wash. Rev. Code Ann. § 81.53.261 (2009).

If the Utilities and Transportation Commission directs the installation of grade crossing protection devices and a federal-aid funding program is available to participate in the costs of the installation, both installation and maintenance costs of the device shall be apportioned according to 81.53.295 (see next entry). Otherwise, if installation is ordered by the Commission, it may apportion the cost of installation and maintenance as provided in this section and described below:

- Installation: 60 percent to the Grade Crossing Protective Fund, 30 percent to the city, town, county or state, and 10 percent to the railroad. However, if the installation is to be located at a new crossing requested by a city, town, county or the state, 40 percent shall be paid by unit and none by the railroad. If the new crossing has been requested by the railroad, the entire cost must be borne by the railroad.
- Maintenance: 25 percent to the Grade Crossing Protective Fund, 75 percent to the railroad. If the crossing is a new crossing requested by the railroad, the entire cost is apportioned to the railroad. Wash. Rev. Code Ann. § 81.53.271 (2009).

If a city, town, county or the state petitions the Commission for closure of an existing crossing in proximity to the crossing for which installation of signals is described above, the share paid by the petitioning city, town, etc., will be reduced by 10 percent of the total cost for each crossing ordered closed and the share paid by the Grade Crossing Protective Fund will be increased accordingly. Wash. Rev. Code Ann. § 81.53.271 (2009).

If funds are not available from the Grade Crossing Protective Fund, the Commission shall apportion to the parties, on the basis of the benefits to be derived by the public and the railroad respectively, that part of the cost which would otherwise be assigned to the Grade Crossing Protective Fund. Provided, that in such instances the city, town, county or state shall not be assessed more than 60 percent of the total costs of installation on other than Federal-aid designated highway projects; and provided further, that the entire cost of maintenance be borne by the railroad. Wash. Rev. Code Ann. § 81.53.275 (2009). See also, Section 81.53.281 concerning creation of the Grade Crossing Protective Fund.

WEST VIRGINIA

No applicable statute related to this topic.

WISCONSIN

If the Wisconsin Department of Transportation determines, either without, or after a hearing, that protection is not adequate at a public highway-rail crossing, it may order the railroad company to keep a flagman at the crossing or to install automatic signals or other suitable safety devices at specific locations at such crossings. The costs of such protection will be apportioned by the Department between the railroad and the state on the basis of benefits received by the railroad and the public respectively. Wis. Stat. § 195.28(2)(3) (2009).

WYOMING

In order to promote the public safety and to provide for the payment of part of the costs of installing, reconstructing and improving automatic and other safety appliance signals or devices at crossings at grade of public highways, as defined in this act, roads or streets over the track or tracks of any railroad corporation or street railway corporation in the state, there is created an account known as the "Highway Crossing Protection Account" within the highway fund. Before any funds of the highway crossing protection account shall be used to pay any part of the cost of the installation, reconstruction, or improvement of any signals or devices at any crossing, the Wyoming Transportation Commission shall first determine that all federal sources of funding have been exhausted. When federal funds are being utilized, federal guidelines as indicated in 23 C.F.R. (part) 646 shall be followed. Wyo. Stat. § 37-10-101 (2009)

The Wyoming Transportation Commission, on the basis of a priority rating assigning priority first to the most hazardous highway-rail crossings, shall determine the type of crossing protection signals and devices required. Wyo. Stat. § 37-10-102 (2009).

Under the direction of the affected railroad, it shall be the duty of the Wyoming Transportation Commission to apportion the costs and expenses of installing or reconstructing such crossings and safety devices between the railroads and the State Highway Department or the county, city, or other governmental entity involved in proportion to the respective benefits to be derived. But, in any case, the Commission must limit the amount to be charged to the railroad to a maximum of thirty-three and one-third percent of the cost of the total project for installing or reconstructing any crossings or safety devices. Wyo. Stat. § 37-10-103 (2009).

The Transportation Commission shall fix in every case the amount to be paid from the Crossing Protection Account, which it administers, and the amount to be paid by the Highway Department or by the city, town, county or other political entity. The railroads will bear all costs of maintaining in good operating condition all such safety devices. Wyo. Stat. § 37-10-104 (2009).

CHAPTER 7: SLOW, LOW, AND SPECIAL VEHICLES

CHAPTER OVERVIEW

This chapter presents a state-by-state examination of regulations concerning slow, low, and special vehicles at highway-rail grade crossings.

“Slow and Low Vehicles” are variously referred to in the statutes as a type of heavy equipment, eg., any crawler-type tractor, steam shovel, derrick, roller, or any other equipment or structure having a normal operating speed of ten miles per hour or less. Some statutes specifically mention 6 mph or less, and one as low as 4 mph for this category of vehicles.

“Special Vehicles,” as defined in the statutes, are vehicles carrying passengers for hire (commercial) and school buses carrying children. Also included under this category are vehicles carrying explosive substances, flammable materials, or other types of hazardous materials.

All of the states require one or more of the vehicles in these two categories to come to a full stop before proceeding across a highway-rail grade crossing. Federal regulations require every bus transporting passengers and vehicles carrying hazardous materials to stop and to listen and look in both directions along the tracks for any approaching train. When it is safe to do so, drivers may cross, however, federal regulations prohibit the drivers from manually shifting gears while moving across the tracks.

This chapter also contains a listing of “Exempt Crossings” at which the stopping requirements for slow, low or special vehicles do not apply. These requirements are borrowed from federal regulations which exempt the following types of crossings from the stopping requirements:

- (1) A streetcar or railroad crossing which is used exclusively for industrial purposes within a business district.
- (2) A crossing where a police officer or flagman directs traffic to proceed.
- (3) A crossing controlled by a functioning highway traffic signal transmitting a green indication which under local law permits the commercial vehicle to proceed across the tracks without slowing or stopping.
- (4) A clearly marked abandoned crossing.
- (5) An industrial or spur line railroad grade crossing marked with a sign reading “EXEMPT.” The “exempt” sign must have been erected by or with the consent of local authority. For a listing of these exempt crossings, refer to 49 CFR 92.10(b)(1)–(5) (2008).

STATE LAWS, REGULATIONS AND PENALTIES

ALABAMA

Slow and Low Vehicles – Alabama’s definition of vehicles within this category is consistent with the majority of states. Alabama defines vehicles in this category as “any crawler-type tractor, steam shovel, derrick, roller or any equipment or structure having a normal operating speed often or less miles per hour or a vertical body or load clearance of less than one-half inch per foot of the distance between any two adjacent axles or in any event of less than nine inches, measured above the level surface of a roadway, upon or across the tracks.”

Alabama law requires persons operating slow and low vehicles to stop before moving over a highway-rail crossing. The stop must be made 15 to 50 feet from the nearest rail, the operator must look and listen for trains and train signals, and may cross only when it is safe to proceed. Ala. Code § 32-5A-152 9 (a), (b), (c) (2007).

Special Vehicles - Alabama law does not specifically mention any type of vehicle in this category. The law does provide however, that the Director of Transportation shall adopt regulations as may be necessary describing the vehicles which must comply with special stopping requirements. The director must formulate the regulations on the basis of the number of passengers carried by the vehicle and the hazardous nature of any substance carried. Such regulations shall correlate with and so far as possible conform to the most recent regulation of the United States Department of Transportation.

Before crossing any highway-rail crossing, the driver must stop the vehicle within 15 to 50 feet of the nearest rail of the tracks. While stopped, the driver is required to listen and look in both directions for an approaching train and for signals indicating the approach of a train. The driver shall not proceed until it is safe to do so. While moving over the crossing, the driver is prohibited from manually shifting gears. Ala. Code § 32-5A-151(a)-(c) (2007).

Exempt Crossings - The stopping regulations do not apply at highway-rail crossings where traffic is controlled by a police officer, flagman or traffic control signal. They also do not apply at crossings which are protected by crossing gates or any alternately flashing light signals which are intended to give warning of an approaching train or at crossings where an official traffic control device gives notice that the stopping requirements do not apply. Ala. Code § 32-5A-151(b)(1)–(4) (2007).

ALASKA

Slow and Low Vehicles - Alaska law prohibits drivers of crawler-type tractors, steam shovel, derricks, rollers, or any other equipment or device having a normal operating speed often or less miles per hour or a vertical body or load clearance to less than one-half inch per foot or a vertical distance between any two adjacent axles or in any event of less than nine inches measured from the surface of a roadway from driving across a highway-rail crossing without first stopping within 15 to 50 feet from the nearest rail of the railroad. After complying with the stopping requirements, the driver may then proceed only when it can be done safely.

Before making any such crossing, Alaska law requires that notice of the intended crossing be given to a station agent of the affected railroad allowing a reasonable period of time for railroad to provide proper protection at the crossing. The stopping requirements do not apply at any highway-rail crossing where warning of the immediate approach of a train is being given. If a flagman is provided by the railroad, movement over the crossing must be done at his direction. Alaska Admin. Code Tit. 13 § 02.255 (a),(b), (c) (2007).

Special Vehicles - Alaska requires mandatory stops at within 15 to 50 feet of the nearest rail of the railroad at a highway-rail crossing by drivers of vehicles carrying passengers for hire, a school bus, or a vehicle carrying an explosive substance or a flammable liquid as a cargo or part of a cargo.

While stopped, the drivers of these vehicle must listen and look in both directions along the track for approaching trains and for a signal indicating the approach of a train, and may not proceed until the crossover can be made safely.

The driver of a school bus approaching a highway-rail crossing must activate the vehicle's amber lights for a distance of not less than 300 feet before stopping. After stopping, the amber lights must be deactivated.

After complying with the stopping and proceeding safely, drivers of these special vehicles are not allowed to shift gears while moving through the crossing. Alaska Admin. Code Tit. 13 § 02.250 (a) (2007).

Exempt Crossings - The stopping requirements do not apply at highway-rail crossing where traffic is being directed by a police officer, an authorized flagman, or an official traffic control device. Alaska Admin. Code Tit. 13 § 02.250(b) (2007). Also see 13 AAC 02.240 concerning stopping distances.

ARIZONA

Slow and Low Vehicles - No person in Arizona may operate or move any crawler-type tractor, steam shovel, derrick, roller or any equipment or structure having a normal operating speed of ten miles per hour or less, without first coming to a complete stop 15 to 50 feet from the nearest rail. After stopping, the operator must look and listen for trains and train signals. Before making the crossing, notice of intent must be given to a station agent.

If the railroad provides a flagman for the crossing of slow and low vehicles, the crossing must be under the flagman's direction. Ariz. Rev. Stat. Ann. § 28-854 (2009).

Special Vehicles - Arizona law requires drivers of motor vehicles carrying passengers for hire (commercial), school buses carrying any children, and vehicles carrying hazardous materials as cargo or part of a cargo while carrying it to or returning from a delivery to stop at crossings.

Drivers of these special vehicles must stop within 15 to 50 feet of the nearest rail at all highway-rail crossings. After the stop is made, the driver must listen and look in both directions

for approaching trains and for signals indicating the approach of a train and may not proceed until it is safe to do so. The driver may not manually change gears while crossing the tracks. Ariz. Rev. Stat. Ann. § 28-853 (2009).

Exempt Crossings - Stops are not required at crossings where a police officer or a traffic control signal directs traffic to proceed. Also exempt from this section are highway-rail grade crossings within a business or residential district. Ariz. Rev. Stat. Ann. § 28-853 (2009).

ARKANSAS

Slow and Low Vehicles - It is unlawful for a person to operate or move any crawler-type tractor, steam shovel, derrick, roller or any equipment or structure having a normal operating speed of up to ten miles per hour or a vertical body or load clearance of less than one-half inch per foot of the distance between any two adjacent axles or, in any event, of less than nine inches measured above the level surface of a roadway without first giving notice to a station agent of the railroad. Any notice should allow reasonable time for the railroad to provide proper protection at the crossing. If a flagman is provided by the railroad, movement over the crossing must be made under the flagman's direction.

Before crossing, the driver of the slow or low vehicle must first stop not less than 15 or more than 50 feet from the nearest rail of the tracks. While stopped, the driver is required to listen and look along the track in both directions for any approaching train and for signals indicating the approach of a train. The driver may not proceed until the crossing can be traversed in a safe manner. Ark. Code Ann. § 27-51-705 (2008).

Special Vehicles - Arkansas requires drivers of motor vehicles carrying passengers for hire, and any school bus transporting any children, to stop within 50 but not less than 15 feet from the nearest rail of the tracks. While stopped, the operator must listen and look in both directions for an approaching train and for signals indicating the approach of a train and may not proceed until it is safe to do so.

The law imposes the same requirement for a driver of any vehicle carrying explosive substances or flammable liquids as cargo or part of a cargo. Ark. Code Ann. § 27 -51- 703 (2008).

In addition to vehicles carrying hazardous materials or cargo, Arkansas law imposes stopping requirements on trucks carrying explosive substances or flammable liquids or gasses as cargo or part of a cargo. While the distance parameters are the same, the driver has the additional requirement of opening the driver's side door of the truck or rolling down the window at least 12 inches in order to remove any obstruction of the sound of a train whistle. The driver must also listen and look along the track in both directions for any approaching train or signals indicating the approach of a train and may proceed to cross the tracks only after it is safe to do so.

Penalty

A violation of this particular section subjects the driver to the following penalties: (1) The first conviction results in a fine of not less than one hundred or more than three hundred dollars and suspension of the chauffeur's license of the operator for thirty days; (2) For the second offense, the operator may be fined not less than one hundred or more than three hundred dollars and have his chauffeur's license suspended for one year. Ark. Code Ann. § 27-51-704 (2008).

Exempt Crossings -The special vehicle stopping requirements do not apply to school buses and vehicles carrying passengers for hire at a crossing where there is a police officer or a traffic control signal directing traffic to proceed. The stopping requirements also do not apply at highway-railway grade crossings within a business or residential district. Ark. Code Ann. § 27-51-703 (2008). **Editor's Note:** This exemption does not apply to trucks carrying explosive cargo or flammable liquids.

CALIFORNIA

Slow and Low Vehicles - California law does not have requirements concerning stops at all highway-rail crossings by drivers of slow and low vehicles.

Special Vehicles - California law requires drivers of school buses, school activity buses, buses carrying passengers for hire, trucks transporting employees outside the cab, buses transporting employees and buses transporting minors on any outing organized on a group basis to stop at crossings. Also covered under the statute are vehicles carrying explosive substances as cargo or part of a cargo, tank vehicles whether loaded or empty and vehicles transporting more than one hundred twenty gallons of flammable liquids or liquefied petroleum gas in containers having a capacity of more than twenty gallons as cargo or the major portion of a cargo.

Each vehicle for which a stop is required must do so within 15 to 50 feet of the nearest rail at all highway-rail crossings. While stopped, the driver is required to listen and look along the track in both directions for any approaching train and must not proceed until it is safe to do so. Upon proceeding, the gears may not be shifted manually while crossing the tracks. Cal. Veh. Code § 22452 (2008).

Penalty

If a driver fails to stop as required by this section, his driver's license may be suspended for not more than six months. Cal. Veh. Code § 13201 (2008).

Exempt Crossings - California does not require drivers to stop at tracks running upon and along the roadway in business or residential districts, or where a traffic officer or official traffic control signal directs traffic to proceed. Additionally, stops are not required at railroad crossings where an official railroad crossing stop exempt sign has been placed by the California Department of Transportation. See also, Section 21400, or by local authority, see Section

22452.5. School buses and school pupil activity buses are not part of the exemption. Cal. Veh. Code § 22452 (2008).

COLORADO

Slow and Low Vehicles - Colorado law considers low clearance as less than nine inches above the level surface of the roadway upon or across the tracks. Slow vehicles are described as those with a normal operating speed of ten miles per hour or less. Before moving slow and low vehicles across a highway-rail crossing, the law requires that reasonable notice be given to a superintendent of the railroad.

The State of Colorado requires persons operating slow and low vehicles to stop before traversing a highway-rail crossing. The stop must be made within 15 to 50 feet from the nearest rail, the operator must look and listen for trains and train signals, and the operator may cross only when possible to proceed safely.

No such crossing is to be made when warning is given by an automatic signal, crossing gate or flagman of the immediate approach of a train. Colo. Rev. Stat. § 42-4-708 (1), (2), (3), (4) (2008). See also, subparagraph (5) under exempt crossings.

Special Vehicles - Colorado law requires drivers of school buses and vehicles carrying passengers for hire which are carrying more than six passengers to stop within 15 to 50 feet of the nearest rail at all non-exempt crossings.

Any vehicle carrying explosives or hazardous materials as cargo or part of a cargo or any vehicle designed to carry flammable liquids whether empty or loaded are to stop at crossings.

After requiring drivers of special vehicles to stop, Colorado law requires that the driver listen and look along the track in both directions for any approaching train and for signals indicating the approach of a train. The driver may then proceed to cross if it is safe to do so.

Exempt Crossings - Under Colorado law, drivers of slow and low vehicles do not have to stop at crossings where state or local road authorities have determined that trains are not operating during certain periods or seasons of the year and have erected an official "EXEMPT" sign. Colo. Rev. Stat. § 42-4-708(5) (2008).

Drivers of special vehicles are not required to stop at crossings marked with an "EXEMPT" sign or at any crossing where traffic is controlled by a police officer or a traffic control signal. Stopping requirements also do not apply at crossings protected by crossing gates or alternately flashing lights intended to give warning of an approaching train. Colo. Rev. Stat. § 42-4-708(5)(a), (b), (c), (d) (2008).

CONNECTICUT

Slow and Low Vehicles - Connecticut has no requirements regulating stops by slow and low vehicles.

Special Vehicles - Connecticut law requires operators of commercial motor vehicles transporting passengers, motor buses, service buses or other motor vehicles carrying school children, vehicles carrying hazardous materials as cargo or part of a cargo and vehicles transporting inflammable or corrosive liquids in bulk, whether loaded or empty, to stop at highway-rail crossings.

Connecticut sets a different minimum stopping distance than most states. The law requires that stops be made within 10 to 50 feet of the nearest rail of the tracks. After stopping, the operator is required to listen and look in both directions for an approaching train.

No crossing is to be made at any crossings where warning of an approaching train is given by an automatic signal, crossing gates, a flagman or other device. Conn. Gen. Stat. § 14-250 (2009).

The operator of any commercial motor vehicle shall not attempt to cross a railroad grade crossing if such vehicle cannot be driven completely through such crossing, without shifting gears, on account of insufficient undercarriage clearance.

The operator of any commercial motor vehicle shall not attempt to cross a railroad grade crossing if such vehicle does not have sufficient space to drive completely through such crossing and to clear the tracks without stopping. Conn. Gen. Stat. § 14-250 (b) and (c) (2009).

Penalty

A violation of any provision of Section 14-250 constitutes an infraction and will result in a fine of not less than one hundred fifty or more than two hundred fifty dollars. Conn. Gen. Stat. § 14-250 (2009).

Exempt Crossings - Connecticut has no provision for exempt crossings.

DELAWARE

Slow and Low Vehicles - The statute defines slow and low vehicles as those having a normal operating speed of ten miles per hour or less and with a vertical body or load clearance of less than nine inches. Del. Code Ann. Tit. 21 § 4167 (2009).

Delaware law requires persons operating slow and low vehicles to stop before traversing highway-rail crossings. The stop must be made within 15 to 50 feet from the nearest rail. The operator must look and listen for trains and train signals and may cross only when it is possible to do so safely. Delaware requires that, if the railroad provides a flagman, movement of slow and low vehicles must be made under the direction of such flagman. Reasonable notice of any

intended crossing must be given to a station agent of the railroad so as to allow the affected railroad to provide protection at the crossing.

Delaware law prohibits such crossing when an automatic signal, gates, flagman or other warning indicates an approaching train.

Special Vehicles - Delaware requires drivers of a school bus carrying any children, a motor vehicle carrying passengers for hire, or a vehicle transporting hazardous materials to stop at crossings. The required stop is to be within 15 to 50 feet of the nearest rail of the crossing. When stopped, the driver of the special vehicle is to listen and look along the track in both directions for any approaching train and for signals indicating the approach of a train. Drivers may not proceed until it is safe to do so and may not manually shift gears while crossing the tracks. Del. Code Ann. Tit. 21 § 4163 (2009).

Exempt Crossings - Drivers of school buses, vehicles transporting passengers for hire, and vehicles with hazardous materials are not required to stop at crossings that are controlled by a police officer or flagman. Stops are also not required at crossings which are regulated by a traffic control signal, crossings where crossing gates or alternately flashing lights have been installed for the purpose of warning of the approach of a train or crossings at which an official traffic control device gives notice that the stopping requirement does not apply. Del. Code Ann. Tit. 21 § 4163 (2009).

DISTRICT OF COLUMBIA

Slow and Low Vehicles - The District of Columbia does not have sections in its vehicle code requiring stops by drivers of slow and low vehicles.

Special Vehicles - The District of Columbia has no provisions concerning special vehicles.

Exempt Crossings - Exempt crossings are not mentioned in the District of Columbia vehicle code.

FLORIDA

Slow and Low Vehicles - As is the case in other states, Florida law define slow and low vehicles as any equipment or structure having a normal operating speed of ten miles per hour or less, with a vertical body or load clearance of less than nine inches measured above the level surface of the roadway upon or across the tracks. Fla. Stat. Ann. § 316-170 (2009).

Florida law requires persons operating slow and low vehicles to stop before traversing a highway-rail crossing. The stop must be made within 15 to 50 feet from the nearest rail and the operator must listen and look in both directions for trains and train signals and may cross only when it is safe to do so.

Before moving slow and low vehicles across a highway-rail crossing, Florida law requires that reasonable notice be given to a station agent or other proper authority of the railroad.

No crossing is to be made when warning is being given by automatic signal, crossing gate, flagman or other device of the immediate approach of a railroad train or car. If a flagman is present, movement over the crossing is to be under his direction. Fla. Stat. Ann. § 316-170 (2009).

Special Vehicles - Florida law requires drivers of school buses carrying any children, vehicles carrying passengers for hire, and vehicles carrying explosive substances or flammable liquids as cargo to stop at crossings.

Drivers of special vehicles must stop within 15 to 50 feet of the nearest rail of the crossing. After making the required stop, the driver must listen and look along the track in both directions for any approaching train and for signals indicating the approach of a train. Drivers may not proceed until it is safe to do so and may not manually shift gears while crossing the tracks. Fla. Stat. Ann. § 316-159 (2009).

Exempt Crossings - Drivers of special vehicles are exempt from the stop requirement at crossings where a police officer, a traffic control signal or a sign directs traffic to proceed. School buses must stop unless directed to proceed by a police officer. Fla. Stat. Ann. § 316-159 (2009).

GEORGIA

Slow and Low Vehicles - Georgia law defines slow and low vehicles as any equipment or structure having a normal operating speed of ten miles per hour or less or a vertical body or load clearance of less than nine inches measured above the level surface of a roadway upon or across any tracks. Ga. Code Ann. § 40-6-143 (2009).

Georgia law requires drivers of slow and low vehicles to stop not less than 15 or more than 50 feet from the nearest rail of the tracks, and while stopped, the driver must listen and look along the track in both directions for any approaching train and for signals indicating the approach of a train. The driver may not proceed until the crossing can be accomplished safely. Reasonable notice of any such intended crossing must be given to a station agent of the railroad so as to give the railroad time to provide proper protection at the crossing.

No such crossing may be made where warning is given by an automatic signal, crossing gate, flagman or other device of the immediate approach of a railroad train or car. If a flagman is present, movement over the crossing must be made under the flagman's direction.

Special Vehicles - Georgia law requires drivers of school buses whether carrying passengers or empty, vehicles carrying passengers for hire, and vehicles transporting explosive substances, flammable liquids, hazardous waste or constituents, or hazardous acidic liquids as cargo or part of a cargo to stop at crossings. Drivers of school buses and vehicles with hazardous

materials must stop within 15 to 50 feet of the nearest rail. When stopped, the drivers of such vehicles are required to listen and look in both directions along each track for any approaching train and for signals indicating the approach of a train. Drivers may not proceed until they can do so safely. The driver may not manually shift gears while crossing the tracks. Ga. Code Ann. § 40-4-142 (2009). See also, Georgia's entry in Chapter 9 (Driver Action).

Exempt Crossings - Drivers of special vehicles are not required to stop at a crossing where a police officer or a traffic control signal directs traffic to proceed. Ga. Code Ann. § 40-4-142 (2009).

HAWAII

Slow and Low Vehicles - Hawaii has no requirements concerning stops by slow and low vehicles.

Special Vehicles - Hawaii requires drivers of school buses carrying children, vehicles carrying passengers for hire or any vehicle carrying explosive substances or flammable liquids as cargo or part of a cargo to stop at crossings. The stops are to be made within 15 to 50 feet of the nearest rail. The driver, while stopped, shall listen and look along the track in both directions for any approaching train and for signals indicating the approach of a train. The driver shall proceed only when it is considered safe to do so. The driver must not manually shift gears while traversing the track. Haw. Rev. Stat. § 291C-93(a) (2008).

Exempt Crossings - Drivers of special vehicles need not stop at crossings where a police officer or traffic control signal directs traffic to proceed. The stopping requirements also do not apply at highway-rail grade crossings within a business or residential district. Haw. Rev. Stat. § 291C-93(b)(C) (2008).

IDAHO

Slow and Low Vehicles - Idaho's Code defines slow and low vehicles as any equipment or structure having a normal operating speed of ten miles per hour or a vertical or load clearance of less than nine inches measured above the level surface of a highway, upon or across the tracks.

Before moving slow and low vehicles across a highway-rail crossing in Idaho, reasonable notice must be given to a station agent of the railroad.

Idaho law requires persons operating slow and low vehicles to stop before traversing a highway-rail crossing. The stop must be made within 15 to 50 feet of the nearest rail. After stopping, the operator must listen and look for trains and train signals and cross only when it is possible to proceed safely.

Idaho law expressly prohibits crossing when an automatic signal, gate, flagman or other warning indicates the approach of a train. If a flagman is provided by the railroad, movement over the crossing must be made under the flagman's direction. Idaho Code § 49-650 (2008).

Special Vehicles - Although Idaho does not mention any specific vehicles under the special category, it requires that drivers of any vehicle stopped at a highway-rail crossing listen and look in both directions for an approaching train and for signals indicating the approach of a train. Drivers shall not proceed until it can be done safely and may not manually shift gears while moving through the crossing. Idaho Code § 49-649 (2008).

Exempt Crossings -Drivers of special vehicles are not required to stop at crossings where traffic is controlled by a police officer or flagman, by a traffic control signal, or by crossing gates or an alternately flashing light signal intended to warn of the approach of a train, or at any grade crossing at which a traffic control device gives notice that the stopping requirements do not apply. Idaho Code § 49-649(a), (b), (c), (d) (2008).

ILLINOIS

Slow and Low Vehicles - Illinois law refers to “power” instead of “steam” shovels. As to vehicles with low clearances, Illinois applies the nine inch height to axles that are eighteen feet or less apart. If the axles are more than eighteen feet apart, the one half inch per foot measure is used.

Before moving slow and low vehicles across a highway-rail crossing, Illinois law requires that reasonable notice be given to a superintendent of the railroad.

Illinois law requires persons operating slow and low vehicles to stop before traversing a highway-rail crossing. The stop must be made within 15 to 50 feet of the nearest rail. After stopping, the operator must look and listen for trains and train signals, and cross only when it is safe to proceed.

No such crossing may be made at a crossing where warning of the approach of a train is given by an automatic signal, crossing gate, flagman or other device. 625 ILCS 5/11-1203 (2008).

Special Vehicles - Illinois requires drivers of school buses carrying any children, vehicles carrying passengers for hire and vehicles transporting hazardous materials to stop at highway-rail crossings.

Illinois law requires these special vehicles to stop within 15 to 50 feet of the nearest rail of the tracks. After making the required stop, drivers of special vehicles are instructed to listen and look in both directions for an approaching train and may not move over the crossing until it can be done safely.

After determining that it is safe to traverse a crossing, drivers of vehicles with passengers for hire, or those carrying hazardous materials, may proceed but may not manually shift gears while crossing the tracks.

Exempt Crossings - An exception is provided for drivers of vehicles with passengers or hazardous material cargos at crossings where a traffic control signal, police officer or flagman regulates traffic. And at any railroad crossings controlled by a functioning traffic-control signal transmitting a green indication.

Illinois law exempts drivers of special vehicles from the stopping requirements at crossings where crossing gates or alternately flashing lights have been installed. However, this exemption does not apply to drivers of school buses.

Stopping requirements are also not applicable at any streetcar grade crossing within a business or residential district and at any abandoned industrial or spur track designated as exempt by the Illinois Commerce Commission. 625 ILCS 5/11-1202(b)-1-2-3-4 (2008).

INDIANA

Slow and Low Vehicles - When defining slow and low vehicles, the Indiana code omits “crawler-type” vehicles, but does mention “caterpillar” tractors. Indiana law describes slow and low vehicles as vehicles or structures weighing more than ten tons and having a normal operating speed of not more than six miles per hour.

Before moving slow and low vehicles across a highway-rail crossing, Indiana law requires that reasonable notice be given to a superintendent of the railroad.

Indiana law requires persons operating slow and low vehicles to stop before traversing a highway-rail crossing. The stop must be made not less than 10 or more than 50 feet from the nearest rail, and while stopped, the operator must listen, look and then cross only when it is possible to do so safely.

Indiana expressly prohibits crossings of tracks by slow and low vehicles where an automatic signal, gate, flagman or other device indicates an approaching train. Ind. Code Ann. § 9-21-8-40 (2009).

Special Vehicles - Indiana has two separate code sections regulating stopping and traversing crossings by special vehicles. Indiana law requires drivers of school buses carrying any children to stop at crossings. The stop shall be made not less than 10 or more than 50 feet of the nearest rail. While the bus is stopped, the driver must open the door and listen and look in both directions for a train or signals indicating the approach of a train. After all requirements are complied with, the driver may then proceed when it is safe to do so but may not manually shift gears while crossing.

Penalty

If a driver of a school bus is convicted of a violation of this section, the operator may have his driver's license suspended for a period of not less than sixty days in addition to penalties provided by Section 20-9.1-5-22. Ind. Code Ann. § 20-9.1-5-1.1(a)-(b) (2009).

A driver of a motor vehicle carrying passengers for hire or a vehicle carrying explosive substances or flammable liquids as cargo or part of a cargo must stop not more than 50 feet and not less than 15 feet from the nearest rail of the crossing.

While stopped, the driver shall listen through an open door or window and look along the track in both directions for an approaching train and for signals indicating the approach of a train. The driver may then proceed only when it is safe to do so but may not manually shift gears while traversing the crossing.

If a police officer or a traffic control signal is directing traffic at a crossing, the driver of a special vehicle may proceed in accordance with the instructions provided by the police officer or the traffic control signal. Ind. Code Ann. § 9-21-12-5(a), (b), (c), (d) (2009).

Penalty

A conviction for a violation of this section will result in a fine and a suspension of driving privileges for a period of not less than sixty days. Ind. Code Ann. § 9-21-12-8 (2009).

Exempt Crossings - Indiana exempts drivers of special vehicles only (not slow and low vehicles) from stopping at highway-rail grade crossings within a business or residential district, at an abandoned or unused crossing and at crossings where traffic is controlled by a police officer or a traffic control signal. Ind. Code Ann. § 9-21-12-5(a)-(d) (2009).

IOWA

Slow and Low Vehicles - Iowa law makes reference to “caterpillar” rather than “crawler-type” tractors. It describes slow vehicles as those with an operating speed of six miles per hour or less and low vehicles as those with a vertical body or load clearance of less than nine inches above the level surface of a roadway upon or across any tracks.

Before moving slow and low vehicles across a highway-rail crossing in Iowa, state law requires that reasonable notice be given to a superintendent of the affected railroad.

Iowa law requires persons operating slow and low vehicles to stop before traversing a highway-rail crossing. The stop must be made within 10 to 50 feet of the crossing. After stopping, the operator must listen and look in both directions along the track for any approaching train and for signals indicating the approach of a train, and may cross only when it is safe to do so.

Iowa expressly prohibits any crossing when an automatic signal, gate, flagman or other warning indicates an approaching train. Iowa Code § 321.344 (2008).

Special Vehicles - Iowa requires drivers of school buses, vehicles carrying passengers for hire and vehicles carrying hazardous materials to stop at highway-rail crossings. Iowa requires stops to be within 50 feet but not less than 15 feet of the nearest rail of the crossing. After stopping, a driver must listen and look in both directions for an approaching train and for signals indicating the approach of a train, and may proceed only when it is safe to do so. Iowa Code § 321.343 (2008). See also, Section 321.449 (Motor Carrier Safety Rules).

Exempt Crossings - Drivers of special vehicles are exempt from stopping requirements at a crossing where a police officer or a traffic control device directs traffic to proceed. Also, no stop need be made at a crossing with an “EXEMPT” sign. The statute indicates that the “EXEMPT” sign shall be posted only where the tracks have been partially removed on either side of the roadway. Iowa Code § 321.343 (2008).

KANSAS

Slow and Low Vehicles - Kansas law describes slow and low vehicles as those having a normal operating speed of ten miles per hour or less or load clearance of less than nine inches measured above the level surface of a roadway, upon or across the tracks.

Before moving slow and low vehicles across a highway-rail crossing, Kansas law requires that reasonable notice be given to a station agent of the affected railroad.

Kansas law requires persons operating slow and low vehicles to stop before traversing a highway-rail crossing. The stop must be made within 15 to 50 feet of the nearest rail. The operator must then listen and look for trains and train signals, and shall cross only when it is safe to proceed.

A crossing may not be made when warning of the approach of a train is given by an automatic signal, crossing gates, a flagman or other device. If a flagman is provided by the railroad, movement over the crossing is to be made under the flagman's direction. Kan. Stat. Ann. § 8-1554 (2008).

Special Vehicles - Kansas law requires that the Kansas Secretary of Transportation, in conjunction with the corporation commission, adopt rules and regulations as are necessary describing the types of vehicles which must comply with the stopping requirements. The statute does not mention any specific vehicles under this category.

Kansas law requires drivers of school buses and vehicles with hazardous materials to stop within 15 but not more than 50 feet of the nearest rail.

After complying with the stopping requirements, drivers of special vehicles must listen and look in both directions for any approaching train and for signals indicating the approach of

a train. No crossing shall be made until it is determined that it is safe to do so. The driver must then cross in an appropriate gear and must not manually shift gears while crossing the tracks. Kan. Stat. Ann. § 8-1553 (2008).

Exempt Crossings - Under Kansas law, the drivers of special vehicles are not required to stop at crossings where traffic is controlled by a police officer or human flagman, any crossing at which traffic is controlled by a highway traffic signal transmitting a green indication, any abandoned crossing which is marked with a sign indicating such, any industrial or spur line crossing marked with a state or local authority approved “EXEMPT” sign and crossings used exclusively for industrial switching purposes within a business district. Kan. Stat. Ann. § 8-1553 (2008). For definition of business district, see Section 8-1407 and amendments.

KENTUCKY

Slow and Low Vehicles - Kentucky does not have a specific statute concerning stops by slow and low vehicles at highway-rail crossings.

Special Vehicles - Kentucky statutes contain a separate section concerning stopping requirements for drivers or chauffeurs of any motor vehicle transporting passengers for hire.

Stops by drivers or chauffeurs of any such vehicle shall stop not less than 10 feet or more than 30 feet from the nearest rail of the track. After the stop is made, the driver or chauffeur must look carefully in each direction for an approaching car or train, and shall not cross until it is ascertained that no car or train is approaching. Ky. Rev. Stat. Ann. § 281.745 (2008). For penalty if convicted of violating this section, see Section 281.990 [1] [3].

Kentucky law requires drivers of buses and motor vehicles used for transporting children to come to a stop within 10 feet and not more than 30 feet of the nearest track over the highway. After the stop is made, the law requires that operators open the service door and carefully look in both directions for approaching trains or maintenance vehicles. Ky. Rev. Stat. Ann. § 189.550 (2008).

Exempt Crossings - Kentucky exempts drivers of buses and motor vehicles used for transporting children and vehicles transporting passengers for hire from the stopping requirements at crossings which are protected by gates or a flagman employed by the railroad. Ky. Rev. Stat. Ann. § 189.550 (2008).

LOUISIANA

Slow and Low Vehicles - Louisiana defines slow and low vehicles as those that have an operating speed often miles an hour or less and a clearance of less than nine inches measured above the level surface of a roadway, upon or across any tracks.

Louisiana law requires that, before moving slow and low vehicles across a highway-rail crossing, reasonable notice be given to a station agent of the affected railroad.

Louisiana law requires persons operating slow and low vehicles to stop before crossing a highway-rail crossing. The stop must be made within 15 to 50 feet of the nearest rail. During the stop, the operator must listen and look in both directions, proceeding only when it is safe to do so.

These procedures have no applicability at a crossing where warning of the approach of a railroad train or car is given by automatic signals, crossing gates, a flagman or other device. If a flagman is provided by the railroad, any crossing attempted shall be under the flagman's direction. La. Rev. Stat. Ann. § 32:174 (2008).

Special Vehicles - Louisiana requires drivers of school buses carrying children or not, vehicles carrying passengers for hire and vehicles carrying explosive substances or flammable liquids as cargo or part of a cargo to stop at highway-rail crossings. Stops are to be made within 15 to 50 feet of the nearest rail and while stopped, the driver is required to listen and look in both directions for any approaching train or for signals indicating the approach of a train. The driver of any school bus must open the door of the bus and leave it open while ascertaining that no train is approaching. La. Rev. Stat. Ann. § 32:1.73 (2008).

Exempt Crossings - The drivers of school buses and vehicles carrying hazardous materials are not required to comply with the stopping provisions at any crossing where a police officer or traffic control signal directs traffic to proceed. La. Rev. Stat. Ann. § 32:173 (2008).

MAINE

Slow and Low Vehicles - Maine has no provisions concerning slow and low vehicles.

Special Vehicles - Maine law requires drivers of school buses to stop at crossings. The stop shall be made at a point within 15 to 40 feet of the nearest rail. While stopped, the driver must ascertain beyond a reasonable doubt that no train, engine or conveyance is approaching. The driver is permitted to cross only when it is safe to do so. Me. Rev. Stat. Ann. Tit. 29-A § 2306 (2008).

