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U.S. Department of Transportation
Federal Railroad Administration

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

THIRD EDITION

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DISCLAIMER

This compilation is intended to present the state of the law as of March, 1999. Every effort has been made to assure accuracy in the information contained in this book. However, due to the broad scope of this project and the fluid nature of state statutory and case law, the Federal Railroad Administration cannot guarantee complete accuracy of the material presented. This document is intended to provide a general overview of the subjects. 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 has been covered in this book and during the 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 Department of Transportation or the Federal Railroad Administration.

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

L. Stephen Jennings
Washington, D.C.

PREFACE

The *COMPILATION OF STATE LAWS AND REGULATIONS ON MATTERS AFFECTING HIGHWAY-RAIL CROSSINGS, Third Edition* makes a unique contribution to the highway-rail grade crossing safety literature.

This book represents the third edition to the 1983 original publication although the title of the second editions has been changed from RAIL-HIGHWAY grade crossings to HIGHWAY-RAIL grade crossings, the material covered is the same. The second edition, published in 1995 broadened the inquiry to include an examination of laws concerning trespassing on railroad facilities, vandalism, and the degree of local government control, if any, over private crossings.

In this Third Edition, the parameters of the examination have been expanded even further to include two additional chapters covering timely issues concerning grade crossing safety: 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. Also, in this edition, the Uniform Vehicle Code (UVC) has been added as an appendix to serve as an additional resource and a means of comparison. The Uniform Vehicle Code 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 a number of 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 discussed in an effort to provide the reader with a brief overview of the subject matter presented. Each individual state's laws or regulations concerning the subject have been listed 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 both students and practitioners.

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

For the first time, this book will be made available on the World Wide Web along with a mechanism to allow the individual states to record changes and/or updates in their law. A form is included on the web site to allow changes or updates to be made on the form only and then submitted the Federal Railroad Administration's Office of Safety where the updates will be made to the text and made available both in hard copy updates as well as on the Web.

This book was prepared under the sponsorship of the Federal Railroad Administration (FRA), Office of the Chief Counsel, and the Office of Safety. I acknowledge with sincere appreciation the contributions of Messrs. Mark Tessler, from the Office of the Chief Counsel and Bruce George, of the Office of Safety. Additional gratitude goes to Mr. Steve Ditymer, Director of the FRA's Office of Research and Development for his willingness to allow other duties to be put aside during the writing .

I would like to extend special appreciation to Ms. Carolyn Penharlow, and Mr. Gary Heiligmen for their research, without which this book could not have been written; and to Kelly

I would like to extend special appreciation to Ms. Carolyn Penharlow, and Mr. Gary Heiligmen for their research, without which this book could not have been written; and to Kelly Sewer and Antinette Turner of Applied System Technologies, Inc. for their valuable editorial review and assistance.

QUICK REFERENCE

	<u>Chapter 1: Crossing Consolidations and Closings</u>	<u>Chapter 2: Crossing Treatment Procedures</u>	<u>Chapter 3: Blocked Crossings</u>	<u>Chapter 4: Warning Devices - Passive</u>	<u>Chapter 5: Warning Devices - Train Borne</u>	<u>Chapter 6: Warning Devices - Active</u>	<u>Chapter 7: Slow, Low and Special Vehicles</u>	<u>Chapter 8: Driver Action</u>	<u>Chapter 9: Trespassing</u>	<u>Chapter 10: Vandallism</u>	<u>Chapter 11: Private Crossings</u>	<u>Chapter 12: Vegetation Clearance</u>	<u>Chapter 13: Photographic Enforcement</u>
Alabama	X	X		X	X		X	X					
Alaska							X	X		X			
Arizona	X	X	X	X	X	X	X	X	X	X			
Arkansas	X	X		X	X		X	X	X	X		X	
California	X	X	X	X	X	X	X	X	X	X	X		X
Colorado	X	X			X	X	X	X		X		X	X
Connecticut	X	X		X	X	X	X	X		X	X		
Delaware	X	X	X				X	X	X	X			X
District of Columbia	X	X	X	X	X	X	X	X	X	X			X
Florida	X	X	X	X	X	X	X	X	X	X	X	X	
Georgia	X	X	X	X	X		X	X	X	X			
Hawaii		X		X			X	X		X			
Idaho	X	X	X		X	X	X	X		X		X	
Illinois	X	X	X	X	X	X	X	X	X	X		X	X
Indiana	X	X	X	X	X	X	X	X	X	X		X	
Iowa	X	X	X		X	X	X	X	X	X	X	X	
Kansas	X	X	X	X	X	X	X	X	X	X	X	X	
Kentucky	X	X	X	X	X	X	X	X	X	X			
Louisiana	X	X	X	X	X	X	X	X	X	X			
Maine	X	X		X	X	X	X	X	X	X	X	X	
Maryland	X	X		X		X	X	X		X	X		X
Massachusetts	X	X	X	X	X	X	X	X	X	X	X	X	
Michigan	X	X	X	X		X	X	X	X	X	X	X	
Minnesota	X	X	X	X	X	X	X	X	X	X	X	X	
Mississippi	X	X	X	X	X	X	X	X	X	X			
Missouri	X	X	X		X	X	X	X	X	X	X	X	
Montana	X	X	X	X	X		X	X	X				
Nebraska	X	X		X	X	X	X	X		X	X		
Nevada	X	X		X	X	X	X	X		X			
New Hampshire	X	X	X	X	X	X	X	X	X		X	X	
New Jersey	X	X	X	X	X	X	X	X	X	X			
New Mexico	X	X			X		X	X					
New York	X	X	X	X	X		X	X	X	X	X		X
North Carolina	X	X				X	X	X		X			
North Dakota	X	X	X	X	X	X	X	X		X			
Ohio	X	X	X	X	X	X	X	X		X	X		
Oklahoma	X	X		X	X	X	X	X	X	X	X		
Oregon	X	X	X	X	X	X	X	X		X	X		
Pennsylvania	X	X	X			X	X	X		X			
Rhode Island	X	X	X	X	X	X	X	X	X	X			
South Carolina	X	X	X	X	X		X	X	X	X	X		
South Dakota	X	X	X	X		X	X	X	X	X	X		
Tennessee	X	X		X	X	X	X	X		X			
Texas	X	X	X	X	X	X	X	X	X	X			
Utah	X	X	X		X	X	X	X	X	X			
Vermont	X	X	X	X	X	X	X	X	X	X			
Virginia	X	X	X	X	X	X	X	X	X	X	X	X	X
Washington	X	X		X	X	X	X	X		X		X	
West Virginia	X	X	X	X	X		X	X	X	X			
Wisconsin	X	X	X	X	X		X	X	X		X		
Wyoming	X	X				X	X	X		X			

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CHAPTER 1: CROSSING CONSOLIDATIONS AND CLOSURES

CHAPTER OVERVIEW

In the majority of states, the overall authority for highway-rail crossing safety and the authority to order the elimination of at-grade crossings lies with 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 are referred to by different names, including the Public Utility Commission and the State Corporation Commission. A couple of states provide for shared responsibility between a state agency and a unit of local government while a few more provide for shared responsibility between the DOT 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 agency originally responsible for grade crossing regulation was the Public Service Commission (PSC). The powers, functions and duties of the PSC with respect to grade crossing safety were transferred to the Division of Motor Carriers and Railroad Safety of the Department of Economic Development. And Massachusetts has renamed its agency responsible for grade crossings as the Department of Telecommunications and Energy.

This chapter is intended to provide a brief 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 of a grade crossing is identified along with an indication of whether the authority is exclusive or shared. Each state's entry concerning the subject is followed by 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 judgement, 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 or overpass, or other provision made for the elimination of the grade crossing.

With respect to at-grade crossings on a municipal or county highway, street or right-of-way of any railroad within the state whenever, if in the judgement of the Department of Transportation, the grade crossing is dangerous, redundant or the enhancement of public safety resulting from the closing outweighs any inconvenience caused by rerouting the vehicular traffic. 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. 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.

Whenever the Department 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. If the closing is 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 three consecutive weeks prior to the closure. The notice must outline the procedure to request a hearing. If there is such a request for hearing, the Department must give ten days' notice to the requester and the municipality or county. Ala. Code § 37-2-84 (a)-(b)-(c) (1999).

ALASKA

Alaska has no code section relating to this topic.

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 (1999).

ARKANSAS

The State Highway Commission has exclusive authority over grade crossings including the power to determine and prescribe the manner, location, terms of installation, operation, maintenance, alteration and abolishment, separation of grades, and protection and apportionment of expenses. Ark. Code Ann. §§ 23-12-301-1001-1002 (1999).

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 §§ 1202 (a)-(b) 1201 (West 1999).

COLORADO

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. Colo. Rev. Stat. § 40-4-106(2)(3) (1999).

CONNECTICUT

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

The process may be initiated upon written petition to the Commissioner 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 a railroad. The Commissioner appoints a time and place for hearing the petition and gives notice to the petitioners. Conn. Gen. Stat. § 13B-270 (West 1998).

A similar procedure applies to the directors of any railroad company whose track is crossed by a highway. 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 (West 1998).

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 time frame; 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 (West 1998).

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. Conn. Gen. Stat. § 13-b-272 (West 1998).

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 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 ten percent. Conn. Gen. Stat. 13b-276 (West 1998).

DELAWARE

The Delaware Department of Transportation has the authority to order the closing of highway-rail crossings. Del. Code Ann. tit. 2 § 1804 (1999).

DISTRICT OF COLUMBIA

The Mayor of the District of Columbia has statutory authority to order a grade crossing elimination. D.C. Code Ann. § 7-137 (1999).

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 (West 1999 Supplement).

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 is required to administer rail operating 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 (West 1999 Supplement).

GEORGIA

The Georgia Department of Transportation has authority for final approval of grade crossing eliminations. The statute indicates 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.

Once a decision is made by either entity, prompt notice must be given to the affected railroads. All parties must meet within thirty days and must further agree on a method of closure and separation within ninety days. If there is no agreement within the specified time, the department, county or municipality may proceed with construction or may, by written order, direct the interested railroads to proceed with construction. Ga. Code Ann. §§ 32-6-193-194 (1998).

HAWAII

Hawaii has no code section relating to this topic.

IDAHO

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.

For crossings not 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 the various railroad companies. Idaho Code §§ 62-301-303 (1999).

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 alteration 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 five 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 crossings 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 (1999).

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, but not the authority to open one.

Upon the issuance of any such order by the Department, the railroad(s) involved is to physically remove the crossing from the tracks. The government unit responsible for maintaining the highway is to remove approaches to the crossing or barricade them. Ind. Code Ann. § 8-6-7.7-3 (Burns 1998 Supplement).

The Department is required to develop criteria for use in determining whether to open a new public railroad grade, and to develop criteria which the Department and unit of local government can use in determining whether to abolish a public railroad 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 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(Burns 1998 Supplement).

A person may petition a unit (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 (Burns 1998 Supplement).

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 (Burns 1998 Supplement).

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 (Burns 1998 Supplement).

IOWA

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 (1998).

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 (1998).

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 State Corporation Commission's authority extends to crossings on city, county, or township roads. Likewise, the governing bodies of first and second class cities 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.

Still another section of the statute confers the same authority on the governing bodies of first and second class cities in counties of 90,000 population or more.

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 such 50 percent limitation shall not apply to express highway for 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 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.

Under this same section, 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 (1998).

The governing body of all cities of the first and second class also have 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 (1998).

At the request of the governing body of any city, county or township, and after proper investigations made in cooperation with the Secretary of Transportation, the state Corporation Commission may designate those railroad grade crossings on city, county or township roads which are dangerous. At all crossings so designated the Corporation Commission may order the installation of appropriate safety devices to be installed and maintained by the railroad. The State Corporation Commission is empowered to determine the number, type and location of such safety devices which must conform with generally recognized standards. The Corporation Commission has additional authority to close and abolish grade crossings on city, county or township roads that are in proximity to crossings on which safety devices have been ordered, subject to the approval of the governing body of such city, county or township, and to require the payment of a portion of the cost of the installation of the safety devices by the affected railroad or railroads: provided, That the cost to the railroad shall be not less than 20 percent nor more than 50 percent of the total installation costs. Kan. Stat. Ann. § 66-321a (1998).

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. §§ 12-1634-68-509 (1998).

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, on or before July 1 of each of the next 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. Either affected party 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 30 days of notice of the opportunity, the Department shall order the crossing closed. Ky. Rev. Stat. Ann. § 177.120 (1)(2)(3) (1999 Supplement).

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 (1999 Supplement).

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) (Baldwin 1998).

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 (Baldwin 1998).

The Fiscal Court is required to give at least ten (10) day's 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) (Baldwin 1998).

LOUISIANA

In 1998, the Louisiana Legislature enacted legislation that authorized the Department of Transportation and Development to require closure of state-maintained railroad grade crossings. The legislation requires a prioritization of proposed crossing closures, along with notification of affected parties prior to closure. It provides for public hearings alternative actions to closing by a local government authority; it spells out the responsibility for funding by the local governing authority, directs promulgation of rules and regulations by the department, and requires certain factors for consideration in development of criteria for crossing closure, and other related matters.

The Secretary of the Department of Transportation and Development can require the closure of crossings. The statute provides for the Department of Transportation and Development to complete a study no later than March 1, 1999 to establish priorities for railroad grade crossing closures and to develop a prioritized plan for implementing railroad grade crossing closures.

The Department may change the location of or abolish any existing public grade crossing on any state-maintained highway in the state when it determines that it is necessary for the safety of the public. The process must comply with the following procedures:

“(1) Within not less than one hundred eighty days prior to the closure of any public crossing, the Department shall notify the municipal governing authority of the area in which the crossing is located, the governing authority of the parish in which the crossings located, the railroad company whose railroad tracks are crossed at grade by the highway, emergency services providers providing services within the affected area, and any other party deemed by the Secretary to be interested in the closing procedure. Such notification of closures shall offer opportunity for rebuttals and alternative actions to such closures.

(2) Not less than ninety days prior to the possible closure of any public grade crossing, the Department shall hold a public hearing in the parish or municipality of the affected grade crossing.

(3) After the hearing, the Department shall attempt to address any concerns raised at the hearings relative to the proposed closing. However, if the Secretary determines that the closure is consistent with the standards established by the Department and in the public interest, the Department shall issue an order to close the existing grade crossing. Any such closure order shall also determine the manner in which such closure shall be made including a determination as to any alteration to be made to the crossing and the method of diversion of traffic to an alternate road or crossing. No provisions of this act shall impose any liabilities of any nature upon the State of Louisiana or any agency of the state.

Any local governing authority which opposes the closure of a grade crossing within its territorial jurisdiction may agree to undertake the upgrading of warning devices and additional safety alternatives in compliance with requirements determined by the Department as an alternative to the proposed closing. The expense of the alternative upgrade of the crossing must be borne by the local government.

At the written request of any local governing authority, the Department shall investigate the need to change the location of or abolish a railroad grade crossing within the jurisdiction of such governing authority and which is not on a state-maintained roadway. After compliance with the provisions of this section, the Department may, upon determination of the need for closure of the crossing, proceed with the relocation or abolishment of the crossing. The application by the local governing authority shall constitute the consent of the authority for such closing.

The Department, subject to the provisions of the Administrative Procedure Act, shall promulgate rules and regulations to implement the provisions of this Section - relocation or Abolishment. The rules and regulations shall include specific criteria for the closure of grade crossings. The following factors are to be considered in developing closure criteria:

- (1) Total number of daily vehicular use at crossing.
- (2) Total number of trains passing the crossing daily.
- (3) Alternative routes and distance to such routes.
- (4) Timetable speeds of trains passing the crossing.
- (5) Collision history of the crossing.
- (6) Type of warning device presently at the crossing.
- (7) Degree of difficulty involved in improvement of roadway approach to the crossing or in providing adequate warning devices.
- (8) Use of the crossing by vehicles carrying hazardous materials, vehicles carrying passengers for hire, and school buses.
- (9) Use of grade crossing by emergency vehicles.
- (10) Sight distance and reduced visibility at the crossings.
- (11) Angle of intersection of alignments of the roadway and the railroad.
- (12) Redundancy of crossings in the area.
- (13) Proximity to a new crossing or a recently upgraded crossing.
- (14) Availability and responsibility of user of private crossing.
- (15) Other factors the Department determines to be necessary in the development of this criteria. La. Rev. Stat. Ann. § 48:390 (West 1999)

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 proper notice and hearing, the Department of Transportation shall make its determination to insure safety or public convenience and by whom the abolishment, reconstruction, alteration, change or removal shall be made. The Department can issue an order after notice of not less than ten days to the railroad and municipality

or after a hearing if requested within the ten days either by the railroad or the municipality. Me. Rev. Stat. Ann. tit. 23 § 7207(West 1999).

MARYLAND

The Maryland Highway Administration has general authority to abandon, relocate, construct, or reconstruct any railroad grade crossing or railroad grade separation that is dangerous or inconvenient for public travel. If the railroad grade crossing is dangerous or inconvenient for public travel, the Administration may construct a railroad grade separation. Md. Ann. Code art. 8 § 640(b)(2) (Michie 1998).

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. Ann. Code art. 8 § 639 (Michie 1998).

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.

After giving due notice to the Department of Highways, the counties and municipalities in which the identified crossings are located and the affected railroad corporations, the Department of Telecommunications and Energy proceeds to hold public hearings on the list. When the hearings are completed, the Department of Telecommunications and Energy may order a program of grade crossings. The program can be amended or revised from time to time by the Department of Telecommunications and Energy on requests from the Department of Highways. Mass. Ann. Laws ch. 159, §§ 65-70 (1998).