Penalty

Maine law provides two separate penalties for violations of the stopping requirement by drivers of special vehicles. A violation of this section by a school bus driver is a Class E crime, and upon conviction of failure to stop or to yield the right-of-way to a train, the driver's license to operate the school bus must be revoked by the Maine Secretary of State for a period of not less than two years. Me. Rev. Stat. Ann. Tit. 29-A § 2306 (2008).

Maine has a second statute which covers stops by a variety of special vehicles. It includes a bus transporting passengers and a motor vehicle transporting any quantity of chlorine. Me. Rev. Stat Ann. Tit. 29-A § 2076 (2008).

Maine requires drivers of hazardous vehicles to stop at crossings. The pertinent section of the statute requires those vehicles that must be marked or placarded in accordance with Title 49 Code of Federal Regulations (CFR) Part 172, Subpart F, to stop at crossings. The statute further requires cargo tank vehicles used to transport a hazardous material as defined in 49 CFR Parts 170–189, or a commodity under special permit in accordance with provisions prescribed by the CFR to stop whether loaded or not.

Another category of vehicle covered under the same section of the statute is described as a cargo tank vehicle transporting a commodity that, at the time of loading, has a temperature above its flash point as determined by 49 CFR Section 173.115. Me. Rev. Stat. Ann. Tit. 29-A § 2076 (2008). See also, 49 CFR Part 172, Subpart F, 49 CFR Parts 170–189, and 49 CFR § 173.115.

Penalty

Any driver of a vehicle covered under this section who fails to comply with the stopping requirements commits a Class D crime. Me. Rev. Stat. Ann. tit. 29-A § 2076(5) (2008).

Exempt Crossings - Drivers of vehicles under the special category with the exception of school buses, are exempt from the stopping requirements within a business district at streetcar crossings or railroad crossings used exclusively for industrial switching purposes when a law enforcement officer or crossing flagman directs traffic to proceed, at a clearly marked abandoned crossing and at an industrial or spur line railroad grade crossing marked with an “EXEMPT” sign. Me. Rev. Stat. Ann. Tit. 29-A § 2076(4) (2008).

MARYLAND

Slow and Low Vehicles – Maryland’s definition of slow and low vehicles is similar to most states with the exception that Maryland refers to “power” and not “steam” shovels.

Prior to moving slow and low vehicles across a highway-rail crossing in Maryland, reasonable notice must be given to an agent of the affected railroad, thereby allowing the railroad time to provide proper protection.

Maryland law requires persons operating slow and low vehicles to stop within 15 to 50 feet of the nearest rail before moving across a highway-rail crossing. While stopped, the operator is required to listen and look in both directions for an approaching or passing train and for signals indicating the approach or passage of train. In any event, no crossing is to be made unless it is determined that it can be done safely.

Maryland law prohibits crossing if a warning of the immediate approach of a train is given by an automatic signal, crossing gate, flagman or other device. Md. Ann. Code Art. 21 § 704 (2009).

Special Vehicles - Maryland law requires drivers of motor vehicles carrying passengers for hire, school vehicles carrying any passenger, buses owned or operated by a church and carrying any passenger, vehicles carrying flammable liquid or an explosive and vehicles carrying hazardous materials of a type and quantity requiring placards under federal hazardous materials regulations, to stop at highway-rail crossings. Stops must be made within 15 to 50 feet of the nearest rail of the tracks. Drivers must listen and look in both directions along the track for any approaching train and for signals indicating the approach of a train. The driver may proceed only when it is safe to do so and may not manually shift gears while crossing. Md. Ann. Code Art. 21 § 703(b), (c), (d) (2009). See also, the Maryland section covered in Chapter 8 of this book.

Exempt Crossings - In Maryland, the stopping requirements for drivers of special vehicles do not apply at any highway-rail crossing in a business or residential district. Md. Ann. Code Art. 21 § 703(g) (2009).

MASSACHUSETTS

Slow and Low Vehicles - Massachusetts has no regulations concerning slow and low vehicles.

Special Vehicles - The law in Massachusetts requiring stops at highway-rail crossings does not specifically mention transit buses or vehicles transporting passengers for hire. Massachusetts law does require drivers of school buses and vehicles carrying explosive substances or flammable liquids as cargo or part of a cargo to stop within 15 to 50 feet of the nearest rail. The statute also requires drivers of school buses to open the door while stopped. Mass. Ann. Laws Ch. 90 § 15 (2009).

Penalty

A violation of any provision of Section 15 is punishable by a fine of not less than one hundred or more than two hundred dollars. Mass. Ann. Laws Ch. 90 § 15 (2009).

Exempt Crossings - Massachusetts has no provisions concerning exempt crossings.

MICHIGAN

Slow and Low Vehicles - Michigan law refers to “caterpillar-type” tractors under this category. Additionally, Michigan law adds as part of the slow and low category, boilers, machinery, and objects upon rollers. Michigan law applies to equipment or structures having a normal operating speed of four miles per hour or less. Mich. Comp. Laws Ann. § 257.670 (2009). See also, Mich. Stat. Ann. § 9.2370(1) (2008).

In Michigan, the nearest agent or officer of the railroad must be notified and a reasonable period of time allowed for protection of the railroad’s locomotives, cars and trains.

Persons operating slow or low vehicles must stop before moving over a highway-rail crossing. The stop must be made not less than 10 feet but no more than 50 feet from the nearest rail and the operator must listen and look in both directions for an approaching train and for signals indicating the approach of a train. After stopping, listening and looking, the operator may proceed only if it is safe to do so. Mich. Comp. Laws Ann. § 257.670 (2009). See also, Mich. Stat. Ann. § 9.2370(2)-(3) (2008).

Michigan law prohibits a crossing to be made when warning of the immediate approach of a railroad train or car is given by an automatic signal, crossing gate, flagman or other device. Mich. Comp. Laws Ann. § 257.670 (2009). See also Mich. Stat. Ann. § 9.2370(4) (2008).

Special Vehicles - In Michigan, vehicles required to stop at highway-rail crossings include motor vehicles carrying passengers for hire, school buses and vehicles carrying explosive substances, flammable liquids or other hazardous materials on which a placard is required by federal law.

Michigan statutes prescribe stopping requirements for school buses under a different section than for motor vehicles carrying passengers for hire and vehicles carrying hazardous materials. Drivers of school buses must stop within 50 feet but not less than 10 feet of the nearest rail of the crossing. After coming to a stop, the driver of the school bus must activate hazard warning lights, turn off all interior switches including fans, heaters, and radios, open the passenger door and driver-side window, and while stopped shall listen and look in both directions along the track for an approaching train and for signals indicating the approach of a train, and shall not proceed until the driver can do so safely. The driver is prohibited from manually shifting gears while crossing. Mich. Stat. Ann. § 9.3557(1) (2008).

Drivers of motor vehicles carrying passengers for hire and vehicles carrying hazardous materials are required to stop within 10 to 50 feet of the nearest rail and while stopped, must listen and look in both directions for an approaching train and for signals indicating the approach of a train. The driver may not proceed until it is possible to do so safely and may not manually shift gears while crossing. Mich. Comp. Laws Ann. § 257.669 (2009). See also, Mich. Stat. Ann. § 9.2369(1) (2008).

Exempt Crossings - School bus drivers, drivers of vehicles carrying passengers for hire, and vehicles carrying hazardous materials are not required to stop at crossings where a police officer or a traffic control signal directs traffic to proceed. Exemptions also apply at crossings that are abandoned as determined by the State of Michigan. No stop is required at a grade crossing on a freeway or limited access highway where the crossing is protected by a signal, crossing gate or barrier at a time when the signal, crossing gate or barrier is not activated. Mich. Stat. Ann. § 9.3557(4) (2008).

MINNESOTA

Slow and Low Vehicles – Minnesota’s description of slow and low vehicles refers to “caterpillar” rather than “crawler-type” tractors. It also defines the operational speed at six miles

per hour or less. The clearance requirements are nine inches or less above the level surface of the roadway.

Minnesota law requires persons operating slow and low vehicles to stop before moving over a highway-rail crossing. The stop must be made not less than 10 feet or more than 50 feet from the nearest rail and the operator must listen and look for approaching trains and for signals indicating the approach of a train. The operator may only proceed when it is safe to do so.

No crossing is to be made where warning of the immediate approach of a train is given by automatic signals, crossing gates, a flagman or other device. Minn. Stat. § 169.29 (2008).

Exempt Crossings - The operator of a slow and low vehicle as defined in Minnesota must stop at a crossing which has been abandoned and is displaying an “EXEMPT” sign, unless directed otherwise by a flagman. Minn. Stat. § 169.29 (2008).

Special Vehicles - Minnesota law adds “any Head Start Bus” to the category of special vehicles. A Head Start Bus is defined in the statute as one which must bear on its front and rear a plainly visible sign containing the words Head Start Bus in letters at least eight inches in height. Minn. Stat. § 169.28 (2008).

Minnesota law requires drivers of motor vehicles carrying passengers for hire, school buses, including Head Start buses, whether carrying passengers or not and any vehicle carrying explosive substances, flammable liquids or liquid gas under pressure as cargo or part of a cargo to stop at highway-rail crossings. The stop is to be made not less than 10 feet from the nearest rail. The driver is required to listen and look in both directions for an approaching train and for signals indicating the approach of a train and may proceed only when it is safe to do so. Minn. Stat. § 169.28 (2008).

Exempt Crossings - Minnesota law has a provision that allows the local school administrative officer to designate a crossing at which a school bus driver may be flagged across. Otherwise, a school bus will not be flagged across a railroad crossing. Minn. Stat. § 169.28(1) (2008).

MISSISSIPPI

Slow and Low Vehicles - Mississippi defines slow and low vehicles as those with an operating speed of six miles per hour or less. Also, the statutes make reference to “caterpillar” rather than “crawler-type” tractors.

Mississippi law requires that drivers of slow and low vehicles stop before moving over a highway-rail crossing. The stop must be made within 10 to 50 feet from the nearest rail and the operator must listen and look for approaching trains and signals indicating an approaching train. Movement across the crossing can be made after it is determined safe to do so by the operator.

Prior to moving slow and low vehicles over a highway-rail crossing, Mississippi law requires that reasonable notification be given to a superintendent of the affected railroad.

Moving over a crossing is prohibited at those crossings where warning of an approaching train is given by automatic signals, crossing gates, a flagman, or other device. Miss. Code Ann. § 63-3-1013 (2008).

Special Vehicles - Mississippi requires drivers of vehicles carrying passengers for hire and hazardous materials as cargo or part of a cargo and school buses carrying any children to stop at crossings.

The stop must be made within 50 feet but not less than 10 feet of the nearest rail of the crossing. While stopped, the driver is required to listen and look in both directions for an approaching train and for signals indicating an approaching train. After complying with the requirements, the driver may proceed when it is determined that it is safe to do so. Miss. Code Ann. § 63-3-1011(1) (2008).

Exempt Crossings - Mississippi exempts drivers of special vehicles from stopping requirements at crossings where a police officer or traffic control signal directs traffic to proceed and at crossings within a business or residential district. Miss. Code Ann. § 63-3-1011(2)-(3) (2008).

MISSOURI

Slow and Low Vehicles - Missouri has no regulation regarding stops by slow and low vehicles.

Special Vehicles - Missouri law requires drivers of motor vehicles carrying passengers for hire, school buses, motor vehicles transporting high explosives or poisonous or compressed inflammable gases and motor vehicles used for the transportation of inflammable or corrosive liquids in bulk whether loaded or empty to stop at crossings.

The stop must be made within 15 to 50 feet of the nearest rail. After the required stop is made, a driver shall not proceed until due caution has been taken to ascertain that it is safe to do so. Mo. Rev. Stat. § 304.030 (2008).

Exempt Crossings - Drivers of special vehicles are not required to stop at streetcar crossings within a business or residential district and at railroad grade crossings protected by a watchman, an on-duty traffic officer or a traffic control signal (not railroad flashing signal) that is giving positive indication to approaching vehicles to proceed. Stops also need not be made at any crossing at which the Missouri Division of Transportation has ordered the placement of an "EXEMPT" sign. Mo. Rev. Stat. § 304.030 (2008).

MONTANA

Slow and Low Vehicles - Montana law defines slow and low vehicles as those having an operating speed of ten miles per hour or less and a clearance of less than nine inches measured above the level surface of a roadway.

Montana law requires persons operating slow and low vehicles to stop before crossing a highway-rail crossing. The stop must be made within 15 to 50 feet of the nearest rail, the operator must listen and look in both directions for approaching trains and train signals, and, when it is safe to do so, the operator may proceed over the crossing.

Before moving slow and low vehicles across a highway-rail crossing, Montana law requires that reasonable notice be given to a station agent of the affected railroad.

No stop is to be made at a crossing where warning of the approach of a train is given by an automatic signal, crossings gates, a flagman or other device. If the railroad provides a flagman, movement over the crossing should be made under the flagman's direction. Mont. Code Ann. § 61- 8-350 (2008).

Special Vehicles - Montana statutes concerning this category of vehicles define a vehicle carrying passengers for hire as one which contains seven or more passengers. A driver of a vehicle carrying passengers for hire, a school bus with or without passengers or a vehicle carrying explosive substances or flammable liquids as cargo or part of a cargo must stop within 15 to 50 feet of the nearest rail of the crossing. While stopped, the driver is required to listen and look in both directions for an approaching train and for signals indicating the approach of a train and may not proceed until it can be accomplished safely. The driver may not manually shift gears while crossing the tracks. In the case of a school bus, the driver must open the door when listening and looking for trains and train signals.

Exempt Crossings - Montana does not require stops at highway-rail crossings in business or residential districts. A stop is also not required at any crossing where a police officer, highway patrol officer or traffic control signal directs traffic to proceed. A traffic control signal, as defined in the statute, does not include a railroad grade crossing signal. Mont. Code Ann. § 61-8-349 (2008).

NEBRASKA

Slow and Low Vehicles -Nebraska law requires persons operating slow and low vehicles to stop before crossing a highway-rail crossing. The stop must be made within 15 to 50 feet of the nearest rail, and the operator must listen and look in both directions for an approaching train and for signals indicating the approach of a train. The operator shall not traverse the crossing until it is safe to do so. Neb. Rev. Stat. § 60-6,174(2) (2009).

No such crossing is to be made at any crossing where warning of an immediate approach of a train is given by an automatic signal, crossing gates, a flagman or other device. If a flagman

is provided by the railroad, movement over the crossing shall be under the flagman's direction. Neb. Rev. Stat. § 60-6,174(3) (2009).

Special Vehicles - In the vehicle code of Nebraska, drivers of any bus carrying passengers for hire or any school bus must stop at highway-rail crossings. The stop must be made within 50 feet but not less than 15 feet of the nearest rail. While stopped, the driver must listen and look along the track in both directions for an approaching train and for signals indicating the approach of a train. Having accomplished all of this, the driver may then proceed when it is safe to do so. While proceeding across the tracks, the driver is prohibited from manually shifting gears. Neb. Rev. Stat. § 60-6,172(1) (2009).

The Nebraska law concerning vehicles transporting hazardous materials requires drivers to stop not less than 15 feet or more than 50 feet from the crossing. Drivers of buses and vehicles with hazardous materials must listen and look in both directions and may cross only when it is safe to do so. The law prohibiting drivers from shifting gears does not apply to drivers of vehicles carrying hazardous materials. Neb. Rev. Stat. § 60-6,173 (2009).

Exempt Crossings - Drivers of any bus carrying passengers for hire, or of any school bus do not need to stop at any crossing where a police officer or flagman directs traffic to proceed, or at an abandoned or exempt crossing which is clearly marked as such with the consent of competent authority when such markings can be read from the driver's position. Neb. Rev. Stat. § 60-6,172(2) (2009).

Drivers of vehicles carrying hazardous materials need not stop at abandoned or exempt crossings. Neb. Rev. Stat. § 60-6,173 (2009).

NEVADA

Slow and Low Vehicles – Nevada’s definition of slow and low vehicles is consistent with the definition of most states; except that Nevada refers to “power” not “steam” shovels.

Nevada law requires persons operating slow and low vehicles to stop before crossing a highway-rail crossing. The stop must be made within 50 feet but not less than 15 feet of the nearest rail of the crossing. Upon stopping, the operator must listen and look in both directions for an approaching train and for signals indicating the approach of a train, and must not proceed until it is safe to do so. Nev. Rev. Stat. Ann. § 484.355(2) (2009).

Nevada law expressly prohibits crossing when an automatic signal, crossing gates, a flagman or other device indicates an approaching train. If a flagman is provided by the railroad, movement over the crossing must be made under the flagman's direction. Nev. Rev. Stat. Ann. § 484.355(3) (2009).

Special Vehicles - Nevada law requires drivers of any motor vehicles carrying passengers for hire, school buses carrying children, or vehicles carrying any explosive or flammable liquid as cargo or part of a cargo to stop at highway-rail crossings. The stop must be

made within 15 to 50 feet of the nearest rail of the crossing. After stopping, the operator is required to listen and look in both directions for any approaching train and for signals indicating the approach of a train. The operator is prohibited from crossing until it is safe to do so. The manual shifting of gears while traversing the crossing is prohibited. Nev. Rev. Stat. Ann. § 484.353(1)-(2) (2009).

Exempt Crossings - Nevada does not require drivers of special vehicles to stop at crossings where a police officer or traffic control device is controlling the movement of traffic, a crossing marked with a device indicating that it is abandoned, a streetcar crossing or one used for industrial switching purposes in a designated business district, and a crossing marked with a sign identifying it as an exempt crossing. Nev. Rev. Stat. Ann. § 484.353(4) a, b, c, d (2009).

Nevada law forbids the erection of an “EXEMPT” sign unless:

- (1) The tracks are an industrial or spur line.
- (2) It is by or with the consent of the appropriate public authority with jurisdiction.
- (3) It is after the state or local authority has held a public hearing to determine whether the crossing should be designated an “exempt” crossing.

Nev. Rev. Stat. Ann. § 484.353(d)(1), (2), (3) (2009).

NEW HAMPSHIRE

Slow and Low Vehicles - Before moving slow and low vehicles across a highway-rail crossing, New Hampshire law requires that a stop be made within 15 to 50 feet of the nearest rail of the crossing. Before proceeding through the crossing, the operator must listen and look in both directions for trains and for signals indicating an approaching train. The operator may traverse the crossing only when it can be done safely. N.H. Rev. Stat. Ann. § 265:51(I)(m) (2008).

Advance notice of any intended crossing must be given to a station agent of the affected railroad and a reasonable time allowed the railroad to provide proper protection at the crossing. N.H. Rev. Stat. Ann. § 265:51(II) (2008).

New Hampshire law expressly prohibits drivers of slow and low vehicles from crossing when an automatic signal, crossing gate, flagman or other device indicates the approach of a train. N.H. Rev. Stat. Ann. § 265:51(IV) (2008).

Special Vehicles - Drivers of school buses carrying children, vehicles carrying passengers for hire and vehicles carrying hazardous materials are required to stop at crossings. New Hampshire divides hazardous vehicles into three separate categories within the same code section:

- (1) Vehicles carrying explosive substances.
- (2) Vehicles transporting flammable liquids in cargo tanks, whether loaded or empty.

(3) Vehicles used to transport cylinders of liquefied petroleum gas.
N.H. Rev. Stat. Ann. § 265:50(I)-(III) (2008).

New Hampshire law requires that stops by all special vehicles be made within 15 to 50 feet of the nearest rail of the crossing.

Drivers of school buses, vehicles carrying passengers for hire and vehicles carrying explosives must listen and look in both directions for any approaching train and for signals indicating the approach of a train.

The New Hampshire law applicable to school buses or vehicles with explosives allows drivers to traverse the crossing only when it is safe to do so; and they are prohibited from manually shifting gears while moving over the crossing. Drivers of vehicles with flammable liquids or cylinders of liquefied petroleum gas must use due caution and ascertain that the course is clear before crossing and are exempt from the prohibition on shifting gears. N.H. Rev. Stat. Ann. § 265:50(I)-(III) (2008).

Exempt Crossings - New Hampshire law exempts vehicles carrying passengers for hire, school buses carrying children and vehicles carrying explosive materials from the stopping requirements at crossings where a police officer or traffic control signal directs traffic to proceed. The New Hampshire Commissioner of Transportation may also designate an exemption for these same vehicles. N.H. Rev. Stat. Ann. § 265:50(II) (2008).

Vehicles transporting flammable liquids in cargo tanks, whether loaded or empty, and vehicles transporting cylinders of liquefied petroleum gas are not required to come to a full stop at crossings where a police officer or traffic control signal (not a railroad flashing signal) directs traffic to proceed or at abandoned or exempt crossings that are clearly marked. N.H. Rev. Stat. Ann. § 265:50 (II) and (III) (2008).

Penalty

If a person is convicted of an offense under any provision of Sections 265:50 or 265:51, such person shall be guilty of a violation for the first offense, and, for any subsequent offense committed during any calendar year, such person shall be guilty of a misdemeanor. The Director may revoke such person's driver's license and no new license shall be issued to such person for at least 90 days' after the date of such revocation. N.H. Rev. Stat. Ann. § 265:52 (2008).

NEW JERSEY

Slow and Low Vehicles - New Jersey expands the definitions in this category to include a wheel tractor, tractor engine with or without trailer(s) attached, a self-propelled concrete mixer or any self-propelled vehicle, all having a normal operating speed of ten miles per hour or less and a clearance of nine inches or less measured above the level surface of the roadway.

Before moving a slow or low vehicle over a highway-rail crossing, New Jersey law requires that notice be given to the nearest superintendent or trainmaster of the affected railroad. The notice must specify the approximate time of the crossing and a reasonable period of time must be allowed to provide protection at the crossing.

New Jersey law requires persons operating slow and low vehicles to stop before traversing a highway-rail crossing. The stop is required to be made between 15 feet and 50 feet from the nearest rail. The operator is then required to listen and look in both directions for trains and for signals indicating the approach of a train, and may not proceed unless it is safe to do so.

New Jersey expressly prohibits traversing any crossing when warning of the approach of a train is given by automatic signal, crossing gates, a flagman or other device. If a flagman is used by the railroad, moving over the crossing will be under the flagman's direction. N.J. Rev. Stat. § 39:428(b) (2008).

Special Vehicles - New Jersey includes an “omnibus” under this category and defines it as a vehicle that is designed for carrying more than six passengers.

New Jersey law requires drivers of any omnibus, a school bus carrying any children, or any vehicle carrying explosive substance or flammable liquids as cargo or part of a cargo to stop before traversing a highway-rail crossing. The stop must be made between 15 feet and 50 feet of the nearest rail. After stopping, the operator is required to listen and look in both directions for any approaching train and for signals indicating the approach of a train. The driver may proceed when it is safe to do so but may not manually shift gears while crossing. N.J. Rev. Stat. § 39:4-128(a) (2008).

Penalty

A violation of this section, either by drivers of slow and low vehicles, or of special vehicles, is punishable by a fine of not more than fifty dollars for the first offense and; for the second offense, a fine of not more than one hundred dollars, imprisonment for not more than thirty days, or both. N.J. Rev. Stat. § 39:4-128(c) (2008).

Exempt Crossings - Drivers of special vehicles are not required to stop at grade crossings which are no longer used for railroad traffic and have been abandoned by the railroad, provided that the crossing is clearly marked as such. Stop requirements are also not applicable at crossings where the racks or warning signs have been removed or paved over. Stopping is not required at grade crossings marked with a sign reading “EXEMPT CROSSING.”

New Jersey law vests exclusive authority with the Commissioner of Transportation to designate and mark any highway-rail crossing with an “EXEMPT CROSSING” sign. The commissioner may not do so without holding a public hearing. The Commissioner may designate a grade crossing an exempt crossing when the potential for damage and injury from accidents between motor vehicles required to stop at grade crossings and other motor vehicles traveling in the same direction exceeds that between a train and the vehicles required to stop by

law. Crossings designated as exempt crossings may include, but shall not be limited to, industrial, spur line, and secondary crossings. N.J. Rev. Stat. § 39:4-128(a) (2008).

NEW MEXICO

Slow and Low Vehicles - New Mexico's definitions for slow and low vehicles are consistent with a majority of other states and include those with an operating speed of ten miles an hour or less and a clearance of nine inches or less.

New Mexico law requires persons operating slow and low vehicles to stop before traversing a highway-rail crossing. The stop must be made within 15 to 50 feet of the nearest rail. After stopping, the operator must listen and look in both directions for an approaching train and for signals indicating the approach of a train. The operator may then proceed only after it is safe to do so. N.M. Stat. Ann. § 66-7-344(A) (2008).

Before moving slow and low vehicles move across a highway-rail crossing, New Mexico law requires that notice be given to a station agent of the railroad and a reasonable time be given to the railroad to provide proper support. N.M. Stat. Ann. § 66-7-344(B) (2008).

New Mexico expressly prohibits crossing by operators of slow and low vehicles at crossings where an automatic signal, crossing gates, flagman or other device indicates the approach of a train. If a flagman is provided by the railroad, movement over the crossing must be made under the flagman's direction. N.M. Stat. Ann. § 66-7-344(D) (2008).

Special Vehicles - New Mexico law requires the driver of any motor vehicle carrying passengers for hire, any school bus carrying children, or any vehicle carrying explosive substances or flammable liquids as cargo or part of a cargo to stop within 15 to 50 feet of the nearest rail of a highway-rail crossing. The driver must then listen and look in both directions for an approaching train and for signals indicating the approach of a train. Drivers may move over the crossing only when it is safe to do so and are prohibited from shifting gears while traversing the crossing. N.M. Stat. Ann. § 66-7-343(A) (2008).

A stop is not required at crossings where a police officer or a traffic control signal directs traffic to proceed. N.M. Stat. Ann. § 66-7-343(B) (2008).

Exempt Crossings - Drivers of special vehicles are not required to stop at the following exempt crossings:

- (1) A streetcar crossing or railroad crossing used exclusively for industrial switching purposes.
- (2) A grade crossing where traffic is controlled by a "stop and go" traffic light.
- (3) A clearly marked abandoned crossing.
- (4) An industrial or spur line crossing clearly marked as an "exempt" crossing.

N.M. Stat. Ann. § 66-7-343 C (1)-(2)-(3)-(4) (2008). See also, Section 66-7-1, concerning the definition of business district.

NEW YORK

Slow and Low Vehicles - New York law requires persons operating slow and low vehicles to stop before crossing a highway-rail crossing. The stop must be made within 15 to 50 feet of the nearest rail. After stopping and before proceeding, the operator is required to listen and look in both directions for an approaching train and for signals indicating an approaching train and then proceed only when it is safe to do so. The driver is prohibited from manually switching gears while crossing the tracks. N.Y. Veh. & Traf. Law § 1171(a) (2009).

Special Vehicles - The law requiring drivers of special vehicles to stop is the same as the law concerning slow and low vehicles and is contained within the same section. N.Y. Veh. & Traf. Law § 1171(a) (2009).

New York requires drivers of any bus carrying passengers, any school bus, and any vehicle carrying explosive substances or flammable liquids to stop at highway-rail crossing. The stop must be made within 15 to 50 feet of the nearest rail of the crossing.

A listen and look requirement applies to drivers of special vehicles. Movement through the crossing may be commenced only when it is safe to do so. Drivers of special vehicles are also prohibited from shifting gears while crossing the tracks. N.Y. Veh. & Traf. Law § 1171(a) (2009).

Exempt Crossings - Slow and low vehicles and special vehicles need not comply with stopping requirements at crossings where a police officer or a traffic control signal directs traffic to proceed or at a grade crossing within a business or residential district. N.Y. Veh. & Traf. Law § 171(b)-(c) (2009)

NORTH CAROLINA

Slow and Low Vehicles - North Carolina defines slow vehicles as any equipment or structure having a normal operating speed of five miles per hour or less. N.C. Gen. Stat. § 20-142.4(a) (2008).

Before moving slow or low vehicles across a highway-rail crossing, North Carolina law requires that notice be given to a superintendent of the railroad and a reasonable time be given to the railroad to provide protection at the intended crossing. N.C. Gen. Stat. § 20-142.4(b) (2008).

Slow and low vehicles must stop within 15 to 50 feet of the nearest rail of the tracks. The operator is required to listen and look in both directions for an approaching train and for signals indicating the approach of a train. The driver may proceed across the tracks only if it can be accomplished safely. N.C. Gen. Stat. § 20-142.4(c) (1)-(2)-(3) (2008).

At no time shall a crossing be made at any crossing where warning of the approach of a train is given by automatic signals, crossing gates, a flagman or other device. N.C. Gen. Stat. § 20-142.4(d) (2008).

Penalty

Any person violating the preceding sections shall be guilty of an infraction and punishment will be in accordance with N.C. Gen. Stat. § 20-176 (2008). N.C. Gen. Stat. § 20-142.4(1) (2008). Also see N.C. Gen. Stat. § 20-176 concerning punishment.

Special Vehicles - North Carolina law contains a couple of different descriptions in the special vehicle category. Along with any school bus, the statute includes any motor vehicle carrying passengers for compensation, any property-hauling motor vehicle over ten thousand pounds which is carrying hazardous materials and any motor vehicle with a capacity of sixteen or more persons.

Drivers of special vehicles in North Carolina are required to bring their vehicles to a stop at a highway-rail crossing. The stop must be made within 15 to 50 feet of the nearest rail of the tracks. The driver is then required to listen and look in both directions for an approaching train. After complying with these requirements, the driver may proceed across the tracks only when it is safe to do so and may not manually shift gears while crossing. N.C. Gen. Stat. § 20-142.3(a) (2008).

Exempt Crossings - Stopping requirements for drivers of slow and low vehicles are not applicable at any crossing where the state or local authorities have determined that trains are not operating during certain periods or seasons of the year and have erected an official sign carrying the legend "EXEMPT."

Drivers of special vehicles, with the exception of school buses, are not required to comply with the stopping provisions at crossings used exclusively for industrial switching purposes within a business district or at highway-rail crossings where a police officer or flagman directs traffic to proceed.

The stopping provisions are not applicable at any crossings protected by gates or flashing signals designed to stop traffic upon the approach of a train when the gates or flashing signs are not activated, at crossings which are clearly marked abandoned by the railroad, and at an industrial or spur line crossing marked with an "EXEMPT" sign erected by a competent local authority. N.C. Gen. Stat. § 20-142.3b-1-5 (2008).

NORTH DAKOTA

Slow and Low Vehicles - North Dakota's legal definition of slow and low vehicles is consistent with the majority of other states.

North Dakota law requires persons operating slow and low vehicles to stop before crossing a highway-rail crossing. The stop must be made within 15 to 50 feet of the nearest rail. While stopped, the operator must listen and look in both directions for an approaching train and for signals indicating the approach of a train. Movement over the crossing may only be commenced when it is safe to do so.

Traversing a crossing is prohibited at any crossing where warning of an approaching train is given by an automatic signal, crossing gates, flagman or other device. If a flagman is provided by the railroad, movement over the crossing must be done at the flagman's direction. N.D. Cent. Code § 39-10-67(1)–(3) (2009).

Special Vehicles - North Dakota law requires drivers of school buses and buses carrying passengers for hire to stop within a distance of 15 to 50 feet of the nearest rail of a highway-rail crossing.

North Dakota law includes in its definition of vehicles carrying hazardous materials “any vehicle used to transport dangerous articles or any liquid having a flash point below 200 degrees Fahrenheit (93.3° Celsius), cargo tank vehicles transporting a commodity having a temperature above its flash point at the time of loading, (and) certain cargo tank vehicles transporting commodities under special permits issued by the hazardous material regulation board....” N.D. Cent. Code § 39-10-43(1) (2009).

After coming to a stop, drivers of these special vehicles must listen and look in both directions for an approaching train and for signals indicating the approach of a train, and may proceed only when it can be done safely. Drivers of special vehicles are prohibited from manually shifting gears while moving across a highway-rail crossing. N.D. Cent. Code § 39-10-43(1) (2009).

Exempt Crossings - No stop is required at any grade crossing where traffic is being controlled by a police officer. N.D. Cent. Code § 39-10-43(2) (2009).

North Dakota exempts drivers from the stopping requirements at a crossing which the Director of the South Dakota Department of Highways has designated as an “out-of-service” crossing and is marked by signs bearing the words “TRACKS OUT OF SERVICE.” The “out-of-service” designation applies only to crossings where the track has been abandoned or is no longer in use. N.D. Cent. Code 39-10-43(3)-(4) (2009).

OHIO

Slow and Low Vehicles - Ohio defines the vehicles in this category as any equipment or structure having a normal operating speed of six miles an hour or less.

Before moving slow and low vehicles across a highway-rail crossing, Ohio law requires that notice be given to a station agent of the affected railroad to allow the railroad reasonable time to provide proper protection at the crossing. Apparently no notice is required if the normal

operating speed of the vehicle or structure is above three miles an hour. Ohio law also states, that if the vehicle or equipment is used in repair work which makes repeated crossings necessary, only one daily notice giving the hours of the work is required. Ohio Rev. Code Ann. § 4511.64 (2009).

Ohio law requires persons operating slow and low vehicles to stop before crossing a highway-rail crossing. The operator must listen and look for trains and train signals and may cross only when it is safe to proceed. Ohio law does not specify where the stop is to be made with respect to distance from the nearest rail. Ohio Rev. Code Ann. § 4511.64(A) (2009).

In the State of Ohio, an operator of a slow or low vehicle is expressly prohibited from crossing at any crossing where an automatic signal, gate, flagman or other device indicates an approaching train. Ohio Rev. Code Ann. § 4511.64(B) (2009).

Special Vehicles - Ohio law requires drivers of school buses, vehicles carrying passengers for hire and vehicles carrying hazardous materials to stop and listen through an open door and look in both directions for an approaching train and for signals indicating the approach of a train. Drivers are instructed to proceed only after exercising due care. Manually shifting of gears is prohibited while moving over the crossing. Ohio Rev. Code Ann. § 4511.63(A) (2009).

Also included in this special vehicle category are “trackless trollies” carrying passengers. Ohio does not specify where the stop must be made.

Exempt crossings - Stops under the preceding section are not required at crossings within a municipal corporation or at abandoned, spur, side or industrial tracks when such exemption has been approved by the Public Utility Commission.

Ohio law also exempts special vehicles from the stopping requirements at any street railway crossing where out-of-service signs are posted. Ohio Rev. Code Ann. § 4511.63(B)-1-2 (2009).

OKLAHOMA

Slow and Low Vehicles - Oklahoma has no provisions regulating stops by drivers of slow and low vehicles.

Special Vehicles - Oklahoma law requires drivers of any motor vehicle carrying passengers for hire, school buses carrying children and vehicles carrying hazardous materials to stop within 50 feet but not more than 15 feet from the nearest rail at highway-rail crossings. Upon stopping, drivers of special vehicles are required to listen and look in both directions for an approaching train and for signals indicating the approach of a train. Drivers of special vehicles may proceed only when it is safe to do so but may not shift gears while crossing. Okla. Stat. Tit. 47 § 11-702(a) (2008).

Exempt Crossings - Drivers of special vehicles are not required to stop at any crossing where a police officer or a traffic control signal directs traffic to proceed. Okla. Stat. Tit. 47 § 11-702(b) (2008).

OREGON

Slow and Low Vehicles - Oregon law requires that prior notice be given to a responsible officer of the railroad before moving any slow or low vehicles across a highway-rail crossing. The notice must be given to the railroad in time for protection to be given. Or. Rev. Stat. § 811.470(1)(a) (2008). See also, Or. Rev. Stat. § 811.470(2) (2008).

Oregon law requires stops at a clearly marked line or, absent any marked line, within 15 to 50 feet from the nearest rail of the tracks. After stopping and before proceeding, an operator of a slow or low vehicle is required to listen and look in both directions for approaching trains. The driver may not proceed over the tracks until it is safe to do so. Or. Rev. Stat. § 811.470(A)–(C) (2008).

Penalty - A violation for improper movement of heavy equipment across a highway-rail crossing is a Class C traffic infraction. Or. Rev. Stat. § 811.470(3) (2008).

Special Vehicles - Oregon refers to vehicles in this category as "high-risk vehicles". Listed in this category are school buses, school activity vehicles with a loaded weight of ten thousand pounds or more, worker transport buses, buses used for transporting children to and from church or a function or activity authorized by the church, and vehicles used to transport persons for hire by a non-profit entity (see Or. Rev. Stat. § 767.025(9), for an explanation of this type of vehicle). Additional vehicles under this category include commercial buses and vehicles carrying hazardous materials. Or. Rev. Stat. § 811.460(2)a–g (2008).

Operators of high-risk vehicles are required to stop at a clearly marked stop line or, if there is no marked stop line, within 15 to 50 feet of the nearest rail of the tracks. After stopping, operators are required to listen and look in both directions for approaching trains and for signals indicating an approaching train. An operator may proceed only when it is safe to do so and may not manually shift gears while moving over the tracks. Or. Rev. Stat. § 811.460(1)(A)–(C) (2008).

Penalty - Failing to follow rail crossing procedures for high-risk vehicles is a Class B traffic violation.

Exempt Crossings - All high-risk vehicles are exempt from the stopping requirements at a street or highway and street railroad tracks, and at interurban electric crossings where traffic control signals or a police officer directs traffic to proceed. Vehicles in this category are also exempt from the stopping requirements at crossings protected by crossing gates, at industry tracks within districts in which the designated speed for vehicles is twenty miles per hour or less, and at industry track crossings across which trains are required to be operating under the control

of a flagman. Or. Rev. Stat. § 811.465(1)–(8) (2008). School buses are not exempt from these requirements. See also, Section 811.460 concerning school buses).

Additional highway-rail crossings for which stopping requirements do not apply include tracks upon which operation has been abandoned and for which the Department of Transportation has plainly marked that no stop need be made. Commercial buses need not stop under the same conditions as above, except in the case of an approaching train.

Another Oregon statute section concerns operators of commercial motor vehicles that are not required by Section 811-460 to stop before reaching a rail crossing. When approaching a rail crossing at grade the operator must slow down and check that the tracks are clear of an approaching train before proceeding across the railroad tracks. Or. Rev. Stat. § 811.462(1)a–c (2008).

Penalty

Failure of the operator of a commercial motor vehicle to slow down and check that the tracks are clear of an approaching train is a Class B traffic violation. Or. Rev. Stat. § 811.462(2) (2008).

PENNSYLVANIA

Slow and Low Vehicles -In the statutory definition of slow and low vehicles, Pennsylvania refers to “power” not “steam” shovels. 75 Pa. Cons. Stat. Ann. § 3343(a) (2009).