MICHIGAN

The Michigan Department of Transportation has exclusive authority to order the elimination of highway-rail crossings. The Department, when it determines that it is necessary for public safety, may change the location of or abolish any existing public at-grade crossing after not less than thirty days' notice in the affected areas. If an affected party requests a hearing, the Department must hold one, and within thirty days after the date of the hearing, can issue an order to close the existing grade crossing. Mich. Comp. Laws Ann. § 462.307 (1999). Also see Mich. Stat. Ann. § 22.1263(307)(2) (1999).

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 the adoption of those standards, the Commissioner must 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. § 219.073 (1998).

Public officials with the necessary authority and a railway company may come to an agreement to the vacation, relocation, consolidation, or separation of grades at grade crossings. If they are unable to reach agreement either party may file a petition with the Commissioner who then schedules a hearing. If the Commissioner determines that the vacation, relocation, consolidation, or separation is consistent with the standards adopted under Section 210.073, he or she may order the crossing vacated, relocated, consolidated, or separated. Minn. Stat. § 219.074 (1998).

MISSISSIPPI

The Mississippi Transportation Commission has statutory authority to regulate and abandon grade crossings on any fixed route as part of the state highway system. Miss. Code Ann. § 65-1-8 (1999).

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 Transportation Commission, the such crossing is dangerous to public safety or traffic is unreasonably impeded thereby and that the crossing should be removed, the State Transportation 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 the proposed changes may can be made either by the Director of the State Highway Department, subject to the approval of the Transportation Commission or the affected railroad; but must in either event be approved by both the Transportation Commission and the railroad company before the contract is awarded. The State Transportation Commission and the railroad are required to 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 (1999).

MISSOURI

The Division of Motor Carrier and Railroad Safety of the Department of Economic Development has exclusive power to alter or abolish a crossing, at-grade or otherwise, of a railroad by a public road whenever the Division finds that public convenience and necessity will not be adversely affected and public safety will be promoted by altering or eliminating the crossing, or to require, where, in its judgment it would be practicable, as separation of grades at any crossing heretofore or hereafter established. The Division has the right to refuse its permission or to grant it upon such terms and conditions as it may prescribe.

This authority extends to private crossings in specific instances in which it is determined that the private crossing is being used by the public to the extent that it is necessary to protect and promote public safety. Mo. Rev. Stat. § 389.610 (1998). See also under Missouri in Chapter 11, Private Crossings and Chapter 3, Crossing Treatment Procedures.

MONTANA

Montana law does not specifically mention closure of highway-rail grade crossings within the code. But general authority over highway-rail crossings is vested in the Montana Public Service Commission. Local authority in unincorporated villages or towns to construct new highway-rail 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. Mont. Code Ann. §§ 69-14-606- 69-14-607(2)(a)(b) (1998).

NEBRASKA

In 1997, the Nebraska legislature passed the Nebraska Highway-Rail Grade Crossing Safety and Consolidation Act. The legislation placed ultimate 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. Neb. Rev. Stat. §§ 74-1329-1330-1332 (Michie 1998).

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, is binding on the parties to the suit. Neb. Rev. Stat. §1335 (Michie 1998).

The same is true 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 the subject 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 agree upon 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 (Michie 1998).

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, 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, and such other facts as may be relevant and asking the Department to enter an order directing 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 (Michie 1998).

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 or refuses, or neglects to comply with such 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 (Michie 1998).

NEVADA

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

After an investigation and hearing, which may 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. Nev. Rev. Stat. § 704.300(2) (Michie 1998).

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 concludes that public safety requires the closing of any public or private crossing, at-grade or above or below the railroad, it may order closure. N.H. Rev. Stat. Ann. § 373:22 (1999).

Railroads in New Hampshire are prohibited from constructing a crossings over another railroad, a highway or other way, at-grade, unless they first obtain the consent in writing of the Department of Transportation. N.H. Rev. Stat. Ann. § 373:4(1999).

NEW JERSEY

The Commissioner and the Department of Transportation have statutory authority to order the construction of new crossings and alterations to existing ones. The statute does not specifically mention authority for closure of existing crossings.

When, in the judgement 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 judgement 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. N.J. Stat. Ann. § 27:1A-62 (West 1998). (Also see Sections 48:2-28 and 48:2-29.)

NEW MEXICO

State statutes do not specifically mention any authority for closure. There is codified, however, a grade separation procedure.

Whenever a state, county, municipal or other street or highway, including a highway which is or may be designated as a part of the Federal-aid Highway System, is constructed or reconstructed so as to cross or intersect a railroad, the State Highway Commission or other governing body may separate the grades at the highway-rail crossing if, in its opinion, it is practicable and reasonably necessary for the protection of the traveling public.

Whenever the public authority is unable to agree with the railroad as to the grade separation and the methodology for carrying it out, the public authority may petition the district court of the county in which the intended separation is located. N.M. Stat. Ann. § 63-3-37 (Michie 1998).

NEW YORK

The power to order elimination of a highway-rail crossings lies with the Commissioner of Transportation.

Any railroad company or governing body of a municipality which contains a highway-rail 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 (McKinney 1999).

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) (1998).

The Department of Transportation also has authority to abolish grade crossings in a road or street not forming a link in part of the state highway system. The statute allows the Department to designate who pays in what proportion for the elimination and separation of the crossing. The amounts are based on the same formula provided for grade crossing elimination on the state highway system. N.C. Gen. Stat. §136.19 (1998).

Further, 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. N.C. Gen. Stat. §136-20 (1998) .

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 receiving the petition, is required to give reasonable notice, conduct a hearing, and then issue its order. N.D. Cent. Code § 24-09-10 (Michie1998).

OHIO

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

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, by whom the construction is to be done, 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. Ohio Rev. Code Ann. §§ 4957.01-4957.02-4957.09 (Baldwin 1999).

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 (1998).

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 general welfare. Or. Rev. Stat. § 824.206 (1998).

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. Pa. CONS. STAT. § 2702 (1999). Also see 32 Pa. Code § 33.31.

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 (1999).

SOUTH CAROLINA

The Public Service Commission of South Carolina has general authority over highway-rail crossings. The statute provides that the Public Service Commission shall 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 effect proper drainage of adjacent territory. S.C. Code Ann. § 58-17-1450 (1998).

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. §§ 31-27-1,27-2 (1999).

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 over the highway may determine when it is necessary to eliminate the dangerous crossing. S.D. Codified Laws Ann. §§ 31-27-12-17 (1999).

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.

The affected railroad company has the right to appeal to the Public Service Commission but only with regard to the period of time required to comply. The Public Service Commission has the authority to stay the order of the Commissioner for the actual construction for any length of time not exceeding two years. Tenn. Code Ann. §§ 65-11-107-108-109(1999).

TEXAS

The Railroad Commission of Texas has statutory authority for closure of existing grade crossings. Tex. Rev. Civ. Stat. Ann. art. 6502 (West 1999).

There also exists within the Texas Revised Civil Statutes, a provision for grade crossing elimination within every incorporated city or town (including home rule cities) having a population of more than one hundred thousand inhabitants. Tex. Rev. Civ. Stat. Ann. art. 1105c (West 1999).

UTAH

The Utah Department of Transportation has exclusive authority to order the closure of highway-rail grade crossings. Utah Code Ann. § 54-4-15 (1999).

VERMONT

The Vermont Transportation Board has statutory authority to determine what alterations, changes or removals, if any, shall be made and by whom. Vt. Stat. Ann. tit.5 §§ 3783-84-85-88 (1999).

VIRGINIA

The Commonwealth Transportation Board has statutory authority to order the elimination of a grade crossing or the consolidation of multiple grade crossings. Va. Code Ann. § 56-365.1 (Michie 1999)

WASHINGTON

The Washington State Utilities and Transportation Commission has authority to order closure of existing crossings. Wash. Rev. Code §§ 81.53.030-060 (1999).

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 (1998).

WISCONSIN

The Office of the Commissioner of Railroads within the Wisconsin Department of Highways has the authority to abolish highway-rail crossings. Wis. Stat. §195.29(1)(4)(5) (1999).

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) (1999).

CHAPTER 2: CROSSING TREATMENT PROCEDURES

CHAPTER OVERVIEW

Chapter Two provides a description of the processes and procedures required, along with the roles to be played by the respective parties (units of government 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. For purposes of clarity and ease of reference, the two processes are described in separate chapters. The appropriate statute sections are included with each state.

STATE LAWS AND REGULATIONS

ALABAMA

When the funds of the state are being expended for the construction, maintenance or repair of a public highway, the Alabama Highway Department has the authority to compel railways operating in the state to construct viaducts, tunnels, underpasses or bridges to the full extent of the width of the right-of-way and over the tracks when they are judged to be necessary for the safety of the general public. To cover the costs, the Highway Department can appropriate an amount not to exceed fifty percent out of the funds credited to them for the construction and maintenance of highways.

If, after due notice to the railroad that such action is necessary in the judgement of the Highway Department and the railroad fails or refuses to comply with the Department's order, the Department is then authorized to undertake the necessary construction and charge the railroad. Ala. Code § 23-1-9 (1999)

ALASKA

The Alaska Statutes do not provide for a process of upgrading or improving highway-rail crossings in the state.

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. Ariz. Rev. Stat. Ann. §§ 40-337-337.01-337.02-337.03 (1999)

ARKANSAS

The State Highway Commission administers the railroad crossing safety program in Arkansas. The General Assembly designated the highway commission as the sole public body with exclusive jurisdiction concerning the location, construction, improvements, and protection of railroad crossings. Ark. Code Ann. §§ 23-12-301-1002-1003-1004 (1999).

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, prescribe the terms upon which the separation is to be made, and what type of structure is required. Cal.[Pub. Util] Code §§ 1201- 1202 (West 1999).

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 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 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. Colo. Rev. Stat. § 40-4-106 (1999).

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. Conn. Gen. Stat. § 13b-268 - 267 (West 1998).

The Commissioner of Transportation has authority to adopt regulations to ensure the safe maintenance inspection, and testing of signal systems and devices at railroad grade crossings. Conn. Gen. Stat. § 13b-345b (West 1998).

The Connecticut Commissioner of Transportation has the authority to investigate conditions surrounding all highway-rail crossings and determine at which crossing(s) public safety reasonably requires that any person traveling upon the highway shall come to a stop or proceed with caution before passing over the tracks. The Commissioner has the authority to require a railroad company at each of the crossings to erect and maintain, on the highway and within the limits of its right-of-way, a STOP, caution or warning sign. Conn. Gen. Stat. § 13b-345 (West 1998).

Any town, city or borough may petition the Department of Transportation to provide a mandatory stop on any municipal or state highway approaching a crossing at grade. Conn. Gen. Stat. § 13b-345a (West 1998).

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 may require each railroad company, at all of its at-grade crossings with gates or signals, to erect and maintain, within their right-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 may 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. Conn. Gen. Stat. § 13b-345 (West 1998).

The Commissioner has authority to make all necessary orders concerning the establishment of a temporary grade crossing during the period of construction of a permanent grade separation,

provided the state, town, city or borough bears the cost of any necessary signs, signals, gates, flagmen or other devices. Conn. Gen. Stat. § 13b-271 (West 1998).

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 which exists at the crossing. Upon receipt of the petition, the Commissioner shall appoint a time and place for hearings. Conn. Gen. Stat. § 13b-275 (West 1998).

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 (West 1998). (Also see Connecticut's entry in Chapter 2).

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 (1999).

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. Code Ann. § 7.1414 (1999).

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.

Every railroad company maintaining a highway-rail 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. Fla. Stat. Ann. §§ 341.302-351.03 (1999).

GEORGIA

Where a new grade crossing results from the construction of a new or relocated railroad line, the railroad is responsible for and bears all expenses associated with the construction of the grade crossing. The Georgia Department of Transportation, when the grade crossing is on the state highway system, or the county, when the grade crossing is on a county road system, or a municipality, when such a grade crossing is on its municipal street system, may set the terms and conditions on the nature of the grade crossing including any safety devices that may be reasonably necessary for the safety and convenience of the traveling public. Ga. Code Ann. 32-6-191 (1998).

Whenever the Transportation Department, a county, or a municipality decides to eliminate any grade crossing on its respective public road system by means of an underpass or overpass, prompt notice must be given to the effected railroad or railroads involved; and within 30 days thereafter the representatives of the Transportation Department, the county, or the municipality and the railroads involved shall meet, and within a period of 90 days, agree to a plan and specification for the construction of a grade separation structure. Any such agreement shall be submitted to the Transportation Department for its approval, and no work may commence without the Department's approval. It is the duty of the railroad to begin work on any such grade separation structure within four months after receipt of an order to do so. If the effected railroad or railroads does begin work with four months after receipt, the Transportation Department, county, or municipality may proceed with the construction of the proposed grade separation structure. Ga. Code Ann. 32-6-194 (1998).

HAWAII

Hawaii has no laws concerning crossing maintenance or improvement procedures for warning or protective devices.

One section of the Hawaii code does indicate that the Director of Transportation and the counties are authorized to identify and erect STOP signs at particularly dangerous highway-rail crossings. Haw. Rev. Stat. § 291C-92 (1999).

IDAHO

The Idaho Transportation Department has authority to administer programs and promote public safety at highway-rail 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. Idaho Code §§ 62-301-304A-304C (1998).

For crossings not 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. Idaho Code § 62-303 (1998).

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 near 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. 625 ILCS 5/18c-7401(3) (1999).

No railroad may change or modify the warning device system at a railroad-highway 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, 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 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 or a State highway, the Illinois Department of Transportation. 625 ILCS 5/18c-7401(3) (1999).

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, Illinois instituted a number of legislative initiatives. One of those was a mandated study by the Illinois Commerce Commission and the State Department of Transportation of the relationship between train speeds and railroad-highway grade crossing safety. The Commission was required to report the findings of the study to the General Assembly no later than January 5, 1997.

Another legislative initiative was 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 miles per hour 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.) As amended, 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)(a)(b) (1998). See also ILCS 5/18c-7502.5.

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 Commerce 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. 625 ILCS 5/18c-7403 (1)(2) (1998).

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 company or companies. The provisions of this section do not apply to cities of over twenty thousand, and to incorporated towns. Ind. Code Ann. §§ 8-6-1-4, 8-6-1-7(1999).

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. Ind. Code Ann. §§ 8-6-2.1-1, 8-6-2.1-2, 8-6-2.1-3 (1999).

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. Ind. Code Ann. § 8-6-7.7-4 (1999).

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 council of the city 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, flasher lights or gate arm signals at the crossing and the allocation of costs. The Department will 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 from the grade crossing safety fund. Iowa Code § 327G.15 (1999).

KANSAS

Upon a request by the governing body of any city, county or township, and after a proper investigation is made in cooperation with the Secretary of Transportation of Kansas, the State Corporation Commission has authority to indicate those railroad grade crossings which are dangerous. The State Corporation Commission may, at a crossing so designated, order that appropriate safety devices be installed and maintained by the railroad(s) and set a completion date. The Commission has the authority to determine the number, type and location of such safety devices, which must conform with generally recognized national standards, and to require a portion of the installation cost of the safety devices be paid by the railroad(s) involved provided that the cost to the railroad(s) shall not be less than 20 percent nor more than 50 percent of the total installation costs. Kan. Stat. Ann. § 66-231a (1999).

But, 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 (1999).

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). Kan. Stat. Ann. § 12-1633 (1999).

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 four 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 affected party 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 30 days of notice of the opportunity, the Department shall order the crossing closed. Ky. Rev. Stat. Ann. § 177.120 (1)(2)(3) (1999 Supplement).

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 (1999 Supplement).

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) (Baldwin 1998) 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 (Baldwin 1998).

The Fiscal Court is required to give at least ten (10) day's 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. Ky. Rev. Stat. Ann § 178.355 (2) (Baldwin 1998).

The Transportation Cabinet has the power to investigate any public grade crossing not equipped with gates and with an average daily traffic 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 (Baldwin 1998).

LOUISIANA

A. 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 fifteen 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.

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. §§ 386 (West 1999).

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 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 where the crossing is located. Me. Rev. Stat. Ann. tit. 23 § 7202 (1999).

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 that the situation be remedied. After proper notice and hearing, the Department of Transportation shall make its determination to insure 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 is 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. Me. Rev. Stat. Ann. tit. 23 § 7231(1999).

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. Me. Rev. Stat. Ann. tit. 23 § 7221(1999).

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 insure public safety at the crossing. The powers of the Secretary over all aspects of railroad grade crossing 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 the secretary considers it necessary. A hearing can also be requested by one 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 insure 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. Md. Code Ann. [Transp.] §§8-639-640-642(1999).

MASSACHUSETTS

A railroad corporation is authorized to raise or lower a public way in order to pass over or under a highway-rail 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 (1999).

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 all cases. Mass. Gen. Laws Ann. ch. 160, § 104 (1999).

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. Mass. Gen. Laws Ann. ch. 160, § 97 (West 1999).

A railroad 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. Mass. Gen. Laws Ann. ch. 160, § 101 (1999).

MICHIGAN

If the location of a proposed highway-rail 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 such a 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 the 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, track 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 one 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 fifteen 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. Mich. Comp. Laws §462.301(1999).

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. Mich. Comp. Laws § 462.307 (1999).

In Michigan, the construction of a new highway-railroad 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. Mich. Comp. Laws § 462.319 (1999).