Before moving slow and low vehicles across a highway-rail crossing, Pennsylvania law requires that reasonable notice be given to an authorized representative of the railroad so as to allow the affected railroad time to protect the crossing. 75 Pa. Cons. Stat. Ann. § 3343(b) (2009).

Pennsylvania law requires persons operating slow and low vehicles to stop before traversing a highway-rail crossing. The stop must be made within 15 to 50 feet of the nearest rail of the tracks. The operator must listen and look for trains and train signals, and may move over the crossing only when it can be done safely. 75 Pa. Cons. Stat. Ann. § 3343(c) (2009).

Pennsylvania law expressly prohibits movement over crossings where a warning of an approaching train is indicated by an automatic signal, crossing gates, a flagman or other device. If the railroad supplies a flagman, movement over the crossing must be at the flagman's direction. 75 Pa. Cons. Stat. § 3343(d) (2009).

Special Vehicles - Pennsylvania law requires operators of school buses, whether or not they are carrying passengers, and every truck tractor combination transporting gasoline, diesel fuel, fuel oil, explosives or radioactive materials to stop within 15 to 50 feet of the nearest rail of the tracks. After stopping, drivers of special vehicles are required to listen and look in both directions for an approaching train and for signals indicating an approaching train, and may

proceed only when it is safe to do so. Operators of special vehicles are prohibited from manually shifting gears while traversing the crossing. Also, the driver of any vehicle covered by this section is required to activate the vehicle hazard lights when stopping at the railroad crossing. 75 Pa. Cons. Stat. § 3342(b)(e) (2009).

Another subsection of this section requires the Pennsylvania Department of Transportation to publish in the *Pennsylvania Bulletin* a notice describing the vehicles which must comply with the stopping requirements. In developing the list of vehicles, the Department must take into consideration the hazardous nature of any substance carried by the vehicle as determined by the Department and to the number of passengers carried by the vehicle in determining whether the vehicle should be required to stop. The list of vehicles must correlate with and so far as possible conform to the regulations of the U.S. Department of Transportation as amended from time to time. 75 Pa. Cons. Stat. § 3342(d) (2009).

Exempt Crossings - Pennsylvania exempts operators of special vehicles from stopping at crossings where traffic is controlled by a police officer, flagman or traffic control signal. Stops are also not required at any railroad grade crossing where a traffic control device gives notice that a stop is not necessary. Additionally, stops are not required at any abandoned crossing clearly marked as abandoned and at an industrial or spur line marked with a sign reading “exempt.” Any such “exempt” sign may only be erected with the consent of the Pennsylvania Public Utility Commission. 75 Pa. Cons. Stat. § 3342(c)1–5 (2009).

Penalty

A violation of Section 3342 constitutes a summary offense punishable by a fine of one hundred dollars to one hundred fifty dollars except that a violation of subsection (b) or (e) is punishable by a fine of from two hundred to five hundred dollars. 75 Pa. Con. Stat. § 3342(f) (2009).

RHODE ISLAND

Slow and Low Vehicles -Before moving slow and low vehicles across a highway-rail crossing, Rhode Island requires that reasonable notice be given to a station agent of the affected railroad so proper protection can be provided.

Rhode Island law requires persons operating slow and low vehicles to stop before traversing a highway-rail crossing. The stop must be made 15 to 50 feet from the nearest rail of the tracks. After complying with the stopping requirements, operators are required to listen and look in both directions for an approaching train and for signals indicating the approach of a train. The operator may then proceed only when it is safe to do so. R.I. Gen. Laws § 31-20-5(a)–(c) (2008).

Rhode Island law expressly prohibits crossing when warning of an approaching train is given by an automatic signal, crossing gates, flagman or other device. If a flagman is used,

movement over the crossing must be done under the flagman's direction. R.I. Gen. Laws § 31-20-5(d) (2008).

Special Vehicles - Rhode Island requires drivers of school buses carrying children, vehicles carrying passengers for hire and vehicles transporting hazardous materials to stop at crossings. Stops are to be made within 15 to 50 feet of the nearest rail of the tracks. Drivers of special vehicles are required to listen and look in both directions for an approaching train and for signals indicating the approach of a train. The driver may then proceed only when it is safe to do so and is prohibited from manually shifting gears while traversing the crossing. R.I. Gen. Laws § 31-20-4(a) (2008).

Exempt Crossings - Drivers of special vehicles need not stop at crossings where traffic is controlled by a traffic control signal or a police officer, or at crossings located in a business or residential district. See R.I. Gen. Laws § 31-20-4(b)(c) (2008).

SOUTH CAROLINA

Slow and Low Vehicles - South Carolina's definition of slow and low vehicles is consistent with the majority of other states.

South Carolina requires that reasonable notice be given to a station agent of the affected railroad before moving slow and low vehicles over highway-rail crossings.

The law requires persons operating slow and low vehicles to stop at highway-rail crossings. The stops must be made within 15 to 50 feet of the nearest rail of the tracks. While stopped, the operator is required to listen and look in both directions for an approaching train and for signals indicating the approach of a train. The operator may not move over the crossing until it is safe to do so. S.C. Code Ann. § 56-5-2725(a)-(c) (2008).

Moving over crossings is prohibited where warning of the approach of a train is given by an automatic signal, crossing gates, a flagman or other device. If a flagman is provided by the railroad, any movement over the crossing must be done under the flagman's direction. S.C. Code Ann. § 56-5-2725 (2008).

Special Vehicles - South Carolina law requires drivers of school buses, motor vehicles with a capacity of sixteen or more persons and vehicles transporting hazardous materials to stop at crossings. Stops are to be made within 15 to 50 feet of the nearest rail of the tracks. After stopping, operators are required to listen and look in both directions for an approaching train and for signals indicating an approaching train. The driver may proceed across the crossing only when it is safe to do so. S.C. Code Ann. § 56-5-2720(A) (2008).

Exempt Crossings - Drivers of special vehicles, with the exception of school buses, are exempt from the stopping requirements at crossings where traffic is controlled by a police officer or flagman, at crossings where there is a traffic control signal, at crossings with crossing gates or alternating flashing light signals where the gates or signals do not indicate the approach of a

train, and at crossings where an official traffic control device gives notice that stopping requirements do not apply. S.C. Code Ann. § 56-5-2720(B)1- 4 (2008).

SOUTH DAKOTA

Slow and Low Vehicles - South Dakota's definition of slow and low vehicles are consistent with the majority of other states. S.D. Codified Laws Ann. § 32-29-8 (2009).

Before moving slow and low vehicles across a highway-rail crossing, South Dakota law requires that reasonable notice be given to a station agent of the affected railroad in order to allow a reasonable period of time to provide proper protection at the crossing.

South Dakota law requires drivers of slow and low vehicles to stop within 15 to 50 feet of the nearest rail of the tracks. While stopped, the driver must listen and look in both directions for an approaching train, and for signals indicating the approach of a train. The driver may proceed only when it can be done safely.

Moving over a crossing is prohibited at any crossing where warning of the approach of a train is given by an automatic signal, crossing gates, a flagman or other device. If a flagman is provided by the railroad, movement over the crossing is to be done under the flagman's direction. S.D. Codified Laws Ann. § 32-29-9 (2009).

Penalty

Any violation of requirements by drivers of slow and low vehicles is a Class 2 misdemeanor. S.D. Codified Laws Ann. § 32-29-9 (2009).

Special Vehicles - South Dakota requires drivers of motor vehicles carrying passengers for hire, school buses carrying passengers, any vehicle carrying passengers owned or operated by a non-profit organization requiring inspection pursuant to Section 32-21-3.1 of South Dakota Codified Laws or any vehicle carrying explosive substances or combustible or flammable liquids as cargo or part of a cargo to stop at highway-rail crossings. South Dakota law mandates that stops be within 50 feet of the nearest rail of the tracks. Drivers may not proceed until it is safe to do so. S.D. Codified Laws Ann. § 32-29-5 (2009).

Penalty

Drivers of special vehicles found in violation of these requirements are guilty of a Class 2 misdemeanor.

Exempt Crossings - The stopping requirements for special vehicles do not apply at crossings where a police officer or traffic control signal directs traffic to proceed or at crossings clearly marked with a special sign as provided in Section 31-28- 7. S.D. Codified Laws Ann. § 32- 29-5 (2009).

TENNESSEE

Slow and Low Vehicles -Tennessee law requires persons operating slow and low vehicles to stop before crossing a highway-rail crossing. The stop must be made within 15 to 50 feet of the nearest rail. After stopping, the operator must listen and look in both directions for an approaching train and for signals indicating the approach of a train. The operator may not proceed until it is safe to do so.

Tennessee law prohibits crossing when an automatic signal, crossing gates, a flagman or other device gives warning of an approaching train. If a flagman is used by the railroad, any movement over the crossing must be done under the flagman's direction. Tenn. Code Ann. § 55-8-148 (2008).

Special Vehicles - Tennessee law requires drivers of school buses carrying any children, vehicles carrying passengers for hire, and vehicles transporting explosive substances or flammable liquids as cargo or part of a cargo to stop at crossings. The stops must be made within 15 to 50 feet of the nearest rail of the tracks. The operator is required to listen and look in both directions for an approaching train and for signals indicating the approach of a train, and may then proceed only when it is safe to do so. While proceeding over the highway-rail crossing, the operator is prohibited from shifting gears. Tenn. Code Ann. § 55-8-147(a) (2008).

Penalty

A violation of the "stop" requirement by drivers of special vehicles is a Class B misdemeanor. Tenn. Code Ann. § 55-8-147(c) (2008).

Exempt Crossings - Drivers of special vehicles are exempt from the stopping requirements at crossings where a police officer or a traffic control signal directs traffic to proceed. Tenn. Code Ann. § 55-8-147(b) (2008).

TEXAS

Slow and Low Vehicles - Texas law includes in the definition of slow and low vehicles a crawler-type tractor, steam shovel, derrick, or roller; and any other equipment or structure with a normal operating speed of 10 miles per hour or less. Before moving slow and low vehicles across a highway-rail crossing, Texas law requires that notice be given to a station agent so as to allow the affected railroad a reasonable period of time to provide proper protection at the crossing.

The statute requires persons operating slow and low vehicles to stop before traversing a highway-rail crossing. The stop must be made 15 to 50 feet from the nearest rail of the tracks. After stopping, the operator must listen and look in both directions for the approach of a train and for signals indicating the approach of a train. The operator may then proceed over the tracks when it is safe to do so.

Traversing a crossing is prohibited at crossings where warning of an approaching train is given by automatic signals, crossing gates, a flagman or other device. If a flagman is used by the railroad, movement over the crossing must be made under the flagman's direction. Tex. Transp. Code Ann. § 545.255 (2008).

Special Vehicles - Drivers of school buses must stop within 15 to 50 feet from the nearest rail of the tracks. The law allows drivers of school buses to proceed only when it is possible to do so safely and the drivers are prohibited from shifting gears while moving over the crossing.

Exempt Crossings - Texas does not require school buses to stop at an abandoned railroad crossing that is marked with a sign reading “tracks out of service,” or an industrial or spur line crossing that is marked with a sign reading “exempt.” Tex. Transp. Code Ann. § 545.2535 (2008).

Drivers of vehicles that have an explosive substance or flammable liquid as their principal cargo and that are moving at a speed of more than 20 miles per hour are required to reduce the speed of the vehicle to 20 miles per hour or less before coming within 200 feet of the nearest rail. After the proper speed reduction, the driver is required to listen and look in both directions along the track and for signals indicating the approach of a train and may not proceed until a determination is made that the course is clear. Tex. Transp. Code Ann. § 545.254 (2008).

The same section requires the driver of a vehicle carrying an explosive substance or flammable liquid as its principal cargo, before crossing a railroad grade crossing on a highway within a municipality to stop the vehicle not closer than 15 feet or more than 50 feet from the nearest rail. After stopping, the driver is required to listen and look in both directions along the track and for signals indicating the approach of a train.

Exempt Crossings - Stops are not required at crossings where a police officer, crossing flagger, or traffic-control signal directs traffic to proceed; or where a flashing signal is installed and does not indicate an approaching train; or at an abandoned or exempted crossing that is clearly marked; or at a streetcar crossing in a business or residential district of a municipality, and at a railroad track used exclusively for industrial switching purposes in a business district.

Penalty

An offense under this section of the code is punishable by a fine of not less than fifty dollars or more than two hundred dollars. Tex. Transp. Code Ann. § 545.254 (2008).

UTAH

Slow and Low Vehicles - Utah refers to “power” and not “steam” shovels. Utah Code Ann. § 41-6-98(1) (2009).

Before moving slow and low vehicles across a highway-rail crossing, Utah law requires that notice be given to a station agent of the affected railroad. It also provides that the railroad be

given reasonable time to provide proper protection at the crossing. Utah Code Ann. § 41-6-98(2) (2009).

Utah requires persons operating slow and low vehicles to stop before traversing a highway-rail crossing. The stop must be made within 10 to 50 feet of the nearest rail of the tracks and the operator must listen and look for approaching trains and for signals indicating the approach of a train. Having complied with these requirements, the operator may then proceed only if it is safe to do so. Utah Code Ann. § 41-6-98(3) (2009).

Crossing is prohibited at any crossing where warning is given of an approaching train by an automatic signal, crossing gates, a flagman or other device. If the railroad provides a flagman, then movement over the crossing shall be done at the flagman's direction. Utah Code Ann. § 41-6-98(4) (2009).

Special Vehicles - Utah does not specifically mention school buses, vehicles transporting passengers for hire and vehicles transporting hazardous materials as being included in the stopping requirements at highway-rail crossings. The statute specifies that the Utah Department of Transportation is responsible for adopting any necessary rules describing the vehicles that must comply with the stopping requirements. See Utah Code Ann. § 41-6-97(3)(a)(b) (2009).

Stops are to be made within 15 to 50 feet of the nearest rail of the tracks. Drivers are required to listen and look in both directions for any approaching train and for signals indicating the approach of a train.

After informing drivers of special vehicles to stop, listen and look, Utah law requires that they proceed over the crossing only when it is safe to do so. In moving over the crossing, the driver is prohibited from manually shifting gears. Utah Code Ann. § 41-6-97(a)(b) (2009).

Exempt Crossings - Utah law exempts drivers of special vehicles from the stopping requirements at crossings where traffic is controlled by a police officer, flagman or traffic control signal and at crossings where an official traffic control device gives notice that the stopping requirements do not apply. Utah Code Ann. § 41-6-97(2)a-c (2009).

VERMONT

Slow and Low Vehicles - Before moving slow and low vehicles over highway-rail crossings, Vermont law requires that stops be made within 15 to 50 feet of the nearest rail of the tracks. While stopped, the driver is required to listen and look in both directions for an approaching train and for signals indicating the approach of a train. Having complied with these requirements, the driver may then proceed over the crossing, but only when movement can be accomplished safely. Vt. Stat. Ann. Tit. 23 § 1073(a)(b) (2008).

No stop need be made at crossings where warning of an approaching train is given by an automatic signal, crossing gates, flagman or other device. If a flagman is provided by the railroad, movement over the crossing must be under the flagman's direction. Vt. Stat. Ann. Tit. 23, § 1073(c)(d) (2008).

Special Vehicles - Vermont requires operators of school buses or other motor vehicles transporting children, or any motor vehicle carrying passengers for hire except jitneys designed to carry not more than seven passengers including the driver, to stop at highway-rail crossings. Stops are to be made within 15 to 50 feet of the nearest rail of the tracks.

While stopped, the driver of a special vehicle is required to listen and look in both directions for any approaching train and may not proceed until it is safe to do so. Vt. Stat. Ann. tit. 23, § 1072(a) (2008). Drivers of a Type I school bus stopping as required shall open the door of the bus before crossing. Drivers of Type II school buses are required to open the left front window. Vt. Stat. Ann. Tit. 23 § 1072(c) (2008).

A stop is not required at any crossing where an attendant, an enforcement officer or a traffic-control signal directs traffic to proceed. Vt. Stat. Ann. Tit. 23 § 1072(b) (2008).

Exempt Crossings - Stopping is not required at a crossing that has been designated as “EXEMPT” by the Vermont Transportation Board. Vt. Stat. Ann. Tit. 23 § 1072(d) (2008).

VIRGINIA

Slow and Low Vehicles - Before moving slow and low vehicles across a highway-rail crossing, Virginia law requires that notice be given to a station agent of the affected railroad and that reasonable time be afforded to provide proper protection at the crossing.

Virginia law requires persons operating slow and low vehicles to stop before traversing a highway-rail crossing. The stop must be made with 15 to 50 feet of the nearest rail of the tracks.

While stopped, the operator is required to listen and look in both directions for an approaching train and for signals indicating the approach of a train, and shall not proceed until it is safe to do so. This section does not apply in cities or towns. Va. Code Ann. § 46.2-887 (2009).

Special Vehicles - Virginia law requires operators of school buses, motor vehicles carrying passengers for hire, and vehicles carrying explosive substances or flammable liquids as cargo or part of a cargo to stop at highway-rail crossings. This section does not apply at crossings within cities or towns. Stops are required to be made within 15 to 50 feet of the nearest rail of the tracks. The driver is then required to listen and look in both directions for any approaching train and for signals indicating the approach of a train. Drivers may proceed through the crossing only when it is safe to do so and are prohibited from manually shifting gears while crossing. Va. Code Ann. § 46.2-886 (2009).

Exempt Crossings - Drivers of special vehicles are exempt from the stopping requirements at any crossing where a law enforcement officer or a traffic control signal directs traffic to proceed. Va. Code Ann. § 46.2-886 (2009).

WASHINGTON

Slow and Low Vehicles - Before moving slow and low vehicles across a highway-rail crossing, Washington law requires that notice be given to a station agent of the affected railroad in sufficient time so as to allow the railroad to provide protection for the crossing.

Washington law requires persons operating slow and low vehicles to stop before crossing a highway-rail crossing. The stop must be made within 15 to 50 feet of the nearest rail of the tracks and the operator is required to listen and look in both directions for an approaching train and for signals indicating the approach of a train. The operator may move over the crossing only when it is safe to do so. Wash. Rev. Code Ann. § 46.61.355(1)–(3) (2008).

Washington expressly prohibits crossing when warning of an approaching train is given by an automatic signal, crossing gates or a flagman. If a flagman is used by the railroad, movement over the crossing will be done under the flagman's direction. Wash. Rev. Code Ann. § 46.61.355(4) (2008).

Special Vehicles - Washington requires operators of school buses carrying children, private carrier buses carrying passengers, vehicles carrying passengers for hire, excluding passenger cars, and vehicles transporting hazardous materials as cargo or part of a cargo, to stop at highway-rail crossings. The stop must be made within 15 to 50 feet of the nearest rail of the tracks. After coming to a stop, the operator is required to listen and look in both directions for an approaching train and for signals indicating the approach of a train. Operators may proceed over the crossing only when it is safe to do so. While proceeding over the crossing, the operator is prohibited from manually shifting gears. Wash. Rev. Code Ann. § 46.61.350(1) (2008).

Exempt Crossings - The stopping requirements for drivers of special vehicles do not apply at a highway-rail crossing where traffic is controlled by a police officer or a duly authorized flagman or at any crossing where traffic is regulated by a traffic control signal. Stops are also not required at crossings protected by crossing gates or alternately flashing lights designed to give warning of an approaching train. Wash Rev. Code Ann. § 46.61.350(2)a–c (2008).

Additionally, stops are not required at crossings where an official traffic control device gives notice that the stopping requirements do not apply. Wash. Rev. Code Ann. § 46.61.350(2)(d) (2008). See also, Section 81.53.60.

WEST VIRGINIA

Slow and Low Vehicles -West Virginia's definition of vehicles under this category is consistent with the majority of other states.

Before moving slow and low vehicles across a highway-rail crossing, West Virginia law requires that notice be given to a station agent of the affected railroad in reasonable time so as to allow the railroad to provide proper protection at the crossing.

West Virginia law requires persons operating slow and low vehicles to stop before crossing a highway-rail crossing. The stop must be made within 15 to 50 feet of the nearest rail of the tracks. After coming to a stop, the operator is required to listen and look in both directions for an approaching train and for signals indicating the approach of a train, and may not move over the crossing until it can be done safely. W. Va. Code § 17C-12-4(a)-(c) (2008).

Movement over crossings is prohibited at crossings where warning of an approaching train is given by an automatic signal, crossing gates, flagman or other device. If a flagman is used by the railroad, movement over the crossing must be under the flagman's direction. W. Va. Code § 17C-12-4 (2008).

Special Vehicles - West Virginia requires drivers of school buses carrying children, vehicles carrying passengers for hire, vehicles transporting hazardous materials, and vehicles owned by an employer that is carrying six or more employees to or from work, to stop at highway-rail crossings. Stops must be made within 15 to 50 feet of the nearest rail of the tracks. After stopping, the driver is required to listen and look in both directions for an approaching train and for signals indicating the approach of a train, and then may move over the crossing only when it can be done safely. The driver is prohibited from manually shifting gears while crossing the tracks. W. Va. Code § 17C-12-3(a) (2008).

Exempt Crossings -West Virginia exempts drivers from the stopping requirements at any crossing where a police officer or traffic control signal directs traffic to proceed. In addition, West Virginia exempts drivers from the stopping requirements at crossings within business or residential districts. W. Va. Code § 17C-12-3(c) (2008).

WISCONSIN

Slow and Low Vehicles - Wisconsin law does not have requirements concerning slow and low vehicles at highway-rail crossings.

Special Vehicles - Wisconsin requires drivers of every motor bus transporting passengers, and vehicles transporting hazardous materials to stop at highway-rail crossings. Wisconsin includes in the hazardous materials category, every cargo tank motor vehicle, whether loaded or empty, used for the transportation of any liquid having a flash point below 200 degrees Fahrenheit, and every cargo tank motor vehicle transporting a commodity which, at the time of loading, has a temperature above its flash point. Wis. Stat. § 346.45(1) (2009).

All stops must be made within 15 to 50 feet of the nearest rail of the tracks and the driver is required to listen and look in both directions for an approaching train. The driver may not proceed until it is safe to do so. If an auxiliary lane is provided for stopping at a highway-rail crossing, drivers of vehicles required to stop must use the lane to do so. Wis. Stat. § 346.45(1)-(2) [2009].

Exempt Crossings -Wisconsin lists a number of circumstances at crossings which exempt drivers of special vehicles from the stopping requirements. They are as follows:

- (1) At crossings where a police officer or flagman directs traffic to proceed.
- (2) At crossings where an official traffic control signal allows traffic to proceed.
- (3) At crossings clearly marked abandoned.
- (4) At crossings marked with a sign in accordance with Section 195.285. of the Wisconsin statutes. See also, Section 195.285 for explanation.

Wisconsin does not exempt those crossings with gates or flashing lights. Wis. Stat. § 346.45(3)(a)–(d) (2009).

WYOMING

Slow and Low Vehicles - Before moving slow and low vehicles across a highway-rail crossing, Wyoming law requires that notice be given to a station agent of the affected railroad with reasonable time so as to allow for the provision of proper protection at the crossing.

Wyoming law requires persons operating slow and low vehicles to stop before traversing a highway-rail crossing. The stop must be made within 15 to 50 feet of the nearest rail of the tracks. The operator is required to listen and look in both directions for an approaching train and for signals indicating the approach of a train. The operator may not proceed over the crossing until it is safe to do so.

No crossing may be made when warning of an approaching train is given by an automatic signal, crossing gates, flagman or other device. If a flagman is used by the railroad, movement through the crossing must be made under the flagman's direction. Wyo. Stat. § 31-18-602(a)–(d) (2009).

Special Vehicles - Wyoming requires drivers of any motor vehicle carrying passengers for hire, school buses whether empty or carrying children, and vehicles transporting hazardous materials to stop at highway-rail crossings. Drivers of vehicles in this category are required to activate their four-way hazard flashers prior to stopping at the crossing. Stops must be made within 15 to 50 feet of the nearest rail of the tracks. The driver is then required to listen and look in both directions for any approaching train and for signals indicating the approach of a train. The driver is prohibited from manually shifting gears while moving over the crossing. Wyo. Stat. § 31-5-511 (a)(i)–(iv) (2009).

Exempt Crossings - Except for school buses, drivers of other special vehicles do not have to comply with the stopping requirements at crossings where traffic is controlled by a police officer, a flagman or a traffic control signal, at crossings protected by crossing gates or alternately flashing light signals, and at crossings where an official traffic control device gives notice that the stopping requirements do not apply. Wyo. Stat. § 31-5-511(b) (i)–(iv) (2009).

CHAPTER 8: DRIVER ACTION

CHAPTER OVERVIEW

This chapter presents a survey of the various laws and regulations concerning a motorist's responsibility with respect to highway-rail crossings.

The laws and regulations cover such things as reduced speed when approaching and crossing a highway-rail crossing, standing, stopping or parking in close proximity to tracks at highway-rail crossings, limitation of driving to the left side of the roadway to pass or overtake another vehicle, and regulations covering full stops at highway-rail crossings.

Penalties are included where they are mentioned. Consistent with all other chapters, the relevant citations are included in the text for ease of reference.

STATE LAWS, REGULATIONS AND PENALTIES

ALABAMA

It is unlawful for any motorist in Alabama to proceed onto a railroad grade crossing unless there is adequate space on the other side of the crossing to accommodate his vehicle without obstructing the passage of other vehicles, notwithstanding any traffic control signal indication to proceed. Ala. Code § 32-5A-61 (2008).

Unless the right side of the highway is obstructed or impassable, all motorists are required to keep to the right side of the highway when traversing a highway-rail crossing. Ala. Code § 32-5-54 (2008).

Under certain conditions, drivers of all vehicles in Alabama are required to bring their vehicles to a complete stop within 15 to 50 feet of the nearest rail of a highway-rail crossing. The driver may not proceed until it is safe to do so. These requirements are applicable at all highway-rail crossings where the following conditions exist:

- (1) When a clearly visible electrical or mechanical device is giving warning of an approaching train.
- (2) When a crossing gate is down or a flagman is indicating the approach of a train.
- (3) When a railroad train is within 1,500 feet of the crossing and is emitting an audible signal.
- (4) When an approaching train is clearly visible.

Alabama law prohibits motorists from driving through, around or under any crossing gate or barrier while the gate or barrier is closed or in the process of being opened or closed. Ala. Code § 32-5A-150 (a)(b) (2008).

Penalty

Penalties are assessed against motorists who break state traffic laws at highway-rail crossings under a general set of violations which occur. This usually includes a fine with a stated minimum and maximum dollar amount and a term of incarceration within specific time parameters. Ala. Code § 32-5A-150 (a)(b) (2008).

ALASKA

Alaska law requires a person driving any vehicle, when approaching a highway-rail crossing, to bring the vehicle to a stop within 15 to 50 feet of the nearest rail of the crossing. The driver may not proceed over the crossing until it is safe to do so. These requirements are applicable at all highway-rail crossings where the following circumstances exist:

- (1) Where warning of the immediate approach of a train is being given by a clearly visible electrical or mechanical signal.
- (2) Where a crossing gate is lowered, a flagman is giving a signal to a motorist to stop or a flagman is indicating that a train is approaching or passing.
- (3) When a train approaching within 1,500 feet of a highway-rail crossing is emitting a signal and, due to its speed or nearness to the crossing, constitutes an immediate hazard.
- (4) When a train is in hazardous proximity to a crossing and is clearly visible.

Alaska law prohibits motorists from driving a vehicle through, around or under a closed crossing gate or barrier or a gate or barrier that is being opened or closed at a highway-rail crossing. Alaska Admin. Code tit. 13, § 02.240 (a)(1)–(4)(b) (2007).

It is unlawful for any driver to drive onto a highway-rail grade crossing unless there is sufficient room on the other side for his vehicle without obstructing the passage of other vehicles, pedestrians or trains, even when a traffic control signal at the crossing is giving an indication to proceed. Alaska Admin. Code tit. 13, § 02.265 (2007).

ARIZONA

Arizona law requires drivers of any vehicles approaching a highway-rail crossing to stop within 50 feet but not less than 15 feet of the nearest rail of the tracks and to remain stopped until movement over the crossing may be accomplished safely. The requirements apply in the following situations:

- (1) Where a clearly visible electrical or mechanical signal device gives warning of the approach of a train.
- (2) Where a crossing gate is lowered or when a flagman is giving a signal of the approach of a train.

- (3) When a train approaching within 1,500 feet of the crossing emits a signal audible from that distance and, due to its speed or nearness to the crossing, constitutes an immediate hazard.
- (4) Where an approaching train is plainly visible.

Arizona law prohibits motorists from driving through, around or under any crossing gate or barrier while the gate or barrier is closed or being opened or closed. Ariz. Rev. Stat. Ann. § 28-851(2009).

Arizona law requires the driver of any vehicle to stop within 15 to 50 feet of the nearest rail of the tracks at highway-rail crossings where local government authorities have designated a grade crossing as particularly dangerous and have erected a stop sign at that crossing. Drivers may proceed only after exercising due care. Ariz. Rev. Stat. Ann. § 28-852 (2009). See also, Chapter 4 under “Arizona.”

Except when necessary to avoid conflict with other traffic, or in compliance with the law or the directions of a police officer or traffic control device, it is unlawful to stop, stand or park a vehicle within 50 feet of the nearest rail of a railroad crossing or within 8 ½ feet, of the center of any railroad track, except while loading or unloading a train. Ariz. Rev. Stat. Ann. § 28-873 (2009).

ARKANSAS

Arkansas motorists are required to stop their vehicles within 10 to 50 feet of the nearest rail of any crossing which the State Highway Commission and local authorities have designated as particularly dangerous and at which they have erected a stop sign. Ark. Code Ann. § 27-51-706 (2008). See also, Chapter 4 under Arkansas.

Penalty

A violation of Section 27-51-706 constitutes a fine of not less than five dollars but not more than twenty-five dollars. Ark. Code Ann. § 27-51-706 (2008).

Under certain circumstances, Arkansas law requires motorists to come to a full stop not less than 15 feet and not more than 50 feet from the nearest rail of the tracks at highway-rail crossings. The requirements apply under the following conditions:

- (1) When a visible electrical or mechanical signal device gives warning of the approach of a train.
- (2) Where a crossing gate is lowered or a flagman is giving a signal of the approach or passage of a train.
- (3) When a railroad train approaching within 1,500 feet of the crossing emits a signal audible from that distance and, due to its speed and close proximity to the crossing, constitutes an immediate hazard.
- (4) When an approaching train is clearly visible.

It is unlawful for any person in Arkansas to drive a vehicle through, around or under any crossing or barrier at a highway-rail crossing while the gate or barrier is closed or is being opened or closed. Ark. Code Ann. § 27-51-702 (2008).

Arkansas law prohibits any person from stopping, standing or parking a vehicle within 50 feet of the nearest rail of a highway-rail crossing, except when it is necessary to avoid conflict with other traffic or in compliance with the directions of a police officer or traffic control device. Ark. Code Ann. § 27-51-1302 (2008).

Additionally, the Arkansas Code lists many provisions relating to speed limitations. Generally, no person may drive a vehicle on a highway at a speed greater than what is reasonable and prudent under the conditions present and with regard for the actual and potential hazards that exist. Specifically, drivers must use an appropriately reduced speed when approaching and crossing an intersection or railway grade crossing. Ark. Code Ann. § 27-51-201 (2008).

CALIFORNIA

California requires motorists to slow to a speed of fifteen miles per hour while traversing highway-rail crossings when, during the last 100 feet of the approach to the crossing, the motorists' view is so obstructed that they cannot see down the tracks for 400 feet in both directions. This law does not apply at crossings where there is a flagman or traffic control signal that does not then indicate the immediate approach of a train. Cal. Veh. Code § 22352 (2008).

California requires that the driver of any vehicle stop not less than 15 feet from the nearest rail of a highway-rail crossing and shall not proceed until it is safe to do so. This law applies when the following conditions exist:

- (1) When a clearly visible electrical or mechanical signal, or a flagman is giving warning of an approaching train.
- (2) When an approaching train is visible or is emitting an audible signal. Cal. Veh. Code § 22451 (2008).

It is unlawful in California for any driver to proceed through, around or under any closed railroad gate. Cal. Veh. Code § 22451 (2008).

California law allows local authorities to adopt rules and regulations by ordinance or resolution requiring that all vehicles stop before entering or crossing the tracks at any highway-rail crossing when signs are in place giving notice of such requirement. No such ordinance can become effective unless approval is given by order of the Public Utility Commission. Cal. Veh. Code § 21110 (2008).

It is unlawful in California for any person to park a vehicle on any railroad track or within seven feet, six inches of the nearest rail of the track. Cal. Veh. Code § 22521 (2008).

COLORADO

It is unlawful in Colorado for any driver to traverse a highway-rail crossing unless there is sufficient space on the other side of the crossing to accommodate the driver's vehicle without obstructing the passage of other vehicles or trains, notwithstanding the indication of a traffic control signal to proceed. Colo. Rev. Stat. § 42-4-709 (2008).

Penalty

A violation of Section 42-4-609.5 is considered a Class A traffic infraction under Colorado law. Colo. Rev. Stat. § 42-4-709 (2008).

Any driver approaching a highway-rail crossing is required to stop at a marked stop line. If no stop line exists, the stop must be within 15 to 50 feet of the nearest rail of the tracks. The driver is forbidden from proceeding until it is safe to do so. Colo. Rev. Stat. § 42-4-706(1)a (2008).

Additionally, Colorado requires stops at the point nearest the crossing where the driver has a reasonable view of approaching trains if, by complying with the stop line and distance requirements, the drivers view is obstructed. Colo. Rev. Stat. § 42-4-706(b)1 (2008). Colorado law provides that stops are to be made at a traffic control device, where a flagman exists and for safety. Colo. Rev. Stat. § 42-4-706 (2008).

It is unlawful in Colorado for any person to drive any vehicle through, around or under any crossing gate or barrier while the gate or barrier is closed or is being open or closed. Colo. Rev. Stat. § 42-4-706(2) (2008).

Penalty

A violation of any subpart of the preceding section is considered a Class A traffic infraction. Colo. Rev. Stat. § 42-4-706(3) (2008).

When approaching within 100 feet of or traversing any railroad grade crossing, Colorado law prohibits driving any vehicle to the left of the roadway to overtake or pass another vehicle. Colo. Rev. Stat. § 42-4-905 (2008).

Colorado law gives the state highway department authority to designate a highway-rail crossing as particularly dangerous and erect stop signs at such a crossing. When a stop sign is erected, drivers of vehicles are required to stop within 15 to 50 feet of the nearest rail and may not proceed without exercising due care. Colo. Rev. Stat. § 42-4-607 (2008).

CONNECTICUT

When approaching within 100 feet of or crossing any highway-rail crossing,

Connecticut law prohibits drivers from driving to the left side of the highway. Conn. Gen. Stat. § 14-235 (2009).

Connecticut requires motorists to stop at crossings but does not prescribe a specific stopping distance from the crossings.

Penalty

Any drivers, who fail to come to a full stop at a highway-rail crossing, when warned of an approaching train by flashing lights erected at the crossing, may be fined one hundred and fifty dollars. Conn. Gen. Stat. § 14-249 (2009).

DELAWARE

Delaware law requires any person driving a vehicle in the state to stop at highway-rail crossings under certain conditions. These requirements apply at crossings under the following conditions:

- (1) Where a clearly visible electrical or mechanical signal gives warning of a train.
- (2) Where a crossing gate is lowered or a flagman gives or continues to give a signal of the approach of a train.
- (3) When a train approaching within 1,500 feet of the crossing is emitting a signal audible from that distance.
- (4) Where an approaching train is clearly visible. Del. Code Ann. Tit. 21, § 4161 (2009).

All stops are to be made within 15 to 50 feet of the nearest rail of the tracks and the driver shall not proceed until it is safe to do so.

It is unlawful in Delaware for any person to drive any vehicle through, around or under any crossing gate or barrier when the gate or barrier is closed or being opened or closed. Del. Code Ann. Tit. 21 § 4161 (2009).

Delaware law prohibits drivers from driving on the left side of the roadway (passing) when approaching within 100 feet of or traversing a highway-rail grade crossing. Del. Code Ann. Tit. 21 § 4119 (2009).

No person driving vehicles on the state's highways is to drive at a speed greater than that which is reasonable and prudent considering the conditions present and the existing and potential hazards. This requirement applies when approaching and traversing a highway-rail crossing. Del. Code Ann. Tit. 21 § 4168(a-b) (2009).

DISTRICT OF COLUMBIA

All requirements concerning the responsibility of motorists in the District of Columbia with respect to highway-rail crossings are listed in a series of volumes titled *Municipal Regulations*. Unless otherwise indicated, all citations will refer to sections in *Municipal Regulations*, rather than the District of Columbia Code.

District of Columbia law requires motorists to bring their vehicles to a stop within 15 to 50 feet of the nearest rail of a highway-rail crossing and to remain stopped until crossing can be done safely. These requirements are applicable under the following circumstances:

- (1) Where warning of the immediate approach of a train is being given by a clearly visible electrical or mechanical signal.
- (2) When a crossing gate is lowered or when a flagman is giving a signal of the approach or passage of a train.
- (3) Where a train approaching within approximately 1,500 hundred feet of the crossing is emitting a signal audible at that distance and, because of its speed or close proximity to the crossing, constitutes an immediate hazard.
- (4) When a train is in hazardous proximity to a crossing and is plainly visible.
D.C. Mun. Regs. Tit. 18, § 2216.1 (2008).

The District of Columbia prohibits motorists from driving a vehicle at a speed greater than that which is reasonable and prudent under the conditions present and with regard to the actual and potential hazards. Consistent with this requirement, the law requires motorists to drive at appropriately reduced speeds when approaching or moving over a highway-rail crossing. D.C. Mun. Regs. Tit. 18, § 2200.3-5 (2008).

Penalty

Any violation of Sections 2216.1 and 2200.3-4 is subject to a civil fine pursuant to the District of Columbia Traffic Adjudication Act. D.C. Mun. Regs. Tit. 18 § 2200.11 (2008).

It is unlawful for anyone in the District of Columbia to stand or park a vehicle, whether occupied or not, within 50 feet of the nearest highway-rail crossing, including stops for the purpose of loading or unloading materials. Standing or parking a vehicle in this manner is permitted when it is necessary to avoid conflict with other traffic or under the direction of a police officer or a traffic control signal. D.C. Mun. Regs. Tit. 18 § 2405.2(e) (2008).