MINNESOTA

Chapter 161 of the Minnesota Statutes outlines the general power of the Commissioner of Transportation with respect to trunk highway-rail grade crossing 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-rail grade crossings and for the construction, reconstruction and maintenance of existing or necessary bridges and approaches for the separation of grade at railroad and trunk highway intersections. Minn. Stat. §161.20 (1999).

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 (1999).

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 a subject 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. Minn. Stat. § 219.39 (1999).

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 agreement cannot be reached, either party may file a petition with the Commissioner who may order the crossing vacated, relocated consolidated or separated. Minn. Stat. § 219.074 (1999).

MISSISSIPPI

Title 65, Chapter 1, § 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. Miss. Code Ann. § 65-1-8 (1999).

Municipal government authorities in Mississippi also have the authority to regulate highway-rail 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 (1999).

Mississippi uses a multi-disciplinary diagnostic team study approach to determine the need for protective or warning devices at railroad crossings. If the findings of any study reveal a need for warning or protective devices at or in the vicinity of a railroad crossing of a public highway under the jurisdiction of any county or incorporated municipality, the Mississippi State Highway Department is authorized to construct protective or warning devices and to pay up to a maximum of one percent of available monies in the State Highway Fund for construction, provided that the municipality complies with conditions necessary for Federal matching funds to complete the balance. Miss. Code Ann. § 57-43-13 (1999).

During its 1999 regular session, the Mississippi Legislature passed and sent to the Governor for signature an act requiring 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 certain other expenses. The act 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 act 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. The Governor signed this as House Bill 733, and as of the completion of this book the law has not been codified.

MISSOURI

The Division of Motor Carriers and Railroad Safety of the Department of Economic Development has exclusive power to regulate and provide standards for railroad crossing construction and maintenance.

The Division may make and enforce reasonable rules and regulations pertaining to all public grade crossings. The Division may establish minimum standards for: the materials to be used in the crossing surface, the length and width of the crossing, the approach grades, and the individual parties responsible for maintenance of the approaches and the crossing surfaces.

The Division also has exclusive power to determine and prescribe the particular point of crossing, the terms of the installation, operation, maintenance, apportionment of expenses, use and any warning devices for each crossing of a public road, street or highway by a railroad, of one railroad by another and of one street railroad by another railroad or street railroad. The Division is aided in its determination by adopting pertinent provisions of the Manual on Uniform Traffic Control Devices for Streets and Highways.

The Division may, after application or complaint by a city, town or village, or upon its own motion, regulate within a municipality the crossing of a highway, street or roadway with a railroad track. The Division's regulatory authority includes requiring precautions, regulating the running, handling and operation of railway engines and cars, governing the speed of railway engines, cars and trains and making and enforcing orders and restrictions to promote public safety.

Missouri makes funds available for the construction of grade crossing signals or other safety devices by charging a grade crossing safety fee of fifteen cents when the owner of a motor vehicle registers or renews his registration. Mo. Rev. Stat. §§ 389.610-612 (1998).

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 judgement, the safety, necessity, and convenience of the traveling public require the crossing. The Commission is required to give at least ten 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. Mont. Code Ann. § 69-14-607 (1998).

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 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. Mont. Code Ann. §§ 69-14-603, 606 (1998).

At all highway-rail 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. Mont. Code Ann. § 69-14-602 (1998).

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. Neb. Rev. Stat. § 74-1329 (1998).

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. Neb. Rev. Stat. § 74-1332(1998).

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. Neb. Rev. Stat. § 74-1341 (1998).

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. Neb. Rev. Stat § 74-1342 (1998).

The Department of Roads is required to establish the grade crossing safety assessment process no later than twelve months after September 13, 1997, and shall recommend to the Legislature no later than eighteen months after September 13, 1997, an equitable formula for funding grade crossing risk abatement. Neb. Rev. Stat. § 74-1343 (1998).

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. Neb. Rev. Stat. §§ 74-1337-1338 (1998).

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 (1998).

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, is binding on the parties to the suit. Neb. Rev. Stat. § 74-1336 (1998).

NEVADA

Chapter 704 of Title 58 of Nevada Revised Statutes describes the powers of the Public Service Commission, including exclusive power over railroad crossings.

The Public Service 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. Nev. Rev. Stat. § 704.300 (1997).

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. Nev. Rev. Stat. § 704-305 (1997).

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. N.H. Rev. Stat. Ann. § 373:2 (1999).

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 373:4). Likewise, no highway may be constructed at-grade across a railroad without consent of the Department of Transportation. N.H. Rev. Stat. Ann. §§ 373:4-6 (1999).

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. N.H. Rev. Stat. Ann. § 373:1 (1999).

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 a new crossing in place of the vacated one.
- 3) Relocation of the railroad tracks where, in the judgement of the Department, the owner of the property will be unduly injured by the elimination of the crossing. N.J. Rev. Stat. § 48:12-61(1999).

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 will schedule a hearing, determine what alterations should be made, and make an order. N.J. Rev. Stat. § 48:12-64 (1999).

The State Highway Department, before January 1 of each year, shall 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 two million dollars. N. J. Rev. Stat. Ann. § 48:12-68 (1999).

The cost of the work is to be shared by railroad companies and the State 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% by the railroad company or companies involved and 95% by the state. N.J. Rev. Stat. Ann. § 48:12-70 (1999).

The State 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. N.J. Rev. Stat. Ann. § 48:12-71 (1999).

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. N.J. Rev. Stat. Ann. § 48:12-53 (1999).

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. N.J. Rev. Stat. Ann. § 48:12-54 (1999).

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 at 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 (1999).

NEW MEXICO

When a state, county, municipal, or other street or highway, including a highway which has been or may be designated as a 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. As to the separation and the method of achieving it, the Commission may apply to the district court of the county asking that the court order separations of the grades. If the 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. N.M. Stat. Ann. § 63-3-37 (Michie 1998).

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. N.M. Stat. Ann. § 63-3-38 (Michie 1998).

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 an elimination. Its determination 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 has 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. N.Y. [Transp.] Law § 222 (McKinney 1999). See also Section 223 concerning expenses of 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 fifteen days' notice in writing to the railroad, the railroad neglects or refuses to make the repairs. N.Y. [Highway] Law § 51 (McKinney 1999).

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 nor 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) (1999). Also, see 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 cities themselves. 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 and the railroad is responsible for 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) (1999).

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, they 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. N.D. Cent. Code § 24-09-10 (1998).

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 same 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 where the crossing is located. N.D. Cent. Code § 24-09-08 (1998).

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 § 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. N.D. Cent. Code § 24-09-08 (1998).

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 to make the 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. Ohio Rev. Code Ann. § 4957.04 (Anderson 1998).

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 as 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, will 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 (Anderson 1998).

A municipal corporation may raise or lower the grade of any street it owns, either within or outside 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. Ohio Rev. Code Ann. § 4957.10 (Anderson 1998).

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. Ohio Rev. Code Ann. § 4957.24 (Anderson 1998).

The cost of constructing a highway-rail 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. Ohio Rev. Code Ann. § 4957.18 (Anderson 1998).

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. Ohio Rev. Code Ann. § 4956.19 (Anderson 1998).

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. Ohio Rev. Code Ann. § 4957.06 (Anderson 1998).

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 (1998).

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 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. Okl. Stat. tit. 17, §§ 82-86 (1998).

All such division of costs that become an obligation of the state will be paid from the state highway construction and maintenance fund. All such division of costs 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 (1998).

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. Okl. Stat. tit. 66, §§ 121-122 (1998).

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. Okl. Stat. tit. 66, § 123 (1998).

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 railroad-highway crossings is vested exclusively in the state, and in the Department of Transportation. Or. Rev. Stat. § 824.202 (1999).

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 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 (1999).

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 lay out and extend any highway over and across any established and existing railroad at-grade, it must 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. Or. Rev. Stat. §§ 824.204-210 (1999).

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 five 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. Or. Rev. Stat. § 824.242 (1999).

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. 100 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 (1999). 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 lay out, 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, equipping, 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. 66 Pa. Cons. Stat. Ann. § 2702(b)-(c) (1998). Also see 52 Pa Code § 33.31 (1998).

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 (1998).

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. R.I. Gen. Laws § 39-8-1.1 (1999).

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. R.I. Gen. Laws § 39-8-6 (1999).

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 power to decide these issues.

The cost 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 (1999).

The Director of Transportation also has statutory authority to improve an existing highway-rail at-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 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 (1999).

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 effect proper drainage of adjacent territory. S.C. Code Ann. § 58-17-1310 (Law. Co-op 1998).

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. S.C. Code Ann. § 58-17-1360 (Law. Co-op. 1998).

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. S.C. Code Ann. § 58-17-1340 (Law. Co-op. 1998).

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 sixty days of receipt of notice. Measures to assure that crossbucks are properly in place and

maintained must be taken by the responsible railroad within thirty days of receipt of notice. However, if the crossbucks are not present or have been removed, then the railroad has ten days from 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. S.C. Code Ann. § 58-17-1450 (Law. Co-op. 1998).

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. S.C. Code Ann. § 58-15-2110 (Law. Co-op. 1998).

In the case of highway-rail crossings involving state highways, the State 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. S.C. Code Ann. § 58-15-2120 (Law. Co-op. 1998).

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 (1999).

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. S.D. Codified Laws Ann. § 31-27-12(1999).

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. S.D. Codified Laws Ann. § 31-27-7 (1999).

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. S.D. Codified Laws Ann. § 31-27-3 (1999).

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 ten 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 (1999).

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. S.D. Codified Laws Ann. § 31-28-17 (1999). 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. S.D. Codified Laws Ann. § 31-27-19.1 (1999).

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. S.D. Codified Laws Ann. § 9-35-9 (1999).

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. S.D. Codified Laws Ann. § 9-35-8 (1999).

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 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 two 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 as are assessed in this manner will constitute a lien upon the physical properties of the railroad recoverable by suit. Tenn. Code Ann. § 65-11-109 (1999).

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. Tenn. Code Ann. § 65-11-110 (1999).

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. Tenn. Code Ann. § 65-11-112 (1999).

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 one and one-half miles. Tex. Rev. Civ. Stat. Ann. art. 6321 (West 1999).

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 state when and where such crossing is desired. Tex. Rev. Civ. Stat. Ann. art. 6322 (West 1999).

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 thirty 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. Tex. Rev. Civ. Stat. Ann. art. 6327 (West 1999).

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. DOT, Federal Highway Administration. The Department may also require the use of retroreflectorized 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. Tex. Rev. Civ. Stat. Ann. art. 6370c (West 1999).

Every incorporated city or town (including a Home Rule city) having a population of more than one hundred thousand inhabitants is empowered and authorized to purchase, build, construct, acquire, 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. Tex. Rev. Civ. Stat. Ann. art. 1105c (West 1999).

(a) A railway company must 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 for each week the railway company does not make needed repairs. The municipality may sue to recover the penalty. Tex. [Transportation] Code Ann. § 471.001 (West 1999).

UTAH

The Department of Transportation has exclusive authority over highway-rail grade crossings in the state. This authority includes complete 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 be between the affected railroads or between the railroads and the state, county, municipality or other public authority in interest. Utah Code Ann. § 54-4-15 (1999).

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. Utah Code Ann. § 54-4-15 (1999).

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. Utah Code Ann. § 54-4-15.1 (1999).

VERMONT

The Selectboard 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 a 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 is then required to appoint a time and place for hearing the petition on notice of not less than ten days to the petitioners, the railroad, the municipality in which the crossing is located, the owners of the land adjoining the 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 (1999).

When the Transportation Board, in the absence of any application, 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 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, or the track or tracks of such railroad or railroads, after hearing had on notice of not less than ten days to the corporation or corporations owning or operating such railroad or railroads, to the Selectboard 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 alteration 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 (1999).

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. Vt. Stat. Ann. tit. 5, § 3571 (1999).

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. Vt. Stat. Ann. tit. 5, § 3572 (1999).

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. Vt. Stat. Ann. tit. 5, § 3573 (1999).

VIRGINIA

The Code of Virginia declares that it is the policy of the Commonwealth at 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. And 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. Va. Code Ann. § 56-363 (Michie 1999).

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. Va. Code Ann. § 56-365.1 (Michie 1999).

Whenever a road in the State Highway System or a public highway maintained by a locality (i) crosses a railroad, (ii) is projected across a railroad, or (iii) 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 (i) 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, (ii) the plans and specifications for and method or manner of construction thereof, or (iii) 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 by the State Corporation Commission on the railroad company or companies involved. Within twenty 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. Va. Code Ann. § 56-366.1 (Michie 1999).

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. Va. Code Ann. § 56-405 (Michie 1999).

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 it grade crossing maintenance and repair activities, he 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. Va. Code Ann. § 56-405.1(1999).

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. Wash. Rev. Code § 81.53.020 (1999).

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 ten 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. Wash. Rev. Code § 81.53.030 (1999).

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. Wash. Rev. Code §§ 81.53.261-271 (1999).

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. Wash. Rev. Code § 81.53.261 (1999).

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.

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 (1999).

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 ten 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. Wash. Rev. Code § 81.53.295 (1999).

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. W. Va. Code § 17-4-8 (1999).

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. W. Va. Code § 17-4-17 (1999).

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. W. Va. Code § 17-4-17a (1999).

Every railroad company which 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. W. Va. Code § 17-16-8 (1999).

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-railroad 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. Wis. Stat. §195.28 (1999).

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. Wis. Stat §84.05 (1999).

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 is to 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. Wyo. Stat. § 37-10-102 (1999).

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 $\frac{1}{3}$ 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. Wyo. Stat. § 37-10-103 (1999).

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. Wyo. Stat. § 1-26-811 (1999).

The Transportation Commission is charged with the administration of the highway crossing protection program. In order to compensate for the use 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. Wyo. Stat. § 37-10-104 (1999).

CHAPTER 3: BLOCKED CROSSINGS

CHAPTER OVERVIEW

This chapter provides a state by state survey of statutory provisions concerning the blocking of crossings by railroads, the exceptions to the law and the penalties imposed if they are listed in the code section. The majority of states place restrictions on the amount of time a highway-rail crossing can be blocked. The laws and regulations vary, but never do they exceed more than twenty 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 crossings within their jurisdictions. A number of them do, but to list them all would extend beyond the scope of this book.

STATE LAWS AND REGULATIONS

ALABAMA

Alabama has no applicable statute.

ALASKA

Alaska has no applicable statute.

ARIZONA

Arizona allows a train to block a crossing for fifteen minutes. It makes an exception for emergencies, unavoidable accidents, or circumstance beyond the control of the railroad company. Ariz. Rev. Stat. Ann. § 40-852 (1999).

Penalty

A violation of this section is a Class 2 misdemeanor. Ariz. Rev. Stat. § 40-852 (1999).

ARKANSAS

Arkansas has no applicable statute.

CALIFORNIA

California law has a special provision concerning blocked crossings as a pilot project in Stanislaus County. The law, passed in 1998, is scheduled to be repealed on January 1, 2002.

Any public grade crossing blocked by a stopped train, other than a passenger train, shall be opened within 10 minutes, unless no vehicle or pedestrian is waiting at the crossing. The cleared crossing shall be left open until it is known that the train is ready to depart. When recoupling such a train at the crossing, movement shall be made promptly and consistent with safety. The code section declares that switching over public grade crossings shall be avoided whenever reasonably possible. If not reasonably possible, public grade crossings shall be cleared frequently to allow a vehicle or pedestrian to pass and shall not be occupied continuously for longer than 10 minutes unless no vehicle or pedestrian is waiting at the crossing. Cars or locomotives are not to be left standing, or switches left open, within the controlling circuits of automatic gate protection devices unless time-out features are provided to allow the gate arms to rise.

There is no restriction on time for crossing occupancy for a moving train continuing in the same direction. These time limits provisions also do not apply to any blocked crossing resulting from compliance with state and federal laws and regulations, terrain and physical conditions, adverse weather conditions, conditions rendering the roadbed or track structure unsafe, mechanical failures, train accidents, or other occurrences over which the railroad has no control, except that the crossing is to be cleared with reasonable dispatch. Cal. [Pub. Util.] Code § 1225.2 (1999). The statute does provide for a procedure by which any railroad or public agency (state, city, county) may, by application, request a variance from the law in connection with operations over a specific crossing where local conditions so require. Cal. [Pub. Util.] Code § 1225.2-.4 (1999).

Penalty

A railroad that violates any of the provisions of the section shall be deemed guilty of a misdemeanor and is punishable by a fine not exceeding one thousand dollars for each violation. Every violation of the chapter is considered a separate and distinct offense, and, in case of a continuing violation where a time limit is not specified, each day's continuance of a violation will be considered a separate and distinct offense, with a fine imposed for each offense. Where a time limit is specified, it shall be a separate and distinct offense for each delay of that specified time, with a fine imposed for each offense. Cal. [Pub. Util.] Code § 1225.2(j) (1999).

COLORADO

Colorado has no applicable statute.

CONNECTICUT

Connecticut has no applicable statute.

DELAWARE

Delaware allows trains to block crossings for no more than ten minutes at a time, although exceptions may be made for emergencies. Del. Code Ann. tit. 17, § 701 (1999).

Penalty

A railroad in violation may receive a fine of not less than five hundred and not more than one thousand dollars for the first conviction and not less than one thousand nor more than two

thousand dollars for each subsequent conviction occurring within a year. Del. Code Ann. tit.17, § 701(c) (1999).

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 five minutes at a time. This does not apply to trains or cars in motion other than those engaged in switching. 18 DCMR § 2211.7 (1998).

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 five minutes, nor shall a train, locomotive, car, or cars be parked or stored on a street for an unreasonable time. 24 DCMR § 120.7 (1998)

Penalty

The 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. 24 DCMR § 120.8 (1998).

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. Fla.. Stat. Ann. § 351.03(5)(a) (1999).

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. Fla.. Stat. Ann. § 351.034 (1999).

Penalty

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

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. Ga. Code Ann. § 46-8-197 (1999).

HAWAII

Hawaii has no applicable statute.

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 (1999).

The 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 to permit any train, railroad car or engine to obstruct public travel at a highway-rail grade crossing for a period in excess of ten minutes, except where the train is continuously moving or cannot be moved due to circumstances beyond the railroad's control. 625 ILCS 5/18c-7402 (b) (1998).

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. 625 ILCS 5/18c-7402 (a) (1998).

Penalty

A violation is a petty offense and a fine is affixed of not less than two hundred nor more than five hundred dollars if the duration of the obstruction is in excess of ten minutes but no longer than fifteen minutes. If the duration exceeds fifteen 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 fifteen minutes but no longer than twenty minutes, the fine is five hundred dollars.
- 2) If the duration is in excess of twenty minutes but no longer than twenty-five minutes, the fine shall be seven hundred dollars.
- 3) If the duration is in excess of twenty-five minutes, but no longer than thirty minutes, the fine shall be nine hundred dollars.
- 4) If the duration is in excess of thirty minutes but no longer than thirty-five minutes, the fine shall be one thousand dollars.
- 5) If the duration of the obstruction is in excess of thirty-five minutes, the fine shall be one thousand dollars plus an additional five hundred dollars for each five minutes of obstruction in excess of twenty-five minutes. ILCS 5/18c-7402 (1998).

INDIANA

Indiana law prohibits trains from blocking crossings for more than ten minutes, except in circumstances where the train, railroad car or engine cannot be moved and for which the railroad company has no control. Ind. Code Ann. § 8-6-7.5-1 (Burns 1999).

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 five minutes between train movements. Ind. Code Ann. § 8-6-7.5-2 (Burns 1999).

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. Ind. Code Ann. § 8-6-7.5-3 (Burns 1999). Also see 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 ten 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. Iowa Code § 327G.32 (1999).

Penalty

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

KANSAS

Kansas prohibits trains from blocking crossings for more than ten minutes without leaving an opening in the traveled portion of the roadway of at least thirty feet. Kan. Stat. Ann. § 62-273 (1999).

Penalty

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

- 1) Fifty dollars if the blocking is for more than ten minutes but less than twenty minutes.

- 2) One hundred fifty dollars if the blocking is for more than twenty minutes but less than thirty minutes.
- 3) Three hundred dollars if the blocking is for more than thirty 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. Kan. Stat. Ann. § 66-274 (1999).

KENTUCKY

Kentucky law permits trains to block crossings for no more than five minutes at any one time. Moving trains are exempted and other exceptions are made for emergencies or circumstances beyond the control of the railroad. Ky. Rev. Stat. Ann. § 277.200 (Baldwin 1999).

Penalty

Any railroad company that violates the provisions of the section shall be fined not less than twenty-five dollars nor more than one hundred dollars 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. Ky. Stat. Ann. § 277.990 (7) (Baldwin 1999).

LOUISIANA

Louisiana has two statutes that pertain to blocked crossings; both of which are the result of revisions made by the legislature in 1998. The Louisiana Department of Transportation and Development has full responsibility to promulgate rules and regulations for the implementation and administration of the obstruction statute.

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 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.

The statute provides that 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 twenty minutes, but not longer than twenty-five minutes, the fine shall be not less than two hundred dollars nor more than five hundred dollars.

(b) A duration in excess of twenty-five minutes, but not longer than thirty minutes, the fine shall be five hundred dollars.

(c) A duration in excess of thirty minutes, but no longer than thirty-five minutes, the fine shall be seven hundred dollars.

(d) A duration in excess of thirty-five minutes, but no longer than forty minutes, the fine shall be nine hundred dollars.

(e) A duration in excess of forty minutes, but no longer than forty-five minutes, the fine shall be one thousand dollars.

(f) A duration in excess of forty-five minutes will result in a fine of one thousand dollars plus an additional five hundred dollars for each five minutes of obstruction in excess of forty-five minutes. However, the maximum fine can not exceed five thousand dollars for an obstruction which occurs within a twenty-four hour period.

All railroads within the state are to be operated in such a manner as to minimize obstruction of emergency vehicles at public grade crossings.

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.

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.

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.

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. La. Rev. Stat. Ann. § 48:391 (West 1998). See also Section 48:392 which is essentially the same statute except that it makes a distinction between moving and nonmoving trains.

MAINE

Maine has no applicable statute.

MARYLAND

Maryland has no applicable statute.

MASSACHUSETTS

Massachusetts law expressly prohibits trains from blocking crossings for more than five minutes. Mass. Ann. Laws ch. 160, § 151 (1999).

Penalty

A railroad corporation or employee thereof who violates the statute shall forfeit not less than two hundred nor more than five hundred dollars. Mass. Ann. Laws ch. 160, § 151 (1999).

MICHIGAN

Michigan law prohibits trains from obstructing vehicular traffic at a public street or highway for longer than five minutes at any one time. An exception is allowed for continuously moving trains at not less than ten miles per hour in the same direction for a period up to seven 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 a 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 (1999).

Penalty

Each offense under the section is a separate violation punishable by a fine of not more than five hundred dollars unless the railroad is willfully, deliberately and negligently blocking the crossing, in which case the fine shall be not more than one thousand dollars plus the cost of prosecution. Mich. Stat. Ann. § 462.391 (1999).

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 ten minutes. This section does not

apply to cities of the first class which regulate obstruction of streets through ordinance. Minn. Stat. § 219.383 (3) (1998).

Penalty

Any railroad violating this section is guilty of a petty misdemeanor. A second or subsequent violation is a misdemeanor. Minn. Stat. 219.383(4)(1998).

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 (1999).

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 (1999).

Penalty

A railroad company may be liable for a fine of fifty dollars for each offense. The conductor in charge of a train may be liable for a fine of not less than twenty-five nor more than fifty dollars if convicted. See Miss. Code Ann. § 77-9-235 (1999).

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. Mo. Rev. Stat. § 71.013 (1999).

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 fifty dollars for each separate offense. Mo. Rev. Stat. § 71.013 (1999).

MONTANA

Montana law permits operation of a train to block a crossing for no more than fifteen minutes at any one time. Mont. Code Ann. § 69-14-626 (1999).

Penalty

Montana considers this offense a misdemeanor; and any corporation, association or company found guilty may be punished by a fine of not less than twenty five nor more than one hundred dollars. Mont. Code Ann. § 69-14-626 (1999).

NEBRASKA

Nebraska has no applicable statute.

NEVADA

Nevada has no applicable statute.

NEW HAMPSHIRE

New Hampshire permits a train to block a crossing for no more than five minutes at one time without authority from the Department of Transportation. N.H. Rev. Stat Ann. § 373:15 (1999).

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 nine minutes. The time for maximum occupancy may also be set by the Commissioner of the Department of Transportation. N.H. Rev. Stat. Ann. § 373:16 (1999).

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." N.H. Rev. Stat. Ann. § 373:17 (1999).

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." N.J. Rev. Stat. § 39:4-94 (1999).

NEW MEXICO

New Mexico has no applicable statute.

NEW YORK

New York permits a train to block a highway-rail crossing for no more than five 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. N.Y. [R.R.] Law § 53-c (McKinney 1999).

Penalty

A violation of this statute is punishable by a fine of not more than one hundred dollars or imprisonment for not more than fifteen 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 (McKinney 1999).

NORTH CAROLINA

North Carolina has no applicable statute.

NORTH DAKOTA

North Dakota law allows a train to block a crossing for no more than ten 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 (1999).

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 pre-existing obstruction ordinances. N.D. Cent. Code § 40-11-19 (1999).

OHIO

Ohio permits a train to block a crossing for not more than five 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. Ohio Rev. Code Ann. § 5589.21 (Baldwin 1999).

Penalty

The code section mentions no specific penalty, but does specify the manner in which summons can be served. Ohio Rev. Code Ann. § 5589.21 (Baldwin 1999). Ohio Rev. Code Ann. § 2935.10 (Baldwin 1999).

OKLAHOMA

Oklahoma has no applicable statute.

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. Or. Rev. Stat. § 824.822 (1999).

Penalty

Violators are punishable. If convicted, by a fine of not less than one hundred nor more than three thousand for each offense. Or. Rev. Stat. § 824.222 (1999).

PENNSYLVANIA

Pennsylvania law makes no reference to time limits.

Penalty

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 fifteen minutes notice to remove its rolling stock. 18 Pa. Stat. Ann. § 6908 (1999).

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. 18 Pa. Stat. Ann. § 6907 (1999).

RHODE ISLAND

Rhode Island law expressly prohibits trains from blocking crossings for more than five minutes. R.I. Gen. Laws § 39-8-4 (1999).

Penalty

For each violation, a railroad corporation may be fined not less than twenty five nor more than one hundred dollars. R.I. Gen. Laws § 39-8-4 (1999).

SOUTH CAROLINA

South Carolina permits standing trains to block crossing for a maximum of five minutes. The person in charge of the train must be notified before the five minutes commence. S.C. Code Ann. § 57-7-240 (Law. Co-op. 1998).

Penalty

For every such offense, a person shall pay not less than five nor more than twenty dollars. It is considered a new offense for every twenty-four hour period the blockage continues. S.C. Code Ann. § 58-17-4080 (Law. Co-op. 1998).

SOUTH DAKOTA

South Dakota law prohibits trains from blocking any street, road or highway-rail crossing for more than twenty 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. S.D. Codified Laws Ann. § 49-16A-119 (1999).

Penalty

South Dakota law considers a violation of this section a Class 2 misdemeanor. S.D. Codified Laws Ann. § 49-16A-119 (1999).

The state exempts railroad employees from liability if the blockage was necessary under state and Federal rules. S.D. Codified Laws Ann. § 49-16A-94 (1999).

TENNESSEE

Tennessee has no applicable statute.

TEXAS

Texas law prohibits a train from blocking a crossing for more than five minutes. This law applies only to a stopped train and is addressed to any officer, agent, servant or receiver of a railroad corporation. 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 five minutes. Tex. [Transp] Code Ann. § 471.008-471.007 (West 1999).

Penalty

Violators are guilty of a misdemeanor and punishable by a fine of not less than five nor more than one hundred dollars. Tex. [Transp] Code Ann. § 471.007 (West 1999).

UTAH

Utah law prohibits a crossing from being blocked for more than five 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.

Utah Code Ann. § 41-6-95.5 (1999).

VERMONT

Vermont expressly prohibits trains from blocking crossings for more than five minutes at a time at a highway or road required for private or farm use. Vt. Stat. Ann. tit. 5, § 3587 (1999).

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. Vt. Stat. Ann. tit. 5, § 3586 (1999).

Penalty

If convicted of a violation of Section 3587, a person or corporation may be fined not less than five nor more than fifty dollars. Vt. Stat. Ann. tit. 5, § 3587 (1999).

If a violator is convicted of Section 3586, the fine may be not less than five nor more than twenty dollars. Vt. Stat. Ann. tit. 5, § 3586 (1999).

VIRGINIA

Virginia law prohibits trains from blocking crossings for more than five minutes at a time. It does allow exceptions for breakdown, mechanical failure, or emergencies. Va. Code Ann. § 56-412-1 (Michie 1999).

Penalty

Upon conviction, a railroad company or individual may be fined not less than one hundred nor more than five hundred dollars, with an additional proviso that the fine could be one hundred dollars for each minute beyond the permitted time. In any case, the total may not exceed five hundred dollars. Va. Code Ann. § 56-412.1 (Michie 1999).

WASHINGTON

Washington has no applicable statute.

WEST VIRGINIA

West Virginia prohibits trains from blocking crossings for longer than ten minutes, except in an emergency, when the train is continuously moving or in the event of circumstances beyond the control of the railroad. However, this rule does not preempt any local ordinances. W. Va. Code § 31-2A-2 (1999).

WISCONSIN

Except outside cities, it is unlawful for a railroad train to block a crossing in Wisconsin longer than ten minutes. Wis. Stat. § 192.292 (1999).

Penalty

A violation of the statute may result in a fine not to exceed twenty-five dollars or imprisonment of not more than fifteen days. Wis. Stat. § 192.292 (1999).

WYOMING

Wyoming has no applicable statute.

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 crossings.

Approximately 78 percent of the reported 280,503 highway-rail crossings in the United States have passive warning devices or some type of traffic control devices but not automatic gates, 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 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. All states require that these devices conform with the Manual on Uniform Traffic Control Devices.

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. Ala. Code § 37-2-80 (1999).

The Highway Department is authorized to identify dangerous highway-rail crossings and install signs notifying drivers to come to a complete stop before crossing the tracks. The state defines a sign as "...clearly visible and positive signals..." but does not specify the type of device. Ala. Code § 32-5-52 (1999).

Every railroad in the state shall cause boards to be placed, well-supported by posts or otherwise, and constantly maintained across each public road or street where the public road or street is crossed by the railroad on the same level. The boards are required to be elevated so as not to obstruct traffic and to be easily seen by travelers. On each side of the boards shall be printed in capital letters of at least the size of nine inches each with the words, "RAILROAD CROSSING".

This section does not apply to streets in cities or villages unless the railroad corporation is required to put up the boards by the officers having charge of the streets. Ala. Code § 23-12-411(1999).

ALASKA

There is nothing applicable in the statutes with respect to the regulation of passive warning devices.

ARIZONA

The Director of the Department of Transportation and local authorities, with the approval of the Director are authorized to identify and erect STOP signs at particularly dangerous highway-rail crossings. Ariz. Rev. Stat. Ann. § 28-852 (1999). Also see Chapter 9 under Arizona.

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. Ark. Code Ann. § 23-12-411 (Michie 1998).

The State Highway Commission and local authorities are authorized to identify and erect STOP signs at particularly dangerous state highway grade crossings. Ark. Code Ann. § 27-51-706 (Michie 1998).

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 (West 1998).

COLORADO

Colorado has no relevant statute concerning passive warning devices.

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. Conn. Gen. Stat. § 13b-347 (1999).

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. Conn. Gen. Stat. § 13b.345(a)-(b) (1999).

DELAWARE

There is nothing applicable in the statutes with respect to the regulation of passive warning devices.

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. 24 DCMR § 120.10 (1998).

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. Fla. Stat. Ann. § 351.03 (West 1999).

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 with 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. Fla. Stat. Ann. § 316.171 (West 1999).

Every railroad company maintaining a highway-rail crossing must, upon reasonable notice from the Department of Transportation, install, maintain and operate traffic control devices to warn motorists of approaching trains. Fla. Stat. Ann. § 335.141 (West 1999).

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. Ga. Code Ann. § 46-8-194 (1999).

Every railroad company in Georgia is required to erect and maintain a signboard at least four feet six inches in height to warn approaching rail traffic of the existence of drawbridges, grade crossings and stations at which there are switches. The signboard must be located at a point on the right-of-way not less than one-half mile nor more than one mile on each side of every station or grade crossing at which there is a switch. Signboards must be placed where they can be clearly seen by persons operating locomotives and must be placed on the right-hand side of the track approaching the station or grade crossing. Failure to comply with this section is a misdemeanor punishable by a fine of one hundred dollars for each offense. Ga. Code Ann. § 46-8-198 (1999).

A railroad company is required to erect a blowpost (whistlepost) on each side of the crossing to indicate its existence. The location of the blowpost is to be at a point 400 yards from the center of its intersection with any public road or street at-grade. Failure to comply with this section is a misdemeanor. Ga. Code Ann. § 46-8-190 (1999).

The Department of Transportation and local authorities are authorized to identify and erect STOP signs at particularly dangerous grade crossings. Ga. Code Ann. § 40-6-141 (1999).

HAWAII

The Director of Transportation and the individual counties are authorized to identify and erect STOP signs at particularly dangerous highway-rail crossings. Haw. Rev. Stat. § 291C-92 (1999).

IDAHO

There is nothing applicable in the statutes with respect to the regulation of passive warning devices.

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 (1999).

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 forty-five days. Ind. Code Ann. § 9-21-4-15 (Burns 1999).

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. Ind. Code Ann. § 8-6-6-1 (Burns 1999).

IOWA

There is nothing applicable in the statutes with respect to the regulation of passive warning devices.

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 crossings. Kan. Stat. Ann. § 8-1552 (1999). See also Section 8-2002 concerning the power of local authorities.

Every railroad corporation must place crossbucks at highway-rail 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. Kan. Stat. Ann. § 66-2,121 (1999).

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 ten inches in height. The Cabinet must install the signs within sixty 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. Ky. Rev. Stat. Ann. § 189.560 (2)(3)(4)(5) (Baldwin 1998).

Every railroad company is required to place and maintain signalboards 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 five inches high, the words "RAILROAD CROSSING". Ky. Rev. Stat. Ann. § 277.160 (Baldwin 1998).

LOUISIANA

All railroads must install and maintain at highway-rail 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 one hundred feet nor more than three hundred feet from the nearest rail of the crossing. La. Rev. Stat. Ann. § 32:169 (A)-(B) (West 1999).