FLORIDA

Under certain circumstances, Florida requires all persons driving a vehicle to stop at highway-rail crossings. The stopping requirement applies:

- (1) Where the warning of an approaching train is given by a clearly visible electrical or mechanical signal.

- (2) Where a crossing gate is lowered or a flagman gives or continues to give a signal indicating the approach of a train.
- (3) Where an approaching train emits an audible signal and, due to its speed or nearness to the crossing, constitutes an immediate hazard.
- (4) Where an approaching train is plainly visible.

Florida law prohibits drivers from driving any vehicle through, around or under any crossing gate or barrier while the gate or barrier is closed or is being opened or closed. Fla. Stat. Ann. § 316-1575 (2009).

It is unlawful in Florida to park a vehicle within 50 feet of the nearest rail of a highway-rail crossing, whether occupied or not, except for the purpose of and while actually engaged in loading and unloading merchandise or passengers. The Florida Department of Transportation may establish a different distance due to unusual circumstances. Fla. Stat. Ann. § 316-1945 (2009).

It is also unlawful for any person to drive a vehicle at a speed greater than is reasonable and prudent considering the conditions present and any actual and potential hazards. A driver must drive at an appropriately reduced speed when approaching and crossing an intersection or highway-rail crossing. Fla. Stat. Ann. § 316-183 (2009).

GEORGIA

Georgia prohibits any person from stopping, standing or parking a vehicle on any railroad tracks, except when necessary to avoid conflict with other traffic, or in compliance with the direction of a police officer, or traffic control device. Ga. Code Ann. § 40-6-203 (2009).

Georgia requires the driver of any vehicle to stop within 15 to 50 feet of the nearest rail of the tracks when approaching a highway-rail crossing. The driver may not proceed across the crossing until it can be done safely. The stopping requirements apply in the following situations:

- (1) Where a clearly visible electrical or mechanical signal device gives warning of the approach of a train.
- (2) Where a crossing gate is lowered or a flagman gives a signal indicating the approach or passage of a train.
- (3) Where an approaching train is visible and is in hazardous proximity to the crossing.

It is unlawful for anyone to drive a vehicle through, around or under any crossing gate or barrier while such gate or barrier is closed or is being opened or closed. Ga. Code Ann. § 40-6-140 (2009).

No person may drive a vehicle at a speed greater than is reasonable and prudent considering the conditions present and the actual and potential hazards. Every person must drive at a reasonable and prudent speed when approaching and crossing a highway-rail crossing. Ga. Code Ann. § 40-6-180 (2009).

HAWAII

Hawaii law prohibits motorists from driving a vehicle at a speed greater than is reasonable considering the actual and potential hazards and road conditions. Every person must drive at a reasonable and prudent speed when approaching and crossing a highway-rail crossing. Haw. Rev. Stat. § 291C-101 (2008).

Hawaii law prohibits driving to the left side of the roadway (passing) when approaching within 100 hundred feet of or traversing a highway-rail crossing. Haw. Rev. Stat. § 291C-46 (2008). See also, § 291C-161 as to the penalty for violation of this section.

Hawaii requires motorists to stop within 15 to 50 feet of the nearest rail of the tracks at a highway-rail crossing. The driver shall not proceed until it is safe to do so. These requirements apply under the following circumstances:

- (1) When there is a clearly visible electrical or mechanical signal device giving warning of an approaching train.
- (2) When a crossing gate is lowered or a flagman is giving a signal indicating the approach or passing of a train.
- (3) When a train approaching within approximately 1,500 feet of the crossing is emitting a signal audible from that distance, and, because of its nearness and speed, constitutes an immediate hazard.
- (4) When an approaching train is clearly visible.

It is unlawful in Hawaii for any person to drive through, around or under any crossing gate or barrier while the gate or barrier is closed or is being opened or closed. Haw. Rev. Stat. § 291C-91(a)-(b) (2008).

The Director of Transportation and the individual counties are authorized to designate a highway-rail crossing as particularly dangerous and to erect stop signs at such crossings. The driver of any vehicle approaching a crossing is required to stop within 15 to 50 feet of the nearest rail of the tracks and is authorized to proceed only after exercising due caution. Haw. Rev. Stat. § 291C-92 (2008). See also, "Hawaii" in Chapter 4 of this book.

IDAHO

Idaho prohibits motorists from driving left of the center of the highway (passing) when approaching within 100 feet of or traversing a highway rail crossing, unless otherwise indicated by a traffic control device. Idaho Code § 49-635 (2008).

Idaho requires drivers to stop within 15 to 50 feet of the nearest rail of the tracks at a highway rail crossing. The driver may not proceed until it is safe to do so. The stopping requirements apply under the following circumstances:

- (1) Where a warning of an approaching train is given by a clearly visible electrical or mechanical signal device.
- (2) When a crossing gate is lowered or a flagman is giving a signal indicating the approach or passage of a train.
- (3) When a train approaching within 1,500 feet of the crossing is emitting a signal audible at that distance and, due to its speed or nearness, constitutes an immediate hazard.
- (4) When an approaching train is clearly visible.

In addition to requiring motorists to stop when a crossing gate is down, Idaho law forbids driving through, around or under any gate or barrier while it is closed or is being opened or closed. Idaho Code § 49-648 (2008).

Idaho law requires the driver of any vehicle stopped a highway rail crossing to listen and look in both directions for any approaching train and for signals indicating the approach of a train. After complying with the stopping requirements, drivers may move over the crossing when it is safe to do so and are forbidden from manually shifting gears while crossing the tracks. Idaho Code § 49-649 (2008).

These requirements do not apply at crossings where traffic is controlled by a police officer or a flagman, or at crossings regulated by a traffic control signal, at crossings protected by crossing gates or an alternately flashing light signal intended to give warning of an approaching train, or at any crossing where a traffic control device gives notice that the stopping requirements do not apply. Idaho Code § 49-649 (2008). See also, Chapter 7 under Idaho section covering exempt crossings in this book.

Idaho law prohibits the parking of a vehicle, whether occupied or not, within 50 feet of the nearest rail of highway rail crossing, except temporarily for the purpose of and while actually engaged in loading or unloading merchandise or passengers. Idaho Code § 49-660 (2008).

Idaho law prohibits motorists from driving a vehicle at a speed greater than that which is reasonable and prudent. Consistent with this prohibition, motorists in Idaho are required to drive at a safe and appropriate speed when approaching and crossing a highway rail crossing. Idaho Code § 49-654 (2008).

ILLINOIS

Illinois prohibits parking on railroad tracks except when necessary to avoid conflict with other traffic or in compliance with the law or directions of a police officer or official traffic control device. 625 ILCS 5/11-1303(1)h (2008).

It is unlawful for anyone to stand or park a vehicle, whether occupied or not, within 50 feet of the nearest rail of a highway-rail crossing, except momentarily while loading or unloading property or passengers. 625 ILCS 5/11-1303(3)a (2008).

Drivers are prohibited from traversing any railroad crossing unless there is sufficient space on the other side to accommodate the vehicle they are operating without obstructing the passage of other vehicles, notwithstanding any traffic control signal indication to proceed. 625 ILCS 5/11-1425 (2008).

Illinois prohibits driving to the left of the center of the roadway (passing) when approaching within 100 feet of or traversing a railroad crossing. 625 ILCS 5/11-706 (2008).

Illinois law requires drivers approaching a highway-rail crossing to exercise due care and caution and to recognize the existing crossing as a sign of danger. When approaching a crossing, the driver must stop within 15 to 50 feet of the nearest rail of the tracks and may not proceed until it is safe to do so. The stopping requirements apply:

- (1) When warning of an approaching train given by a clearly visible electrical or mechanical signal device.
- (2) When a crossing gate is lowered or a flagman is giving a signal to indicate the approach or passage of a train.
- (3) When an approaching train is emitting a warning signal and, due to its speed or nearness to the crossing, constitutes an immediate hazard.
- (4) When an approaching train is visible and its proximity constitutes an immediate hazard.

It is unlawful in Illinois for any person to drive any vehicle through, around or under any crossing gate or barrier at a railroad crossing while the gate or barrier is closed or is being opened or closed. 625 ILCS 5/11-1201(a)(b) (2008).

The Illinois Department of Transportation, in consultation with local authorities, is authorized to designate a highway-rail as particularly dangerous and to install stop signs at the crossing. When the driver of any vehicle approaches a highway-rail crossing, the driver must stop within 15 to 50 feet of the nearest rail of the tracks and is not to proceed over the crossing until it is safe to do so. 625 ILCS 5/11-1201(c) (2008).

At any railroad grade crossing provided with railroad crossbuck signs, without automatic, electric, or mechanical signal devices, crossing gates, or a human flagman giving a signal of the approach or passage of a train, the driver of a vehicle shall in obedience to the crossbuck, yield the right-of-way and slow down to a speed reasonable for the existing conditions and shall stop, if required for safety, at a clearly marked stop line, or if no stop line, within 50 feet but not less than 15 feet from the nearest rail of the railroad and shall not proceed until he or she can do so safely. If a driver is involved in a collision at a railroad crossing or interferes with the movement of a train after driving past the railroad crossbuck sign, the collision or interference is prima facie evidence of the driver's failure to yield the right-of-way. 625 ILCS 5/11-1201(d) (2008).

Penalty

A violation of any part of Section 5/11-1201 shall result in a mandatory fine of five hundred dollars or fifty hours of community service. Local jurisdictions shall impose fines as

established by this section for vehicles that fail to obey signals indicating the presence, approach, passage, or departure of a train. 625 ILCS 5/11-1201(e)(f) (2008).

INDIANA

When a stop sign is erected at any highway-rail crossing in Indiana, drivers are required to stop within 10 to 50 feet of the nearest rail of the crossing and may only proceed after exercising due caution. Ind. Code Ann. § 9-21-4-16 (2009).

Indiana law requires persons driving a vehicle to stop within 10 to 50 feet of the nearest rail of the tracks at a highway-rail crossing. The driver may not proceed over the crossing until it is safe to do so. The stopping requirements apply under the following circumstances:

- (1) At crossings where warning of an approaching train is given by a clearly visible electrical or mechanical signal device.
- (2) Where a crossing gate is lowered or when a flagman is giving a signal of the approach or passage of a train.
- (3) When a train approaching within 1,500 feet of a crossing is emitting a signal audible at that distance and, because of its speed or nearness to the crossing, constitutes an immediate hazard.
- (4) At a crossing where an approaching train is clearly visible. Ind. Code Ann. § 9-21-8-39 (2009).

IOWA

Iowa law requires drivers of any vehicle approaching a highway-rail crossing to stop at the first opportunity, either at a clearly marked stop line or at a point near the crossing where the driver has a clear view of any approaching railroad traffic.

The statute requires drivers to stop at crossings with a stop sign, a railroad sign directing traffic to stop or an official traffic control signal that is displaying a flashing red or steady circular red-colored light. Iowa Code § 321.342 (2008). See also, Section 321.252, concerning signs.

In Iowa, any person driving a vehicle approaching a highway-rail crossing where warning of an approaching train is given by an automatic signal, crossing gates, a flagman or other device, is required to stop within 15 to 50 feet of the nearest rail of the crossing. Iowa Code § 321.341 (2008).

Iowa has a code section which states that a driver shall stop, remain standing, and not traverse a crossing when a crossing gate is lowered or when a flagman is giving a signal indicating the approach or passage of a train. Iowa Code § 321.341 (2008).

Iowa law expressly prohibits the stopping, standing or parking of a vehicle within 50 feet of the nearest rail of a crossing, except when parked parallel to the rail and exhibiting a red light. This prohibition does not apply if the stopping, standing or parking was necessary to avoid

conflict with other traffic or in compliance with the direction of a police officer or a traffic control device. Iowa Code § 321.358 (2008).

KANSAS

Kansas law requires drivers, when approaching a highway-rail crossing, to drive their vehicle at a safe and appropriate speed. Kan. Stat. Ann. § 8-1557 (2008).

Kansas expressly prohibits drivers from driving on the left side of the roadway (passing) when approaching within 100 feet of or traversing a highway-rail crossing. This prohibition does not apply however, at any intersection on a state or county maintained road located outside city limits unless that intersection is clearly marked with a traffic control device or pavement markings exist indicating that passing is prohibited. Kan. Stat. Ann. § 8-1519 (2008).

When approaching a highway-rail crossing, motorists are required to stop within 15 to 50 feet of the nearest rail of the tracks and may not proceed until it is safe to do so. The stopping requirements are applicable at highway-rail crossings when the following conditions are present:

- (1) Where there is a clearly visible electrical or mechanical device giving warning of the immediate approach of a train.
- (2) Where a crossing gate is lowered or when a flagman is giving a signal of the approach or passage of a train.
- (3) Where a train approaching within approximately 1,500 feet of the crossing is emitting a signal audible from that distance and, because of its speed or nearness to the crossing, constitutes an immediate hazard.
- (4) When an approaching train is clearly visible.

It is unlawful for any person to drive any vehicle through, around or under any crossing gate or barrier at a highway-rail crossing while the gate or barrier is closed or is being opened or closed. Kan. Stat. Ann. § 8-1551(a)-(b) (2008).

Kansas law prohibits motorists from driving onto any railroad grade crossing unless there is adequate space on the other side to accommodate the driver's vehicle without obstructing the passage of other vehicles, pedestrians or trains, notwithstanding any traffic control signal indication to proceed. Kan. Stat. Ann. § 8-1584 (2008).

The Kansas Secretary of Transportation, and local authorities, may designate a highway-rail crossing as particularly dangerous and erect a stop sign at such crossings. Drivers are then required to stop within 15 to 50 feet of the nearest rail of the crossing and must not proceed without exercising due care. Kan Stat. Ann. § 8-1552 (2008).

KENTUCKY

Kentucky law requires the operator of any vehicle to stop at a highway-rail crossing and remain standing at when any of the following circumstances exist:

- (1) When warning of the immediate approach of a train is being given by a visible electrical or mechanical signal.
- (2) Where a crossing gate is lowered giving warning of the immediate approach or passage of a train.
- (3) When a train is in hazardous proximity to the crossing and is plainly visible.
- (4) A human flagman signals the approach or passage of a train.

These requirements also apply at highway-rail crossings that the Kentucky Transportation Cabinet has designated as “unsafe” and at which a stop sign has been erected within sixty days of the designation. An “unsafe” determination may not be made and no stop sign installed at highway-rail crossings where protection is provided by a crossing gate, electrical warning signals or other automatic audible signal, or where protection is provided by a watchman. Ky. Rev. Stat. Ann. § 189.560(1)(2)(3) (2008). See also, Section 189.561, under “Kentucky” in Chapter 2 of this book.

At any crossing where a stop sign has been installed, Kentucky law requires motorists operating any vehicle to come to a full stop within 10 to 30 feet of the nearest rail of the tracks. Kentucky law also prohibits drivers from driving to the left side of the roadway when approaching within 100 feet of or traversing a highway-rail crossing. Ky. Rev. Stat. Ann. § 189.345 (2008).

LOUISIANA

It is unlawful in Louisiana to drive to the left side of the highway (passing) when approaching within 100 feet of or traversing a highway-rail crossing. La. Rev. Stat. Ann. § 32.76 (2008).

Louisiana law expressly prohibits the stopping, standing or parking of a vehicle within 50 feet of the nearest rail of a highway-rail crossing, except when it is necessary to avoid conflict with other traffic or when complying with the directions of a police officer or traffic control device. La. Rev. Stat. Ann. § 32:143 (2008).

Louisiana law requires that drivers of motor vehicles come to a full stop within 15 to 50 feet of the nearest rail of a highway-rail crossing. Drivers may not proceed until it can be done safely. The stopping requirements apply at crossings where the following conditions prevail:

- (1) Where warning of the immediate approach of a train is being given by a clearly visible electrical or mechanical device.
- (2) Where a crossing gate is lowered or a flagman is giving warning of the approach or passage of a train.

- (3) When a train approaching within approximately 900 feet of the crossing is emitting a warning signal and, due to its speed or nearness to the crossing, constitutes an immediate hazard.
- (4) When an approaching train is clearly visible.
- (5) A stop sign is erected at the approach to a railroad crossing.

Louisiana prohibits persons from driving through, around or under any crossing gate or barrier when the gate or barrier is closed or is being opened or closed. La. Rev. Stat. Ann. § 32:171(A)(B)(C) (2008).

It is unlawful for anyone in Louisiana to stop a motor vehicle on any railroad track or to drive a vehicle across any railroad crossing while the signal devices are flashing and an approaching train is plainly visible. La. Rev. Stat. Ann. § 32:171(B)(D) (2008).

Louisiana law provides that the Department of Highways may designate any highway-rail crossing as particularly dangerous and may erect stop signs at these crossings. Drivers of all vehicles are required to stop within 15 to 50 feet of the nearest rail of the tracks and may proceed only after exercising due care. La. Rev. Stat. Ann. § 32: 172 (2008). See also, Chapter 2 under Louisiana.

When approaching a highway-rail crossing that is marked by the presence of a railroad crossbuck sign, a motorist is required to slow down, or stop if necessary, before entering a crosswalk. If there is no crosswalk, then the driver must stop at a clearly marked stop line or if none, then at the point nearest the intersecting rail where the driver has a clear view of any approaching trains. The driver is then required to listen and look in both directions for any approaching train and for signals indicating the approach of a train, and is required to yield the right of way to any approaching train. The driver may proceed over the crossing only after exercising due care. La. Rev. Stat. Ann. § 32: 175(A) (2008).

Louisiana law does not require a motorist to yield at any highway-rail crossing where a police officer or traffic control signal directs traffic to proceed. La. Rev. Stat. Ann. § 32: 175(B) (2008).

Penalty

Any motorist who violates this section of Louisiana law shall be fined as follows:

- (1) On first offense the fine shall be not more than one hundred seventy-five dollars or imprisonment for not more than thirty days, or both. In addition, the motorist shall be required to attend an Operation Lifesaver Course to be given by a certified Operation Lifesaver presenter within one hundred eighty days after adjudication of the citation. It is the responsibility of the violator to notify the appropriate court of jurisdiction of the successful completion of the course.
- (2) On second and each subsequent offense the fine shall not be more than five hundred dollars or imprisonment for not more than ninety days, or both. In addition, the

motorist in violation shall be required to attend a one-day safe driver's course designed by Operation Lifesaver within one hundred eighty days after adjudication of the citation. It is the responsibility of the violator to notify the appropriate court of jurisdiction upon completion of the course.

- (3) Any motorist who violates any provision of this section by racing a train to a railroad crossing and thereby causes immediate danger to any railroad crew member, the general public, or damage to any property in the immediate vicinity of the crossing shall be fined not more than one thousand dollars. In addition, the violator shall be required to attend a one-day safe driver's course designed by Operation Lifesaver within one hundred eighty days after the adjudication of the citation. It is the responsibility of the violator to notify the appropriate court of jurisdiction upon completion of the course.

If a violator fails to attend any safe driving courses, the Department shall suspend the violator's driving privileges for a period of thirty days.

The governing authority of a municipality may enter into a cooperative endeavor agreement authorizing certified railroad law enforcement officers to assist in the enforcement of state laws and local ordinances pertaining to railroad grade crossings within its municipal limits.

The operator, engineer, or conductor of any train is authorized to notify the appropriate law enforcement authority of any railroad grade crossing violation within thirty-six hours of the violation. The operator, engineer, or conductor must report the violation by affidavit which shall contain the color, license number, and any other identifiable information from the vehicle involved in the violation. In addition to the affidavit, a law enforcement officer may rely upon other evidence, including photographic or video evidence. A law enforcement officer may issue a citation to the owner or driver of the vehicle, or in the case of a leased vehicle, the lessee or driver of the leased vehicle, on the basis of the information contained in the affidavit or photographic or video evidence. The owner or lessee shall not be cited if the vehicle had been stolen. La. Rev. Stat. Ann. § 32:171(A)–(H) (2008).

MAINE

Drivers of motor vehicles in Maine are required to reduce their speed to a reasonable and proper rate beginning 100 feet from a highway-rail crossing, to look in each direction and only proceed over the crossing with caution. Me. Rev. Stat. Ann. Tit. 29-A, § 2076(1) (2008).

Motorists are required to bring their vehicles to a full stop at a distance of not less than 10 feet from the nearest rail of a crossing where a gate has been or is being lowered, or a flagman or automatic signal is indicating that a train is approaching. Motorists may proceed through a highway-rail crossing when the gates have been raised or the flagman indicates that no train is approaching. Motorists proceeding over a highway-rail crossing under the direction of an automatic signal are required to use extra caution and may proceed only when they have ascertained that no train is approaching. Me. Rev. Stat. Ann. tit. 29-A, § 2076(2) (2008).

The Maine Department of Transportation has the statutory authority to designate a highway-rail crossing as particularly dangerous and to install and maintain stop signs at the crossing. The Department also has the authority to designate crossings as particularly dangerous within the limits of municipalities and to order the municipality to erect and maintain stop signs

at the crossings. At any highway-rail crossing where stop signs are in place, drivers are required to stop within 10 to 50 feet of the nearest rail of the railroad and may not proceed over the crossing without exercising due care. Me. Rev. Stat. Ann. Tit. 23 § 1253-A (2008).

Penalty

A motorist operating a vehicle in violation of Section 1253-A is guilty of a misdemeanor and punishment may be fixed as a fine not to exceed fifty dollars, imprisonment for not more than sixty days or both. Me. Rev. Stat. Ann. Tit. 23 § 1253-A (2008).

MARYLAND

The State of Maryland requires motorists to stop within 15 to 50 feet of the nearest rail at a highway-rail crossing and to proceed only when it can be done safely. This requirement applies at highway-rail crossings where the following circumstances exist:

- (1) Where warning of an approaching train is given by an electrical or mechanical device.
- (2) Where a crossing gate is lowered.
- (3) Where a flagman is signaling the approach or passage of a train.
- (4) When a train approaching the crossing within 1,500 feet is giving a signal audible at such a distance and, due to its speed or nearness to the crossing, constitutes an immediate hazard.
- (5) When a train is plainly visible and is dangerously near the crossing.

It is unlawful for anyone in Maryland to drive a vehicle through, around or under any crossing gate or barrier at a highway-rail crossing while the gate or barrier is closed or is in the process of being opened or closed. Md. Ann. Code Art. 21 § 701(a)(b) (2009).

Maryland law prohibits the parking of a vehicle within 50 feet of the nearest rail of a highway-rail crossing unless it is necessary to avoid conflict with other traffic or in compliance with the law or the directions of a police officer or traffic control device. Md. Ann. Code Art. 21 § 1003(t) (2009).

Maryland law prohibits driving to the left of the center of the highway for the purpose of overtaking and passing while crossing or approaching within 100 feet of a highway-rail crossing. Md. Ann. Code Art. 21 § 305(ii) (2009).

The state highway administration in Maryland, in consultation with local authorities, is authorized to designate a highway-rail crossing as particularly dangerous and to erect a stop sign

at the crossing. Motorists are required to come to a full stop within 15 to 50 feet of the nearest rail of the crossing and shall proceed only after exercising due care. Md. Ann. Code Art. 21 § 702(a) (b) (2009).

Maryland law prohibits motorists from driving a vehicle at a speed that, “...with regard to the actual and potential dangers existing, is more than that which is reasonable and prudent under the conditions.” Consistent with these requirements, when motorists are approaching and crossing a highway-rail crossing, they must drive at an appropriate reduced speed. Md. Ann. Code art. 21, § 801(a)(d) (2009).

MASSACHUSETTS

The law in Massachusetts pertaining to speed when approaching highway-rail crossings is codified in the section relating to driver duties and not under its basic speed law; this is a departure from the vast majority of other states. The pertinent section of the statute states that motorists must reduce their speed to a reasonable and proper rate before moving over any highway-rail crossing. They must not cross until they can proceed safely with regard to the current circumstances. Mass. Ann. Laws Ch. 90, § 15 (2009).

Massachusetts requires drivers to stop within 15 to 50 feet of the nearest rail at a highway-rail crossing protected by red lights which flash as a warning. Motorists are further prohibited from proceeding through the crossing until the red lights stop flashing. Mass. Ann. Laws Ch. 90, § 15 (2009).

Stops within 15 to 50 feet of the nearest rail are also required at highway-rail crossings protected by a lowered automatic gate. Drivers are prohibited from crossing until the gate is raised. Additionally, stops are required at crossings protected by “...a railroad employee waving a red flag or white lantern.” Drivers are forbidden to move through the crossing until the railroad employee gives the signal. Mass. Ann. Laws Ch. 90 § 15 (2009).

Penalty

A violation of any part of this section requiring stopping at highway-rail crossings will bring a maximum fine of two hundred dollars but not less than one hundred dollars. Mass. Ann. Laws Ch. 90 § 15 (2009).

MICHIGAN

Michigan law requires any person driving a vehicle to stop within 15 to 50 feet of the nearest rail of a highway-rail crossing. Drivers may not proceed over the crossing until it is possible to do so safely. Stops are required in all of the following circumstances:

- (1) Where warning of an approaching train is being given by a clearly visible electrical or mechanical device.
- (2) Where a crossing gate is lowered or a flagman is giving a signal of the approach or passage of a train.

- (3) When a train approaching within approximately fifteen hundred feet of a crossing is emitting a signal audible from that distance and, because of its speed or nearness to the crossing, constitutes an immediate hazard.
- (4) Where an approaching train is in hazardous proximity to the crossing and is plainly visible.

It is unlawful in Michigan for any driver to attempt to drive through, around or under a gate or barrier at highway-rail crossings while the gate or barrier is closed or is being opened or closed. Mich. Stat. Ann. § 9.2367(1)(2) (2008). (Mich. Comp. Laws Ann. § 257.667 (2009)).

Motorists are prohibited from parking within 50 feet of the nearest rail of a highway-rail crossing, except when necessary to avoid conflict with other traffic or in compliance with the law or the directions of a police officer or traffic control device. Mich. Stat. Ann. § 9.2374 (2008). (Mich. Comp. Laws Ann. § 257.674 (2009)).

MINNESOTA

Minnesota law prohibits motorists from parking their vehicles within 50 feet of the nearest rail of a highway-rail crossing. Minn. Stat. § 169.34 (2008).

Minnesota has a basic speed rule which requires that no person shall drive a vehicle on any highway at a speed greater than that which is reasonable and proper. Accordingly, motorists in Minnesota are required to drive at an appropriately reduced speed when approaching and crossing a highway-rail crossing. Minn. Stat. § 169.14(3) (2008).

When approaching a highway-rail crossing in Minnesota, motorists are required to come to a full stop not less than ten feet from the nearest rail of the crossing and may not proceed until it is safe to do so. The stopping requirements apply when the following circumstances are present:

- (1) Where warning of an approaching train is being given by a clearly visible electrical or mechanical device.
- (2) Where a crossing gate is lowered.
- (3) When an approaching train is clearly visible and its close proximity constitutes an immediate hazard.

Minnesota law states that the fact that a train approaching a crossing is visible is prima facie evidence that it is not safe for motorists to move over the crossing. Minn. Stat. § 169.26(a)(b)(2008).

It is unlawful in Minnesota for a motorist to move over a highway-rail crossing when a flagman is signaling the approach or passage of a train. Motorists are prohibited from driving a vehicle past a flagman until the flagman signals that the way is clear to proceed. Minn. Stat. § 169.26(c) (2008).

Penalty

A motorist who violates the stopping requirements is guilty of a misdemeanor. Minn. Stat. § 169.26(2a) (2008).

MISSISSIPPI

Whenever any motorist in Mississippi approaches a highway-rail crossing, the motorist must stop within 15 to 50 feet of the nearest rail of the tracks and may not proceed until it can be done safely. Stops are required when the following circumstances are present:

- (1) When warning of an approaching train is being given by a clearly visible electrical or mechanical device.
- (2) Where a crossing gate is lowered or a flagman is giving a signal indicating the approach or passage of a train.
- (3) Where an approaching train is clearly visible and close enough to the crossing that it constitutes a hazard.
- (4) Where a train approaching a crossing within nine hundred feet is emitting a warning signal and, because of its speed or nearness to the crossing, constitutes an immediate hazard.

Mississippi law prohibits motorists from driving through, around or under any downed crossing gate or barrier or one that is being opened or closed. Miss. Code Ann. § 77-9-249(1)(2) (2008).

Penalty

Mississippi law makes it a misdemeanor to fail to meet the stopping requirements or to drive through, around or under a downed crossing gate or barrier. Anyone convicted may be fined not more than fifty dollars, be imprisoned for not more than thirty days or both. Miss. Code Ann. § 77-9-249(4) (2008).

Editor's Note: Mississippi has another stopping requirement at a distance that seems to be in conflict with Section 77-9-249(1). The relevant code section states in part, that when any motorist approaches a highway-rail crossing where warning is being given of an approaching train by a clearly visible electrical or mechanical signal device, the motorist must stop within 10 to 50 feet of the nearest rail of the tracks and may not proceed until it is safe to do so. Miss. Code Ann. § 63-3-1007 (2008).

Mississippi law requires motorists to come to full stop within 10 to 50 feet of the nearest rail and to proceed only after exercising due care at any highway-rail crossing with a stop sign. The Mississippi Highway Commission is authorized to designate a crossing as particularly dangerous and to erect a stop sign at the crossing. Miss. Code Ann. § 63-3-1009 (2008).

MISSOURI

It is unlawful in Missouri for a motorist to stop, stand or park on any railroad tracks, or park a vehicle, whether empty or not, within 50 feet of the nearest rail of a highway-rail crossing. An exception exists allowing a motorist may park within 50 feet of the nearest rail temporarily to load or unload merchandise or passengers. Mo. Rev. Stat. § 300.440(1a)(3a) (2008).

Missouri requires motorists approaching a highway-rail crossing to stop within fifteen to fifty feet of the nearest rail of the tracks. Motorists are prohibited from moving over the crossing until they can do so safely. These requirements are applicable under the following circumstances:

- (1) Where warning of an approaching train is being given by a clearly visible electrical or mechanical device.
- (2) Where a crossing gate is lowered or a flagman is giving a signal indicating the approach or passage of a train.
- (3) When an approaching train is plainly visible and in hazardous proximity to the crossing.
- (4) Where any other traffic sign, device or any other act, rule, regulation or statute requires a vehicle to stop.

Motorists are prohibited from driving through, around or under any crossing gate or barrier while the gate or barrier is closed or is in the process of being opened or closed. Mo. Rev. Stat. § 304.035(1)(2) (2008).

Penalty

Any motorist who violates any provision of these requirements is guilty of a Class C misdemeanor. Mo. Rev. Stat. § 304.035(3) (2008).

Missouri law prohibits motorists from driving to the left side of a roadway when the view is obstructed when approaching within 100 feet of or at a highway-rail crossing. Mo. Rev. Stat. § 304.016(4)(2) (2008).

MONTANA

Montana prohibits drivers from stopping, standing or parking any vehicle within 50 feet of the nearest rail of a highway-rail crossing, except when it is necessary to avoid conflict with other traffic, when in compliance with the law or when in response to the commands of a police officer or traffic control device. Mont. Code Ann. § 61-8-354(li) (2008).

Montana's basic speed rule requires that motorists on a public highway drive in a careful and prudent manner and at a rate of speed not to exceed that which is reasonable and proper. Motorists must therefore drive at an appropriate reduced speed when they are approaching and moving over a highway-rail crossing. Mont. Code Ann. 61-8-303(1)(5) (2008).

Montana law prohibits motorists from driving to the left side of the center of the highway (passing) when approaching within 100 feet of or moving over a highway-rail crossing. Mont. Code Ann. § 61-8-325(2b) (2008).

All motorists in Montana, when approaching a highway-rail crossing, are required to stop within 15 to 50 feet of the nearest rail of the crossing and may not proceed over the crossing until it can be done safely. These requirements are applicable under the following circumstances:

- (1) Where warning of an approaching train is being given by an electrical or mechanical device.
- (2) When a crossing gate is down or a flagman is giving a signal to indicate an approaching or passing train.
- (3) When a train approaching within approximately 1,500 hundred feet of a crossing is emitting a signal audible from that distance and, because of its speed or nearness to the crossing, constitutes an immediate hazard.
- (4) Where a train is plainly visible and is in hazardous proximity to a crossing.

It is unlawful in Montana for a motorist to drive any vehicle through, around, or under any crossing gate or barrier at a highway-rail crossing while the gate or barrier is closed or is in the process of being opened or closed. Mont. Code Ann. § 61-8-347(1)(2) (2008).

The Montana Department of Transportation, along with the local authorities, is authorized to designate a highway-rail crossing as particularly dangerous and to install a stop sign at the crossing. Motorists are then required to come to a full stop within 15 to 50 feet of the nearest rail of the tracks and may not proceed over the crossing without exercising due care. Mont. Code Ann. § 61-8-348 (2008).

NEBRASKA

When approaching a highway-rail crossing, all motorists are required to come to a full stop within 15 to 50 feet of the nearest rail of the crossing. A motorist may not proceed over the crossing until it can be done safely. These requirements are applicable under the following circumstances:

- (1) Where warning of an approaching train is being given by a clearly visible electrical or mechanical device.
- (2) When a crossing gate is lowered or a flagman is signaling the approach or passage of a train.
- (3) When a train approaching within one-quarter mile of a highway-rail crossing is emitting a signal audible from that distance and, because of its speed or close proximity to the crossing, constitutes an immediate hazard.
- (4) Where a train is plainly visible and close enough to the crossing to be a hazard.

Nebraska law prohibits motorists from driving through, around or under any crossing gate or barrier while the gate or barrier is closed or is being opened or closed. Neb. Rev. Stat. 60-6,170(2009).

In Nebraska, the Department of Roads, along with the local highway authority, has statutory authority to designate a highway-rail crossing as particularly dangerous and shall erect stop signs at those crossings. Motorists are then required to come to a full stop within 15 to 50 feet of the nearest rail of the tracks and may not proceed across without exercising due care. Neb. Rev. Stat. § 60-6,171 (2009).

Nebraska law prohibits motorists from overtaking and passing another vehicle to the left of the center of the roadway when approaching within 100 feet or traversing any highway-rail crossing. Neb. Rev. Stat. § 60-6,136(b) (2009).

Nebraska law prohibits motorists from driving a vehicle at a speed greater than is reasonable and prudent under the conditions present and with regard to the actual and potential hazards. Consistent with this prohibition, motorists are required to drive at a safe and appropriate speed when approaching and moving over a highway-rail crossing. Neb. Rev. Stat. § 60-6,185 (2009).

Nebraska law prohibits the stopping, standing or parking of a vehicle on any railroad track, except when necessary to avoid conflict with other traffic or when complying with the directions of a law enforcement officer or traffic-control device. The same law forbids the parking of a vehicle, whether occupied or not, within 50 feet of the nearest rail at any highway-rail crossing, except for the purpose of loading or unloading merchandise or passengers. Neb. Rev. Stat. § 60-6,166(i) (2009).

NEVADA

Nevada law requires all motorists to stop within 15 to 50 feet of the nearest rail of the tracks at highway-rail crossings. After stopping, motorists are prohibited from proceeding through the crossing unless it can be done safely. These requirements are applicable under the following circumstances:

- (1) Where warning of an approaching train is being given by a clearly visible electrical or mechanical device.
- (2) When a crossing gate is lowered or a flagman is giving signals indicating an approaching or passing train.
- (3) Where an approaching train within approximately 1,500 hundred feet is emitting a signal audible from that distance and, because of its speed or close proximity to the crossing, constitutes an immediate hazard.
- (4) When a train is in hazardous proximity to the crossing and is plainly visible. .

Nevada law prohibits motorists from driving through, around or under any crossing gate or barrier while the gate or barrier is closed or is in the process of being opened or closed. Nev. Rev. Stat. Ann. § 484.349 (2009).

The Nevada Department of Transportation and local authorities with the approval of the Department of Transportation has statutory authority to designate a highway-rail crossing as particularly dangerous and may erect a stop sign at the crossing. Motorists are then required to come to a full stop within 15 to 50 feet of the nearest rail of the tracks and may not proceed across without exercising due care. Nev. Rev. Stat. Ann. § 484.351 (2009).

Nevada law prohibits motorists from overtaking and passing another vehicle by driving to the left of the center of the roadway within 100 feet of a highway-rail crossing. Nev. Rev. Stat. Ann. § 484.299 (2009).

NEW HAMPSHIRE

New Hampshire law requires that motorists come to a full stop within 15 to 50 feet of the nearest rail at a highway-rail crossing. Drivers may not proceed through the crossing until it can be done safely. These requirements are applicable at highway-rail crossings under the following circumstances:

- (1) Where warning of an approaching train is being given by a clearly visible electrical or mechanical device.
- (2) Where a crossing gate is lowered or a flagman is giving a signal indicating an approaching or passing train.
- (3) When a train approaching within 1,500 feet of a crossing is emitting a signal audible from that distance and, because of its speed or closeness to the crossing, constitutes an immediate hazard.
- (4) Where a train is plainly visible and is in hazardous proximity to a crossing.

New Hampshire prohibits motorists from driving through, around or under any crossing gate or barrier while the gate or barrier is closed or in the process of being opened or closed. N.H. Rev. Stat. Ann. § 265:48 (2008).

The New Hampshire Commissioner of Transportation is vested with the statutory authority to designate a highway-rail crossing particularly dangerous and may erect a stop sign at the crossing. The Commissioner may also order local jurisdictions to do the same if the effected crossing lies within their jurisdiction. At any crossing where a stop sign has been erected, motorists are required to come to a full stop within 15 to 50 feet of the nearest rail of the tracks and may not proceed across without exercising due care. N.H. Rev. Stat. Ann. § 265:49 (2008).

It is unlawful for motorists to drive to the left side of the roadway when approaching within 100 feet of or moving through a highway-rail crossing. N.H. Rev. Stat. Ann. § 265:21 (2008).

It is unlawful for motorists in New Hampshire to drive a vehicle at a speed greater than that which is reasonable and prudent under the conditions present and with regard to any actual and potential hazards. Consistent with this rule, motorists are required to drive at an appropriate speed when approaching and crossing a highway-rail crossing. N.H. Rev. Stat. Ann. § 265:60(IV) (2008).

NEW JERSEY

New Jersey law requires motorists to reduce their speed appropriately when approaching and moving across a highway-rail crossing. N.J. Rev. Stat. § 39:4-98 (2008).

New Jersey prohibits the parking of vehicles within 50 feet of the nearest rail of a highway-rail crossing, except when it is necessary to avoid conflict with other traffic or in compliance with the directions of a police officer, traffic sign or traffic signal. N.J. Rev. Stat. \ § 39:4-1380) (2008).

New Jersey law requires motorists to keep vehicles to the right half of the roadway when traversing a highway-rail crossing. N.J. Rev. Stat. § 39:4-83 (2008).

New Jersey law requires motorists approaching a highway-rail crossing to come to a full stop within 15 to 50 feet of the nearest rail of the railroad. Motorists are prohibited from proceeding over the crossing until it can be done safely. These requirements are applicable under the following circumstances:

- (1) Where warning of the immediate approach of a train is being given by a clearly visible electrical or mechanical signal.
- (2) Where a crossing gate is lowered or a flagman is giving a signal of an approaching or passing train.
- (3) When a train approaching within approximately 1,500 feet of a highway-rail crossing is emitting a signal audible from that distance and, because of its speed or close proximity to the crossing, constitutes an immediate hazard.
- (4) When a train is in hazardous proximity to a crossing and is plainly visible.

It is unlawful in New Jersey for a motorist to drive any vehicle through, around or under any crossing gate or barrier that is closed or is being opened or closed. N.J. Rev. Stat. 39:4-127.1 (2008).

NEW MEXICO

New Mexico law prohibits the parking of any vehicle within 50 feet of the nearest rail of a highway-rail crossing, except when it is necessary to avoid conflict with other traffic or in compliance with the law or directions of a police officer or traffic control device. N.M. Stat. Ann. § 66-7-351(A-9) (2008).

New Mexico requires the drivers of all vehicles, when approaching a highway-rail crossing, to come to a stop between 15 and 50 feet from the nearest rail of the tracks. The drivers may not move over the crossing until it may be done safely. These requirements apply at highway-rail crossings under the following circumstances:

- (1) Where warning of an approaching train is given by a clearly visible electrical or mechanical device.

- (2) Where a crossing gate is lowered or a flagman is giving a signal indicating an approaching or passing train.
- (3) When a train approaching within 1,500 feet of a crossing is emitting a signal audible from that distance and, because of its speed or close proximity to the crossing, constitutes an immediate hazard.
- (4) Where a train is plainly visible and is in hazardous proximity to a crossing.

It is unlawful for motorists to drive through, around or under any crossing gate or barrier that is closed or is in the process of being opened or closed. N.M. Stat. Ann. § 66-7-341(A)(B) (2008).

The New Mexico Highway Commission and local authorities have the power to designate a highway-rail crossing as particularly dangerous and may erect a stop sign at the crossing. Motorists are then required to stop between 15 and 50 feet from the nearest rail of the tracks and must not proceed over the crossing except after exercising due care. N.M. Stat. Ann. § 66-7-342 (2008).

New Mexico law prohibits drivers from driving to the left side of the roadway when approaching within 100 feet of or traversing any highway-rail crossing. N.M. Stat. Ann. § 66-7-313 (2008).

NEW YORK

Motorists in New York are prohibited from driving through a highway-rail crossing without first coming to a full stop within 15 to 50 feet of the nearest rail of the railroad. The motorist is then permitted to move over the crossing only if it can be done safely. These requirements are applicable at highway-rail crossings where the following circumstances exist:

- (1) Where warning of an approaching train is being given by a clearly visible electrical or mechanical device.
- (2) Where a crossing gate is lowered or a flagman is giving a signal indicating an approaching or passing train.
- (3) When a train approaching within 1,500 feet of a crossing is emitting a signal audible from that distance and, because of its speed or closeness to the crossing, constitutes an immediate hazard.
- (4) Where a train is plainly visible and is in hazardous proximity to a crossing.

It is unlawful for motorists to drive through, around or under any crossing gate or barrier that is closed or is in the process of being opened or closed. N. Y. Veh. & Traf. Law § 1170 (a)(b) (2009).

Penalty

Every motorist convicted of a violation for driving through, around or under a closed crossing gate or barrier shall, for a first conviction, be punished by a fine of not less than one

hundred fifty or more than two hundred fifty dollars, imprisonment for not more than thirty days or both. For a second conviction of the same section, if within a period of eighteen months, punishment shall be a fine of not less than three hundred fifty or more than five hundred dollars, imprisonment for not more than ninety days or both. For a third or subsequent violation within a period of eighteen months, a person shall be punished by a fine of not less than six hundred or more than seven hundred dollars, imprisonment for not more than one hundred eighty days or both. N.Y. Veh. & Traf. Law § 1170(b) (2009).

It is unlawful in New York for a motorist to drive a vehicle to the left of the center of the roadway when approaching within 100 feet of or traversing any highway-rail crossing. N.Y. Veh. & Traf. Law § 1125 (2009).

New York law prohibits motorists from driving a vehicle at a speed greater than that which is reasonable and prudent under the conditions present and with regard to the actual and potential hazards. Consistent with this prohibition, motorists are required to drive at an appropriately reduced speed when approaching and crossing a highway-rail crossing. N. Y. Veh. & Traf. Law § 1180 (2009).

It is unlawful in New York to stop, stand or park a vehicle on any railroad track, except when it is necessary to avoid conflict with other vehicles or when complying with the law or the directions of police officer or traffic control device. Except when actually engaging in loading or unloading passengers or merchandise, no person may park a vehicle, whether occupied or not, within 50 feet of the nearest rail of a highway-rail crossing, unless a different distance is specified by signs, markings or parking meters. N.Y. Veh. & Traf. Law § 1202(1)(h)-(3) (2009).

NORTH CAROLINA

It is unlawful for any motorist in North Carolina to drive to the left side of the center of the highway to overtake and pass another vehicle at any highway-rail crossing. N.C. Gen. Stat. § 20-150(c) (2008).

Motorists are also required to keep to the right half of the highway at all times while passing over a highway-rail crossing. N.C. Gen. Stat. § 20-147 (2008).

North Carolina law prohibits motorists from driving onto any highway-rail unless there is adequate space on the other side of the crossing to accommodate their vehicle without obstructing the passage of other vehicles, pedestrians or trains, even if there is a traffic signal indicating it is safe, to proceed. N.C. Gen. Stat. § 20-142.5 (2008).

Penalty

A motorist violating any provision of Section 20-142.5 is guilty of an infraction and may be punished. N.C. Gen. Stat. § 20-142.5 (2008).

Effective Jan.1,1995, the penalty was fixed at a period of imprisonment not to exceed sixty days, a fine of not more than one hundred dollars or both. N.C. Gen. Stat. § 20-176 (2008).

The North Carolina Department of Transportation has the authority to designate a highway-rail crossing as particularly dangerous and may erect a stop sign at the crossing. The driver of any vehicle is then required to stop within 15 to 50 feet of the nearest rail of the railroad and may not move over the crossing except upon exercising due care. N.C. Gen. Stat. § 20-142.2 (2008).

Penalty

Any motorist violating any provision of Section 20-142.2, is guilty of an infraction and may be punished. N.C. Gen. Stat. § 20-142.2 (2008). See also, N.C. Gen. Stat. § 20-176 concerning punishment.

North Carolina law requires motorists approaching a highway-rail crossing to come to a full stop within 15 to 50 feet of the nearest rail of the railroad and to remain stopped until they can proceed over the crossing safely. These requirements are applicable at highway-rail crossings when the following circumstances prevail:

- (1) Where warning of an approaching train is being given by a clearly visible electrical or mechanical device.
- (2) When a crossing gate is lowered or a flagman is giving warning of an approaching or passing train.
- (3) When a train approaching a highway-rail crossing within 1,500 feet is emitting a signal audible from that distance, and, because of its speed or close proximity to the crossing, constitutes an immediate hazard.
- (4) Where a train is in hazardous proximity to the crossing and is plainly visible.

It is unlawful in North Carolina for any motorists to drive any vehicle through, around or under any crossing gate or barrier that is closed or is being opened or closed. N.C. Gen. Stat. § 20-142.1(a)(b) (2008).

When complying with the stopping requirements at a highway-rail crossing, a motorist must keep his vehicle as far to the right of the highway as possible and may not form two lanes of traffic unless the roadway is marked with four or more lanes of traffic. N.C. Gen. Stat. § 20-142.1(c)(2008).

Penalty

A violation of any of the provisions of Section 20-142.1 constitutes an infraction and is punishable. N.C. Gen. Stat. § 20-142.1(d) (2008). See also, Section 20-176 concerning punishment.

NORTH DAKOTA

Upon approaching a highway-rail crossing in North Dakota, motorists are required to bring their vehicles to a full stop within 15 to 50 feet of the nearest rail of the tracks and may not

proceed across until it is safe to do so. These regulations apply at highway-rail crossings under the following circumstances:

- (1) Where warning of an approaching train is being given by a clearly visible electrical or mechanical device.
- (2) Where a crossing gate is down or a flagman is giving a signal indicating an approaching or passing train.
- (3) When a train approaching a crossing within approximately 1,500 fifty feet is emitting a signal audible at that distance and, because of its speed or close proximity to the crossing, constitutes an immediate hazard.
- (4) Where a train is in close proximity to the crossing and is clearly visible.

Motorists are prohibited from driving any vehicle through, around or under any crossing gate or barrier that is closed or is in the process of being opened or closed. Motorists are also prohibited from driving past a flagman until the flagman signals the way is clear to proceed. N.D. Cent. Code § 39-10-41(1)(2) (2009).

The North Dakota Highway Department, along with local authorities if applicable, is vested with statutory authority to designate a highway-rail crossing as particularly dangerous and may erect a stop sign at the crossing. When motorists approach a crossing where a stop sign has been installed, they must bring their vehicle to stop within 15 to 50 feet of the nearest rail of the tracks and may only proceed after exercising due care. N.D. Cent. Code § 39-10-42 (2009).

Except in an instance when a lower speed is specified, motorists in North Dakota are prohibited from exceeding a speed of twenty miles an hour when approaching within 50 feet of a highway-rail crossing when the motorist's view is obstructed. "A motorist's view is considered to be obstructed when at any time during the last 200 feet of the approach to the crossing he does not have a clear and uninterrupted view of the crossing and of any traffic on the railway for a distance of 400 feet in each direction from the crossing." N.D. Cent. Code § 39-09-02(a) (2009).

North Dakota's basic speed rule refers to speed at highway-rail crossing in addition to the prohibited identified in § 39-09-02(a). The statute says, in part, that no person may drive a vehicle at a speed greater than that which is reasonable and prudent under the conditions present and with regard to the actual and potential hazards. Consistent with this prohibition, motorists are required to drive at a safe and appropriate speed when approaching and crossing a highway-rail crossing. N.D. Cent. Code § 39-09-01 (2009).

North Dakota law prohibits motorists from driving to the left side of the center of the roadway to pass or overtake another vehicle while within 100 feet of or when moving over a highway-rail crossing. N.D. Cent. Code § 39-10-14 (2009).

North Dakota law prohibits the stopping, standing or parking of a vehicle within 15 feet of the nearest rail of a highway-rail crossing. N.D. Cent. Code § 39-10-49(9) (2009).

OHIO

Ohio law requires motorists approaching a highway-rail crossing to bring their vehicles to a full stop within 15 to 50 feet of the nearest rail of the railroad. A motorist may not proceed across until it safe to do so. These requirements are applicable at highway-rail crossings under the following circumstances:

- (1) Where warning of an approaching train is being given by a clearly visible electrical or mechanical signal.
- (2) When a crossing gate is lowered or a flagman is giving a signal indicating the approach or passage of a train.
- (3) When a train approaching within approximately 1,500 feet of the crossing is emitting a signal audible from that distance; and because of its speed or close proximity to the crossing, constitutes an immediate hazard.
- (4) When an approaching train is in hazardous proximity to a crossing and is plainly visible.

It is unlawful in Ohio for anyone to drive any vehicle through, around or under a crossing gate or barrier that is closed or is being opened or closed. Ohio Rev. Code Ann. § 4511.62(A)(B) (2009).

The Ohio Department of Transportation and local authorities with approval from the Department of Transportation may designate a highway-rail crossing as particularly dangerous and may require that a stop sign be erected at the crossing. At highway-rail crossings with stop signs, the driver of any vehicle must bring that vehicle to a full stop within 15 to 50 feet of the nearest rail of the railroad and may not proceed across the crossing except after exercising due care. Ohio Rev: Code Ann. § 4511.61 (2009).

Ohio law prohibits motorists from driving vehicles on the left side of the roadway when approaching within one hundred feet of or traversing any highway-rail crossing. Ohio Rev. Code Ann. § 4511.30 (2009).

Ohio prohibits motorists from standing or parking a vehicle within 50 feet of the nearest rail of a highway-rail crossing. Ohio Rev. Code Ann. § 4511.68(1) (2009).

It is unlawful in Ohio for anyone to drive a vehicle onto any highway-rail crossing unless there is sufficient space on the other side of the crossing to accommodate the vehicle without obstructing the passage of other vehicles, pedestrians or trains, even if the traffic control signal indicates that it is safe to proceed. Ohio Rev. Code Ann. § 4511.712 (2009).

Penalty

Ohio lists first and subsequent offenses for violations of all of the foregoing sections as misdemeanors of different degrees. The reader may review them at Section 4511.99.

OKLAHOMA

Oklahoma law prohibits any person driving a vehicle from passing through a highway-rail crossing without first coming to a full stop within 15 to 50 feet of the nearest rail of the railroad. The driver may then proceed only when it can be done safely. These requirements are applicable at highway-rail crossings under the following circumstances:

- (1) Where warning of the immediate approach of a train is being given by a clearly visible electrical or mechanical device.
- (2) Where a crossing gate is lowered or a flagman is giving a signal indicating the approach or passage of train.
- (3) Where a train approaching within approximately 1,500 feet of a crossing is emitting a signal audible at that distance, and because of its speed or close proximity to the crossing, constitutes an immediate hazard.
- (4) Where a train is in hazardous proximity to a crossing and is plainly visible.

It is unlawful in Oklahoma for any motorists to drive a vehicle through, around or under any crossing gate or barrier that is closed or is in the process of being opened or closed. Okla. Stat. Tit. 47 § 11-701(a)(b) (2008).

Oklahoma motorists are prohibited from stopping, standing or parking a vehicle within 50 feet of the nearest rail of a highway-rail crossing except when it is necessary to avoid conflict with other traffic, when in compliance with the law or when under the direction of a police officer or traffic control device. Okla. Stat. Tit. 47 § 11-1003 (2008).

Oklahoma's basic speed rule requires motorists at all times to drive their vehicles at a careful and prudent speed not greater nor less than what is reasonable and proper with regard to existing conditions. Consistent with this basic speed rule, motorists in Oklahoma are required to drive at an appropriately reduced speed when approaching and crossing a highway-rail crossing. Okla. Stat. Tit. 47 § 11-801(d) (2008).

It is unlawful in Oklahoma for motorists to drive to the left side of a roadway when approaching within 100 feet of or over any highway-rail crossing. Okla. Stat. Tit. 47 § 11-306(a) (2008).

OREGON

It is unlawful for any person driving a vehicle to drive upon or over a highway-rail crossing without first coming to a full stop at a clearly marked stop line or, if there is no line, within 15 to 50 feet of the nearest rail of the tracks. Drivers may not proceed across the tracks until it is safe to do so. These requirements are applicable at highway-rail crossings under the following circumstances:

- (1) Where warning of the immediate approach of a train is being given by a clearly visible electrical or mechanical device.

- (2) Where a crossing gate is lowered or a flagman is giving a signal indicating the approach or passage of a train.
- (3) When a train is clearly visible and because of its nearness to the crossing constitutes an immediate hazard.
- (4) Where an approaching train is giving an audible signal because its speed and nearness to the crossing constitute an immediate hazard.

It is unlawful for any driver to drive through, around or under a crossing gate or barrier that is closed or is in the process of being opened or closed. Or. Rev. Stat. § 811.455(a)(b)(c) (2008).

Penalty

A motorist in Oregon is guilty of failure to stop for a railroad signal, a Class C traffic infraction, for failure to comply with the requirements stated in Section 811.455. Or. Rev. Stat. § 811.455(1)(2) (2008).

Oregon law prohibits motorists from driving onto a highway rail crossing when there is not sufficient space on the other side to accommodate their vehicles without obstructing the passage of other vehicles, pedestrians or trains, notwithstanding a traffic control device indicating it is safe to proceed. Or. Rev. Stat. § 811.475(1)(2) (2008).

Penalty

A violation of Section 811.475 constitutes the offense of obstruction of a rail crossing and is a Class C traffic infraction. Or. Rev. Stat. § 811.475(1)(3) (2008).

Oregon law prohibits motorists from driving to left of the center of the roadway when approaching a highway rail crossing where the driver's view is obstructed for such a distance as to create a hazard if a vehicle approaches from the opposite direction and is prohibited from driving to the left side of the center of the road at any highway rail crossing. Or. Rev. Stat. § 811.305(1) (2008).

Penalty

Any motorist failing to comply with the provisions of Section 811.305 commits the offense of driving on the left at a highway rail crossing which is a Class B traffic infraction. Or. Rev. Stat. § 811.305(3) (2008).

Editor's note: For an explanation of the classification of traffic infractions and a listing of fines for offenses under the foregoing sections, consult Sections 153.610 and 153.623 contained in Oregon's criminal statutes.

PENNSYLVANIA

Pennsylvania law prohibits motorists from moving through a highway rail crossing without first coming to a complete stop within 15 to 50 feet of the nearest rail of the tracks. Motorists are not permitted to traverse the crossing unless it can be done safely. These requirements are applicable at highway rail crossings under the following circumstances:

- (1) Where warning of an approaching train is being given by a clearly visible electrical or mechanical device.
- (2) Where a crossing gate is lowered or a flagman is giving a signal indicating an approaching or passing train.
- (3) Where a train approaching within 1,500 feet of a crossing is emitting signal audible from that distance and, because of its speed or nearness to the crossing, constitutes an immediate hazard.
- (4) Where a train is in close proximity to the crossing and is plainly visible.

It is unlawful in Pennsylvania for any motorist to drive any vehicle through, around or under any crossing gate or barrier while the gate or barrier is closed or is in the process of being opened or closed. 75 Pa. Cons. Stat. § 3341(a)(b) (2009).

Penalty

A violation of subsection (a) constitutes a summary offense punishable by a fine of from fifty to two hundred dollars. However, a violation of subsection (b) is considered a summary offense punishable by a fine of from two hundred to five hundred dollars. 75 Pa. Cons. Stat. §3341(c) (2009).

Pennsylvania law prohibits anyone from parking a vehicle within 50 feet of the nearest rail of a highway rail crossing. 75 Pa. Cons. Stat. § 3353(3) (2009).

Penalty

A person violating Section 3353(3) is guilty of a summary offense and, if convicted, shall receive a fine of not more than fifteen dollars. 75 Pa. Cons. Stat. § 3353 (E) (2009).

It is unlawful in Pennsylvania for a motorist to drive any vehicle on the left side of the roadway when approaching with 100 feet of or traversing a highway rail crossing. 75 Pa. Cons. Stat. § 3306(a)(2) (2009).

Pennsylvania's basic speed rule prohibits motorists from driving a vehicle at a speed greater than that which is reasonable and prudent under the existing conditions and having regard to the actual and potential hazards, "...nor at a speed greater than will permit the driver to bring his vehicle to a stop within the assured clear distance ahead. Consistent with the speed prohibition, drivers are required to drive at a safe and appropriate speed when approaching and crossing a highway rail crossing." 75 Pa. Cons. Stat. § 3361 (2009).

RHODE ISLAND

Rhode Island law requires drivers approaching a highway rail crossing to come to a full stop within 15 to 50 feet of the nearest rail of the tracks. Drivers must not proceed until the crossing can be made safely. These requirements are applicable at highway rail crossings under the following circumstances:

- (1) Where warning of an approaching train is being given by a clearly visible electrical or mechanical device.
- (2) When a crossing gate is lowered or a flagman is giving a signal indicating an approaching or passing train.
- (3) Where a train approaching within approximately 1,500 feet of a crossing is emitting a signal audible at that distance, and because of its speed or close proximity to the crossing, constitutes an immediate hazard.
- (4) Where a train is in hazardous proximity to a crossing and is plainly visible. R.I. Gen. Laws § 31-20-1 (2008).

It is unlawful for anyone in Rhode Island to drive any vehicle through, around or under any crossing gate or barrier that is closed or is in the process of being opened or closed. R.I. Gen. Laws § 31-20-2 (2008).

The State Traffic Commission in Rhode Island and local authorities with the approval of the State Traffic Commission have the authority to designate a highway rail crossing as particularly dangerous and erect a stop sign at the crossing. At any crossing where a stop sign has been installed, motorists are required to stop within 15 to 50 feet of the nearest rail of the tracks and may only proceed after exercising due care. R.I. Gen. Laws § 31-20-3 (2008).

Rhode Island's basic speed rule may be found at Section 31-14-1. Consistent with the requirements of that rule, drivers are required to drive at an appropriately reduced speed when approaching and crossing a highway rail crossing. R.I. Gen. Laws § 31-14-3 (2008).

Motorists in Rhode Island are prohibited from driving to the left side of the roadway when approaching within 100 feet of or traversing any highway rail crossing. R.I. Gen. Laws §31-15-7(2) (2008).

SOUTH CAROLINA

South Carolina law prohibits motorists from traversing a highway rail crossing without first bringing their vehicle to a complete stop within 15 to 50 feet of the nearest rail of the tracks. Drivers must refrain from passing over the crossing until it can be done safely. These requirements are applicable under the following circumstances:

- (1) Where warning of an approaching train is being given by a clearly visible electrical or mechanical device.
- (2) Where a crossing gate is lowered or a flagman is giving a signal indicating the approach or passage of a train.

- (3) Where a train approaching within approximately 1,500 feet of a highway rail crossing is emitting a signal audible at that distance and, because of its speed or close proximity to the crossing, constitutes an immediate hazard.
- (4) Where a train is in hazardous proximity to a crossing and is plainly visible.

It is unlawful in South Carolina for any motorist to drive any vehicle through, around or under any crossing gate or barrier that is closed or is in the process of being opened or closed. S.C. Code Ann. § 56-5-2710(a)(b) (2008).

The South Carolina Department of Highways and Public Transportation and local authorities with the approval of the Department have the authority to designate a highway-rail crossing as particularly dangerous and may erect a stop sign at the crossing. At any crossing where a stop sign is placed, motorists are required to stop within 15 to 50 feet from the nearest rail and must proceed only upon exercising due care. S.C. Code Ann. § 56-5-2715 (2008).

South Carolina law prohibits motorists from driving at a speed greater than that which is reasonable and prudent under the conditions present and with regard to the actual and potential hazards. Consistent with this rule, drivers must drive at an appropriately reduced speed when approaching and crossing a highway rail crossing. S.C. Code Ann. § 56-5-1520 (2008).

It is unlawful in South Carolina for motorists to stop, stand or park a vehicle on any railroad track, except when it is necessary to avoid conflict with other traffic, when in compliance with the law or under the direction of a police officer or official traffic control device. S.C. Code Ann. § 56-5-2530(A) 1-h (2008).

No person may park a vehicle, whether occupied or not, within 50 feet of the nearest rail of a highway rail crossing, except while actually loading or unloading property or passengers. S.C. Code Ann. § 56-5-2530(3-a) (2008).

SOUTH DAKOTA

The South Dakota Department of Transportation and local authorities with the approval of the Department have statutory authority to designate a highway rail crossing as particularly dangerous and may place a stop sign at the crossing. At any crossing where a stop sign is located, motorists must stop within 15 to 50 feet of the nearest rail of the tracks and may not proceed except upon exercising due care. S.D. Codified Laws Ann. § 32-2-7 (2009).

Penalty

A violation of Section 32-29-7 is a Class 2 misdemeanor. S.D. Codified Laws Ann. § 3229-7 (2009).

South Dakota law prohibits motorists from driving any vehicle on the left side of the highway when approaching within 100 feet of or traversing a highway rail crossing. S.D. Codified Laws Ann. § 32-26-36 (2009). Also see Section 32-26-2 concerning staying to the right when moving over a crossing.

Penalty

Failing to keep to the right of the roadway within one hundred feet of a highway rail crossing is considered a Class 2 misdemeanor in South Dakota. S.D. Codified Laws Ann. § 32-26-36(2009).

South Dakota law requires motorists to slow to a speed of fifteen miles per hour near a highway rail crossing when their view is obstructed. A driver's view is considered to be obstructed if, at any time during the last 200 feet of approach to the crossing, a driver is unable to clearly see any railroad traffic within 400 feet in each direction from the crossing. S.D. Codified Laws Ann. § 32-25-13 (2009).

Penalty

A violation of Section 32-25-13 is considered a Class 2 misdemeanor. S.D. Codified Laws Ann. § 32-25-13 (2009).

It is unlawful for anyone driving a vehicle in South Dakota to traverse a highway rail crossing where warning of an approaching train is being given by a clearly visible or audible signal. At any such crossing, motorists must bring their vehicles to a full stop with 15 to 50 feet of the nearest rail of the tracks and are forbidden to proceed until it can be done safely. S.D. Codified Laws Ann. § 32-29-4 (2009).

Penalty

A violation of Section 32-29-4 is considered a Class 2 misdemeanor. S.D. Codified Laws Ann. § 32-29-4 (2009).

It is unlawful in South Dakota to stop, stand, or park a vehicle on any railroad tracks, except when necessary to avoid conflict with other traffic or when responding to directions from a police officer or traffic control device. S.D. Codified Laws Ann. § 32-30-6.1 (2009).

Penalty

A violation of both Sections 32-29-4 and 32-30-6.2 is a petty offense. S.D. Codified Laws Ann. §§ 32-29-4, 32-30-6.2 (2009).

TENNESSEE

All drivers in Tennessee are required to stop within 15 to 50 feet of the nearest rail of the tracks at any highway rail crossing and may not proceed over the crossing until it can be done safely. These requirements apply under any of the following circumstances:

- (1) Where warning of an approaching train is being given by a clearly visible electrical or mechanical device.

- (2) When a crossing gate is lowered or a flagman is giving a signal indicating the approach or passage of a train.
- (3) Where a train approaching within approximately 1,500 feet of the crossing is emitting a signal audible at that distance and, because of its speed or close proximity to the crossing, constitutes an immediate hazard.
- (4) When a train is in hazardous proximity to a crossing and is clearly visible.

It is unlawful in Tennessee for any person to drive any vehicle through, around or under any crossing gate or barrier that is closed or is in the process of being opened or closed. Tenn. Code Ann. § 55-8-145(a)(b) (2008).

Penalty

A violation of Section 55-8-145 is a Class C misdemeanor. Tenn. Code Ann. § 55-8-145(c) (2008).

The Tennessee Department of Transportation and local authorities with the approval of the Department have statutory authority to designate a highway rail crossing as particularly dangerous one and may require a STOP sign be erected at the crossing. At any such crossing, motorists are required to bring their vehicles to a complete stop within 15 to 50 feet of the nearest rail of the tracks and may proceed only while exercising due care. Tenn. Code. Ann. § 55- 8-146(a) (2008).

Penalty

Failing to comply with any of the provisions of Section 55-8-146 is a Class 2 misdemeanor in Tennessee. Tenn. Code Ann. § 55-8-146(c) (2008).

It is unlawful in Tennessee for anyone to stop, stand or park a vehicle within 50 feet of the nearest rail of the tracks at a highway rail crossing, except where stopping, standing or parking is necessary to avoid conflict with other traffic or under the direction of a police officer or traffic control device. These requirements are only applicable outside the limits of an incorporated municipality in Tennessee. Tenn. Code Ann. § 55-8-160(a) (2008).

Penalty

Failure to comply with any provision of Section 55-8-160 is a Class C misdemeanor. Tenn. Code Ann. 55-8-160(d) (2008).

TEXAS

When approaching a highway rail crossing in Texas, all motorists are required to come to a full stop within 15 to 50 feet of the nearest rail of the tracks and may not proceed over the crossing until it may be done safely. These requirements apply at highway rail crossings under the following circumstances:

- (1) Where warning of an approaching train is being given by a clearly visible electrical or mechanical device.
- (2) Where a crossing gate is lowered or a flagman is giving a signal indicating that a train is approaching or passing.
- (3) Where a train approaching within approximately 1,500 feet of a highway rail crossing is emitting a signal audible at that distance and, because of its speed or close proximity to the crossing, constitutes an immediate hazard.
- (4) Where a train is in hazardous proximity to the crossing and is plainly visible.
- (5) The operator is required to stop by:
 - (A) other law;
 - (B) a rule adopted under a statute;
 - (C) an official traffic control device; or
 - (D) a traffic control signal.

An operator of a vehicle who approaches a railroad grade crossing equipped with railroad crossbuck signs without automatic, electric, or mechanical signal devices, crossing gates, or a flagger warning of the approach or passage of a train is required to yield the right of way to a train in hazardous proximity to the crossing, and proceed at a speed that is reasonable for the existing conditions. If required for safety, the operator shall stop at a clearly marked stop line before the crossing or, if no stop line exists, not closer than 15 feet or farther than 50 feet from the nearest rail.

A driver commits an offense if, as the operator of a vehicle, he or she drives around, under, or through a crossing gate or a barrier at a railroad crossing while the gates or barrier is closed, being closed, or being opened.

Penalty

An offense under this section is punishable by a fine of not less than fifty dollars or more than two hundred dollars. Tex. Transp. Code Ann. § 545.251 (2008).

The Texas Department of Transportation or a local authority with appropriate jurisdiction is authorized to designate a highway rail crossing as a particularly dangerous one and to erect STOP signs or other official traffic control devices at the crossing. At any such crossing, motorists are required to stop their vehicles within 15 to 50 feet of the nearest rail of the tracks and may not proceed except upon exercising due care. Tex. Transp. Code Ann. § 545.252 (2008).

Penalty

An offense under Section 542.252 is punishable by a fine of not less than fifty dollars or more than two hundred dollars.

No vehicle in Texas may be driven to the left side of the roadway when approaching within 100 feet of or traversing a highway rail crossing. Tex. Transp. Code Ann. § 545.056 (2008).

It is unlawful for anyone to stop, stand or park a vehicle on a railroad track, except when it is necessary to avoid conflict with other traffic, when complying with the law or when following the directions of a police officer or traffic control device. Tex. Transp. Code. Ann. § 545.302 (2008).

Except to temporarily load or unload passengers or merchandise, no one in Texas may park a vehicle, whether occupied or not, within 50 feet of the nearest rail of a highway rail crossing. Tex. Transp. Code, Ann. § 545.302 (2008).

It is unlawful for a person to drive a vehicle on a highway at a speed greater than that which is reasonable and prudent under the existing circumstances. Consistent with the prohibition concerning speed, the driver of any vehicle must drive at an appropriately reduced speed when approaching and crossing a highway-rail crossing. Tex. Transp. Code Ann. § 545.351 (2008).

UTAH

Utah law prohibits any person from operating a vehicle at a speed other than what is reasonable and prudent under the conditions present and with regard to the actual and potential hazards. This prohibition applies when approaching and crossing a highway rail crossing. Utah Code Ann. § 41-6-46(1) (2009).

When operating a vehicle approaching a highway rail crossing, motorists are required to come to a full stop within 15 to 50 feet of the nearest rail of the tracks and may not proceed until it is safe to do so. These requirements are applicable at highway rail crossings under the following circumstances:

- (1) Where warning of an approaching train is being given by an electrical or mechanical signal.
- (2) Where a crossing gate is lowered or a flagman is giving a signal indicating an approaching or passing train.
- (3) Where a train approaching within approximately 1,500 feet of a crossing is emitting a signal audible at that distance and, because of its speed or close proximity to the crossing, constitutes an immediate hazard.
- (4) When a train is in hazardous proximity to a crossing and is plainly visible.

In Utah, it is unlawful for any person to drive any vehicle through, around or under a crossing gate or barrier that is closed or is in the process of being opened or closed. Utah Code Ann. § 41-6-95(a)(b) (2009).

Utah prohibits motorists from driving a vehicle over a crossing if there is not sufficient room on the other side of the crossing to accommodate their vehicles without obstructing the passage of other vehicles, pedestrians or trains, even if a traffic control signal is giving an indication to proceed. Utah Code Ann. § 41-6-109.10 (2009).

No vehicle in Utah may be operated on the left side of the roadway when approaching within 100 feet of a highway rail crossing unless otherwise indicated by a traffic control device or a law enforcement officer. Utah Code Ann. § 41-6-58 (2009).

VERMONT

Vermont law requires motorists, when approaching a highway rail crossing, to bring their vehicles to a stop within 15 to 50 feet of the nearest rail of the tracks. Moving over the crossing is forbidden unless it can be done safely. These requirements apply at highway rail crossings under the following conditions:

- (1) Where warning of an approaching train is being given by a clearly visible electrical or mechanical device.
- (2) Where a crossing gate is lowered or a flagman is giving a signal indicating the approach or passage of a train.
- (3) Where a train approaching within eight rods (1,320 feet) of the crossing is emitting a signal audible at that distance and, because of its speed or close proximity to the crossing, constitutes an immediate hazard.
- (4) When a train is in hazardous proximity to a crossing and is plainly visible.
- (5) Where a stop sign has been erected.

It is unlawful in Vermont for any person to drive any vehicle through, around or under any crossing gate or barrier while it is closed, or is in the process of being opened or closed. Vt. Stat. Ann. tit. 23, § 1071(a)(b) (2008). See also, Title 23, Section 1006.

Vermont's Section 1071 differs relates to stops at highway- rail grade crossings. Part (c) of this section states "Nothing in this section prohibits a person from operating a motor vehicle across the tracks of a railroad at grade while a mechanical warning signal is in operation, provided he first brings the vehicle to a full stop and reasonably ascertains that the tracks can be crossed safely." Vt. Stat. Ann. tit. 23, § 1071(c) (2008).

In Vermont, the traffic committee has the authority to designate a highway rail crossing as particularly dangerous and the agency of transportation (department of highways) shall erect a stop sign at any such crossing. Vt. Stat. Ann. Tit. 23, § 1006 (2008).

It is unlawful for any vehicle to be driven to the left side of the center of the roadway in overtaking and passing another vehicle when approaching within 100 feet of or traversing a highway rail crossing. Vt. Stat. Ann. Tit. 23 § 1035(b) (2008).

Vermont prohibits persons from driving a vehicle on a highway at a speed greater than that which is reasonable and prudent under the conditions present and with regard to the actual and potential hazards. Consistent with this prohibition, drivers are required to drive at an appropriately reduced speed when approaching and crossing a highway rail crossing. Vt. Stat. Ann. Tit. 23 §1081(d) (2008).

VIRGINIA

Except within the limits of cities or towns, Virginia law requires drivers of motor vehicles when approaching a highway rail crossing to come to a full stop within 15 to 50 feet of the nearest rail of the railroad and not proceed over the crossing until it can be done safely. These regulations are applicable under the following conditions:

- (1) Where warning of an approaching train is being given by a clearly visible electrical or mechanical device.
- (2) Where a crossing gate is lowered or a flagman is giving a signal indicating an approaching or passing train.
- (3) When a train is approaching a highway rail crossing and is emitting signals within a distance of 300 to 600 hundred yards from the crossing. See Section 56-414 for whistle and horn requirements in Chapter 5.
- (4) Where a train is in hazardous proximity to the crossing and is plainly visible.

Virginia law prohibits drivers of all vehicles from driving through, around or under any crossing gate or barrier that is closed or is in the process of being opened or closed. Va. Code Ann. § 42.2-885 (2009).

Virginia law expressly prohibits drivers from disobeying a clearly visible or audible railroad crossing signal when giving warning of the immediate approach of a train at a highway rail crossing. Va. Code Ann. § 46.2-884 (2009).

Virginia law makes it an offense of reckless driving when any driver overtakes or passes another vehicle at any highway rail crossing, unless permitted to do so by a traffic light or law enforcement officer. Va. Code Ann. § 46-2-858 (2009).

WASHINGTON

Washington law requires any person driving a vehicle approaching a highway rail crossing to bring their vehicle to a stop within 15 to 50 feet of the nearest rail of the tracks. Drivers may not proceed over the crossing until it can be done safely. These requirements are applicable at highway rail crossings under the following circumstances:

- (1) Where warning of an approaching train is given by a clearly visible electrical or mechanical device.
- (2) Where a crossing gate is lowered or a flagman is giving a signal indicating an approaching or passing train.
- (3) Where an approaching train is in hazardous proximity to a crossing and the train is plainly visible.

Washington law expressly prohibits persons from driving their vehicle through, around or under any crossing gate or barrier that is closed or is being opened or closed. Wash. Rev. Code Ann. 46.61.340 (2008).

Washington law prohibits the stopping, standing or parking of a vehicle on a railroad track or within 50 feet of the nearest rail of the track except when it is necessary to avoid conflict with other traffic or when in compliance with the law or the direction of a police officer or an official traffic control device; an exception is made for the temporary loading or unloading of property or passengers. Wash. Rev. Code Ann. § 46.61.570(1)(c) (2008).

The Washington State Department of Transportation and local authorities within their respective jurisdictions have statutory authority to designate a highway rail crossing as particularly dangerous and may erect stop signs at the crossing. At any crossing where a stop sign has been erected, all drivers must bring their vehicles to a full stop within 15 to 50 feet of the nearest rail of the tracks and may move over the crossing upon exercising due care. Wash. Rev. Code Ann. 46.61.345 (2008).

Washington law expressly prohibits any person from driving a vehicle at a speed greater than that which is reasonable and prudent the conditions present and with regard to the actual and potential hazards. Consistent with this prohibition, drivers must drive at an appropriately reduced speed when approaching and crossing a highway rail crossing. Wash. Rev. Code Ann. §46.61.400(3) (2008).

WEST VIRGINIA

West Virginia law requires any person driving a vehicle approaching a highway rail crossing to bring the vehicle to a full stop within 15 to 50 feet of the nearest rail of the tracks. Drivers must not proceed through the crossing until it can be done safely. These requirements are applicable at highway rail crossings under the following circumstances:

- (1) Where warning of the immediate approach of train is being given by a clearly visible electrical or mechanical device.
- (2) Where a crossing gate is lowered or a flagman is giving a signal indicating the approach or passage of a train.
- (3) When a train approaching within approximately 1,500 feet of a highway rail crossing is emitting a signal audible from that distance and, because of its speed or close proximity to the crossing, constitutes an immediate hazard.
- (4) Where a train is in hazardous proximity to a crossing and is plainly visible.