MAINE

Every railroad is responsible for the erection and maintenance of warning signs at highway-rail crossings. The signs should be of the size, design and color ordered by the Maine Department of Transportation. Me. Rev. Stat. Ann. tit. 23, §§ 1251-1252 (West 1998).

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 (West 1998).

The Department is authorized to designate any highway-rail 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 (West 1998).

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 crossing designated as a dangerous crossing. Md. Ann. Code art. 21, § 702 (1999).

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. Mass. Ann. Laws ch. 160, § 140 (1999).

"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...." Mass. Ann. Laws ch. 160, § 141 (1999).

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. Mass. Ann. Laws ch. 160, § 142 (1999).

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 road authority, at its own expense, must furnish, renew and maintain all passive traffic control devices on public streets and highways that cross railroad tracks at-grade. This includes the various advance warning signs, railroad pavement markings, railroad grade crossing signs, number of track signs, and other special signs located, designed, and maintained as prescribed by the Michigan Manual on Uniform Traffic Control Devices.

The Department may install and maintain or arrange for the installation and maintenance of highway street lighting at any grade crossing of state trunkline highway. Mich. Comp. Laws Ann. § 463.311 (West 1999).

MINNESOTA

Every railroad must maintain a proper and conspicuous sign indicating the presence of a highway-rail 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. Minn. Stat. § 219.06 (1999).

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. Minn. Stat. § 219.20 (1999).

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 with the word "STOP" on it. Minn. Stat. § 219.17 (1999).

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." Miss. Code Ann. § 65-1-70 (1999).

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". Miss. Code Ann. § 77-9-247 (1999).

MISSOURI

There is nothing applicable in the statutes with respect to the regulation of passive warning devices.

MONTANA

The Department of Highways and local authorities may identify dangerous highway-rail crossings and install STOP signs at these crossings. Mont. Code Ann. § §1-14-602-603 (1999).

Beginning April 9, 1987, and within two years from that date, all railroad companies will have installed and be currently maintaining reflectorized material on the front and back sides of crossbuck blades at all public crossings. Mont. Code Ann. § 69-14-612 (1999).

NEBRASKA

The Department of Roads, and local authorities, on highways under their jurisdiction, may identify and install STOP signs at dangerous highway-rail crossings. Neb. Rev. Stat. § 60-6-171 (1999).

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. Nev. Rev. Stat. § 484.351 (Michie 1998).

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 crossings. N.H. Rev. Stat. Ann. § 373.11 (1999).

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. N.J. Stat. Ann. § 48:12-58 (West 1999).

NEW MEXICO

There is nothing applicable in the statutes with respect to the regulation of passive warning devices.

NEW YORK

Each municipality or political subdivision which 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 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. N.Y. [R.R.] Law § 53-a (McKinney 1999).

It is the duty of every Class 1 railroad to install a whistle sign made of retroreflective material as specified by the Commissioner of Transportation on the approach to each highway-rail crossing. N.Y. [R.R.] Law § 71-a (McKinney 1999).

NORTH CAROLINA

There is nothing applicable in the statutes with respect to the regulation of passive warning devices.

NORTH DAKOTA

The North Dakota Public Utility Commission prescribes three distinct types of warning signs for use at highway-rail crossings: the home crossing sign, the STOP sign, and the approach crossing sign. N.D. Cent. Code § 24-09-02 (1999).

The railroad company is responsible for erecting and maintaining one or more of such uniform crossing signs at each grade crossing in the state. N.D. Cent. Code § 24-09-03 (1999).

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. N.D. Cent. Code § 24-09-04 (1999).

The Department of Transportation, may designate any crossing requiring additional protection as a "stop" crossing and make notification to the appropriate road authority. Within thirty days after notification the road authority shall erect STOP signs. N.D. Cent. Code § 24-09-05 (1999).

OHIO

All railroad companies operating in Ohio are required to erect crossbuck signs at all highway-rail 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. Ohio Rev. Code Ann. § 4955.33 (1998 Supplement).

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 is

to be determined by the Commission, as is the division of costs. The devices are to conform as near as possible to national standards. Okla. Stat. tit. 17, § 86 (1999).

Every railroad corporation in the state has a duty to erect suitable warning signs at each crossing of its tracks by a public highway. Okla. Stat. tit. 66, § 124 (1999).

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. Okla. Stat. tit. 66, § 130 (1999).

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. Or. Rev. Stat. § 824.224 (1999).

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. Or. Rev. Stat. § 824.220 (1999).

PENNSYLVANIA

There is nothing applicable in the statutes with respect to the regulation of passive warning devices.

RHODE ISLAND

Every railroad corporation must install and maintain at every highway-rail crossing a suitable signboard for the purpose of warning traffic of approaching trains. R.I. Gen. Laws § 39-8-13 (1999).

Penalty

Railroad corporations neglecting or refusing to comply with the provisions of § 39-8-13 may be fined an amount not to exceed one thousand dollars and may be liable for all damages due to neglect or refusal to comply. R.I. Gen. Laws § 39-8-15 (1999).

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. S.C. Code Ann. § 56-5-1010 (Law. Co-op. 1998).

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. S.C. Code Ann. § 58-17-1390 (Law. Co-op. 1998).

Every railroad company operating within the state must install and maintain warning boards (signs) near drawbridges and highway-rail crossings. S.C. Code Ann. §§ 58-17-3380 - 3390(Law. Co-op. 1998).

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 crossing as a "stop" crossing by placing a STOP sign preceded by a warning sign at the crossing. S.D. Codified Laws Ann. § 31-28-17 (1999).

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. S.D. Codified Laws Ann. § 49-16A-87 (1999).

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. S.D. Codified Laws Ann. § 31-28-7 (1999).

TENNESSEE

The Public Service Commission of the state, and the Commissioner of Transportation or his designee have the authority to determine the type of railroad crossing sign which shall be uniform throughout the state. Tenn. Code Ann. § 65-11-105 (1999).

"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'." Tenn. Code Ann. § 65-18-104 (1999).

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. Tex. [Transp] Code Ann. § 471.002 (West 1999).

The Texas Department of Highways and Transportation is responsible for the development of material for the installation and maintenance of retroreflectorized material at all public grade crossings not provided with active warning devices. The retroreflectorized material will be affixed to the backs of crossbucks and their support posts. Tex. [Transp] Code. Ann. §471.004 (West 1999).

UTAH

There is nothing applicable in the statutes with respect to the regulation of passive warning devices.

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 (1999).

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 flagperson must be present at these exempt crossings whenever a train is traversing the crossing. Within ninety 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. Vt. Stat. Ann. tit. 5, § 3581 (1999).

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 recind an "exempt" crossing designation. Vt. Stat. Ann. tit. 5, § 3581. (1999).

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 five 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. Va. Code Ann. § 56-405.2 (Michie 1999).

WASHINGTON

It is the duty of the railroad corporation to install and maintain at every highway-rail crossing, a sign known as a saw buck crossing sign with the lettering "RAILROAD CROSSING" and an inscription indicating the number of tracks. Wash. Rev. Code Ann. § 47.36.050 (West 1999).

The Transportation Department may install approach and warning signs on the approach of any state highway to a highway-rail crossing, situated at a sufficient distance from the crossing as to make the warning effective. Wash. Rev. Code Ann. § 47.36.080 (1999).

WEST VIRGINIA

Every railroad company must erect and maintain suitable signboards or notices at each of its highway-rail 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 five dollars for each week the violation continues. W. Va. Code § 31-2-9 (1999).

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 (1999).

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) (1999).

The penalty for violation by a railroad of this section is a fine of not less than ten nor more than fifty dollars for each violation. Wis. Stat. § 195.286(7) (1999).

WYOMING

There is nothing applicable in the statutes with respect to the regulation of passive warning devices.

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. A state 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 before reaching crossings. 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. In recent years, a couple of states have passed legislation to allow individual municipalities to regulate through their local ordinances, the blowing of the train horn at crossings. If a state has such a law, it is listed here under the subtitle "local option". If a state has a penalty codified, it is presented here. As in all chapters, appropriate citations are included.

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 (1999).

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; and
3. At short intervals, on entering into, or while moving within or passing through any village, town or city. Ala. Code § 37-2-81 (1999).

ALASKA

Alaska has no relevant code section relating to this topic.

ARIZONA

Under Arizona law each railroad must equip its locomotives with a bell weighing not less than twenty 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. Ariz. Rev. Stat. Ann. § 40-847 (1999).

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. Ariz. Rev. Stat. Ann. § 40-858 (1999).

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. Ariz. Rev. Stat. Ann. § 40-854 (1999).

Arizona requires a headlight brilliancy of not less than fifteen hundred 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 nor more than one thousand dollars for each offense. Ariz. Rev. Stat. Ann. § 40-846 (1999).

ARKANSAS

Arkansas requires locomotives or engines to have a bell of at least thirty pounds weight or a steam whistle. The bell or whistle must be sounded at a distance of at least eighty 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 two hundred dollars for each incident of neglect plus possible liability for all damages sustained by any person as a result of such neglect. Ark. Code Ann. § 23-12-410 (Michie 1998).

Arkansas law requires any company owning or operating a locomotive over fifty miles in length to equip all their locomotives being operated at night with a headlight of power and brilliancy equal to fifteen hundred candlepower. A violation of this section will subject the offending railroad to a penalty of not less than three hundred or more than five hundred dollars for each separate offense. Ark. Code Ann. § 23-12-402 (Michie 1998).

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. Violation of this section is punishable by a fine of not less than one hundred or more than one thousand dollars for each offense. Cal. [Pub. Util.] Code § 7605 (West 1999).

California law requires trains to give audible warning of their approach to a crossing eighty 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 twenty pounds. Any railroad corporation violating this section is subject to a penalty of one hundred dollars for every violation. Cal. [Pub. Util.] § 7604 (West 1999).

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 eight hundred feet on a dark night when the train is traveling at least thirty miles per hour. A violation of this section results in a penalty of not less than one hundred or more than one thousand dollars for each offense. Cal. [Pub. Util.] § 7607 (West 1999).

Any person in charge of a locomotive engine 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. Cal. [Pub. Util.] § 7607 (West 1999).

COLORADO

The Colorado statutes do not require any audible warning upon the approach to a highway-rail 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 three hundred 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 three hundred feet.

Violation of this section will result in a penalty of one hundred dollars for each violation, recovered in suits brought by the attorney general. Colo. Rev. Stat. §§ 40-29-108 -109 (1999).

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 and is within eighty rods 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 twenty-seven rods 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 not be less than eighty-seven decibels. Any railroad operating a train with an audible signal which produces noise emissions in excess of the maximum is in violation of this section. Conn. Gen. Stat. § 13b-329(a)-(b)-(c) (1999).

DELAWARE

Delaware law has no applicable statute.

DISTRICT OF COLUMBIA

It is unlawful in the District of Columbia for a 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. 24 DCMR § 120.6 (1998).

FLORIDA

Except as provided in subsection (4), any railroad train approaching within fifteen hundred feet of a public highway-rail grade crossing must emit a signal audible for such distance.

Local Option

"(4) (a) The Department of Transportation and the Federal Railroad Administration (FRA) 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 highway-rail crossings for the purpose of preventing vehicles from going around, under or through lowered railroad gates.
- 2) The municipality has an ordinance which unconditionally prohibits the sounding of railroad train horns and whistles during the hours of ten p.m. and six a.m.

(4) (b) Upon final approval and verification by the Department of Transportation and the FRA that such traffic systems' operations meet all state and federal safety and traffic regulations and that the highway-rail crossing can be secured, the municipality or county may pass an ordinance prohibiting the sounding of audible warning devices by trains during the hours of 10 pm and 6 am.". Fla. Stat. Ann. § 351.03 (West 1999). Also see Emergency Order Number 15, Notice Number 4 issued by the Federal Railroad Administration on August 31, 1993.

GEORGIA

An engineer operating a locomotive moving over the tracks is required, when he reaches the blowpost (whistlepost), to blow through the whistle two long blasts, one short blast and one long blast. The blasts must be loud and distinct. Violation of this section is a misdemeanor. Ga. Code Ann. § (1999).

Within the corporate limits of cities, a railroad is not required either to erect a blowpost or to blow the whistle when approaching a crossing. Instead, the engineer is required to signal the approach of the train to such crossing by constantly tolling the bell of the locomotive. Failure to comply with this section is a misdemeanor. Ga. Code Ann. § 46-8-191 (1999).

Each locomotive must be equipped with a signal bell and a signal whistle or horn. Additionally, each locomotive operated on a railroad line after dark must have a good and sufficient headlight which shall consume no less than three hundred watts at the arc and with a reflector no less than twenty-three inches in diameter. Ga. Code Ann. § 46-8-170 (1999).

HAWAII

Hawaii law has no applicable statute.

IDAHO

A bell of at least twenty pounds weight is required on each locomotive.

Idaho requires trains to give audible warning of their approach to crossings at least eighty rods before the crossing and allows repeated use of either the horn or the whistle if continuous use of the bell is not used between the initial signal point and the crossing.

There is no local option in this state because Idaho law forbids the use of the horn or whistle within city or town limits. A violation of this section results in a penalty of one hundred dollars for each offense. Idaho Code § 62-412 (1999).

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 Commission shall by order direct, 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. ILCS 5/18c-7402 (2)(a) (1998).

INDIANA

Indiana law requires the use of an audible warning beginning not less than one quarter of a mile from the crossing. The engineer or other person operating the locomotive shall sound the whistle on the engine not less than four distinct times. The sounding shall be prolonged or repeated until the crossing is reached. The operator must also ring the bell continuously from the time of sounding the whistle until the engine has fully passed through the crossing.

It is unlawful for an engineer or other person in charge to move a locomotive over or across a turnpike, public highway or street crossing if the whistle and bell are not working. If the whistle and bell are not working, the locomotive must stop before each crossing and proceed only after manual warning is provided as by a flagger.

Local Option

An Indiana city or town may adopt its own ordinance regulating the sounding of warning devices but only after receiving permission from the state Department of Transportation. Ind. Code Ann. § 8-6-4-1 (a)-(b)-(c) (Burns 1999).

IOWA

Iowa law requires an audible warning one thousand 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 forbid the use of any audible signal within city or town limits unless local ordinances require it. Iowa Code § 327G.13 (1999).

Any officer or employee of the railroad that violates any part of Section 327G.13, shall be subject to a schedule "2" penalty. Iowa Code § 327G.14 (1999).

KANSAS

Kansas law requires locomotives operating at night to be equipped with headlights. These headlights are required to have sufficient power to illuminate an object the size of a man at a distance of eight hundred feet. Violation of this section is a misdemeanor, and conviction brings a fine of not less than one hundred or more than five hundred dollars for each offense. Kan. Stat. Ann. §§ 66-261-262 (1999).

All trains are required to give an audible warning (air whistle) at least four times (two long, one short and one long blast) beginning at least eighty 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. The penalty is a fine to be paid by the railroad of not more than twenty dollars 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. Kan. Stat. Ann. § 66-2-120 (1999).

KENTUCKY

Railroad companies operating within the state 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 fifty rods (753 feet), and either the whistle or bell shall be sounded continuously or alternately until the engine has reached the crossing.

Local Option

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. Ky. Rev. Stat. Ann. § 277.190(1)-(2) (Baldwin 1999).

LOUISIANA

Louisiana law requires trains to use an audible warning (either a bell or a whistle) at a distance of three hundred yards from a highway-rail crossing up to the crossing itself. La. Rev. Stat. Ann. § 32:168 (West 1999).

MAINE

Maine law requires a train to give an audible warning nine hundred ninety feet from a highway-rail crossing. The state requires 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. Me. Rev. Stat. Ann. tit. 23, § 7214 (West 1999).

MARYLAND

Maryland law lists no applicable statute.

MASSACHUSETTS

Massachusetts law requires a whistle and a bell of at least thirty-five 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 eighty rods from the crossing. The whistle and bell shall be sounded continuously or alternately until the engine has passed through the crossing. Mass. Ann. Laws ch. 160, § 138 (Law. Co-op. 1999).

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. Mass. Ann. Laws ch. 160 § 139 (1999).

Massachusetts has an additional statute requiring a railroad train approaching within approximately one thousand five hundred feet of a highway crossing to emit a warning signal audible from such distance. Mass. Ann. Laws ch. 90, § 15 (Law. Co-op. 1999).

Whoever violates any provision of Section 15 shall be punished by a fine of not less than one hundred nor more than two hundred dollars. Mass. Ann. Laws ch 90, § 15 (Law. Co-op. 1999).

MICHIGAN

Michigan law lists no applicable statute.

MINNESOTA

"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 least eighty 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". Minn. Stat. § 219.567 (1999).

MISSISSIPPI

Mississippi law requires the use of an audible warning, such as a whistle, horn or thirty pound bell, at an initial signal point three hundred yards from the crossing. Mississippi allows repeated blasts of the horn or whistle if a continuous bell is not used. Miss. Code Ann. § 77-9-225 (1999).

MISSOURI

State law requires trains to give audible warnings of their approach to a crossing eighty rods (1,320 feet or 440 yards) before the crossing is reached, and at regular intervals until the train is through the crossing. Failure to comply brings a penalty of twenty dollars for each violation. Mo. Rev. Stat. § 389.990 (1999).

All railroad companies operating within the state are required to equip, maintain and use upon; every locomotive operating at night an electric headlight of fifteen hundred candle power brilliancy, measured with the aid of a reflector. The provisions of this law do no apply to independent lines of railroad less than seventy-five miles in length; and during the first ninety days of a strike of the particular employees whose duties are to repair and maintain electric headlights. Mo. Rev. Stat. § 389.900 (1998).