It is unlawful in West Virginia for any person to drive a vehicle through, around or under any crossing gate or barrier that is closed or is in the process of being opened or closed. W. Va. Code § 17C-12-1(a)(b) (2008).

The State Road Commission and local authorities, with the approval of the State Road Commission, are authorized to designate particularly dangerous highway/rail crossings and to erect a stop sign at the crossing. Where such a sign is erected, the driver of any vehicle is required to stop within 15 to 50 feet from the nearest rail and only proceed while exercising due care. W. Va. Code § 17C-12-2 (2008).

West Virginia law prohibits motorists from driving to the left side of the roadway when approaching within 100 feet of or traversing any highway rail crossing. W. Va. Code §17C-7-6(a) (2008).

West Virginia law prohibits anyone from stopping, standing or parking a vehicle within 50 feet of the nearest rail of a railroad crossing. W.Va. Code § 17C-13-3(a)(2008)

It is unlawful for anyone in West Virginia to drive a vehicle at a speed greater than that which is reasonable and prudent under the conditions present and with regard to the actual and potential hazards. Consistent with this prohibition, drivers must drive at an appropriately reduced speed when approaching and crossing a highway rail crossing. W. Va. Code § 17C-6-1(c) (2008).

WISCONSIN

Wisconsin expressly prohibits drivers from driving on or over a highway rail crossing when any of the following circumstances exist:

- (1) Where a signal to stop is being given by a traffic officer or railroad employee.
- (2) Where any warning device is giving a signal to stop, except when the driver of a vehicle, after complying with the stop signal, finds that no train is approaching. In that case, the driver may proceed.

It is unlawful for the driver of a vehicle to drive through, around or under any crossing gate or barrier that is closed or is in the process of being opened or closed. Wis. Stat. § 346.44 (2009).

Wisconsin prohibits vehicles from overtaking and passing any other vehicle proceeding in the same direction within 100 feet of or traversing any highway rail crossing, unless the roadway is of sufficient width for two or more lines of vehicles to lawfully proceed simultaneously or unless the driver is directed to pass by a traffic officer. Wis. Stat. § 346.10(1) (2009).

Wisconsin law prohibits drivers from driving a speed greater than that which is reasonable and prudent under the conditions present and with regard to the actual and potential hazards. Consistent with this prohibition, drivers must drive at an appropriately reduced speed when approaching and crossing a highway rail crossing. Wis. Stat. § 346.57(3) (2009).

It is unlawful to stop or leave standing any vehicle, whether occupied or not, and whether temporary or otherwise, within 25 feet of the nearest rail of a highway rail crossing. Wis. Stat. § 346.52(i) (2009).

WYOMING

Wyoming law requires any driver approaching a highway rail crossing to bring their vehicle to a stop within 15 to 50 feet of the nearest rail of the tracks. Drivers are not to proceed

through the crossing until it can be done safely. These requirements are applicable at highway rail crossings under the following circumstances:

- (1) Where warning of the immediate approach of a train is given by a clearly visible electrical or mechanical device.
- (2) When a crossing gate is lowered or a flagman is giving a signal indicating the approach or passage of a train.
- (3) When a train approaching within approximately 1,500 feet of a highway rail crossing is emitting a signal audible at that distance and, because of its speed or close proximity to the crossing, constitutes an immediate hazard.
- (4) Where a train is in hazardous proximity to the crossing and is plainly visible.

Wyoming law prohibits drivers from driving through, around or under any crossing gate or barrier that is closed or is being opened or closed. Wyo. Stat. 31-5-510 (2009).

No vehicle in Wyoming may be driven to the left side of the roadway when approaching within 100 feet of or traversing a highway rail crossing. Wyo. Stat. 31-5-205(a) (2009).

Wyoming law prohibits anyone from driving a vehicle on a highway at a speed greater than that which is reasonable and prudent under the conditions present and with regard to the actual and potential hazards. Consistent with this prohibition, everyone must drive at a safe and reduced speed when approaching and crossing a highway rail crossing. Wyo. Stat. 31-5-301(a) (2009).

It is unlawful in Wyoming for any person to stop, stand, or park a vehicle on any railroad track, except when it is necessary to avoid conflict with other traffic, or when complying with the law or directions of a police officer or traffic control device. Wyo. Stat. 31-5-504(H) (2009).

Wyoming law also prohibits anyone from parking a vehicle within 50 feet of the nearest rail of a highway rail crossing, except temporarily to load or unload property or passengers. Wyo. Stat. 31-5-504 (iii)(A) (2009).

CHAPTER 9: TRESPASSING

CHAPTER OVERVIEW

In all of the states it is a violation of law to trespass on any private property without permission of the owner or without having an official reason, and all states provide for minimal punishments.

This chapter provides a state-by-state listing of trespassing laws as they pertain to railroad property and equipment. In the majority of states, trespassing is in sections of the respective codes concerned with property crimes and general offenses. A number of states specifically forbid trespassing on railroad property and facilities and codify it. When punishments are spelled out in the statutes, they are listed. As in other chapters, the relevant code sections are listed.

STATE LAWS, REGULATIONS AND PENALTIES

ALABAMA

Penalty

In Alabama, a person is guilty of criminal trespass in the second degree if he knowingly enters or remains unlawfully in a building (railroad property falls within this definition) or upon real property which is fenced or enclosed in a manner designed to exclude intruders. Ala. Code §§13A-7-1 and 13A-7-3 (2008).

Penalty

A person is guilty of criminal trespass in the first degree if he knowingly enters or remains unlawfully in a dwelling. Criminal trespass in the first degree is a Class A misdemeanor. Ala. Code § 13A-7-2 (2008). Also see Section 13A-7-4.

ALASKA

Alaska has no trespass regulations or laws specifically targeted to railroad property or equipment. However, a person shall be guilty of a criminal trespass in the second degree if that person enters or remains unlawfully, in or upon premises, or in a propelled vehicle. A criminal trespass in the second degree is a Class B misdemeanor. Alaska Stat. § 11.46.330 (2008).

ARIZONA

State law in Arizona makes it a third degree crime for a person to knowingly enter or remain unlawfully on the railroad right-of-way, the storage or switching yards or rolling stock of a railroad company. The section does not specify a range of punishment. Ariz Rev. Stat. Ann. § 13-1502 (2009).

ARKANSAS

Penalty

It is unlawful in Arkansas for any person to board any passenger, freight, or other railway train, whether moving or standing still, for any purpose and without good faith intending to become a passenger, and with no lawful business thereon, and with intent to obtain a free ride, however short the distance, without consent of person or persons in charge. To do so constitutes a misdemeanor, and upon conviction a person may be fined not less than one dollar or more than ten dollars. Ark. Stat. Ann. § 23-12-802 (2008).

No person may use any railroad track as a common highway for horses, cattle, or vehicles other than those propelled on the rails of the railroad in the operation thereof. A person, upon conviction, may be fined in any sum not exceeding twenty-five dollars for each offense and may be imprisoned in the county jail for a period no exceeding thirty days. Ark. Stat. Ann. § 23-12-803 (2008).

CALIFORNIA

It is unlawful in California for anyone to enter or remain upon the property of any railroad where entry, presence or conduct upon the property interferes with or interrupts the safe and efficient operation of any locomotive.

Penalty

A violation of this section is a misdemeanor under California law. Cal. Penal Code § 369i (2008). See also, Cal. Penal Code § 554 (2008), regarding posting of property.

COLORADO

Colorado prohibits the boarding of a train or entering a train station or other facility of public transportation while carrying a loaded firearm or explosive or incendiary device.

Penalty

In Colorado, a person commits a Class 6 felony if, without legal authority, he has any loaded firearm or explosive or incendiary device in his possession in, or carries, brings, or causes to be carried or brought any of such items into, and facility of public transportation. Col. Rev. Stat. § 18-9-118 (2008).

CONNECTICUT

The criminal code of Connecticut lists three degrees of criminal trespass and includes railroad car within the meaning of a building. Conn. Gen. Stat. §§ 53a-107-108-109 (2009).

A person is guilty of simple trespass of railroad property when, knowingly that person is not licensed or privileged to do so enters or remains on railroad property without lawful authority or consent of the railroad carrier. Conn. Gen. Stat. § 53a-110d. (2009).

Penalty

Violation of 53a-110d is an infraction. Conn. Gen. Stat. § 53a-110d. (2009).

DELAWARE

It is unlawful for any person, other than those connected with the railroad, to walk along the tracks, except when the tracks are laid along a public road or street. No person may lead or drive any horse or other animal upon railroad property within the fences and guards other than at farm crossings. Violation results in a ten dollar penalty in addition to all damages which are sustained thereby to the aggrieved party. Del. Code Ann. tit. 2, § 1811 (2009).

No person in Delaware other than those connected with or employed upon the railroad shall walk along the tracks of any such railroad, except when the tracks are laid along public roads or streets. Del. Code Ann. tit. 2, § 1811 (2009).

The Governor of Delaware is empowered to appoint any number of special constables for any railroad upon request. The constables shall have all the powers of a county constable, but shall receive no compensation or fees except as shall be paid by the railroad company. The special constables shall have arrest powers on railroad property and may do so for offenses including vagrancy or trespass.

Penalty

The person so arrested, if proven guilty, may be committed to the county jail by any justice of the peace for a term of not exceeding five days. Del. Code Ann. tit. 10, § 2715 (2009).

DISTRICT OF COLUMBIA

In the District of Columbia it is unlawful for any unauthorized person to loiter, walk, ride, drive, or other wise trespass upon railroad tracks, the bridge or elevated or depressed structures carrying tracks, locomotives or cars operated on tracks, in tunnels or underpasses designed solely for the accommodation of tracks of any steam, diesel, or electric railroad company operating in the District of Columbia. 24 DCMR § 120 (2008).

FLORIDA

No person may without authority or without permission ride or attempt to ride on any railroad train with the intention of being transported free.

Penalty

A conviction is a misdemeanor of the second degree, punishable as provided in Sections 775.082 - 775.083. Fla. Stat. Ann. § 860.04 (2009).

GEORGIA

Georgia law states that any person intruding unlawfully upon the tracks of a railroad company without consent is guilty of a misdemeanor. Ga. Code Ann. § 46-8-380 (2009).

Penalty

A person is guilty of criminal trespassing when he knowingly and without authority:

- (1) Enters upon the land or premises of a railroad or into a railroad car.
- (2) Enters a railroad car after being notified by the owner that such entry is forbidden.
- (3) Remains upon the land after being told to leave.

Violation of this section is a misdemeanor. Ga. Code Ann. § 16-7-21 (2009).

Any person who rides or attempts to ride on a railroad train of any character and conceals himself from the conductor or train authorities by hiding under the train, or on top of the train, or in box cars, on tinders, or elsewhere, for the purposes of avoiding payment of fare, or of stealing a ride thereon, is guilty of a misdemeanor. Ga. Code Ann. § 46-8-381 (2009).

HAWAII

Hawaii has no trespass regulations or laws specifically targeted to railroad property or equipment. But state law does make it a criminal trespass in the second degree if anyone shall enter or remain unlawfully in or upon premises that are enclosed in a manner designed to exclude intruders. Haw. Rev. Code 708-814 (2008).

IDAHO

Penalty

It is unlawful for anyone in Idaho to disturb the peace of any traveler on any railroad train, or break the seal or forcibly enter any, or disturb the contents of any car. A person doing so is guilty of a misdemeanor and upon conviction may be fined in an amount not exceeding one thousand dollars, or by imprisonment in the county jail not exceeding six months, or by both. Idaho Code § 18-6012 (2008).

ILLINOIS

The state has a general prohibition against trespassing on railroad property but outlines several exceptions when unlawful trespass may not apply. It is generally prohibited for anyone

to walk, drive or ride along the right-of-way or rail yard of any railroad. Unlawful trespass does not apply to passengers on trains, persons entering the property to protect human life, persons crossing at farm crossings, anyone having written permission and representatives of state and Federal governmental agencies in the performance of their official duties. See generally, 625 ILCS 5/18c-7401(3) (2008).

For the purposes of enforcement the statute defines "right-of-way" as the track or roadbed owned or leased by a rail carrier which is located on either side of its tracks and which is readily recognizable to a reasonable person as being rail carrier property or is reasonably identified as such by fencing or appropriate signs. 625 ILCS 5/18c-7401(3) (2008).

A violation of the statute would subject the violator to a fine not to exceed five hundred dollars. 625 ILCS 5/18c-7401(2) (2008).

INDIANA

Indiana law makes it a Class B misdemeanor for anyone to drive, walk or ride along the right-of-way or yard of a railroad company at a place other than a public crossing. The code section also defines the terms used and outlines the differences between the various classes of misdemeanors and felonies. Ind. Code § 8-3-15-3 (2009).

IOWA

It is unlawful in Iowa for anyone to enter or remain upon or in railway property without lawful authority or without the consent of the railway corporation which owns, leases, or operates the railway property. This section does not apply to passage over a railroad right-of-way, other than a track, railroad roadbed, viaduct, bridge, trestle, or railroad year, by an unarmed person if the person has not been notified or requested to abstain from entering on to the right-of-way or to vacate the right-of-way and the passage over the right-of-way does not interfere with the operation of the railroad. The section defines "railway property" as all tangible real and personal property owned, leased, or operated by a railway corporation with the exception of any administrative building or offices of the railway corporation. Iowa Code § 716.7 (2008).

KANSAS

It is unlawful in Kansas for any person to enter or remain on railroad property without consent of the owner or the owner's agent. The statute defines "railroad property" as including, but not limited to, any train, locomotive, railroad car, caboose, rail-mounted work equipment, rolling stock, work equipment, safety device, switch, electronic signal, microwave communication equipment, connection, railroad track, rail, bridge, trestle, right-of-way, or other

property that is owned, leased, operated, or possessed by a railroad company. Kan. Stat. Ann. § 21-3761 (2008).

KENTUCKY

Penalty

A person is guilty of criminal trespass in the third degree if they are on the track, property or the right-of-way, other than while passing over the track or the right-of-way at a public or private crossing. Anyone doing so is subject to a maximum fine of twenty-five dollars for the first violation, fifty dollars for the second, and a maximum fine of one hundred dollars for third and subsequent violations. KY. Rev. Stat. Ann. § 277.350 (2008).

LOUISIANA

Penalty

Louisiana prohibits unauthorized entry to railroad property. An initial conviction under the section brings a fine of not more than five hundred dollars, imprisonment of not more than ninety days or both. A second and any subsequent convictions are punishable by a fine not to exceed five hundred dollars or imprisonment for a term not to exceed six months. La. Rev. Stat. Ann. § 14:63.6 (2008).

Louisiana has a section prohibiting unauthorized access into or upon any railroad movable property when a person knows that such access is unauthorized, or under circumstances where he reasonably should know such access is unauthorized. The section defines "access" as meaning to enter by any means and includes, but is not limited to, the attaching or holding by any means onto any train, locomotive, or railroad car.

A violation of this section brings a fine of not more than five hundred dollars or imprisonment for not more than six months, or both. La. Rev. Stat. Ann. § 14:63.5 (2008).

MAINE

Penalty

The State of Maine imposes a fine of not less than five or more than twenty dollars for anyone who, without right, stands or walks on a railroad track or bridge, or passes over such a bridge.

Additionally, whoever, without right, enters upon any railroad track with any team, or any vehicle however propelled or drives any team or propels any vehicle upon any railroad track, commits a class E felony. Me. Rev. Stat. Ann. tit. 23, § 7007 (2008).

State law requires that a printed copy of Section 7007 be kept posted at a conspicuous place in every railroad station. Failure to post properly will result in forfeiture by the railroad

corporation of not more than one hundred dollars for every offense. Me. Rev. Stat. Ann. tit. 23, § 7008 (2008).

MARYLAND

Penalty

A person who is in or on a railroad vehicle on a railroad track without complying with the law or with the rules and regulations of the railroad company shall be guilty of a misdemeanor and upon conviction is subject to a fine not exceeding twenty five dollars or imprisonment for a period of time not exceeding one month or both. Md. Ann. Code art., 27, § 455 (2009).

MASSACHUSETTS

Massachusetts law prohibits a person from being present, standing, walking or riding a bicycle, snow vehicle, recreational or other vehicle on the right-of-way of a railroad or other property used or controlled by that railroad except at a highway or other authorized grade crossing.

Penalty

Violation brings a fine of one hundred dollars. Any person who violates this section can be arrested without a warrant by law enforcement authorities. Mass. Ann. Laws ch. 160, § 218 (2009).

MICHIGAN

Michigan law prohibits walking, riding, driving or being present on the right-of-way of a railroad or a railroad yard. The law lists a number of exceptions, such as legitimate passengers, railroad employees and authorized representatives of the railroad.

Penalty

A violation of this section is considered a misdemeanor and is punishable by imprisonment for not more than thirty days, a fine of not more than one hundred dollars or both. Mich. Stat. Ann. § 22.1263 (273) (2009). See also, Section 257-1515 for a right-of-way exception for a demonstration snowmobile trail.

MINNESOTA

Minnesota law prohibits anyone from intentionally permitting animals under their control to trespass on a railroad track.

Penalty

Anyone doing so is guilty of a misdemeanor. Minn. Stat. Ann. § 609.85(6) (2008).

MISSISSIPPI

Mississippi law forbids any person from riding, or driving any vehicle, cattle, horses, mules or other livestock along or on any railroad track open and operated for traffic, unless by permission.

Penalty

If convicted, a person is guilty of a misdemeanor and shall be fined not less than twenty-five dollars or more than two hundred-fifty dollars. Miss. Code Ann. § 97-25-7 (2008).

It is unlawful in Mississippi, other than passengers or employees, for anyone who shall willfully climb, jump or step upon, or in any way attaches himself to, or jumps off a locomotive, tender, or car while in motion on a railroad track or siding.

Penalty

A conviction may bring a fine of not less than fifty dollars nor more than two hundred dollars, or imprisonment in the county jail for a period of not less than five days nor more than twenty-five days, or both. Miss. Code Ann. § 97-25-15 (2008).

MISSOURI

It is unlawful for anyone to walk upon the track of railroad, except at a crossing.

Penalty

Violation of this section is considered a trespass. Mo. Rev. Stat. § 389.650(6) (2008).

Missouri law deems it a "trespass to railroad property" when a person commits any one of the following acts:

- (1) Throwing an object at a railroad train or rail-mounted work equipment; or
- (2) Maliciously or wantonly causing in any manner the derailment of a railroad train, railroad car or rail-mounted work equipment.

Any person committing a trespass to railroad property pursuant to this section shall be guilty of a class A misdemeanor. There is an exception, however; and that is if committing a trespass results in the damage or destruction of railroad property in an amount exceeding one thousand five hundred dollars or resulting in the injury or death of any person; then the infraction is a class D felony. Mo. Rev. Stat. § 389.653. (2008).

No person may ride, lead or drive any horses or other animals upon a railroad right-of-way other than at a farm crossing without the consent of the railroad. For each offense, a person shall forfeit and pay a sum not exceeding ten dollars, and shall also be required to pay all damages. Mo. Rev. Stat. § 389.650 (2008).

MONTANA

A trespass specific to railroad property or equipment is not mentioned. The reader is referred to Mont. Code Ann. § 45-6-201 (2008), for a discussion of criminal trespass.

NEBRASKA

No applicable statute related to this topic.

NEVADA

No applicable statute related to this topic.

NEW HAMPSHIRE

Penalty

Any person in the state who enters upon any railroad property without license or privilege to do so shall be guilty of criminal trespass. N.H. Rev. Stat. Ann. § 381:14 (2008). See also, Section 635:2, for a definition of criminal trespass.

NEW JERSEY

It is unlawful in New Jersey for anyone to walk upon the tracks of any railroad. Any person so doing will be deemed to have contributed to any injury sustained and may not recover damages. N.J. Rev. Stat. § 48:12-152 (2008). See also, Section 39:3C-19, for prohibition against the operation of a snowmobile upon a railroad right-of-way.

NEW MEXICO

No applicable statute relating to this topic.

NEW YORK

A railroad corporation in New York shall no be liable for any injury to an passenger while on the platform of a car, on in any baggage, wood or freight car, in violation of the printed regulations of the railroad, posted at the time in a conspicuous place inside of the passenger cars, then in the train, if there shall be at the time sufficient room for the proper accommodation of the passenger inside such passenger cars. No person other than those connected with or employed by the railroad shall walk upon on along the track or tracks, except where the tracks are laid

across or along streets or highways, in which case he shall not walk upon the track unless crossing the same.

It is also unlawful for any person to ride, lead, or drive any horse or other animal upon any railroad, or within the fences and guards, other than at a farm or street or forest crossing, without consent.

Penalty

If convicted, a person shall forfeit to the people of the state the sum of ten dollars, and pay all damage's sustained to the railroad. N.Y. Railroad Law § 83 (2009).

New York prohibits the operation of snowmobiles on railroad property except at the crossing of streets or highways, or at farm or forest crossings.

Penalty

A person violating the provisions of this section shall be guilty of a violation punishable by a fine of one hundred dollars for each separate offense. N.Y. Railroad Law § 83-a (2009).

Any city with a population of one million or more and the counties of Nassau and Suffolk are authorized and empowered to adopt or amend a local law or ordinance designating any portion or portions of property consisting of a right-of-way or yard of a railroad or rapid transit railroad as a no-trespass railroad zone and provide for the conspicuous posting of the zone for purposes of establishing criminal liability for trespass upon the property pursuant to subdivision (g) of Section 140.10 of the penal law. N.Y. Railroad Law § 83-b (2009).

Penalty

A person shall be guilty of a criminal trespass in the third degree when he knowingly enters or remains unlawfully in a building or upon real property where the property consists of a right-of way or yard of a railroad or rapid transit railroad which has been designated and conspicuously posted as a “no-trespass railroad zone,” pursuant to Section 83-b of the railroad law, by the city or county in which such property is located. Criminal trespass in the third degree is a class B misdemeanor. N.Y. Penal Law § 140.10 (2009).

NORTH CAROLINA

North Carolina law considers it a trespass on railroad right-of-way if a person enters and remains on the right-of-way of a railroad company without the consent of a railroad company Or the person operating the railroad, or without authority granted pursuant to state or Federal law. The section does not apply to a person crossing the railroad right-of-way at a public or private crossing, or at a right-of-way that has been legally abandoned pursuant to an order of a state or federal agency and is not being used for railroad services.

Penalty

Trespassing on a railroad right-of-way is a class 3 misdemeanor. N.C. Gen. Stat. § 14-280.1(a)-(b)-(c)-(d) (2008).

NORTH DAKOTA

No applicable statute related to this topic.

OHIO

It is unlawful for any person to draw, drive or cause to be moved any vehicle on or between the rails or tracks of a railroad. Violation of this section is a minor misdemeanor.

No person may climb, jump, step, or stand upon a locomotive, engine, or car upon the track of a railroad without permission. Violation is a minor misdemeanor. Ohio Rev. Code Ann. §§ 4999.01-02 (2009).

OKLAHOMA

It is unlawful for anyone without authority to ride upon a train in Oklahoma. Violation of this section is a misdemeanor. Okla. Stat. tit. 21, § 1365 (2008).

OREGON

No applicable statute related to this topic.

PENNSYLVANIA

No applicable statute related to this topic.

RHODE ISLAND

Rhode Island forbids any person to stand or walk on a railroad right-of-way without authorization, except for when crossing at a highway or other authorized crossing.

Penalty

Violation may bring a fine of not more than one thousand dollars, imprisonment for not more than one year, or both.

Any person violating this section may be arrested without a warrant by a law enforcement officer. R.I. Gen. Laws § 11-36-6 (2008).

SOUTH CAROLINA

Penalty

Whoever breaks and enters, in the night, any railroad or electric railway car or enters in the night without breaking, breaks and enters in the daytime or shoots with any firearm into any railroad or electric railway car, with intent to commit the crime of larceny or any other crime, shall, in addition to any other punishment prescribed by law for such offense, be punished by imprisonment in the State Penitentiary not exceeding ten years or by fine not exceeding five hundred dollars. S.C. Code Ann. § 58-50-850 (2008).

SOUTH DAKOTA

Penalty

It is unlawful for a person, either individually or as a member of any mob, band, or assembly, to enter upon, occupy, or appropriate any part of a railway train or of railway equipment used or useful in the transportation of passenger or property, or in the maintenance or operation of any road, armed with any instrument or weapon of any kind, for the purpose of committing any offense; or to ride in any other than the usual, proper, and lawful manner at the legal rate of fare, and in the proper coaches or cabooses provided for that purpose. Any violation of this section is a Class 5 felony. S.D. Codified-Laws § 49-J06A-105 (2009).

TENNESSEE

No applicable statute related to this topic.

TEXAS

Texas law defines railroad property as a train, locomotive, railroad car, caboose, work equipment, rolling stock, safety device, switch, or connection that is owned, leased, operated, or possessed by railroad; or a railroad track, rail, bridge, trestle, or right-of-way owned or used by a railroad. Under the same code section, it is unlawful for anyone to enter or remain on railroad property without the consent of the owner, knowing that it is railroad property.

Penalty

An offense under this section is a Class B misdemeanor unless the person causes bodily injury to another, in which event the offense is a felony of the third degree. Tex. Penal Code Ann. §28.08(A) (2008).

UTAH

It is unlawful in Utah for a person to ride or climb or attempt to ride or climb on, off, under, over, or across a railroad locomotive, car, or train.

A person may not walk, ride, or travel across, along, or upon railroad yards, tracks, bridges, or active right-of-way at any location other than a public crossing.

In Utah, an owner or operator of a railroad, including its officers, agents, and employees, owes no duty of care to keep railroad yards, tracks, bridges, or active rights-of-way safe for entry for any person that violates this section. Utah Code Ann. § 56-1-18.5(2)(3)(4) (2009).

VERMONT

No person shall, without right, loiter or remain in a depot, or upon the platform, approaches or grounds adjacent to, after being requested to leave by a railroad policeman, sheriff, deputy sheriff, constable or policeman.

Penalty

A conviction brings a fine of not more than twenty dollars or less than two dollars. Vt. Stat. Ann. tit. 5, 3734 (2008).

It is unlawful for any person to board or ride without permission on a train, car or locomotive, other than a passenger train, or to board or ride on a passenger train without paying fare, or to loiter in or about a railroad yard, station or car without permission.

Penalty

A conviction brings a period of imprisonment not to exceed ninety days or a fine of not more than twenty-five dollars, or both. Vt. Stat. Ann. tit, 5, § 3735 (2008).

VIRGINIA

It is unlawful in Virginia for anyone to go upon the track of a railroad other than to pass over the track at a public or private crossing without the consent of the railroad company, or person operating the railroad.

Penalty

It shall be a Class 4 misdemeanor for the first violation. If a second violation occurs within two years of the first violation, it is punishable as a Class 3 misdemeanor. A third violation within two years of a second, is punishable as a Class I misdemeanor. Va. Code Ann. § 18.2-159 (2009).

WASHINGTON

No applicable statute related to this topic.

WEST VIRGINIA

It is unlawful in West Virginia for anyone to trespass upon any railroad property in the state, except when driving across a public, private or farm crossing.

Penalty

Violation of this section is a misdemeanor and punishment shall be a fine not to exceed twenty-five dollars or imprisonment in the county jail for a period of time not to exceed thirty days. W.VA.Code § (2008).

WISCONSIN

- (1) No person, other than a licensee or authorized newspaper reporters or those connected with or employed upon the railroad, shall walk, loiter or be upon or along the track of any railroad; and,
- (2) Each railroad corporation shall post notices containing substantially the provisions and penalties of this section, in one or more conspicuous places in or about each railroad station. Wis. Stat. § 192.32 (2009).

Any person under the age of 17 years, who shall get upon, attempt to get upon, cling to, jump, or step from any railroad car or train while it is in motion shall be punished by a fine of not more than twenty dollars nor less than two dollars. This section does not apply to employees of the railroad or railroad express. Wis. Stat. § 192.321 (2009).

WYOMING

No applicable statute related to this topic.

CHAPTER 10: VANDALISM

CHAPTER OVERVIEW

Every state has laws against the defacing and destruction of private property. Not every state lists a law or regulations specific to railroad property. In recent years, penalties at the state government level have been increased because of the recognition of the catastrophic results that are possible in some cases of vandalism to trains, tunnels, bridges, viaducts, trestles, tracks, or signals.

For purposes of comparison and reference, included here is the Federal Statute related to the wrecking or destroying of trains:

Whoever willfully derails, disables, or wrecks any train, engine, motor unit, or car used, operated, or employed in interstate or foreign commerce by any railroad; or whoever willfully sets fire to, or places any explosive substance on or near, or undermines any tunnel, bridge, viaduct, trestle, track, signal, station, depot, warehouse, terminal, or any other way, structure, Property, or appurtenance used in the operation of any such railroad in interstate or foreign commerce, or otherwise makes any such tunnel, bridge, viaduct, trestle, track, signal, station, depot, warehouse, Terminal, or any other way, structure, property, or appurtenance unworkable or unusable or hazardous to work or use, with the intent to derail, disable, or wreck a train, engine, motor unit, or car used, operated, or employed in interstate or foreign commerce.

Anyone attempting to do any of the aforesaid acts or things shall be fined or imprisoned not more than twenty years, or both.

If anyone is convicted of a violation that has resulted in the death of any person, shall be also subject to the death penalty or to imprisonment. This same subsection of the statute imposes a penalty of a fine and imprisonment for any term or years not less than 30, or for life, if the violation involved a train that at the time was carrying high-level radioactive waste, or spent nuclear fuel. 18 USCS § 1992 (1999).

This chapter presents a state-by-state listing of the laws and regulations concerning vandalism of railroad property, warning devices and equipment, along with the prescribed punishment if any. Each state entry is accompanied by citations.

STATE LAWS, REGULATIONS AND PENALTIES

ALABAMA

No applicable statute related to the topic.

ALASKA

Alaska law declares it a crime of criminal mischief in the third degree if a person knowingly removes, relocates, defaces, alters, obscures, shoots at, destroys or otherwise tampers with an official traffic control device. A railroad sign or signal is included in the definition of official traffic control device. Alaska Stat. §§ 11.46.480-484-490 (2008).

ARIZONA

No person shall, without lawful authority, attempt to alter, deface, injure, knock down or remove any official traffic control device, any railroad sign or signal, or any inscription, shield or insignia thereon, or any part thereof. Ariz. Rev. Stat. Ann. § 28-649 (2009).

ARKANSAS

It is unlawful in Arkansas for any person to willfully perpetrate an act whereby any building, construction, or work of any railroad corporation in the state, or any engine, machine, structure, or any matter or thing appertaining to the corporation shall be stopped, obstructed, injured, impaired, weakened, or destroyed.

Penalty

Anyone found guilty of this misdemeanor shall be required to forfeit and pay to the affected railroad, treble the amount of damages sustained by means of such an offense. Ark. Stat. Ann. § 23-12-805(a) (2008).

It is unlawful for anyone in Arkansas to wantonly, maliciously, or mischievously discharge a firearm, or throw stones, sticks, clubs, or other missiles at, into, or against any locomotive, railroad car, or street car on any railroad. Upon being found guilty of this misdemeanor offense, a person may be punished by a fine of not less than twenty-five dollars or more than two-hundred fifty dollars, or by imprisonment in the county jail for not more than three months, or by both. Ark. Stat. Ann. § 23-12-804 (2008).

CALIFORNIA

Penalty

The California Penal Code makes it a misdemeanor for any person who, absent any authority from the owner, manipulates or in anyway tampers or interferes with any air brake or other device, appliance or apparatus in or upon any car or locomotive upon such railroad, or with any switch, signal or other appliance or apparatus used or provided for use in the operation of a railroad. Cal. Penal Code § 587a (2008).

COLORADO

Penalty

In Colorado, it is a Class B traffic infraction to alter, deface, injure, knock down, remove or interfere with the effective operation of any official traffic control device, any railroad sign or signal, or any inscription, shield or insignia thereon, or any part thereof. Colo. Rev. Stat. § 42-4-607 (2008).

A person commits the crime of endangering public transportation (a class 3 felony) if such person tampers with a facility of public transportation with intent to cause any damage, malfunction, or nonfunction which would result in the creation of a substantial risk of death or serious bodily injury to anyone. Endangering public transportation is a class 3 felony. Colo. Rev. Stat. §18-9-115 (2008).

It constitutes a Class 2 misdemeanor in Colorado if a person knowingly and without lawful authority forcibly stops and hinders the operation of any vehicle used in providing transportation services of any kind to the public or to any person, association, or corporation. Colo. Rev. Stat. § 18-9-115 (2008).

It is unlawful for an individual or corporation to obstruct a highway, street, sidewalk, railway, waterway, building entrance, elevator, aisle, stairway, or hallway 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, whether the obstruction arises from his acts alone or from his acts and the acts of others. An offense under this section shall be a Class 3 misdemeanor. Colo. Rev. Stat. § 18-9-107 (2008).

CONNECTICUT

Penalty

In Connecticut, a person is guilty of criminal mischief in the second degree for damaging or tampering with the tangible property of a public utility or mode of public transportation, power or communication. Criminal mischief in the second degree is a Class A misdemeanor. Conn. Gen. Stat. § 53a-116 (2009).

A person is guilty of criminal mischief in the first degree (a Class D felony) when: (1) With intent to cause damage to tangible property of another and having no reasonable ground to believe that he has a right to do so, he damages tangible property of another in an amount exceeding one thousand five hundred dollars, or (2) with intent to cause an interruption or impairment of service rendered to the public and having no reasonable ground to believe that he has a right to do so, he damages or tampers with tangible property of a utility or mode of public transportation, power or communication, and thereby causes an interruption or impairment of service. Conn. Gen. Stat. § 53a-115 (2009).

DELAWARE

Penalty

If a person in the State of Delaware willfully impairs, injures, destroys, or obstructs the use of any railroad or any of its works, wharves, bridges, carriages, engines, cars, machines or other property, must pay to the railroad fifty dollars and be liable for all damages sustained. Del. Code Ann. tit. 2, § 1812 (2009).

It is illegal for anyone to attempt to alter or alter, damage, deface, injure, twist, knock down, interfere with the operation of or remove a railroad signal or sign. Violation of this offense will result in a fine or not less than fifty seven dollars and fifty cents nor more than two hundred thirty dollars, imprisonment for not more than ten days or both. Each subsequent offense committed within two years will bring a fine of not less than one hundred fifteen nor more than four hundred sixty dollars or imprisonment for a maximum of thirty days. A person found guilty of this offense is also responsible to the state for actual costs incurred in replacing the sign or device. Del. Code Ann. tit. 21, § 4112 (2009).

A person is guilty of an offense if he throws, or causes to be thrown, any waste paper, sweepings, ashes, household waste, glass, metal, tires, refuse or rubbish, or any dangerous or detrimental substance to be deposited into or upon any railroad right-of-way in the State of Delaware. If found guilty of a violation of this section, a person may be fined an amount of not less than fifty dollars or more than three hundred dollars. For each subsequent offense occurring within three years of a former offense, the fine shall be not than three hundred dollars or more than five hundred dollars. The minimum fines for a violation of this section shall not be subject to suspension. Del. Code Ann. tit. 2, § 1821 (2009).

DISTRICT OF COLUMBIA

Penalty

District of Columbia law prohibits anyone from placing an obstruction on or near the track of any steam or street railway, or displaces or injures anything appertaining to the track, with intent to endanger the passage of any locomotive or car. Upon a conviction, a sentence can be imposed for not more than ten years. D. C. Code Ann. § 22-3119 (2009).

FLORIDA

Penalty

Florida has a number of statutes related to vandalism of railroad signals or traffic control devices. A person is guilty of a felony of the third degree for knowingly or willfully interfering with or removing any railroad system used to control railroad operations, any railroad crossing warning devices, or any lantern, light, lamp, torch, flag, fuse, torpedo or other signal used in

connection with railroad operations. Fla. Stat. Ann. § 860.08 (2009). See also, Sections 775.082, 775.083 and 775.084, concerning punishment.

No person shall, unless by lawful authority, attempt to alter, deface, injure, knock down or remove any railroad sign or signal, any inscription, shield or insignia on the sign or signal, or any other part thereof. Fla. Stat. Ann. § 316.0775 (2009).

It is unlawful in Florida for anyone, other than an employee or authorized agent of a railroad company acting within the line of duty, to knowingly or willfully move, interfere with, remove, or obstruct, any railroad switch, bridge, crossties, or other equipment located on the right-of-way or property of a railroad and used in railroad operations. A violation is a felony of the third degree. Fla. Stat. § 860-09 (2009).

It is unlawful to shoot at, throw any object capable of causing death or great bodily harm or place any object capable of causing death or great bodily harm in the path of any railroad train, locomotive, car, caboose or other railroad vehicle. The statute lists particular penalties based on specific circumstances. Fla. Stat. Ann. § 860-121 (2009).

Any person, other than a railroad employee or authorized agent acting within the line of duty, who knowingly or willfully detaches or uncouples any train, puts on, applies, or tampers with any brake, bell cord or emergency valve, or otherwise interfere with any train, engine, car, or part thereof is guilty of a felony in the third degree. Fla. Stat. Ann. § 860.05 (2009).

Whoever wantonly or maliciously injures any bridge, trestle, culvert, cattle guard, or other superstructure of any railroad or salts the track for the purpose of attracting cattle thereto, or who shall drive cattle thereon, shall be guilty of a felony of the second degree. Fla. Stat. Ann. § 860.11 (2009).

It is unlawful for any person to wrongfully, recklessly, or wantonly and without authority, to signal any train or engine with a red light or with a red flag, or to give a signal calculated to affect the movement or operation of any train, engine, or cars on any railroad in the State of Florida. A violation of this section, a section is a misdemeanor of the second degree and punishable as provided in Section 775.082. Fla. Stat. Ann. § 860.07 (2009). This section does not apply to any person giving signals to stop a train for the purpose of preventing an accident, or at a regular station or flag station when the train is flagged for the purposes of taking passage.

GEORGIA

Georgia law makes it unlawful for any person to mutilate, destroy or deface any crossing sign.

Penalty

Violation is a misdemeanor punishable under Georgia law by a fine not exceeding fifty dollars, imprisonment for not more than twelve months, or both. Ga. Code Ann. § 46-8-196 (2009).

HAWAII

It is unlawful for any person to attempt to alter, deface, injure, knock down, or remove any railroad sign or signal or any inscription, shield or insignia thereon, or any part other thereof Haw. Rev. Stat. § 291C-37 (2008). See also, Section 291C-161 concerning the penalty for violations.

IDAHO

Penalty

It is a felony in Idaho for any person to maliciously remove, displace, injure or in any way interfere with, change or destroy any part of any railroad property, any track of any railroad, branch or branch way, switch, block, or other signal or signaling device, turnout, bridge, viaduct, culvert, embankment, station house or other structure or fixture connected to the railroad. Punishment may be imprisonment for a time not exceeding ten years, a fine not exceeding fifty thousand dollars or both. Idaho Code § 18-6006 (2008).

A person may not attempt to alter, twist, deface, injure, knock down, remove or interfere with the effective operation of any traffic control device, any railroad sign or signal, any inscription, shield or insignia, or any other part of the device or signal. Idaho Code § 49-1420 (2008).

Idaho makes it unlawful to place an obstruction on the rails or track of any railroad or to obstruct any switch, branch, branch way or turnout connected with any railroad. A violation is punishable by imprisonment not exceeding five years in the state prison or not less than six months in the county jail. Idaho Code § 18-6009 (1999).

If such acts result in a death, the offense is a felony and punishment may be imprisonment for a term of not less than five years but may extend to the natural life of the person responsible. The wrongdoer may also be tried and punished for murder. Idaho Code §§ 18-6010 - 6011 (2008).

It is unlawful in Idaho for any person to report to any police officer, sheriff, employee of a fire department or fire service, prosecuting attorney, newspaper, radio station, television station, deputy sheriff, deputy prosecuting attorney, member of the state police, employee of an airline, employee of an airport, employee of a railroad or bus line.... that a bomb or other explosive has been placed or secreted in a public or private place knowing that the report is false. Idaho Code § 18-3313 (2008).

ILLINOIS

Penalty

A person in Illinois found to have removed, taken, stolen, changed, added to, taken from or in any manner interfered with any of the parts or attachments of any locomotive or car, or any plant or property used in or connected with the operation of any locomotive or car, or any person who causes or attempts to cause the derailment of an engine, cars, or a track vehicle used on railroad tracts is guilty of a Class 4 felony. If any of the actions described above results in death, the person found guilty shall be liable for first degree murder. 625 ILCS 5/18c-7502 (2008).

Anyone found to have interfered with a railroad sign or signal or who in anyway attempts to alter, deface, injure, knock down or remove any railroad sign or signal, any inscription, shield or insignia thereon, or any other part thereof shall be guilty of a Class A misdemeanor punishable by a fine of not less than two hundred fifty dollars in addition to any other penalties imposed. 625 ILCS 5/11-3110(2008).

INDIANA

Indiana law makes it unlawful for anyone to place, maintain, or display upon or in view of a highway an unauthorized sign, signal, marking, or device that: (1) Purports to be, is an imitation of, or resembles an official traffic control device or a railroad sign or signal; (2) attempts to direct the movement of traffic; or (3) hides from view or interferes with the effectiveness of an official traffic control device or a railroad sign or signal. Ind. Code § 9-21-4-4 (2009).

IOWA

Penalty

It is unlawful in Iowa to attempt to alter, deface, injure, knock down or remove a railroad sign or signal. A person convicted of such an act is guilty of a serious misdemeanor and can be required to make restitution to the affected jurisdiction. Iowa Code § 321.260 (1999).

KANSAS

Penalty

Kansas law declares it a Class C misdemeanor to tamper with a traffic signal, railroad switching device or other signal device erected or installed for the purpose of controlling or diverting the movement of railroad trains. Tampering is defined as intentionally manipulating, altering, destroying or removing such signals or devices. Kan. Stat. Ann. §§ 21-3725-8-1513 (2008).

It is unlawful in Kansas for any person to maliciously or wantonly cause in any manner the derailment of a train, railroad car or rail-mounted work equipment. A violation of this section is a Class A non-person misdemeanor, except that any person violating this section which results in a demonstrable monetary loss, damage or destruction of railroad property which such loss is valued at more than fifteen hundred dollars upon conviction is deemed guilty of a severity level 8, non-person felony. Kan. Stat. Ann. § 21-3761 (2008).

KENTUCKY

No applicable statute relating to this topic.

LOUISIANA

Penalty

Louisiana law defines throwing stones, missiles or other objects at any train, railway car, or locomotive as criminal mischief and makes the punishment a fine of not more than five hundred dollars, imprisonment for not more than six months in jail, or both. It prescribes the same penalty for discharging a firearm at a train, locomotive or railway car. La. Rev. Stat. § 14:59 (2008).

It is also against the law in Louisiana to give false signals to a person(s) in charge of a locomotive with intent to cause the stopping of the locomotive, train or cars. Violation brings a fine of not less than ten nor more than two hundred dollars or imprisonment for not more than three months. La. Rev. Stat. § 14:321 (2008).

MAINE

Penalty

It is unlawful in the State of Maine to destroy or molest any signal of a railroad corporation or any line, wire, post, lamp, or other structure or mechanism used in connection with any signal on a railroad. If convicted, a person may be punished by a fine not to exceed five hundred dollars or by imprisonment for not more than two years.

No one may alter, without authority, change or in any manner interfere with any safety switch or switch lights on any railroad. This type of offense is a Class E crime. Me. Rev. Stat. Ann. tit. 23, §§ 7010 -7011 (2008).

MARYLAND

It is a violation of law in Maryland to alter, deface, injure, knock down, change the direction of, twist or remove parts of any traffic control device or railroad sign or signal. The statute contains no mention of a penalty. Md. Ann. Code art. 21, § 206 (2009).

Penalty

Maryland also has a law against giving false or unauthorized signals to influence train operations. Violation is a misdemeanor and carries a penalty of imprisonment for a period not to exceed six months. Md. Ann. Code art. 27, § 456 (2009).

A person who breaks or damages a railroad or places or causes to be placed anything on a railroad in Maryland to obstruct, overthrow, or direct from the track a railroad vehicle, is guilty of a felony and upon conviction is subject to a fine not exceeding five thousand dollars or imprisonment not exceeding ten years or both. Md. Ann. Code art 27, § 453A (2009).

It is unlawful in Maryland for any person to willfully and maliciously cause an object to strike a railroad vehicle or electric railway by shooting, throwing, or causing an object to fall. This offense constitutes a misdemeanor and upon conviction, a person is subject to a fine not exceeding one thousand dollars or imprisonment not exceeding five years or both. Md. Ann. Code art 27, § 458 (2009).

MASSACHUSETTS

No person may lawfully remove, throw down, injure or deface any grade crossing sign. Violation of this section may result in a fine of not more than ten dollars to be paid to the county, city or town that maintains the sign, or to the commonwealth if the sign is placed and maintained by the Department of Highways. Mass. Gen. Laws Ann. ch. 160, § 146 (2009).

It is unlawful to intentionally injure, molest or destroy any railroad signal or any line, wire, post or other structure or mechanism used in connection with the signal, or in any way interfere with the proper functioning of the signal. The law also prohibits meddling or tampering with a track or car, or the mechanisms or apparatus used in the operation of a railroad car.

Penalty

A violation will result in fine of not more than five hundred dollars, imprisonment for not more than two years or both. Mass. Gen. Laws Ann. ch. 159, § 103 (2009).

MICHIGAN

Michigan prohibits the altering, defacing, knocking down or removal of any railroad signal or any inscription, shield or insignia on the sign or signal, or any other part thereof. A penalty for violation is not described. Mich. Stat. Ann. § 9.2316 (2009).

Penalty

Michigan also prohibits tampering with a light or banner attached to or connected with any switch or derailing device. Violation is a misdemeanor punishable by a fine of at least one

hundred but not more than five hundred dollars or by imprisonment of at least ten but not more than sixty days. Mich. Stat. Ann. § 22.1263 (267) (2009).

MINNESOTA

It is unlawful for anyone in Minnesota to maliciously injure, remove, displace, deface or destroy the signs or signals that are regulated and mandated by statute at railroad crossings with roads. Minn. Stat. § 219.30 (2008).

Penalty

It is a misdemeanor for a person to exhibit a false light or signal or to interfere with a light, signal or sign controlling or guiding traffic on a railroad track. If the person doing same knows that they are risking lives or serious injury or property damage, the violation could be a felony. Minn. Stat. § 609-85 (1) (2008).

Minnesota law makes it a felony for anyone to throw or deposit any type of debris, waste material, or other obstruction on any railroad track or cause damage, or cause another person to damage, tamper, change or destroy any railroad track, switch, bridge, trestle, tunnel, signal or moving equipment used in providing railroad services, with intention to cause injury, an accident or derailment. If any of the prohibited acts create a reasonably foreseeable risk of any injury, accident or derailment, then the person is guilty of a gross misdemeanor.

Any person who intentionally shoots a firearm at any portion of a railroad train, car, caboose, engine or moving equipment so as to endanger the safety of another is guilty of a gross misdemeanor. Likewise, any person who intentionally throws, shoots or propels any stone, brick or other missile at any railroad train, car caboose, engine or moving is guilty of a gross misdemeanor.

It is a misdemeanor for anyone in Minnesota to place an obstruction on a railroad track. Minn. Stat. § 609.85 (1)(2)(3)(4) (2008).

No person or corporation may place, maintain or display any red light or red sign, signal, or lighting device or maintain it in view of any highway or any line of railroad on or over which trains are operated in such a manner as to interfere with the effectiveness or efficiency of any highway traffic-control device or signals used in the operation of a railroad. Minn. Stat. § 169.073 (2008).

It is unlawful for anyone to possess, without lawful authority, or attempt to or in fact alter, deface, injure, knock down, or remove any official traffic-control device or any railroad sign or signal or any inscription, shield, or insignia thereon, or any part thereof. Minn. Stat. § 169.08 (2008).

MISSISSIPPI

Penalty

Mississippi law forbids any person from willfully destroying, defacing, marring, damaging, pulling down, or removing any milepost, signboard, or index board, or road number, or railroad crossing sign or flasher signal, or other traffic control device. Upon conviction, a person is liable for the actual cost of replacing or repairing such sign and may be fined not less than two hundred dollars or more than five hundred dollars, or imprisoned in the county jail not more than six months, or both. Miss. Code Ann. § 97-15-1 (2008).

No one may willfully obliterate, injure or destroy any railroad gate, warning-strings, cattle-gap or any board or sign erected or maintained by a railroad. If convicted, a person may be fined not less than one hundred dollars or more than five hundred dollars, or be imprisoned in the county jail no exceeding three months, or both. Miss. Code Ann. § 97-25-5 (2008).

It is unlawful for anyone to wantonly or negligently obstruct or injure any railroad. A conviction shall bring a fine of not less than five hundred dollars nor more than two thousand dollars, or imprisonment for not longer than twelve months in the county jail, or both. Miss. Code Ann. § 97-25-21 (2008).

No person in Mississippi shall wantonly or maliciously injure, or place any impediment or obstruction on any railroad, or commit any other act by means of which any car or vehicle might be caused to diverge, or be derailed, or thrown from the track. Upon conviction, a person shall be committed to the custody of the Department of Corrections for a term of not less than one year or more than ten years. Miss. Code Ann. § 97-25-23 (2008).

Unlawfully seizing upon any locomotive and running it away, or aiding, abetting or procuring the doing of the same shall, upon conviction, bring a fine of not less than five hundred dollars nor more than one thousand dollars, or imprisonment in the county jail for a period not to exceed six months, or both. Miss. Code Ann. § 97-25-25 (2008).

No person shall, without authority, and in the absence of apparent danger warranting such act, out of a spirit of mischief, or with any purpose other than to prevent or give information of an accident, make, or cause to be made, any sign or signal to persons in charge of any locomotive, or railroad train or cars, or to any of such persons, or in sight of any of them, with intent to cause the stopping or starting of the train; or no person may unlawfully interfere with the management or running of any locomotive, train, or cars on any railroad. If convicted, a person shall be fined not less than one hundred dollars or more than five hundred dollars, or shall be imprisoned in the county jail for a period not to exceed three months. Miss. Code Ann. § 97-25-27 (2008).

It is unlawful in Mississippi for any person to maliciously remove, take, steal, change or in any manner interfere with any railroad transmission line, signaling device, microwave tower, or any of the parts or attachments belonging to any communication or signaling device owned,

leased or used by any railroad or transportation company. A conviction can bring a fine of not more than three thousand dollars or imprisonment for not more than five years, or both. Miss. Code Ann. § 97-25-35 (2008).

It is unlawful for any person not employed by a railroad to willfully and maliciously uncouple or detach the locomotive or tender or any of the cars of any railroad train, or to in any way aid, abet or procure the doing of the same. Such person shall be punished by a fine of not less than two hundred fifty dollars nor more than one thousand dollars, or imprisonment in the county jail not exceeding six months, or both. Miss. Code Ann. § 97-35-39 (2008).

No person shall willfully shoot any firearm or hurl any missile at, or into, any train, bus, truck, motor vehicle, depot, station, or any other transportation facility. A conviction shall bring a fine of not less than one hundred dollars nor more than two hundred fifty dollars, or commitment to the custody of the Department of Corrections for not less than one year or more than five years, or both fine and incarceration. Miss Stat. Ann. § 97-25-47 (2008).

Editor's Note: Mississippi has two more code sections of interest. See Sections 97-25-43, concerning conspiracy to impede railroad, carrier or utility, and Section 97-25-45, concerning impeding the movement of trains or any other public service corporation by force.

MISSOURI

Although it is listed here in this chapter concerning vandalism, Missouri law deems it a trespass for anyone who commits the acts of throwing an object at a railroad train or rail-mounted equipment, or maliciously or wantonly causes in any manner the derailment of a railroad train, railroad car or rail-mounted equipment, or who discharges a firearm or a weapon at a railroad train, railroad car or rail-mounted equipment. Mo. Rev. Stat. § 389.653 (2008). See also, Missouri in Chapter 9 of this book.

Penalty

It shall be a crime of unlawful use of weapons if a person knowingly discharges or shoots a firearm into a dwelling house, a railroad train, boat, aircraft, or motor vehicle..., or any building or structure used for the assembling of people. For a first violation a person may be sentenced to the maximum authorized term of imprisonment for a Class B felony. Mo. Rev. Stat. 571.030 (2008).

MONTANA

No applicable statute relating to this topic.

NEBRASKA

Nebraska law prohibits, without lawful authority, anyone from altering, defacing, injuring, knocking down or removing any traffic sign, railroad sign or signal, or any part of any such device. Neb. Rev. Stat. § 60-6,129 (2009).

NEVADA

It is unlawful for any person without authority to:

- (a) Willfully uncouple or detach any locomotive, tender, or any car of any railroad train, either when standing or in motion on any track of any railroad.
- (b) Release the brake of any railroad car, tender, or train.
- (c) Put in motion any locomotive, tender, car or train.

It is against the law for any person to throw any stone, rock, missile, or any substance at any railroad train, car, locomotive, or tender, or any part of any train, or to wrongfully injure, deface or damage the same or any part thereof.

Penalty

A person who violates any provision of this section is guilty of a public offense, as prescribed in Section 193.155, proportionate to the value of the property damaged, and in no event less than a misdemeanor. Nev. Rev. Stat. Ann. §705-480 (2009).

No one may willfully obstruct, hinder or delay the passage of any car lawfully operated by any railway. A violation is a misdemeanor. Nev. Rev Stat. Ann. § 705-450 (2009).

Any person in Nevada who willfully and maliciously places any obstruction on the track of any railroad, or tears up or removes any part or portion of a railroad, or destroys, deranges, misplaces or injures any rail, switch, block or other signaling device, culvert, viaduct, bridge, car, tender or engine, or willfully and maliciously does or attempts to do any of those things, or any other act or thing, whereby the life and limb of a person is in endangered, is guilty of a category C felony and punished as provided in Section 193.130. Nev. Rev. Stat. Ann. § 705.460 (2009).

A person may not endanger a vessel, railway engine, motor, train or car, show, mask, extinguish, alter or remove any light or signal, or exhibit any false light or signal. A person doing so will be punished in the following manner:

- (1) Where physical injury or property damage results it is a category B felony, punishable by imprisonment in the state prison for a term of not less than one year or more than ten years, and may be further punished by a fine of not more than ten thousand dollars.
- (2) Otherwise, it shall be a gross misdemeanor. Nev. Rev, Stat. Ann. § 206-300 (2009).

It is unlawful in Nevada for anyone to attempt to or alter, deface, injure, knock down, or remove and official traffic-control device or any railroad sign or signal or any inscription shield, or any part thereon. Nev. Rev. Stat. Ann. § 484-289 (2009).

NEW HAMPSHIRE

No applicable statute related to this topic.

NEW JERSEY

Penalty

It is unlawful in New Jersey for anyone to impair, injure, destroy or obstruct either the use of a railroad or the property of a railroad. Anyone violating this section shall forfeit to the affected railroad the sum of fifty dollars to be recovered in an action at law in any court having jurisdiction. N.J. Rev. Stat. § 48:12-167 (2008).

Any person who vandalizes railroad signals or protection devices in New Jersey shall be guilty of a disorderly person's offense. For any subsequent violations, an offender is guilty of a crime of the fourth degree. N.J. Rev. Stat. § 2C:33-14.1 (2008).

NEW MEXICO

No applicable statute related to this topic.

NEW YORK

A person shall be deemed guilty of unlawful propulsion of a missile at railroad train where he willfully with intent to cause person injury or property damage throws, shoots or propels a rock, stone, brick, or piece of iron, steel or other metal or any deadly or dangerous missile or fire bomb at any locomotive or car of a train which is occupied by a person or persons. N.Y. Railroad Law § 53-d (2009).

It is unlawful for any person to willfully with intent to disrupt, delay, or disturb service, places, or cause to be placed, drop, or position an object or objects of any kind, on, under, or upon the tracks which does or could cause physical damage to railroad equipment or property or physical injury to passengers or both.

Penalty

Unlawful interference with a railroad train is a Class D felony. N.Y. Railroad Law § 53-e (2009).

NORTH CAROLINA

North Carolina prohibits the placing of any matter or thing upon, over or near any railroad track, or destroying or tampering with the roadbed, rail or fixtures.

Penalty

Effective October 1, 1994, the law in North Carolina makes a distinction as to whether the act was done with or without intent to cause injury and punishment is fixed accordingly. If there was intent to cause injury, the violation is a Class I felony. If there was no intent, the violation is a Class 2 misdemeanor. N.C. Gen. Stat. §§ 14-278 -279 (2008).

Any person who, without authorization of the affected railroad company, shall willfully do or cause to be done any act to railroad engines, equipment, or rolling stock so as to impede or prevent movement of railroad trains, or so as to impair the operation of railroad equipment, is guilty of a Class 2 misdemeanor. N.C. Gen. Stat. § 14-279.1 (2008).

It is unlawful for any person to willfully cast, throw, or shoot any stone, rock, bullet, shot, pellet, or other missile at, against, or into any railroad car, locomotive or train, or any person thereon, while such car or locomotive shall be in progress from one station to another, or while such car, locomotive or train shall be stopped for any purpose. A violation of this section is a Class 1 felony. N.C. Gen. Stat. § 14-280 (2008).

NORTH DAKOTA

Penalty

It is unlawful for anyone in North Dakota to tamper with, alter or damage railroad property, or to exhibit any false lights or signals. Violation is a Class C felony. N.D. Cent. Code § 49-10.1-08 (2009).

A person shall be guilty of an offense if he causes a substantial interruption or impairment of a public communication, transportation, supply of water, gas, power, or other public service by: (a) Tampering with or damaging the tangible property of another; (b) Incapacitating an operator or such service; or (c) Negligently damaging the tangible property of another by fire, explosive, or other dangerous means. This offense is considered a class C felony if the person engages in the conduct intentionally, and a Class A misdemeanor if the person engages in the conduct knowingly or recklessly. Otherwise it is a Class B misdemeanor. N.D. Cent. Code § 12.1-21-06 (2009).

OHIO

No applicable statute related to this topic.

OKLAHOMA

Oklahoma law prohibits anyone from removing, displacing, injuring or destroying any part of any railroad or railroad equipment, including switches, bridges, viaducts, culverts, station houses and other structures.

Penalty

Any person convicted of placing an obstruction on the rails or tracks of any railroad, or any branch, branch way, or turnout connected with any railroad may be imprisoned in the penitentiary for a period of time not to exceed four years, or in a county jail for not less than six months. Okla. Stat. tit. 21, § 1751 (1)-(2) (2008).

OREGON

Penalty

It is a crime of criminal mischief in the first degree for any person in Oregon to damage property of a railroad or to intentionally interfere with the service of a railroad, and to manipulate or rearrange any property of a railroad. Criminal mischief in the first degree is a Class C felony. Or. Rev. Stat. § 164.365 (2008).

PENNSYLVANIA

Pennsylvania law defines it an act of criminal mischief if someone intentionally or recklessly tampers with tangible property of another so as to endanger person or property. Criminal mischief is considered a summary offense and uses a graded severity level depending upon the amount of pecuniary loss. 18 Pa. Con. Stat. Ann § 3304 (2009).

RHODE ISLAND

Penalty

Any person who unlawfully and intentionally injures, molests, or destroys any electric or other signal of a railroad or any part used in connection with that signal may be punished by a fine of up to five hundred dollars or by imprisonment for a period not to exceed two years.

There is another section of the code that deals with the tampering of railroad switches. Violations of the section bring a fine of up to one thousand dollars, or by imprisonment for as much as three years or both. R.I. Gen. Laws §§ 11-36-4-13 (2008).

SOUTH CAROLINA

Penalty

South Carolina law forbids the injuring, molesting, or destroying of railroad signals or any part of the signals. If found guilty of this misdemeanor, the punishment is a fine of up to five hundred dollars, imprisonment for a period not to exceed two years, or both. S.C.CodeAnn.§5815-860 (2008).

Whoever willfully and maliciously injures in any way any railroad, electric railway or, anything appertaining thereto or any material or instrument for the construction or use thereof, or aids or abets in such trespass, shall be punished by a fine not exceeding one thousand dollars or imprisonment not exceeding one year and, except in the case of an electric railway, shall forfeit to the use of corporation for each offense treble the amount of damages. Whoever commits any of the acts mentioned in this section in such a manner as by so doing, to endanger life shall be punished by a fine not exceeding one thousand dollars or by imprisonment in the Penitentiary not exceeding twenty years. S.C. Code Ann. § 58-15-870 (2008).

A person who willfully does or causes an action, or aids or assists an action with intent to obstruct any engine, carriage, or car passing upon a railroad or with intent to endanger the safety of persons within these vehicles is guilty of a felony and, upon conviction, must be imprisoned not more than five years or fined not more than five hundred dollars. For each offense, the person is required to forfeit to the railroad company treble the amount of damages. S.C. Code Ann. § 58-15-820 (2008).

It is unlawful in South Carolina for any unauthorized person to place any explosive substance upon the rail of any railroad, whether operated by steam, electricity or otherwise. Any person who violates the provisions of this section or aids or assists shall be guilty of a misdemeanor and, upon conviction, shall be sentenced to pay a fine of not more than one hundred dollars or to imprisonment not exceeding thirty days, in the discretion of the magistrate. S.C. Code Ann. § 58-15-830 (2008).

Any person who shall willfully and maliciously or with intent to steal or to injure, take or remove the brasses, bearings, waste or packing from any journal box of any locomotive, engine, tender, carriage, coach, caboose or truck used or operated upon any railroad, whether the same by operated by steam or electricity, shall be guilty of a misdemeanor and, upon conviction, shall be punished by imprisonment in the Penitentiary or labor on the chain gang for a period of not less than six months nor more than two years or fined not less than fifty dollars nor more than two hundred dollars. S.C. Code Ann. § 58-15-840 (2008).

SOUTH DAKOTA

Penalty

In South Dakota, anyone convicted of removing, displacing, injuring or destroying any railroad property is guilty of a Class 6 felony.

Anyone who masks, alters or removes a light or signal belonging to a railroad, or who exhibits a false light or signal with the intent of stopping the train is guilty of a Class 4 felony. S.D. Codified Laws Ann. §§ 49-16A-107 -90 (2009).

Any person who maliciously places an obstruction on the rails or track of a railroad, or any branch, or turnout connected with a railroad, is guilty of a Class 6 felony. S.D. Codified Laws 49-16A-108 (2009).

If death results from any violation of Sections 49-16A-107 or 49-16A-108, the offender is guilty of a Class 5 felony. S.D. Codified Laws 49-16A-109 (2009).

It is unlawful for any person to intentionally take or remove the waste or packing or brass from any journal box of any locomotive, engine, tender, carriage, coach, caboose, or truck used or operated or capable of being used or operated on a railroad. A violation of this section is a Class 5 felony. S.D. Codified Laws § 49-16A-109 (2009).

No person may with intent cause damage, deposit, throw, or propel any substance upon any highway, roadway, runaway, or railroad track, or at any vehicle while it is in motion or stationary. A violation is a Class 1 misdemeanor. S.D. Codified Laws Ann. § 22-34-27 (2009).

TENNESSEE

Penalty

Tennessee law makes it a Class E felony to destroy or interfere with any railroad property. Tenn. Code Ann. § 39-14-411 (2008). See also, Section 39-13-408, for punishment and Section 39-13-103, for increased penalty if the offense is elevated to reckless endangerment.

It shall be an offense for any person to intentionally throw, hurl, or project a stone or other hard substance, or shoot a missile, at a train, locomotive, railway car, caboose, street railway car, bus, motorcycle, steam vessel or other watercraft used for carry passengers or freight on any of the waters within or bordering the State of Tennessee. Tenn. Code Ann. § 39-14-413 (2008).

It is unlawful for a person to knowingly destroy or interfere with any property utilized by a railroad to furnish service to the general public. Should the destruction or interference place a person in imminent danger of death or serious bodily injury, then it constitutes reckless

endangerment and punished as a Class E felony. Tenn. Code Ann. §39-14-411 (2008). See also, Section 40-35 -111, as to penalty for Class E felony.

TEXAS

It is unlawful for anyone in Texas to dismantle a warning signal at a grade crossing if that warning signal was originally paid for from public funds. The statute defines "warning signal" as a "traffic control device that is activated by the approach or presence of a train, including a flashing light signal, an automatic gate, or a similar device that displays to motorists a warning of the approach or presence of a train."

Penalty

An offense is a Class C misdemeanor. Tex. Transp. Code Ann. § 471.005 (2008).

No person may throw an object or discharge a firearm or weapon at a train or rail-mounted work equipment, or tamper with railroad property, or place an obstruction on a railroad track or right-of-way, or cause in any manner the derailment of a train, railroad car, or other railroad property that moves on tracks. Tex. Penal Code Ann. § 28.07 (2008). The section lists a number of penalties with the severity of the offense based on the amount of pecuniary loss.

UTAH

In Utah, it is unlawful for a person to intentionally obstruct or interfere with train operations or use railroad property for recreational purposes. Utah Code Ann. § 56-1-18.5 (2009).

VERMONT

It is unlawful in Vermont for anyone to willfully and maliciously tamper with, displace, damage or remove a railroad switch, track, bridge, sign, signal, fence, or other structure, or to place an obstruction on a railroad track or bridge or in the railroad right-of-way, or to willfully and maliciously do or cause to be done an act whereby an engine, on-rail motor vehicle, machine, rolling stock, or structure, or any matter or thing appertaining thereto, is stopped, diverted, obstructed, or set in motion with reckless disregard for the life of any person passing over the railroad.

Penalty

If as a consequence thereof a person is killed, the perpetrator shall be guilty of manslaughter. Vt. Stat. Ann. tit. 13, § 3101 (2008).

A person shall not willfully and maliciously display, hide, or remove a signal or light upon or near to a railroad; or by any other willful and malicious act or willful and malicious omission to act, with reckless disregard for the safety of persons or property traveling or being

upon such, endanger or cause to be endangered, the safety of those persons or property. A person who violates a provision of this section shall be imprisoned not more than two years. However, if as a consequence of the violation a person suffers serious bodily injury, the time of imprisonment may be lengthened, provided it does not exceed in all ten years, except in the case provided in Section 3101. Vt. Stat. Ann. tit. 13, § 3102 (2008).

Any person who tampers with any safety appurtenance or device of a locomotive, passenger train car, freight train car, caboose or other train car, or any other on-track rail equipment, including but not limited to wheels, axles, journal bearings, air or hand brake equipment, couplers or uncoupling devices used or operated upon a railroad may be imprisoned for not more than two years, fined not more than five hundred dollars, or both. Vt. Stat. Ann. tit. 13, § 3104 (2008).

A person who willfully does or causes to be done an act whereby a building, fence, construction, work, engine, machine, structure, or any matter or thing appertaining to a railroad is stopped, obstructed, injured, or destroyed, shall forfeit to the person or corporation owning or operating the railroad, double the amount of damages sustained. Vt. Stat. Ann. tit. 5, § 3733 (2008)

VIRGINIA

Penalty

Virginia law makes it a Class 1 misdemeanor to set in motion a locomotive or other rolling stock of a railroad with the intent to commit any crime, malicious mischief or injury. Va. Code Ann. § 18.2-147 (2009).

WASHINGTON

Penalty

Every person who, in such manner as might, if not discovered, endanger the safety of any engine, motor, car or train, or any person thereon, shall in any manner interfere or tamper with or obstruct any switch, frog, rail, roadbed, sleeper, viaduct, bridge, trestle, culvert, embankment, structure, or appliance pertaining to or connected with any railway, or any train, engine, motor, or car on such railway, and every person who shall discharge any firearm or throw any dangerous missile at -any train, engine, motor, or car on any railway, shall be punished by imprisonment in a state correctional facility for not more than twenty-five years. Wash. Rev. Code Ann. § 81.60.070 (2008).

WEST VIRGINIA

West Virginia law forbids anyone from interfering with any railroad sign or signal. The code does not list a penalty. W. VA. Code § 17C-3-9 (2008).

WISCONSIN

Penalty

It is a Class A misdemeanor for any person to intentionally cause damage to a railroad switch, bridge, trestle or tunnel. Wis. Stat. § 943.07 (2009).

WYOMING

It is unlawful for anyone to cause destruction to, remove or in anyway injure any part of a railroad track or its fixtures, or for anyone to tamper with any signal or part of a signal. This includes any bridge, viaduct, culvert, trestle-work, embankment, parapet or other fixture.

Penalty

A violation of any part of this section could result in imprisonment for at least one but not more than twenty years. If any such mischief results in the death of any person, the offender would be deemed guilty of murder in the first or second degree or manslaughter, depending on the nature of the offense. Wyo. Stat. § 37-12-103 (2009).

CHAPTER 11: PRIVATE CROSSINGS

CHAPTER OVERVIEW

Private highway-rail grade crossings are those that are on roadways not open to use by the public nor are they maintained by public authority.

Typical types of private crossings are as follows:

- Farm crossings that provide access between tracts of land lying on both sides of the railroad.
- Industrial plant crossings that provide access between plant facilities on both sides of the railroad.
- Residential access crossings over which the occupants and their invitees reach private residences from another road, frequently a public road paralleling and adjacent to the railroad right-of-way.
- Temporary crossings established for the duration of a private construction project or other seasonal activity.

In some instances, changes in land use policy have resulted in expanded use of such private crossings to the extent that they have become public crossings as evidenced by frequent use of the general public. This occurs whether or not any public agency accepted responsibility for maintenance or control of the use of the traveled way over the crossing.

There are an estimated 83,129 private highway-rail crossings on the U.S. rail system (Source: *United States Department of Transportation, Federal Railroad Administration Grade Crossing Inventory Records*). Casualties and property losses resulting from accidents at these crossings remain a continual concern. At present, authority for closure or treatment of private crossings does not exist in all states. Those that do are listed in this chapter. Usually, there exists some kind of an agreement between the land owner and the railroad that governs the use of the private crossing.

STATE LAWS AND REGULATIONS

ALABAMA

No applicable statute relating to this topic.

ALASKA

No applicable statute relating to this topic.

ARIZONA

No applicable statute relating to this topic.

ARKANSAS

No applicable statute relating to this topic.

CALIFORNIA

California allows the owner of any lands through which a railroad is constructed to have the number of crossings considered necessary or convenient for ingress or egress from the land. The railroad responsible for building and maintaining such crossings and keeping them safe and passable. The Public Utility Commission is empowered to determine the necessity for these crossings and to prescribe the manner, place and conditions under which the crossings are to be built. The commission is also responsible for the apportionment of costs.

The state may order STOP signs be placed at all farm and private crossings where no automatic gates exist. The signs are not required, however, if the Commission determines through a hearing that the signs would constitute an additional safety hazard. Cal. Pub. Util. Code § 7537 (2008).

Penalty

Any person who enters upon or crosses a railroad at any private crossing which is enclosed by bars or gates and fails or neglects to close the gates or bars is guilty of a misdemeanor. Cal. Penal Code § 369d (2008).

COLORADO

No applicable statute relating to this topic.

CONNECTICUT

The railroad is responsible for the restoration of a private crossing that it has abolished without the consent of the owner(s). Failure to do so on the part of the railroad will result in forfeiture of five dollars per day to the owners of the crossing. Such forfeiture begins thirty days from the date of notice. Conn. Gen. Stat. § 13b-291 (2009).

(a) For the purposes of this section, private crossing means any private way, private drive or any facility other than a public highway for the use of pedestrians, motor vehicles or other types of conveyances, which crosses at grade any railroad track. No private crossing shall be established, except that the Commissioner of Transportation may authorize the establishment of a private crossing if it is deemed necessary for the economic welfare of the community but only after imposing specific requirements for the protection of persons using the crossing. The cost of meeting such protection requirements shall be borne by the party requesting such private crossing or the town, city or borough in which such crossing is located may, in its discretion, assume all or part of such cost. The provisions of this section shall not apply to a private crossing used by a railroad company in connection with its operation or for access to its facilities.

(b) Each town, city or borough shall erect and maintain traffic control devices within the limits of the railroad right-of-way at each private crossing, or each town, city or borough shall require the person, association or corporation that owns or has the right to use such crossing to erect and maintain such traffic control devices at each private crossing. Such order shall specify the time within which such protective measures shall be installed. Upon failure of a person, association or corporation to comply with an order issued pursuant to this subsection, the required installation shall be made by the authority issuing such order and the expense of such installation shall be a lien on premises owned by such person, association or corporation. If under the provisions of subsection (d) of this section the Commissioner of Transportation and the State Traffic Commission order the erection of traffic control devices at a private crossing and the town, city or borough within which such crossing is located fails to erect or have erected such devices within one hundred eighty days of such order, the Commissioner of Transportation and the State Traffic Commission shall order the railroad to erect such devices and the expense of such erection shall be a lien on premises owned by the person, association or corporation that owns or has the right to use such crossing. If the Commissioner of Transportation and the State Traffic Commission prescribe traffic control measures in addition to traffic control devices, the town, city or borough shall invoke the provisions of this subsection for the purpose of complying with such order, and the cost of such compliance, if one thousand dollars or less, shall be borne one-half by the town, city or borough and one-half by the property owner and, if over one thousand dollars, shall be borne one-sixth by the town, city or borough, one-sixth by the state, one-third by the property owner, and one-third by the railroad.

(c) The town, city or borough within which any private way leads to a private crossing from a town, city or borough highway, and the Commissioner of Transportation, in the case of any private way which leads to a private crossing from a state highway, shall erect and maintain at the entrance to such private way a suitable sign warning of the railroad grade crossing.

(d) The State Traffic Commission and the Commissioner of Transportation shall prescribe the nature of traffic control devices and traffic control measures to be erected at each private crossing and at approaches to such private crossings.

(e) The Commissioner of Transportation shall make all necessary orders for the closing of any private crossing if the commissioner finds that the necessity for such crossing has ceased or that such private crossing constitutes a hazard to public safety. The commissioner may order the consolidation into one crossing of two or more private crossings located in close proximity to each other.

(f) The provisions of section 13b-281 shall apply to private crossings.

(g) Representatives of towns, cities, boroughs, railroads and state agencies may enter private ways, drives or other facilities to the extent required to perform their duties pursuant to this section.

(h) Any person who fails to comply with traffic control measures installed pursuant to this section shall be fined not more than one hundred dollars. Conn. Gen. Stat. § 13b-292 (2009).

DELAWARE

No applicable statute relative to this topic.

DISTRICT OF COLUMBIA

No applicable statute relative to this topic.

FLORIDA

Florida law requires crossbuck signs be erected at all private highway-rail crossings. Fla. Stat. Ann. § 351.03 (2009).

GEORGIA

No applicable statute relative to this topic.

HAWAII

No applicable statute relative to this topic.

IDAHO

No applicable statute relative to this topic.

ILLINOIS

No applicable statute relative to this topic.

INDIANA

No applicable statute relative to this topic.

IOWA

Iowa requires the railroad to construct and maintain a private farm crossing when a person owns farmland on both sides of the railroad or if tracks of the railroad run between a farm and a public highway, thereby cutting off access to the public highway. The railroad has a duty to construct the crossing at such reasonable place as the owner of the farmland shall designate. Iowa Code § 327G.11 (2008).

KANSAS

Whenever any railroad runs through any farm in such a way as to divide it, the railroad, at the request of the owner of the farm, shall construct and maintain a crossing either on, over or under the railroad track.

In the event the railroad refuses or neglects to comply, Kansas law allows the farm owner, through appropriate action, to compel compliance of the railroad. Kan Stat. Ann. §§ 66-301-303 (2008).

KENTUCKY

No applicable statute related to this topic.

LOUISIANA

No applicable statute related to this topic.

MAINE

In a municipality in which a private way is crossed by a railroad crossing, the municipal officers may act as agents for a railroad corporation in collecting maintenance and insurance charges from those persons using that crossing. ME. Rev. Stat. Ann. tit. 23, § 7229 (2008).

MARYLAND

Under Maryland law, "the conversion of a private road grade crossing to a public highway grade crossing is a projection of a public highway over the railroad by the public authority taking jurisdiction of the private road." MD. Ann. Code art. 8, § 639 (2009).