MONTANA

Montana does not specify when locomotive headlights or other lights must be used, but it requires headlights that have at least fifteen hundred candlepower measured without the aid of a reflector. A violation of this section is a misdemeanor and carries a fine of not less than one hundred or more than one thousand dollars for each offense. Mont. Code Ann. § 69-14-236 (1999).

NEBRASKA

Nebraska law requires locomotives operating at night to be equipped with headlights. They 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 three hundred feet. Neb. Rev. Stat. § 74-592 (1999).

NEVADA

Nevada law requires locomotives operating at night to be equipped with headlights. They must have at least fifteen hundred candlepower measured without the aid of a reflector.

Any railroad that violates this section is liable to the public service commission of Nevada for a penalty of not more than one thousand dollars for each violation. Nev. Rev. Stat. § 705.360 (1999).

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 three hundred feet. N.H. Rev. Stat. Ann. § 367:57 (1999).

NEW JERSEY

The law in New Jersey specifies a distance of three hundred yards from a highway-rail crossing as the point a train must give audible warning of its approach. If a bell is used for this purpose, it must weigh thirty pounds. New Jersey law requires continuous use of the whistle or horn, if the continuous bell is not used, from the initial signal point to the crossing. If in default, the railroad company shall pay a penalty of one hundred dollars to be sued for by any informer within ten days after the infraction. N.J. Rev. Stat. § 48:12-57 (1999).

New Jersey law requires headlights on trains but does not specify size or illumination. N.J. Rev. Stat. § 48:12-90.1 (1999).

NEW MEXICO

New Mexico law requires trains to give audible warnings of their approach to a highway-rail crossing eighty rods (1,320 feet or 440 yards) before it. If a bell is used for this purpose, the weight of the bell must be twenty pounds.

Trains 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 eight hundred feet with the aid of a reflector. No time period is specified for headlight use. N.M. Stat. Ann. §§ 63-3-29 -34 (Michie 1999).

A violation of these sections will result in a penalty of one hundred dollars and liability for damages.

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 eighty rods 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. N.Y. [Railroad] Law § 53b (McKinney 1999).

A violation of this section is a misdemeanor. N.Y. [Railroad] Law § 53b (McKinney 1999).

NORTH CAROLINA

North Carolina law lists no applicable statute.

NORTH DAKOTA

North Dakota requires trains to give audible warning of their approach to a highway-rail crossing eighty rods (1,320 feet or 440 yards) before the crossing. If a bell is used for this purpose, North Dakota requires the bell to weigh thirty 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 crossing. N.D. Cent. Code § 49-11-21 (1999).

A violation of the preceding section by either the owner of the railroad or the locomotive engineer is an infraction. N.D. Cent. Code §§ 49-11-22 -23 (1999).

OHIO

State law 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 eighty rods (1,320 ft or 440 yards) and ring the bell continuously until the engine passes the crossing. Ohio Rev. Code Ann. § 4955.32 (Baldwin 1999).

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. Ohio Rev. Code Ann. § 4999.04 (Baldwin 1999).

OKLAHOMA

Oklahoma law requires that trains give audible warning of their approach eighty rods (1,320 feet or 440 yards) before a crossing. The state requires continuous use of the whistle or horn, if a continuous bell is not used, from the initial signal point to the crossing. The bell used must weigh thirty pounds.

Oklahoma requires locomotives operating at night to be equipped with headlights whose candlepower is at least fifteen hundred measured without the aid of a reflector. Okla. Stat. tit. 66, § 95 -126 (1999).

A train operator who fails to ring the bell or sound the whistle upon approaching a crossing is punishable by a fine not exceeding fifty dollars or by imprisonment in the county jail for a period not exceeding sixty days. Okla. Stat. Ann. tit. 21, § 1253 (West 1999).

OREGON

Oregon law requires locomotives operating at night to be equipped with headlights with enough power to distinguish a man-sized object at night at a distance of eight hundred feet. Or. Rev. Stat. § 761.310 (1999). Also see Section 761.990 concerning penalties.

PENNSYLVANIA

Pennsylvania law lists no applicable statute.

RHODE ISLAND

Rhode Island requires that trains have a bell weighing thirty-two pounds. The operator must ring the bell at a distance of at least eighty 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 one thousand dollars and the railroad shall be liable for all damages as a result of failure to comply. R.I. Gen. Laws §§ 39-8-14 -15 (1999).

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 five hundred yards from the crossing until the engine is through the crossing. South Carolina law requires that the bell weigh thirty pounds. S.C. Code Ann. § 58-15-910 (Law. Co-op. 1999).

SOUTH DAKOTA

South Dakota law lists no applicable statute.

TENNESSEE

Tennessee law requires repeated use of a bell or whistle for a distance of one quarter of a mile from the crossing and at short intervals until the train has passed the crossing. Tenn. Code Ann. § 65-12-108 (1999).

TEXAS

A railroad company is required to have on each locomotive a bell weighing at least 30 pounds and a steam whistle, air whistle, or air horn.

The engineer in charge of the locomotive is required to 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 ring the bell continuously until the locomotive has crossed the road or stopped.

The engineer in charge of the locomotive commits an offense if the engineer violates this section. An offense under this subsection is a misdemeanor punishable by a fine of not less than five dollars or more than one hundred dollars. Tex. [Transp] Code § 471.006(a-b-d) (1999).

Texas law requires trains to have headlights of not less than fifteen hundred candlepower, measured without the aid of a reflector.

A violation of this section brings a penalty of not less than one hundred nor more than one thousand dollars for each offense. Tex. Rev Civ. Stat. Ann. art. 6372 (West 1999).

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. Tex. [Transp] Code § 471.006(e) (1999)

UTAH

Utah requires continuous use of a bell or other audible warning between an initial signal point and the crossing. Trains are required to give audible warning of their approach to a crossing eighty rods (1,320 feet or 440 yards) before the crossing, except in towns when the distance shall be one quarter of a mile. Utah Code Ann. § 56-1-14 (1999).

VERMONT

Vermont requires trains to sound an audible warning device in advance of each public crossing. The device must be of the type approved by the Federal Railroad Administration. No distance is specified. It must be continuous up to and through the crossing. Vt. Stat. Ann. tit. 5, § 3582 (1999).

Local Option

The statute provides that a local agency of transportation may prohibit the sounding of audible warning devices at both public and private grade crossings, provided they are 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 the entire width of the lanes of traffic is blocked when the gates are lowered.
- (3) A bell that is automatically activated by an 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 miles per hour.
- (7) Not more than two lanes of vehicular traffic in each direction at the crossing.

No prohibition under this section shall become effective until the Federal Railroad Administration grants a waiver or exemption under 49 U.S.C. § 20153.

Any 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.

Nothing in this section prohibits a railroad from using an audible warning device in emergency circumstances.

Additionally, 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, incur liability to any person for death, personal injury or property damage resulting from the use of the crossing. Vt. Stat. Ann. tit. 5, § 3582 (1999).

VIRGINIA

Virginia requires audible warning be given between three hundred and six hundred yards of the crossing. Local governments in Virginia may require the sounding of the whistle upon approaching designated railroad trestles or bridges having lengths of one hundred feet or more. Va. Code Ann. § 56-429 (Michie 1999).

Virginia law requires locomotives operating at night to be equipped with headlights. The headlights must have a brilliance of at least five hundred candlepower measured with the aid of a reflector. Va. Code Ann. § 56-413 (Michie 1999).

WASHINGTON

It is unlawful in the State of Washington to fail to ring a bell or sound a whistle upon approaching a crossing from at least eighty rods (1,320 feet or 440 yards), except in cities.

Violation of this section is a misdemeanor. Wash. Rev. Code § 81.48.010 (1999).

WEST VIRGINIA

West Virginia law requires the continuous use of a bell, horn, or whistle for a distance of at least sixty rods from a crossing and up to and through the crossing.

Failure to do so is a misdemeanor and is punishable by a fine not to exceed one hundred dollars. W. Va. Code § 31-2-8 (1999).

WISCONSIN

State law requires that 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. Wis. Stat. § 192.15 (1999).

All trains operating at night must be equipped with an electric headlight of sufficient candlepower to render plainly visible anything in advance of the train at a distance of two hundred feet. Wis. Stat. § 192.266 (1999).

WYOMING

Wyoming law lists no applicable statute.

CHAPTER 6: WARNING DEVICES - ACTIVE

CHAPTER OVERVIEW

This chapter surveys the various state laws and regulations concerning active warning devices. Not all of the states have laws or regulations covering these devices. Active warning devices as used here is intended to mean those devices that are activated automatically at the approach of a train.

STATE LAWS AND REGULATIONS

ALABAMA

Alabama has no requirement concerning active warning devices.

ALASKA

Alaska has no requirement concerning active warning devices.

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, 50 percent.
2. Where a city street is involved: the city, 50 percent.
3. If a county highway: the county, 50 percent.
4. If a state highway: the state highway fund, 50 percent.
Ariz. Rev. Stat. Ann. § 40-337.01 (1999).

ARKANSAS

Arkansas has no requirement concerning active warning devices.

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 (West 1999).

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 that case, the Commission shall also fix the amount to be paid. Colo. Rev. Stat. § 40-4-106 (1999).

CONNECTICUT

The Commissioner of Transportation has authority to adopt regulations to ensure the safe maintenance inspection, and testing of signal systems and devices at railroad grade crossings. Conn. Gen. Stat. § 13b-345b (West 1997).

The Commissioner has the authority to investigate conditions surrounding all highway-rail crossings and determine at which crossing(s) public safety reasonably requires that any person traveling upon the highway shall come to a stop or proceed with caution before passing over the tracks. The Commissioner also has authority to require a railroad company at each of the crossings to erect and maintain, on the highway and within the limits of its right-of-way, a STOP, caution or warning sign. Conn. Gen. Stat. § 13b-345 (West 1997).

Any town, city, or borough may petition the Department of Transportation to provide a mandatory stop on any municipal or state highway approaching a crossing at grade. Conn. Gen. Stat. § 13b-345a (West 1997).

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 of Transportation may require each railroad company, at all of its at-grade crossings with gates or signals, to erect and maintain, within their right-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 of Transportation may also require each railroad company to maintain logs, subject to the inspection of the Transportation Department, listing 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. Conn. Gen. Stat. § 13b-345 (West 1997).

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 to 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 (West 1997).

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 (West 1997).

DELAWARE

Delaware has no requirement concerning active warning devices.

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 (1999).

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 operating 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 (West 1999 Supplement).

GEORGIA

Georgia has no requirement concerning active warning devices.

HAWAII

Hawaii has no requirement concerning active warning devices.

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 account.

The Idaho Department of Transportation 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 volume 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 §§ 304A-B-C-D (1998).

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 (1999).

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 (Burns 1999).

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 and 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 (1999). See also entries in chapters titled Crossing Consolidations and Openings and Crossing Treatment Procedures.

KANSAS

At the request of the governing body of any city, county or township, and after proper investigations made in cooperation with the Secretary of Transportation, the State Corporation Commission shall designate those railroad grade crossings on city, county or township roads which are dangerous. At all crossings so designated the corporation commission shall order the installation of appropriate safety devices to be installed and maintained by the railroad or railroads. The State Corporation Commission has the authority to determine the number, type and location of such safety devices which must conform with generally recognized standards. The Corporation Commission has additional authority to close and abolish grade crossings on city, county or township roads that are in proximity to crossings on which safety devices have been ordered, subject to the approval of the governing body of such city, county or township, and to require the payment of a portion of the cost of the installation of the safety devices by the affected railroad or railroads: provided, that the cost to the railroad or railroads shall be not less than twenty percent (20% nor more than 50 % of the total installation costs. Kan. Stat. Ann. § 66-321a (1998).

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 (Baldwin 1998).

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) (Baldwin 1998) 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 (Baldwin 1998).

The Fiscal Court is required to give at least ten (10) day's 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. Ky. Rev. Stat. Ann § 178.355 (2) (1998).

The Transportation Cabinet has the power to investigate any public grade crossing not equipped with gates and with an average daily traffic 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 (1998).

LOUISIANA

In 1998, the Louisiana Legislature enacted legislation that authorized the Department of Transportation and Development to require closure of state-maintained railroad grade crossings. The legislation requires a prioritization of proposed crossing closures, along with notification of affected parties prior to closure. It provides for public hearing, alternative actions to closing by a local government authority, spells out the responsibility for funding by the local governing authority, directs promulgation of rules and regulations by the department, and requires certain factors for consideration in development of criteria for crossing closure, and other related matters.

The Secretary of the Department of Transportation and Development can require the closure of crossings. The statute provides for the Department of Transportation and Development to

complete a study no later than March 1, 1999 to establish priorities for railroad grade crossing closures and to develop a prioritized plan for implementing railroad grade crossing closures.

The Department may change the location of or abolish any existing public grade crossing on any state-maintained highway in the state when it determines that it is necessary for the safety of the public. The process must comply with the following procedures:

“(1) Within not less than one hundred eighty days prior to the closure of any public crossing, the Department shall notify the municipal governing authority of the area in which the crossing is located, the governing authority of the parish in which the crossings located, the railroad company whose railroad tracks are crossed at grade by the highway, emergency services providers providing services within the affected area, and any other party deemed by the secretary to be interested in the closing procedure. Such notification of closures shall offer opportunity for rebuttals and alternative actions to such closures.

(2) Not less than ninety days prior to the possible closure of any public grade crossing, the department shall hold a public hearing in the parish or municipality of the affected grade crossing.

(3) After the hearing, the Department shall attempt to address any concerns raised at the hearings relative to the proposed closing. However, if the Secretary determines that the closure is consistent with the standards established by the Department and in the public interest, the Department shall issue an order to close the existing grade crossing. Any such closure order shall also determine the manner in which such closure shall be made including a determination as to any alteration to be made to the crossing and the method of diversion of traffic to an alternate road or crossing. No provisions of this Act shall impose any liabilities of any nature upon the state of Louisiana or any agency thereof.

Any local governing authority which opposes the closure of a grade crossing within its territorial jurisdiction may agree to undertake the upgrading of warning devices and additional safety alternatives in compliance with requirements determined by the department as an alternative to the proposed closing. The expense of the alternative upgrade of the crossing shall be borne by the local government.

At the written request of any local governing authority, the Department shall investigate the need to change the location of or abolish a railroad grade crossing within the jurisdiction of such governing authority and which is not on a state-maintained roadway. After compliance with the provisions of this Section, the Department may, upon determination of the need for closure of the crossing, proceed with the relocation or abolishment of the crossing. The application by the local governing authority shall constitute the consent of the authority for such closing.

The Department, subject to the provisions of the Administrative Procedure Act, shall promulgate rules and regulations to implement the provisions of this Section - relocation or Abolishment. The rules and regulations shall include specific criteria for the closure of grade crossings. The following factors are to be considered in developing closure criteria:

- (1) Total number of daily vehicular use at crossing.
- (2) Total number of trains passing the crossing daily.
- (3) Alternative routes and distance to such routes.
- (4) Timetable speeds of trains passing the crossing.
- (5) Collision history of the crossing.
- (6) Type of warning device presently at the crossing.

- (7) Degree of difficulty involved in improvement of roadway approach to the crossing or in providing adequate warning devices.
- (8) Use of the crossing by vehicles carrying hazardous materials, vehicles carrying passengers for hire, and school buses.
- (9) Use of grade crossing by emergency vehicles.
- (10) Sight distance and reduced visibility at the crossings.
- (11) Angle of intersection of alignments of the roadway and the railroad.
- (12) Redundancy of crossings in the area.
- (13) Proximity to a new crossing or a recently upgraded crossing.
- (14) Availability and responsibility of user of private crossing.
- (15) Other factors the department determines to be necessary in the development of this criteria.

La. Rev. Stat. Ann. § 48:390 (West 1999)

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 (West 1999).

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 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.

The 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 (Michie 1998).

MASSACHUSETTS

Massachusetts law requires a railroad whose track is intersected by a public way to install at their own 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 (1999).

MICHIGAN

The Michigan Department of Transportation 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.

The cost of any installation, alteration, or modernization of active traffic control devices shall be divided equally between the railroad and road authority.

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 must also install, renew, and maintain any signs placed on cantilevered signal supports. Whenever active traffic control devices are installed at any crossing, they must 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 20 seconds or more than 60 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.

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 (1999).

MINNESOTA

If the Transportation Regulation Board in Minnesota finds, after an investigation, that conditions at a highway-rail crossing require additional safeguards such as crossing gates or other suitable devices, the Board may specify any such device and order the affected railroad to install them. Minn. Stat. § 219.24 (1999).

MISSISSIPPI

Title 65, Chapter 1, § 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 (1999).

Municipal government authorities in Mississippi also have the authority to regulate highway-rail crossings and to provide precautions and prescribe rules regulating the same. 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 (1999).

Mississippi uses a multi-disciplinary diagnostic team study approach to determine the need for protective or warning devices at railroad crossings. If the findings of any study reveal a need for warning or protective devices at or in the vicinity of a railroad crossing of a public highway under the jurisdiction of any county or incorporated municipality, the Mississippi State Highway Department is authorized to construct protective or warning devices and to pay up to a maximum of one percent of available monies in the State Highway Fund for construction, provided that the municipality complies with conditions necessary for Federal matching funds to complete the balance. Miss. Code Ann. § 57-43-13 (1999).

MISSOURI

The Missouri Division of Motor Carriers and Railroad Safety of the Department of Economic Development has exclusive power 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 Division 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 (1999). See also Missouri under entries in chapters titled Crossing Consolidations and Openings and Private Crossings.

MONTANA

Montana has no requirement concerning active warning devices.

NEBRASKA

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 (1998).

NEVADA

Chapter 704 of Title 58 of Nevada Revised Statutes sets forth the powers of the Public Service Commission, which include exclusive power over railroad crossings.

The Public Service 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 council or 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 paid by the railroad and the state, county, town or municipality. Nev. Rev. Stat. § 704.300 (1997).

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 thirteen 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 (1997).

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 (1999). See also Section 373:3 regarding apportionment of cost.

NEW JERSEY

New Jersey law requires that every railroad shall provide protection to pedestrians and the traveling public at every highway-rail crossing. Such protection may take the form of safety gates, flagmen, electric bells, electric signs or other recognized systems of alarm or protection approved

by the Department of Transportation. N.J. Rev. Stat. §§ 48:12-34, 12-29 (1999). See also Section 48:12-55.

NEW MEXICO

New Mexico has no requirement concerning active warning devices.

NEW YORK

New York has no requirement concerning active warning devices.

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 nor 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) (1999). Also, see 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 cities themselves. 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 and the railroad is responsible for 10 percent.

A city has the authority to order the elimination and separation of a grade crossing if the council finds that the crossing constitutes an unreasonable hazard to vehicular or pedestrian traffic. N.C. Gen. Stat. § 160A-298 (a)-(c)-(d) (1999).

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 (1999).

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 cost must be apportioned to such parties or to any one 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 cost 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 (1999).

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, taking 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. § 4907.47.1(A)(B)(C) (Anderson 1999).

Any gates, bells or devices ordered erected by the Public Utilities 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 (Anderson 1999).

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 (1998).

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 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. Okl. Stat. tit. 17, §§ 82-86 (1998).

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 detailed 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 (1994).

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 railroad-highway crossings is vested exclusively in the state, and in the Department of Transportation. Or. Rev. Stat. § 824.202(1999).

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 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 (1999).

After receiving the application, the Department may schedule a hearing, unless one is not required. At a 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 (1999).

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: 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 five 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. Or. Rev. Stat. § 824.242 (1999).

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 (1999). See also Section 824.250 concerning apportionment where federal funds are available.

PENNSYLVANIA

No rail carrier shall, without Public Service 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.

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. 52 Pa. Code § 33.21 (1999). 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 Utility 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 (1999).

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 (1999).

SOUTH CAROLINA

South Carolina has no requirement concerning active warning devices.

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 (1999).

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 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 (1999).

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 (1999).

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 (1999).

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 (1999).

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 is 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 (1999).

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 cost 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 (1999).

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 (1999).

VIRGINIA

When required by the State Highway and Transportation Commissioner or by the governing body of any county, city or town, every railroad company will place and maintain, a highway-rail crossing protective device, including flashing electric lights, at each state highway-rail crossing. The device is to be automatically activated by an approaching train so as to be clearly discernible to travelers approaching the highway-rail crossing from each direction at a distance of two hundred feet. These lights will be installed at the initiative of counties, cities or towns only when required by ordinance or resolution adopted by the governing body stating that such political subdivision will pay the initial installation costs and that such cost and maintenance costs will be fixed as provided by this article. The costs of installation and maintenance of the lights may be apportioned by agreement between the railroad company and the governing body, or the Highway and Transportation Commissioner when he initiates it. If no agreement can be reached among the parties, any one of the parties may petition the State Corporation Commission for a decision on the costs. Va. Code Ann. § 56-405.3 (Michie 1999). See also Section 56-406.1.

When, in the opinion of the State Highway and Transportation Commissioner or the governing body of any county that has withdrawn its roads from the secondary system of state highways as to roads maintained by such county, or the council of any city or incorporated town, the public interest requires that automatically operated gates, wigwag signals or other electrical or automatic protection devices be installed at any highway, road or street crossing of one or more railroads at-grade, agreement may be made between any of these bodies and the affected railroad regarding the plans and specifications, the method of construction and the division of cost of installing such crossing protection devices. In the event that such governing bodies and the railroad company/s are unable to agree, they may petition the State Corporation Commission which shall determine what share of the costs of the project to be borne by the affected railroad is fair and reasonable. Va. Code Ann. § 56-406.1 (Michie 1999).

When any automatically operated gate, wigwag signal or other electrical or automatic crossing protection device has been installed at any highway-rail crossing by a railroad company outside the corporate limits of any city or inside the corporate limits of any incorporated town having a population of thirty-five hundred or less where the street involved is maintained by the State Highway and Transportation Board, the State Highway and Transportation Commissioner or the governing body may agree with the affected railroad company as to the division of cost of future maintenance of the devices. If the concerned parties are unable to agree, then the State Highway and Transportation Commissioner or the governing body may petition the State Corporation Commission which shall determine what share of the costs of the future maintenance is to be borne by the railroad company and/or the State Highway and Transportation Commission or the county, with regard to the benefits accruing to the railroad from the continued maintenance of such protection of the crossing. Va. Code Ann. § 56-406.2 (Michie 1999).

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 (West 1999).

If the Utilities and Transportation Commission directs the installation of a grade crossing protection device, and a federal-aid funding program is available to participate in the costs of the installation, both installation and maintenance cost of the device shall be apportioned according to § 81.53.295 (see next entry). Otherwise, if installation is ordered by the Commission, it shall 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 (West 1999).

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 (West 1999).

"In the event 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 (West 1994). See also Section 81.53.281 concerning creation of the Grade Crossing Protective Fund.

WEST VIRGINIA

West Virginia has no requirement concerning active warning devices.

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) (1999).

WYOMING

The Wyoming Public Service 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 (1999).

Under the direction of the affected railroad, "it shall be the duty of the Wyoming Public Service 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 (1999).

The Public Service 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 (1999).

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 types of heavy equipment, e.g. 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 six miles per hour or less, and one as low as four miles per hour in this category of vehicles.

"Special Vehicles" as they are referred to in the statutes are vehicles carrying usually passengers for hire 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 traversing a highway-rail 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 an 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. For a complete listing of vehicles required to stop under Federal regulations, see 49 CFR 392.10 (1997).

This chapter also contains a listing of "Exempt Crossings" at which the requirements for slow, low or special vehicles have no application. The majority of the requirements are based on Federal regulations which exempt the following 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 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. 49 CFR 392.10(b)-1 to -5 (1992).

As is the case throughout this book, all citations pertaining to the topics outlined in this chapter are included in the text.

STATE LAWS, REGULATIONS AND PENALTIES

ALABAMA

Slow and Low Vehicles - Alabama's definition of vehicles that make up 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 of ten 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 state law requires persons operating slow and low vehicles to stop before moving over a highway-rail crossing. The stop must be made fifteen to fifty feet from the nearest rail, the operator must look and listen for trains and train signals, and the operator may cross only when it is safe to proceed.

Special Vehicles - Alabama law does not specifically mention types of vehicles in this category. The law does provide however, that the Director of Highways 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.

Before crossing any highway-rail crossing, the driver must stop the vehicle within fifteen to fifty 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) (1999).

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 to-4 (1999).

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 of ten 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 fifteen to fifty 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. (See also 13 AAC 02.240 concerning stopping distances).

Special Vehicles - Alaska requires mandatory stops at within fifteen to fifty 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 three hundred feet before stopping.

After complying with the stopping and proceeding safely, drivers of these special vehicles are not allowed to shift gears while moving across the crossing. Alaska Admin. Code tit. 13, § 02.250 (Also see 13 AAC 02.240 concerning stopping distance).

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.

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 fifteen to fifty 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 (1999).

Special Vehicles - Arizona law requires drivers of motor vehicles carrying passengers for hire, 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 fifteen to fifty 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 (1999).

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. § 853 (1999).

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 fifteen or more than fifty 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 accomplished in a safe manner. Ark. Code Ann. § 27-51-705 (Michie 1998).

Special Vehicles - Arkansas requires drivers of motor vehicles carrying passengers for hire and any school bus transporting any children to stop within fifty but not less than fifteen 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 (Michie 1998).

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" 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 (Michie 1998).

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 (Michie 1998). 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 fifteen to fifty 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 (West 1999).

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 (West 1999).

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. Also, 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 (West 1999).

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.

Colorado law requires persons operating slow and low vehicles to stop before traversing a highway-rail crossing. The stop must be made fifteen to fifty 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) (1999). Also see 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 fifteen to fifty 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 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) (1999).

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 to -d (1999).

CONNECTICUT

Slow and Low Vehicles - Connecticut has no requirements regulating stops by slow and low vehicles.

Special Vehicles - Connecticut law specifically mentions taxicabs under this category. Operators of commercial motor vehicles carrying passengers, taxicabs, motor vehicles in livery service, 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, are required to stop at highway-rail crossings.

Connecticut sets a different minimum stopping distance than most states. Connecticut requires that stops be made within ten to fifty 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 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 (1999).

Penalty

A violation of any provision Section 4-250 will result in a fine of not less than one hundred fifty nor more than two hundred fifty dollars. Conn. Gen. Stat. § 14-250 (1999).

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 (1998).

Delaware law requires persons operating slow and low vehicles to stop before traversing highway-rail crossings. The stop must be made fifteen to fifty 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 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 fifteen to fifty 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 (1998).

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 (1998).

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, the Florida statutes 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 (West 1998).

Florida law requires persons operating slow and low vehicles to stop before traversing a highway-rail crossing. The stop must be made fifteen to fifty 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 (West 1998).

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 fifteen to fifty 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 (West 1998).

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 (West 1998).

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 (1998).

Georgia law requires drivers of slow and low vehicles to stop not less than fifteen or more than fifty feet from the nearest rail of the tracks and while stopped, 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 fifteen to fifty 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 (1998). Also see 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 (1998).

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 fifteen to fifty 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) (1998).

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) (1998).

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 fifteen to fifty 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 (1999).

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 (1999).

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) to (d) (1999).

ILLINOIS

Slow and Low Vehicles - Illinois law refers to "power" and not "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 fifteen to fifty 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 (1999).

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 fifteen to fifty 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 to -4 (1999).

INDIANA

Slow and Low Vehicles - When defining slow and low vehicles, the Indiana code omits "crawler-type" and instead mentions "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 ten or more than fifty 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 by slow and low vehicles when an automatic signal, gate, flagman or other device indicates an approaching train. Ind. Code Ann. § 9-21-8-40 (Burns 1998).

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 within fifty but not less than ten 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 an operator 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. § 20-9.1-5-11(a)-(b) (Burns 1998).

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 fifty and not less than fifteen 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) (Burns 1998).

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 (Burns 1998).

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) (Burns 1998).

IOWA

Slow and Low Vehicles - Iowa refers 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 ten to fifty 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 (1998).

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 fifty but not less than fifteen 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 (1998). 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 (1998).

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 fifteen to fifty 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 (1999).

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 specific vehicles that might fall under this category.

Kansas law requires drivers of school buses and vehicles with hazardous materials to stop within fifteen but not more than fifty 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 (1999).

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 (1999). 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 ten or more than thirty 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 (Baldwin 1998). 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 ten and not more than thirty 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 (Baldwin 1998).

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 (Baldwin 1998).

LOUISIANA

Slow and Low Vehicles - Louisiana defines slow and low vehicles as those that have an operating speed of ten 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 fifteen to fifty 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 (West 1998).

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 fifteen to fifty 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. § 32:173 (West 1998).

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 (West 1998).

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 fifteen to fifty 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 (West 1998).

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 (West 1998).

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 (West 1998).

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 49 Code of Federal Regulations, 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 Code of Federal Regulations, Parts 170 to 189 or a commodity under special permit in accordance with provisions prescribed by the Code of Federal Regulations 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 Code of Federal Regulations, Part 173.115. Me. Rev. Stat. Ann. tit. 29-A § 2076 (West 1998). See also 49 C.F.R. § 172(f), 49 C.F.R. § 170-189, and 49 C.F.R. § 173.115 (1997).

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) (West 1997).

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) (West 1998).

MARYLAND

Slow and Low Vehicles - Maryland's definition of slow and low vehicles is the same as most states with the exception that Maryland refers to "power" 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 fifteen to fifty 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 (1998).

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 placarding under federal hazardous materials regulations, to stop at highway-rail crossings. Stops must be made within fifteen to fifty 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) (1998). Also see the Maryland section under 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) (1998).

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 fifteen to fifty 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 (1999).

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 (1999).

Exempt Crossings - Massachusetts has no provisions concerning exempt crossings.

MICHIGAN

Slow and Low Vehicles - Michigan law refers to "caterpillar" not "crawler-type" tractors. 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 (1999). Or see also Mich. Stat. Ann. § 9.2370(1) (Law. Co-op. 1998).

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 ten but no more than fifty 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 (1999). Or see also Mich. Stat. Ann. § 9.2370(2)-(3) (Law. Co-op. 1998).

Michigan law prohibits crossing 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 (1999). Or see also Mich. Stat. Ann. § 9.2370(4) (Law. Co-op. 1998).

Special Vehicles - In Michigan, vehicles which must 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 fifty but not less than ten 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) (Law. Co-op. 1998).

Drivers of motor vehicles carrying passengers for hire and vehicles carrying hazardous materials are required to stop within ten to fifty 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 (1999). Or see also Mich. Stat. Ann. § 9.2369(1) (Law. Co-op. 1998).

Exempt Crossings - The exemptions under Michigan law are the same for school bus drivers, drivers of vehicles carrying passengers for hire and for vehicles carrying hazardous materials. Michigan expressly exempts drivers of special vehicles from the stopping requirements 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) (Law. Co-op. 1998).

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 ten or more than fifty 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 (1998).

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 (1998).

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 (1998).

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 ten 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 then proceed only when it is safe to do so. Minn. Stat. § 169.28 (1998).

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) (1998).

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" and not "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 ten to fifty 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 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 (1998).

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 fifty but not less than ten 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) (1998).

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) (1998).

MISSOURI

Slow and Low Vehicles - Missouri has no regulation regarding stops by slow and low vehicles.

Special Vehicles - The law in Missouri 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 fifteen to fifty 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 (1998).

Exempt Crossings - Drivers of special vehicles are exempt from the stopping requirements 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 (1998).

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 fifteen to fifty 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 (1998).

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 fifteen to fifty 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 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 (1998).

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 fifteen to fifty feet of the nearest rail, 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) (1999).

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) (1999).

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 fifty but not less than fifteen 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) (1999).

The Nebraska law concerning vehicles transporting hazardous materials requires drivers to stop not less than fifteen or more than fifty 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 (1999).

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) (1999).

Drivers of vehicles carrying hazardous materials need not stop at abandoned or exempt crossings. Neb. Rev. Stat. § 60-6,173 (1999).

NEVADA

Slow and Low Vehicles - Nevada's definition of slow and low vehicles is consistent with 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 fifty but not less than fifteen 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) (Michie 1998).

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) (Michie 1998).

Special Vehicles - Nevada law requires drivers of any motor vehicles carrying passengers for hire, school buses carrying any 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 fifteen to fifty 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 may not cross until it is safe to do so. Manual shifting of gears while traversing the crossing is prohibited. Nev. Rev. Stat. Ann. § 484.353(1)-(2) (Michie 1998).

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 (Michie 1998).

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) (Michie 1998).

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 fifteen to fifty 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)-(III) (1998).

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) (1998).

New Hampshire law expressly prohibits 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) (1998).

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 liquified petroleum gas.
- N.H. Rev. Stat. Ann. § 265:50(I)-(III) (1998).

New Hampshire law requires that stops by all special vehicles be made within fifteen to fifty feet of the nearest rail of the crossing.

New Hampshire specifies that 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 are prohibited from manually shifting gears while moving over the crossing. Drivers of vehicles with flammable liquids or cylinders of liquified 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)-(II)-(III) (1998).

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) (1998).

Vehicles transporting flammable liquids in cargo tanks, whether loaded or empty, and vehicles transporting cylinders of liquified 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)-(III) (1998).

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 drivers 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 (1998).

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 fifteen and fifty 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. § 39:4-128(b) (1998).

Special Vehicles - New Jersey includes an "omnibus" under this category and defines it as one that is designed for carrying more than six passengers.

New Jersey law requires drivers of any omnibus, a school bus carrying any children or of 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 is to be made between fifteen and fifty 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) (1998).

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) (1998).

Exempt Crossings - Drivers of special vehicles are not required to stop at grade crossings which are no longer used for railroad traffic and that have been abandoned by the railroad, provided that it is clearly marked as such. Stop requirements are also not applicable at crossings where the tracks 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 shall 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) (1998).

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 fifteen to fifty 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) (Michie 1998).

Before moving slow and low vehicles 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) (Michie 1998).

New Mexico expressly prohibits crossing by operators of slow and low 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) (Michie 1998).

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 fifteen to fifty feet of the nearest rail of a highway-rail crossing. The drivers 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 may not shift gears while traversing the crossing. N.M. Stat. Ann. § 66-7-343(A) (Michie 1998).

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) (Michie 1998).

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) (Michie 1998). 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 fifteen to fifty 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) (McKinney 1998).

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) (McKinney 1998).

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 fifteen to fifty 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) (1998).

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 § 1171(b)-(c) (McKinney 1998).

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) (1998).

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) (1998).

Slow and low vehicles must stop within fifteen to fifty 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) (1998).

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) (1998).

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 (1998). N.C. Gen. Stat. § 20-142.4(f) (1998). See also 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 fifteen to fifty 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) (1998).