MASSACHUSETTS

If a railroad lays its track through any private land without having the consent of the owner of the land, separates a portion of the land from another or from a public way and the owner cannot agree with the railroad as to the place or manner in which the owner shall cross, or if a crossing is inconvenient, either party may, in a case which does not involve the abolition of an at-grade crossing, apply to the county commissioners. The county commissioners may order the matter resolved. In no case however, shall the county commissioners order the railroad to construct or maintain a crossing without its consent, unless the railroad is liable by law or by agreement to construct a crossing. Mass. Ann. Laws ch. 160 § 109 (2009).

MICHIGAN

A farm crossing in Michigan shall be constructed and maintained by the railroad at the expense of the requesting party.

A railroad can permit the establishment of private crossings on such terms as may be negotiated between the requesting party and the railroad. Mich. Stat. Ann. § 22.1263 (323) (2)-(3) (2009).

MINNESOTA

Minnesota law provides that the Commissioner of Transportation, by December 31, 1992, shall adopt rules that establish minimum safety standards at all private railroad grade crossings in the state. Minn. Stat. § 219.165 (2008).

A railroad company is required when constructing a railroad to construct a proper farm crossing at a convenient place. Minn. Stat. § 219.13 (2008).

Persons owning lands abutting upon a railroad may construct, at their own expense, crossings under, over, or across the railroad and drains under and across the railroad at places and in ways that do not obstruct or impair the use of the railroad. Before commencing such work, the owner of the land is required to service notice on the nearest station agent. The notice shall detail the work to be performed. The railroad company may construct the crossing and drains but they may not be open for the use of the landowner until the landowner pays the costs of construction. The crossing or crossings must be maintained and kept in good repair by the railroad company; however, the railroad can require reimbursement from the landowner for reasonable and accountable maintenance and repair costs when such was initiated by the landowner. Minn. Stat. § 219.35 (2008).

MISSISSIPPI

No applicable statute relative to this topic.

MISSOURI

The State Highways and Transportation Commission, after receiving application from any person, firm or corporation, has the responsibility for determining if an existing or proposed private crossing is or will become utilized by the public to such an extent that is necessary to protect the public safety. If such is found to be the case, the division may order the installation of crossing warning devices and apportion the cost among the parties according to the benefits accruing to each. In the event of that the orders of the Commission are not complied with, the Commission may close the private crossing to public use. MO. Rev. Stat. § 389.610 (1993).

MONTANA

No applicable statute relating to this topic.

NEBRASKA

Whenever any person owns land on both sides of the right-of-way of any railroad, such railroad shall provide and keep in repair at least one adequate means for such landowner to cross the right-of-way. Any interested landowner with land on both sides of the right-of-way of any railroad may file written complaint with the Department of Roads against any such railroad that the crossing is not adequate or is unsafe and dangerous to the life and property of those who use it, and the department thereupon shall make such investigation, hold such hearing, and issue such orders as it deems necessary, proper, and adequate. If circumstances warrant, the Department may require overhead, underground, or grade crossings and wing fences at underground crossings or may require existing crossings to be relocated so as to be safe to those who use them, but when a special crossing involves an expenditure of more than one thousand five hundred dollars, the landowner shall bear one-half the expenses in excess of one thousand five hundred dollars. Neb. Rev. Stat. § 74-1335 (2009).

The Department of Roads shall have jurisdiction over all crossings outside of incorporated villages, towns, and cities, both public and private, across, over or under all railroads in the State of Nebraska. Neb. Rev. Stat. § 74-1332. (2009).

NEVADA

No applicable statute relating to this topic.

NEW HAMPSHIRE

When it appears to the New Hampshire Department of Transportation that a private crossing and its adjacent approaches are being used to an extent that it may be considered a public highway, the Department may require the grade crossing to be laid out as a public highway, constructed and equipped as such. The railroad will not be charged with any of the cost involved. N.H. Rev. Stat. Ann. § 373:6-a (2008).

NEW JERSEY

New Jersey places a duty upon the railroads to provide and keep in good repair suitable and convenient crossings over, under and across the railroad where it intersects the land of an individual (at a private crossing) and construct and maintain proper cattle guards at all such crossings. N.J. Rev. Stat. § 48:12-49 (2008).

NEW MEXICO

No applicable statute relating to this topic.

NEW YORK

New York law gives the Commissioner of Transportation regulatory authority over new construction of private crossings. The Commissioner may also order alterations to existing ones. Any such private crossings must be located on an existing intercity rail passenger service corridor. If a new private crossing is approved by the Commissioner, he or she may prescribe the manner of the crossing, whether it is to be at-grade or grade separated, the location, the type of warning devices and the apportionment of responsibility for the maintenance thereof.

The statute defines "intercity rail passenger corridor as a continuous railroad route which contains one or more segments of railroad track or tracks where intercity rail passenger service is operated by the National Rail Passenger Corporation" (Amtrak). Emphasis author's.

The statute also provides a definition for private crossings. "Private rail crossing shall mean a crossing which traverses a railroad track or tracks and may be used by the owner by the owner of the right-of-way, the owner's invitees and others, including the public, but has not been declared or recognized as a public rail crossing by the Commissioner." N.Y. R.R. Law § 97 (2009).

NORTH CAROLINA

No applicable statute related to this topic.

NORTH DAKOTA

No applicable statute relating to this topic.

OHIO

Ohio law provides that a person who owns fifteen or more acres of land in one body intersected by a railroad track in such a manner as to preclude freedom of movement by the owner to his land across the tracks may request that the railroad construct, within four months from the date of request, a good and sufficient private crossing.

If the railroad neglects to construct the crossing, the landowner may proceed to build it himself. The railroad then becomes liable to the landowner for all reasonable expense of the construction, not exceeding fifty dollars. Ohio Rev. Code Ann. §§ 4955.27-.28 (2009).

OKLAHOMA

The railroad is required to build and maintain a causeway or other safe and adequate means for crossing when any person who owns land on both sides of the track makes a request for such a causeway. Okla. Stat. tit. 66, § 127 (2008).

OREGON

Oregon law refers to private crossings as "unauthorized crossings." The Department of Transportation in Oregon has broad authority to regulate these unauthorized crossings. The Department may order a railroad to install and maintain warning devices at an unauthorized highway-rail crossing and order the public authority in interest to install and maintain STOP signs at and other warning devices in advance of such crossing. The Department has no authority to authorize the railroad to install automatic or train-activated warning devices unless the Department determines that the railroad intentionally created the unauthorized crossing after June 2, 1995.

The costs of installation and maintenance of the devices are apportioned to the railroad, in the absence of an agreement to the contrary. Or. Rev. Stat. § 824.236 (2008).

PENNSYLVANIA

No applicable statute relating to this topic.

RHODE ISLAND

The Public Utilities Commission of Rhode Island has the authority to consent to the establishment of any new private crossing and to order that an existing private crossing be barricaded if found to be dangerous and a hazard to safety. R.I. Gen. Laws §§ 39-8-1.3 -1.4 (2008).

SOUTH CAROLINA

South Carolina law requires railroads to protect private road crossings as the law requires them to protect public highways. S.C. Code Ann. § 58-15-810 (2008).

SOUTH DAKOTA

South Dakota law provides that the Department of Transportation may order the railroads to construct and maintain a private farm crossing or other causeway when the tracks of the railroad pass through private land leaving a portion of the land on each side of the railroad right-of-way. S.D. Codified Laws Ann. § 49-16A-86 (2009).

TENNESSEE

No applicable statute related to this topic.

TEXAS

No applicable statute related to this topic.

UTAH

Every railroad company operating in Utah is required to erect and maintain a fence of each side of its rights-of-way where the same passes through lands owned and improved by private owners.... The fence shall not be less than four and one-half feet in height and may be constructed of barbed or other fencing wire with not less than five wires, and good, substantial posts not more than one rod apart with a stay midway between the posts attached to the wires to keep the wires in place. Whenever any railroad company shall provide gates for private crossings for the convenience of the owners of the land through which the railroad passes, such gates are to be constructed so that they may be easily operated; and every railroad company shall be liable for all damages sustained by the owner of any domestic animal killed or injured by such railroad as a consequence of the failure to build or maintain such fence. The owner of the land is required to keep the gate closed at all times when not in actual use, and if he fails to do so, and in consequence thereof, any animal strays upon the railroad and is killed or injured, the owner is not entitled to recover damages from the railroad. Utah Code Ann. § 56-1-13 (2009).

VERMONT

No applicable statute related to this topic.

VIRGINIA

Through the *Virginia Highway Corporation Act of 1988*, the state forbids the construction of at-grade crossings of railroads and private roads. The code sections provide that any such crossings will be grade separated. Va. Code Ann. § 56-548 (2009). See also, The *Virginia Highway Corporation Act of 1988*, codified at § 56-548.

WASHINGTON

No applicable statute related to this topic.

WEST VIRGINIA

No applicable statute related to this topic.

WISCONSIN

No applicable statute related to this topic.

WYOMING

No applicable statute related to this topic.

CHAPTER 12: VEGETATION CLEARANCE

CHAPTER OVERVIEW

This chapter is intended to present an overview of laws and regulations covering responsibility for the removal of brush, shrubbery, and trees from the railroad right-of-way within a reasonable distance from the crossing.

If the relevant statute prescribes a penalty, it is listed here. As in other chapters, the relevant citations are listed in the narrative.

STATE LAWS, REGULATIONS, AND PENALTIES

ALABAMA

No applicable statute related to this topic.

ALASKA

No applicable statute related to this topic.

ARIZONA

No applicable statute related to this topic.

ARKANSAS

Arkansas law requires all railroads operating within the state to maintain their right-of-way at or around any railroad crossing of a public road or highway free from grass, trees, bushes, shrubs, or other growing vegetation that may obstruct the view of pedestrians and vehicle operators using the public highway.

The maintenance of the right-of-way must be for a distance of 50 feet on each side of the centerline between the rails for the maintenance width and for a distance of 100 yards on each side of the centerline from the public road or highway for the maintenance length.

Penalty

Any railroad corporation failing or refusing to comply shall be subject to a fine of not less than \$100 or more than \$500 for each violation. Ark. Code Ann. § 23-12-201 (2008).

CALIFORNIA

No applicable statute related to this topic.

COLORADO

Colorado law requires railroads to pay all expenses of keeping public and private crossings planked and in good repair. Colo. Rev. Stat. § 40-24-104 (2008).

CONNECTICUT

If the view of that portion of the tracks of any railroad, crossing a highway at grade, which adjoins such crossing, is obstructed by trees, shrubbery, embankments of earth, or structures of any kind, the Commissioner of Transportation, after proper notice to the railroad company and to the selectmen of the town, mayor of the city, or warden of the borough wherein such crossing is located, and to the owners of the land adjoining the crossing, may conduct a hearing and make such orders for or concerning the removal of any such obstruction as will afford an unobstructed view of the railroad tracks and highway for a distance of at least 150 feet in each direction from the crossing. The entire expense occasioned by any order of the commissioner is to be paid for by the owner of the land upon which the obstruction is located. Conn. Gen. Stat. § 13b-281 (2009).

DELAWARE

No applicable statute related to this topic.

DISTRICT OF COLUMBIA

No applicable statute related to this topic.

FLORIDA

Florida law prohibits the removal, cutting, marring, defacing, or destruction of any trees or other vegetation, either by direct personal action or by causing any other person to take such action, within the rights-of-way of roads located on the State Highway System or within publicly owned rail corridors unless prior written permission has been granted by the Department of Transportation, except where normal tree trimming is required to ensure the safe operation of utility facilities, and such tree trimming is performed in accordance with the provisions of its utility accommodations guide. The department is required to adopt rules for the implementation of this section to achieve protection of vegetation, while at the same time, assuring safe utility operations.

Penalty

Any person who violates the provisions of this section is guilty of a misdemeanor of the second degree. Fla. Stat. § 337.405 (2009). See also Sections 775.082 and 775.083 concerning punishment.

GEORGIA

No applicable statute related to this topic.

HAWAII

No applicable statute related to this topic.

IDAHO

Idaho law requires that the owner of real property be responsible for the removal from his property of any hedge, shrubbery, fence, wall, or other sight obstructions of any nature, except public traffic or highway signs, buildings, and trees, where these sight obstructions constitute a potential traffic hazard. A sight obstruction shall not extend more than 3 feet, or less than 10 feet, in height above the existing center line highway elevation within the vision triangle of vehicle operators. The boundaries of the vision triangles are defined by measuring from the intersection of the edges of two adjacent highways 40 feet along each highway and connecting the two points with a straight line. The sight distance obstruction restriction is also applicable to highway-rail grade crossings with vision triangle defined by measuring 40 feet along the railroad property line when intersecting with a highway.

Penalty

The failure of the owner to remove the traffic hazard after being notified, within a specified period of time as determined by the Department of Transportation, shall constitute a misdemeanor and every day the owner fails to remove the obstruction may be considered a separate and distinct offense. Civil action may be initiated by state or local officials to enforce vision triangle restrictions. Idaho Code § 49-221(2)(3) (2008).

ILLINOIS

Every rail carrier operating within the State of Illinois is required to remove from its right-of-way at all grade crossings within the state, all brush, shrubbery, and trees as is reasonably practical for a distance of not less than 500 feet in either direction from each grade crossing. 625 ILCS 5/18c7401 (2008).

INDIANA

Indiana law requires that all railroad corporations doing business in Indiana must, between July 1 and August 20 in each year, destroy detrimental plants (see Section 15-3-4-1, for definition of detrimental plants), noxious weeds, and rank vegetation growing on lands occupied by the railroad. Ind. Code Ann. § 8-3-7-1 (2009).

Penalty

Any railroad failing to comply with these requirements will be liable for a penalty of \$25. Ind. Code Ann. § 8-3-7-2 (2009).

Each railroad in Indiana shall maintain each public crossing under its control in such a manner that the operator of any licensed motor vehicle has an unobstructed view for 1,500 feet in both directions along the railroad right-of-way subject only to terrain elevations or depressions, track curvature, or permanent improvements. However, the Indiana Department of Transportation may adopt rules to adjust the distance of the unobstructed view requirement based on variances in train speeds, number of tracks, angles of highway and rail crossing intersections, elevations, and other factors consistent with accepted engineering practices.

A public crossing equipped with a train-activated crossing gate is exempt from these requirements if the railroad maintains an unobstructed view for at least 250 feet in both directions along the railroad right-of-way. Ind. Code Ann. § 8-6-7.6-1 (2009)

Penalty

A railroad that violates the provisions of this chapter shall be held liable to the State of Indiana in a penalty of \$100 a day for each day the violation continues subject to a maximum fine of \$5,000 to be recovered in a civil action at the suit of said state, in the circuit or superior court of any county wherein such crossing may be located. Ind. Code Ann. § 8-6-7.6-2 (2009)

IOWA

Iowa law requires every railroad operating in the state to ensure that vegetation on their property, which is on or immediately adjacent to the roadbed, be controlled so that it does not:

- (1) Become a fire hazard to track-carrying structures.
- (2) Obstruct visibility of railroad signs and signals.
- (3) Interfere with railroad employees performing normal trackside duties.
- (4) Prevent proper functioning of signal and communication lines.
- (5) Prevent railroad employees from visually inspecting moving equipment from their normal duty stations. Iowa Code § 327F.27 (2008).

KANSAS

The Board of County Commissioners of each county are authorized to cut all hedge fences, trees, and shrubs growing upon the highway right-of-way boundary, within 350 feet of a highway-rail grade crossing and thereafter keep the same trimmed. Kan Stat. Ann. § 19-2612 (2008).

KENTUCKY

No applicable statute related to this topic.

LOUISIANA

All railroads in Louisiana are required to maintain their rights-of-way for a length of 300 feet on each side of the centerline of public road or highway, and for a distance of 50 feet on each side of the centerline between the rails or the width of the operating right-of-way, whichever is shorter. The measurement for grade crossings with multiple tracks shall be from the centerlines of the outside tracks.

All railroad companies in Louisiana shall maintain their rights-of-way at any public road or highway-rail grade crossing that is not protected by an active warning device that includes lights and cross-arms, in such a manner that the vegetation and structures and others obstructions do not block the view of motorists approaching the crossing.

Railroad companies shall cut vegetation and remove structures and other obstructions that block the view of the operator of any motor vehicle approaching any public road or highway-rail grade crossing that is not protected by an active warning device that includes lights and crossarms, from either direction, and that are located within the maintenance width (50 feet), and maintenance length (300 hundred feet) of the crossing.

The Department of Transportation and Development may periodically inspect and evaluate all state highway-rail grade crossings on state highways to determine whether such crossings are maintained in compliance with the provisions of this section. If the department determines that a particular grade crossing is not in compliance with the requirements, the department shall inform the parish or municipal governing authority in whose jurisdiction the crossing is located, and the respective governing authority shall notify the railroad.

Each parish or municipal governing authority may periodically inspect and evaluate all nonstate public road or highway-rail grade crossings located within its jurisdiction to determine whether such grade crossings are maintained in compliance. If a parish or municipal governing authority determines that a particular grade crossing is not in compliance, the governing authority shall notify the respective railroad company.

Notification to a railroad company must be in writing transmitted by certified mail, return receipt requested, to the person listed as the registered agent of the railroad for service of process.

Penalty

Every railroad that fails or refuses to maintain, or to cause a grade crossing to be in compliance with the provisions of this section within 15 working days after receipt of notification, shall be subject to a civil fines of not less than \$100 for each day of the violation

after receipt of the notification subject to a maximum fine not to exceed \$5,000, payable to the appropriate parish or municipal governing authority. La. Rev. Stat. Ann. § 386.1 (2008).

MAINE

The Maine Department of Transportation has the authority to designate the highway-rail grade crossings in the state at which, from all points on the highway within 300 feet of these crossings, a traveler can have a “fair view” (emphasis author’s) of an approaching train continuously from the time the train is 300 feet from the crossing until it has passed over the crossing, either under existing conditions or by bushes, trees, fences, signboards, or encroachments being trimmed, cut down, or removed. Me. Rev. Stat. Ann. tit. 23 § 7222 (2008).

When the Department of Transportation deems that trees, bushes, or other encroachments are obstructing the view at highway-rail grade crossings and such a condition is dangerous to travelers, it may order the removal of any such obstacles. Me. Rev. Stat. Ann. tit. 23 § 7234 (2008).

Title 23 of the Maine Revised Statute, at Section 7222, allows the Department of Transportation to designate by general orders, which can be issued without formal notice or hearing, crossings in which the railroads, through trimming brush and trees or by removing fences and signboards on their right-of-way, must ensure that the motorist or traveler through the crossing has a clear view of an approaching train 300 feet from the crossing. Me. Rev. Stat. Ann. tit. 23 § 7222 (2008).

MARYLAND

No applicable statute related to this topic.

MASSACHUSETTS

If the view of a railroad crossing or highway at grade is obstructed by standing wood in woodlands, the railroad corporation or 10 citizens of a town may petition the county commissioners for the county where such crossing is situated for the removal of such standing wood; and the commissioners, after proper notice and hearing, may make orders as to such removal as the public safety demands. They shall also prescribe the limits within which such standing wood shall be taken, and shall determine the damage sustained. Any damage and expense incident thereto may be recovered from the railroad corporation. Mass. Gen. Laws Ann. ch. 160, § 150 (2009).

MICHIGAN

Michigan law allows the road authority and the railroad to agree in writing for clear vision areas on crossings in high-speed rail corridors. The portions of the right-of-way and property owned and controlled by the respective parties, within an area to be provided for clear vision, shall be considered as dedicated to the joint usage of both the railroad and the road authority.

The acquisition of right-of-way, purchase, and removal of obstructions within a clear vision area, including buildings and other artificial construction, trees, brush, and other growths, and grading or earthwork, and including the maintenance of such conditions, shall be at the equal cost and expense of the railroad and the road authority. Mich. Comp. Laws § 462.317 (2009).

MINNESOTA

If a railroad, road authority, or abutting property owner fails to control the growth of trees or vegetation or the placement of structures or other obstructions on its right-of-way or property as to interfere with the safety of the public traveling on a public or private grade crossing, the local governing body of the town or municipality where the grade crossing is located may, by notice, require the obstruction to be removed as necessary to provide an adequate view of oncoming rains as the crossings. The commissioner is required to adopt rules establishing minimum standards for visibility at public and private grade crossings.

Penalty

A railroad company, road authority, or property owner failing to comply within 30 days after being notified in writing is subject to a fine of \$50 for each day that the condition is not corrected. Minn. Stat. § 219-384(1)(2) (2008).

MISSISSIPPI

No applicable statute related to this topic.

MISSOURI

All railroads operating in Missouri are responsible for the maintenance of their right-of-way at highway-rail grade crossings. The crossing must be kept clear of vegetation, undergrowth, or other debris for a distance of 250 feet each way from the near edge of the crossing. Mo. Rev. Stat. § 389.665 (2008).

MONTANA

No applicable statute related to this topic.

NEBRASKA

No applicable statute related to this topic.

NEVADA

No applicable statute related to this topic.

NEW HAMPSHIRE

Whenever, after a hearing upon petition or upon its own motion, the Department of Transportation shall be of the opinion that the protection required by its order demands that the land adjacent to any crossing shall be kept clear of buildings, trees, brush, or other obstructions, it may order the railroad corporation to clear the land of such obstruction. N.H. Rev. Stat. Ann. § 373:18 (2008).

NEW JERSEY

No applicable statute related to this topic.

NEW MEXICO

No applicable statute related to this topic.

NEW YORK

No applicable statute relating to this topic.

NORTH CAROLINA

No applicable statute related to this topic.

NORTH DAKOTA

No applicable statute related to this topic.

OHIO

Every railroad company is required to destroy or remove plants, trees, brush, or other destructive vegetation upon its right-of-way at each intersection with a public road or highway, for a distance of 600 feet, or a reasonably safe distance from the roadway of the public road as shall be determined by the public utilities commission.

Whenever any railroad fails to destroy or remove such vegetation after 10-day written notice served on its local agent, the commission, Board of County Commissioners, Board of Township Trustees, or legislative authority of a municipal corporation, in which the intersection is located, having the care of such road or highway, shall remove such plants, trees, brush, or other obstructive vegetation and shall recover the cost of removal from the responsible railroad company.

Penalty

If the railroad company fails to pay the amount demanded within 30 days after notification by certified mail, the commission, Board of County Commissioners, Board of Township Trustees, or legislative authority of a municipal corporation shall certify the amount demanded to the county auditor to be collected as other taxes and assessments, and upon collection, shall be credited to the general fund of the public body causing the work to be performed. Ohio Rev. Code Ann. § 4955.36 (2009).

OKLAHOMA

No applicable statute related to this topic.

OREGON

No applicable statute related to this topic.

PENNSYLVANIA

No applicable statute related to this topic.

RHODE ISLAND

No applicable statute related to this topic.

SOUTH CAROLINA

South Carolina law requires that all railroad crossings on public highways must be inspected for conditions which unsafely obstruct a motorist's view of approaching trains, for the presence of crossbucks, and for the presence of stop signs. The Department of Transportation is responsible for inspecting crossings on state-maintained highways, the governing body of each county is responsible where railroads cross county-maintained highways. The governing body of each municipality is responsible for inspecting railroad crossings on road and street rights-of-way maintained by municipalities. The department is required to inform the counties and municipalities of the railroad crossings they are responsible for inspecting. By January 1, 1989, the governing body of each county and municipality must notify the department of the office and public official to whom the governing body has assigned responsibility for performing the inspections.

If the person inspecting a railroad crossing finds that a motorist's view of approaching trains is unsafely obstructed by vegetation, growth, or objects not permanently affixed to realty which are within the rights-of-way of the railroad, the inspector must immediately notify the deputy director of engineering within the Department of Transportation of the hazard. Notice from the department shall direct the railroad to cut or remove the vegetation, growth, and objects that are blocking a motorist's view.

Penalty

The railroad is then required to cut or remove the vegetation, growth, and objects within 60 days of receipt of the notice. If the railroad company fails to do what is required within the specified period of time will result in a civil penalty of not less than \$100 or more than \$500. The railroad company is subject to an additional civil penalty of \$100 a day for each day obstructions remain after the specified period of time.

If the inspector finds that a motorist's view of approaching trains is obstructed by vegetation, growth, or objects not permanently affixed to realty that lie outside the right-of-way of the railroad but within right-of-way of highways and roads maintained by the state, county, or municipality, the inspector shall give written notice to the appropriate department of the state, county, or municipality. The department, counties, and municipalities have sixty days to eliminate the hazard. If counties and municipalities fail to remove the obstruction, the Department of Transportation must do so. Counties and cities will then be required to reimburse the department.

If the inspector finds that motorist's view is obstructed by vegetation, growth, or objects no permanently affixed to realty that lie on private property outside the right-of-way of both the railroad and the highway or a right-of-way of the state, county or municipality, he or she must give appropriate notice. The owner of the property shall then have 60 days to remove the obstruction.

By January 1 of each year, counties and municipalities are required to report all railroad crossings that were inspected during the preceding year and at which no obstructions were found. The Department of Transportation must also make a similar annual report and provide the report to the Senate Transportation Committee and education and public works committee of the House of Representatives of the South Carolina Legislature. S.C. Code Ann. § 58-17-1450 (2008).

SOUTH DAKOTA

No applicable statute related to this topic.

TENNESSEE

No applicable statute related to this topic.

TEXAS

No applicable statute related to this topic.

UTAH

No applicable statute related to this topic.

VERMONT

No applicable statute related to this topic.

VIRGINIA

Every railroad operating in Virginia is required to clear from its right-of-way trees and brush for 100 feet on each side of public road crossing at grade when such trees or brush would otherwise obstruct the view of approaching trains.

Penalty

A violation by a railroad brings a fine of not more than \$500 for each offense, to be imposed by the State Corporation Commission after due notice and hearing. Va. Code Ann. § 56-411 (2009).

WASHINGTON

Every railroad operating within the State of Washington is required to keep its right-of-way clear of all brush and timber in the vicinity of a railroad grade crossing with a county road for a distance of 100 feet from the crossing so as to allow a person an unobstructed view in both directions of an approaching train. Likewise, the county legislative authority shall keep its right-of-way clear for 100 in both directions. Wash. Rev. Code § 36.86.100 (2008).

Every railroad is required to keep its right-of-way clear of all brush and timber in the vicinity of a highway-rail grade crossing with a state highway for a distance of 100 feet from the crossing so as to allow a person an unobstructed view in both directions of an approaching train. Likewise, the Washington Transportation Department is responsible to clear their right-of-way in the same manner and for the same distance. Wash. Rev. Code § 47.32.140 (2008).

WEST VIRGINIA

No applicable statute related to this topic.

WISCONSIN

Every railroad operating in Wisconsin must keep its right-of-way clear of brush or trees for a distance of at least 330 feet in each direction from the center of its intersection with any public highway, and for such further distance as is necessary to provide an adequate view of approaching trains. Wis. Stat. § 195.29(6) (2009).

WYOMING

No applicable statute related to this topic.

CHAPTER 13: PHOTOGRAPHIC MONITORING AND ENFORCEMENT

CHAPTER OVERVIEW

Automated enforcement of traffic laws using photographs and video tapes has assumed a new presence in the efforts to enforce speed limits and ticketing red light violators. In the last several years it has entered the discussions as a possible tool for monitoring highway-railroad grade crossings. The success of several research projects utilizing photographic monitoring of driver behavior at highway-railroad grade crossings has prompted a new round of discussion concerning the use of such technology as a means of enforcement against violators at highway-railroad crossings. Since the last edition of this book was published efforts in this regard have diminished and not a lot of interest has been shown in this method of facilitating lawful observance at the highway-rail crossing. Only three states currently use photo enforcement of traffic laws at highway-rail grade crossings: California, Illinois, and Louisiana.

This chapter describes in detail the process in three states. In the others having a traffic control signal monitoring system (known by other names also), only the statute number is listed for review.

STATE LAWS AND REGULATIONS

CALIFORNIA

The California Vehicle Code authorizes governments and law enforcement agencies to operate “automated enforcement systems” at both traffic light intersections (sec. 21455.5) and at railroad grade crossings (sec.21362.5). Cal. Veh. Code §§ 22451.5–21362.5 (2008).

Railroads and rail transit grade crossings may be equipped with an automated rail crossing enforcement system if the system is identified by clearly indicating the system’s presence and visible to traffic approaching from each direction. Cal. Veh. Code § 21362.5 (2008)

The statute requires, however, that prior to utilizing an automated traffic enforcement system shall commence a program to issue only warning notices for 30 days. The local jurisdiction shall also make a public announcement for the automated traffic enforcement system at least 30 days prior to the commencement of the public program. Cal. Veh. Code §§ 21455.5 (2008).

Both Sections 21362.5 and 21455.5 require that signs be posted giving notice to drivers of the presence of automated enforcement systems. Both statutes also provide that photographic records made by automated enforcement systems are confidential. These records may only be accessed by relevant governmental and law enforcement agencies, the registered owner of the violating vehicle, and any individual identified by the violating vehicle’s owner as the driver at the time of the alleged violation, if signs are posted to notify drivers of the presence of the system. Section 22451 states that violations detected by an automated enforcement system are subject to the procedures established by Section 40518. Under Section 40518, a written notice to

appear, issued by peace officer or a qualified employee of a law enforcement agency and mailed with 15 days of the alleged violation to the current address of the registered owner of the violating vehicle, constitutes a complaint against the vehicle owner.

COLORADO

Colorado has a statute describing an automated vehicle identification system. The sections do not mention any application to highway-rail grade crossings. Colo. Rev. Stat. § 42-4-110.5 (2008). See also related Sections 13-10-111, 42-2107(5), 42-2-118(3), and 42-2-121.

DELAWARE

Delaware law allows the department of transportation and/or the governing body of any city or county to install and operate traffic light signal violation monitoring systems; provided however, that in the event the installation other than by the department of transportation The statute does not specifically provide for the use of violation monitoring systems at highway-railroad crossings. Del. Code. Ann. Tit. 21 § 4101(d)(e) (2009).

DISTRICT OF COLUMBIA

(a) The Mayor of the District of Columbia is authorized to use an automated traffic enforcement system to detect moving violations. There is no indication that it is being adapted to highway-rail grade crossings. D.C. CODE § 50-2209.01(a)(b) (2009)

ILLINOIS

The law in Illinois provides for an Automated Railroad Crossing Enforcement System for use at highway-rail grade crossings.

(a) For the purposes of this section, an automated railroad grade crossing enforcement system is a system operated by a law enforcement agency that records a driver's response to automatic, electrical, or mechanical signal devices and crossing gates. The system shall be designed to obtain a clear photograph or other recorded image of the vehicle, vehicle operator, and the vehicle registration plate of a vehicle in violation of Section 11-1201 or 11-1425. The photograph or other recorded image shall also display the time, date, and location of the violation.

(b) The Illinois Commerce Commission and the Illinois Department of Transportation may, in cooperation with a local law enforcement agency, establish in any county or municipality an automated railroad grade crossing enforcement system at any railroad grade crossing designated by local authorities. Local authorities desiring the establishment of an automated railroad crossing enforcement system must initiate the process by enacting a local ordinance requesting the creation of such a system. After the ordinance has been enacted, and before any additional steps toward the establishment of the system are undertaken, the local authorities, the Commission, and the Department must agree to a plan for obtaining, from any combination of

federal, State, and local funding sources, the moneys required for the purchase and installation of any necessary equipment.

(c) For each violation of Section 11-1201 or 11-1425 recorded by an automatic railroad grade crossing system, the local law enforcement agency having jurisdiction shall issue a written Uniform Traffic Citation of the violation to the registered owner of the vehicle as the alleged violator. The Uniform Traffic Citation shall be delivered to the registered owner of the vehicle, by mail, within 30 days of the violation. The Uniform Traffic Citation shall include the name and address of vehicle owner, the vehicle registration number, the offense charged, the time, date, and location of the violation, the first available court date, and that the basis of the citation is the photograph or other recorded image from the automated railroad grade crossing enforcement system.

(d) The Uniform Traffic Citation issued to the registered owner of the vehicle shall be accompanied by a written notice, the contents of which is set forth in subsection (e) of this Section, explaining how the registered owner of the vehicle can elect to proceed by either paying the fine or challenging the issuance of the Uniform Traffic Citation.

(e) The written notice explaining the alleged violator's rights and obligations must include the following text:

“You have been served with the accompanying Uniform Traffic Citation and cited with having violated Section 11-1201 or 11-1425 of the Illinois Vehicle Code. You can elect to proceed by:

1. Paying the fine; or
2. Challenging the issuance of the Uniform Traffic Citation in court; or
3. If you were not the operator of the vehicle at the time of the alleged offense, notifying in writing the local law enforcement agency that issued the Uniform Traffic Citation of the number of the Uniform Traffic Citation received and the name and address of the person operating the vehicle at the time of the alleged offense. If you fail to so notify in writing the local law enforcement agency of the name and address of the operator of the vehicle at the time of the alleged offense, you may be presumed to have been the operator of the vehicle at the time of the alleged offense.”

(f) If the registered owner of the vehicle was not the operator of the vehicle at the time of the alleged offense, and if the registered owner notifies the local law enforcement agency having jurisdiction of the name and address of the operator of the vehicle at the time of the alleged offense, the local law enforcement agency having jurisdiction shall then issue a written Uniform Traffic Citation to the person alleged by the registered owner to have been the operator of the vehicle at the time of the alleged offense. If the registered owner fails to notify in writing the local law enforcement agency having jurisdiction of the name and address of the operator of the vehicle at the time of the alleged offense, the registered owner may be presumed to have been the operator of the vehicle at the time of the alleged offense.

(g) Evidence.

(1) A certificate alleging that a violation of Section 11-1201 or 11-1425 occurred, sworn to or affirmed by a duly authorized agency, based on inspection of recorded images produced by an automated railroad crossing enforcement system, are evidence of the facts contained in the certificate and are admissible in any proceeding alleging a violation under this Section.

(2) Photographs or recorded images made by an automatic railroad grade crossing enforcement system are confidential and shall be made available only to the alleged violator and governmental and law enforcement agencies for purposes of adjudicating a violation of Section 11-1201 or 11-1425 of the Illinois Vehicle Code. The photographs may also be made available to governmental agencies for the purpose of a safety analysis of the crossing where the automatic railroad grade crossing enforcement system is installed. However, any photograph or other recorded image evidencing a violation of Section 11-1201 or 11-1425 shall be admissible in any proceeding resulting from the issuance of the Uniform Traffic Citation when there is reasonable and sufficient proof of the accuracy of the camera or electronic instrument recording the image. There is a rebuttable presumption that the photograph or recorded image is accurate if the camera or electronic recording instrument was in good working order at the beginning and the end of the day of the alleged offense.

(h) Rail crossings equipped with an automatic railroad grade crossing enforcement system shall be posted with a sign visible to approaching traffic stating that the railroad grade crossing is being monitored, that citations will be issued, and the amount of the fine for violation.

(i) A county or municipality, including a home rule county or municipality, may not use an automated railroad crossing enforcement system to provide recorded images of a motor vehicle for the purpose of recording its speed. The regulation of the use of automated railroad crossing enforcement systems to record vehicle speeds is an exclusive power and function of the State. This subsection (i) is a denial and limitation of home rule powers and functions under subsection (h) of Section 6 of Article VII of the Illinois Constitution.

(j) If any part or parts of this Section are held by a court of competent jurisdiction to be unconstitutional, the unconstitutionality shall not affect the validity of the remaining parts of this Section. The General Assembly hereby declares that it would have passed the remaining parts of this Section if it had known that the other part or parts of this Section would be declared unconstitutional.

Penalty

(1) A violation of this Section is a petty offense for which a fine of \$250 shall be imposed for a first violation, and a fine of \$500 shall be imposed for a second or subsequent violation. The court may impose 25 hours of community service in place of the \$250 fine for the first violation.

(2) For a second or subsequent violation, the Secretary of State may suspend the registration of the motor vehicle for a period of at least 6 months. 625 ILCS 5/11-1201.5 (2009).

LOUISIANA

Louisiana law mentions that law enforcement officers may use video or photographic evidence to issue citations for highway-rail grade crossing violations. A law enforcement officer may issue a citation to the owner or driver of a vehicle, or in the case of a leased vehicle, the lessee or driver of the leased vehicle, on the basis of the information contained in the photographic or video evidence.

The governing authority of a municipality may enter into a cooperative endeavor agreement authorizing certified railroad law enforcement officers to assist in the enforcement of state laws and local ordinances pertaining to railroad grade crossings within its limits La Rev. Stat. Ann. § 32:171 (g)- (h) (2008)

MARYLAND

Maryland law does provide for the use of a Traffic Control Signal Monitoring System and defines one as a device with one or more motor vehicle sensors working in conjunction with a traffic control signal to produce recorded images of motor vehicles entering an intersection against a red signal indication. It does not authorize adaptability to highway-rail grade crossings. Md. Code Ann. Transp. § 21-202.1(2009).

NEW YORK

Section 1111-a of the N.Y. Vehicle and Traffic law permits cities with a population of one million or more to adopt a demonstration program imposing liability on the owner of a vehicle for failure to comply with traffic-control signals. Section 1111- a(c) authorizes the use of a vehicle sensor device installed to work in conjunction with a traffic-control signal which automatically produces two or more photographs, two or more microphotographs, a videotape or other recorded images of each vehicle at the time the vehicle commits a violation. The statute does not mention highway-rail grade crossings. N.Y. Transp. Law § 1111 (2009).

OHIO

Ohio law allows local authorities to use traffic law photo-monitoring devices. The statute does not mention any applicability to highway-rail grade crossings. Ohio Rev. Code Ann. § 4511.094 (2009).

RHODE ISLAND

The Rhode Island Department of Transportation and the various municipalities are given authorization to install and operate automated traffic violation detection systems. Such systems are limited to systems which monitor and detect violations of traffic control signals. No mention is made of highway-rail grade crossings. R.I. Gen Laws § 31-41.2-3 (2008).

TENNESSEE

Tennessee law has a provision for a traffic light signal monitoring system. No mention is made of its adaptability to highway-rail grade crossings. Tenn. Code Ann. § 55-8-198 (2008).

TEXAS

Texas law provides for the implementation of a photographic traffic signal enforcement system by local authorities. It does not mention adaptability to highway-rail grade crossings. Tex. Transp. Code Ann. § 707.003 (2008).

VIRGINIA

Virginia law provides for a photo-monitoring system or automatic vehicle identification system. However, its use is limited exclusively to that information that is necessary for the collection of unpaid tolls at toll facilities. Va. Code Ann. § 46.2-819.1 (2009).