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, except for 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. § 20-142.3 b-1 to -5 (1998).

NORTH DAKOTA

Slow and Low Vehicles - North Dakota's 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 fifteen to fifty 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)-(2)-(3) (1998).

Special Vehicles - North Dakota law requires drivers of school buses and buses carrying passengers for hire to stop within a distance of fifteen to fifty 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° 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) (1998).

After stopping, 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) (1998).

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) (1998).

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) (1998).

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 further 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 (Anderson 1998).

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) (Anderson 1998).

In 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) (Anderson 1998).

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. The manual shifting of gears is prohibited while moving over the crossing. Ohio Rev. Code Ann. § 4511.63(A) (Anderson 1998).

Also included in this special vehicle category are "trackless trolleys" 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. Note: According to the code section, this exemption is applicable through June 30, 1995. Ohio Rev. Code Ann. § 4511.63(B)-1-2 (Anderson 1998).

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) (1999).

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) (1999).

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 (1999). See also Or. Rev. Stat. § 811.470(2) (1999).

Oregon law requires stops at a clearly marked line or, absent any marked line, within fifteen to fifty 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)-(B)-(C) (1999).

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) (1999).

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 to -g (1999).

Operators of high-risk vehicles are required to stop at a clearly marked stop line or, if there is no marked stop line, within fifteen to fifty 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 to -C (1999).

Penalty - Failing to follow rail crossing procedures for high-risk vehicles is a Class B traffic infraction.

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. All high-risk vehicles 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) to -(8) (1999). 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

Commission has plainly marked that no stop be made. Commercial buses need not stop under the same conditions as above, except in the case of an approaching train.

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) (1999).

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) (1999).

Pennsylvania law requires persons operating slow and low vehicles to stop before traversing a highway-rail crossing. The stop must be made within fifteen to fifty 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) (1999).

Pennsylvania law expressly prohibits moving 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) (1999).

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 fifteen to fifty 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) (1999).

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) (1999).

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) 1-2-3-5 (1999):

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) (1999).

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 fifteen to fifty 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)-(b)-(c) (1999).

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) (1999).

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 fifteen to fifty 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) (1999).

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) (1999).

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.

South Carolina laws requires persons operating slow and low vehicles to stop at highway-rail crossings. The stops must be made within fifteen to fifty feet of the nearest rail of the rail. 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)-(b)-(c) (1998).

Moving over crossings are 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 (1998).

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 fifteen to fifty feet of the nearest rail of the tracks. After stopping, South Carolina law requires drivers 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) (1998).

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- to -4 (1998).

SOUTH DAKOTA

Slow and Low Vehicles - South Dakota's definitions of slow and low vehicles are consistent with the majority of other states. S.D. Codified Laws Ann. § 32-29-8 (1999).

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 fifteen to fifty 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 (1999).

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 (1999).

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 stops be within fifty 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 (1999).

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 (1999).

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 fifteen to fifty 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 driver 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 (1999).

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 fifteen to fifty feet of the nearest rail of the tracks. 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 then proceed only when it is safe to do so. While proceeding over the highway-rail crossing, the driver is prohibited from shifting gears. Tenn. Code Ann. § 55-8-147(a) (1999).

Penalty

A violation of the "stop" requirement by drivers of special vehicles is a Class B misdemeanor. Tenn. Code Ann. § 55-8-147(c) (1999).

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) (1999).

TEXAS

Slow and Low Vehicles - Texas law defines 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 fifteen to fifty 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 (1999).

Special Vehicles - Drivers of school buses must stop fifteen to fifty 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 (West 1999).

Drivers of vehicles that have an explosive substance or flammable liquid as their principal cargo and is 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 listen and look in both directions along the track and for signal indicating the approach of a train and may no proceed until a determination is made that the course is clear. Tex. [Transp.] Code Ann. § 545.254 (West 1999).

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 farther 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 (West 1999).

UTAH

Slow and Low Vehicles - Utah refers to "power" and not "steam" shovels. Utah Code Ann. § 41-6-98(1) (1999).

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) (1999).

Utah requires persons operating slow and low vehicles to stop before traversing a highway-rail crossing. The stop must be made within ten to fifty 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) (1999).

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) (1999).

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) (1999).

Stops are to be made within fifteen to fifty 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) (1999).

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-b-c (1999).

VERMONT

Slow and Low Vehicles - Before moving slow and low vehicles over highway-rail crossings, Vermont law requires that stops be made within fifteen to fifty 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) (1999).

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) (1999).

Special Vehicles - Vermont requires drivers 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 fifteen to fifty 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) (1999). 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) (1999).

"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) (1999).

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) (1999).

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 fifteen to fifty 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 (Michie 1999).

Special Vehicles - Virginia law requires drivers 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 fifteen to fifty 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 (Michie 1999).

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 (Michie 1999).

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 fifteen to twenty 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)-(2)-(3) (West 1999).

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) (West 1999).

Special Vehicles - Washington requires drivers 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 fifteen to fifty 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. Drivers may proceed over the crossing only when it is safe to do so. While proceeding over the crossing, the driver is prohibited from manually shifting gears. Wash. Rev. Code Ann. § 46.61.350(1) (West 1999).

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-b-c (West 1999).

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 (West 1999). Also see 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 fifteen to fifty 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 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)-(b)-(c) (1999).

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 (1999).

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 fifteen to fifty 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) (1999).

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) (1999).

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 two hundred 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) a-am-c-d-e (1999).

All stops must be made within fifteen to fifty 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) (1999).

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 to -d (1998).

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 fifteen to fifty 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) to -(d) (1999).

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 fifteen to fifty 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)- to -(iv) (1999).

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)- to -(iv) (1999).

CHAPTER 8: DRIVER ACTION

CHAPTER OVERVIEW

This chapter presents an overview and 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

Except where a lower speed is specified, it is lawful for a motorist to drive at a speed not exceeding fifteen miles per hour when approaching within fifty feet of a highway-rail crossing when the view of the motorist is obstructed. A motorist's view is considered to be obstructed when, at any time during the last two hundred feet of the approach to the crossing, there is not a clear and uninterrupted view of the approach to the crossing or of any traffic on the railroad track for a sight distance of four hundred feet in each direction from the crossing. Ala. Code § 32-5-91 (1999).

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 (1999).

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 (1999).

Under certain conditions, drivers of all vehicles in Alabama are required to bring their vehicles to a complete stop within fifteen to fifty 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 fifteen hundred feet of the crossing and is emitting an audible signal.
- 4) When an approaching train is clearly visible.

Alabama 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) (1999).

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.

ALASKA

Editor's note - Alaska's laws concerning driver responsibilities and motor vehicle laws are contained in the Alaska Administrative Code. All citations in this section refer to the Alaska Administrative Code unless otherwise indicated.

Alaska law requires a person driving any vehicle, when approaching a highway-rail crossing, to bring the vehicle to a stop within fifteen to fifty 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 fifteen hundred 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 (1999).

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 (1999).

ARIZONA

Arizona law requires drivers of any vehicles approaching a highway-rail crossing to stop within fifty but not less than fifteen 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 fifteen hundred 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 (1999).

Arizona law requires the driver of any vehicle to stop within fifteen to fifty 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 (1999). See also chapter on passive warning devices.

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 fifty feet of the nearest rail of a railroad crossing or within eight feet, six inches of the center of any railroad track, except while loading or unloading a train. Ariz. Rev. Stat. Ann. § 28-873 (1999).

ARKANSAS

Arkansas motorists are required to stop their vehicles within ten to fifty 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 (Michie 1998). See also chapter on passive warning devices.

Penalty

A violation of Section 27-51-706 subjects a driver to a fine of not less than five dollars but not more than twenty-five dollars. Ark. Code Ann. § 27-51-706 (Michie 1998).

Under certain circumstances, Arkansas law requires motorists to come to a full stop not less than fifteen and not more than fifty 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 fifteen hundred 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 (Michie 1998).

Arkansas law prohibits any person from stopping, standing or parking a vehicle within fifty 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 (Michie 1998).

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 (Michie 1998).

CALIFORNIA

California requires motorists to slow to a speed of fifteen miles per hour while traversing highway-rail crossings when, during the last one hundred feet of the approach to the crossing, the motorists' view is so obstructed that they cannot see down the tracks for four hundred 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 (West 1999).

California requires that the driver of any vehicle stop not less than fifteen 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 (West 1999).

It is unlawful in California for any driver to proceed through, around or under any closed railroad gate. Cal. [Veh.] Code § 22451 (West 1999).

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 (West 1999).

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 (West 1999).

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 (1999).

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 (1999).

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 fifteen to fifty 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 (1999).

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 (1999). 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 (1999).

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) (1999).

Penalty

A violation of any subpart of the preceding section is considered a Class A traffic infraction. Colo. Rev. Stat. § 42-4-706(3) (1999).

When approaching within one hundred feet of or traversing any railroad grade crossing, Colorado prohibits driving any vehicle to the left of the roadway to overtake or pass another vehicle. Colo. Rev. Stat. § 42-4-905 (1999).

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 fifteen to fifty feet of the nearest rail and may not proceed without exercising due care. Colo. Rev. Stat. § 42-4-607 (1999).

CONNECTICUT

When approaching within one hundred 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 (1998).

Connecticut requires motorists to stop at crossings but does not prescribe a specific stopping distance from the crossings.

Penalty

Any driver who fails 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 (1999).

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 fifteen hundred 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 (1999).

All stops are to be made within fifteen to fifty 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 (1999).

Delaware law prohibits drivers from driving on the left side of the roadway (passing) when approaching within one hundred feet of or traversing a highway-rail grade crossing. Del. Code Ann. tit. 21, § 4119 (1999).

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) (1999).

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 entitled 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 fifteen to fifty 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 fifteen 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 (1987).

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 -4 (1987).

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 (1987).

It is unlawful for anyone in the District of Columbia to stand or park a vehicle, whether occupied or not, within fifty 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) (1987).

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 (West 1999).

It is unlawful in Florida to park a vehicle within fifty 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 (West 1999).

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 (West 1999).

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 (1999).

Georgia requires the driver of any vehicle to stop within fifteen to fifty 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 (1999).

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 (1999).

HAWAII

In Hawaii, motorists are prohibited 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 (1999).

Hawaii prohibits driving to the left side of the roadway (passing) when approaching within one hundred feet of or traversing a highway-rail crossing. Haw. Rev. Stat. § 291C-46 (1999). See also § 291C-161 as to the penalty for violation of this section.

Hawaii requires motorists to stop within fifteen to fifty 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 fifteen hundred 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) (1999).

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 fifteen to fifty feet of the nearest rail of the tracks and is authorized to proceed only after exercising due caution. Haw. Rev. Stat. § 291C-92 (1999). See also same section under Crossing Treatment Procedures.

IDAHO

Idaho prohibits motorists from driving left of the center of the highway (passing) when approaching within one hundred feet of or traversing a highway-rail crossing, unless otherwise indicated by a traffic control device. Idaho Code § 49-635 (1999).

Idaho requires drivers to stop within fifteen to fifty 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 fifteen hundred 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 (1999).

Idaho law requires the driver of any vehicle stopped at 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 (1999).

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 (1999). See also exempt crossings in chapter on Slow, Low and Special Vehicles.

Idaho law prohibits the parking of a vehicle, whether occupied or not, within fifty 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 (1999).

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 (1999).

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 (Michie 1999).

It is unlawful for anyone to stand or park a vehicle, whether occupied or not, within fifty 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 (Michie 1999).

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 (Michie 1999).

Illinois prohibits driving to the left of the center of the roadway (passing) when approaching within one hundred feet of or traversing a railroad crossing. 625 ILCS 5/11-706 (Michie 1999).

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 fifteen to fifty 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.
- 5) When an approaching train is so close that an immediate hazard is created.

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) (Michie 1999).

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 fifteen to fifty 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) (Michie 1999).

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 fifty feet but not less than fifteen 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)(Michie 1999).

Penalty

A violation of any part of Section 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) (Michie 1999).

INDIANA

When a stop sign is erected at any highway-rail crossing in Indiana, drivers are required to stop within ten to fifty feet of the nearest rail of the crossing and may only proceed after exercising due caution. Ind. Code Ann. § 9-21-4-16 (Burns 1999).

Indiana law requires persons driving a vehicle to stop within ten to fifty 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 fifteen hundred 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 (Burns 1999).

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 (1999). Also see 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 fifteen to fifty feet of the nearest rail of the crossing. Iowa Code § 321.341 (1999).

Iowa law 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 (1999).

Iowa law expressly prohibits the stopping, standing or parking of a vehicle within fifty 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 (1999).

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 (1998).

Kansas expressly prohibits drivers from driving on the left side of the roadway (passing) when approaching within one hundred 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 (1998).

When approaching a highway-rail crossing, motorists are required to stop within fifteen to fifty 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 fifteen hundred 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) (1998).

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 (1998).

The Secretary of Transportation of Kansas, 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 fifteen to fifty feet of the nearest rail of the crossing and must not proceed without exercising due care. Kan. Stat. Ann. § 8-1552 (1998).

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. No "unsafe" determination may 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) (Baldwin 1998). See also Section 189.561 under Kentucky in Crossing Treatment Procedures.

At any crossing where a stop sign has been installed, Kentucky law requires motorists operating any vehicle to come to a full stop within ten to thirty feet of the nearest rail of the tracks.

Kentucky law prohibits drivers from driving to the left side of the roadway when approaching within one hundred feet of or traversing a highway-rail crossing. Ky. Rev. Stat. Ann. § 189.345 (Baldwin 1998).

LOUISIANA

It is unlawful in Louisiana to drive to the left side of the highway (pass) when approaching within one hundred feet of or traversing a highway-rail crossing. La. Rev. Stat. Ann. § 32.76 (West 1998).

Louisiana law expressly prohibits the stopping, standing or parking of a vehicle within fifty 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 (West 1998).

Louisiana law requires that drivers of motor vehicles come to a full stop within fifteen to fifty 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 nine hundred 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.

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)(C) (West 1998).

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) (1998).

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 fifteen to fifty feet of the nearest rail of the tracks and may proceed only after exercising due care. La. Rev. Stat. Ann. § 32:172 (1998). See also the chapter on crossing treatments.

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) (West 1998).

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) (West 1998).

MAINE

Drivers of motor vehicles in Maine are required to reduce their speed to a reasonable and proper rate beginning one hundred 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) (West 1999).

Motorists are required to bring their vehicles to a full stop at a distance of not less than ten 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) (West 1999).

Maine's law that prohibited driving a vehicle to the left side of the roadway when approaching within one hundred feet of or traversing any highway-rail crossing was repealed effective Jan. 1, 1995. Me. Rev. Stat. Ann. tit. 29, § 1152 (West 1999).

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 ten to fifty 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 (West 1999).

Penalty

A motorist operating a vehicle in violation of § 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 (West 1999).

MARYLAND

The State of Maryland requires motorists to stop within fifteen to fifty 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 fifteen hundred 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) (1999).

Maryland law prohibits the parking of a vehicle within fifty 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) (1999).

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 one hundred feet of a highway-rail crossing. Md. Ann. Code art. 21 § 305(ii) (1999).

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 fifteen to fifty feet of the nearest rail of the crossing and shall proceed only after exercising due care. Md. Ann. Code art. 21, § 702(a)(b) (1999).

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) (1999).

MASSACHUSETTS

Massachusetts law pertaining to speed at highway-rail crossings is discussed in driver duties and not in its basic speed law. 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 (1999).

Massachusetts requires drivers to stop within fifteen to fifty 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 (1999).

Stops within fifteen to fifty 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 (1999).

Within the same section of the statute, Massachusetts requires a train approaching within approximately fifteen hundred feet of a highway-rail crossing to emit a warning signal audible at that distance. Mass. Ann. Laws ch. 90, § 15 (1999).

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 (1999).

MICHIGAN

Michigan law requires any person driving a vehicle to stop within fifteen to fifty 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) (1999). Or see also Mich. Comp. Laws Ann. § 257.667 (1999).

Motorists are prohibited from parking within fifty 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 (1999). Or see also Mich. Comp. Laws Ann. § 257.674 (1999).

MINNESOTA

Minnesota law prohibits motorists from parking their vehicles within fifty feet of the nearest rail of a highway-rail crossing. Minn. Stat. § 169.34 (1999).

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) (1999).

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 circumstance 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) (1999).

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) (1999).

Penalty

A police officer in Minnesota may arrest any driver of a motor vehicle violating the stopping requirements of Section 169.26(a)(b) if the officer has probable cause to believe that the motorist has violated the stopping requirements within the past four hours. Minn. Stat. § 169.26(1a) (1999).

A motorist who violates the stopping requirements is guilty of a misdemeanor. Minn. Stat. § 169.26(2a) (1999).

MISSISSIPPI

Whenever any motorist in Mississippi approaches a highway-rail crossing, the motorist must stop within fifteen to fifty 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) (1999).

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) (1999).

Editor's Note: Mississippi has another stopping requirement that seems to conflict with § 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 ten to fifty 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 (1999).

Mississippi law requires motorists to come to full stop within ten to fifty 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 (1999).

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 fifty feet of the nearest rail of a highway-rail crossing. An exception exists that states a motorist may park within fifty feet of the nearest rail temporarily to load or unload merchandise or passengers. Mo. Rev. Stat. § 300.440(1a)(3a) (1999).

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) (1993).

Penalty

Any motorist who violates any provision of these requirements is guilty of a Class C misdemeanor. Mo. Rev. Stat. § 304.035(3) (1999).

Missouri law prohibits motorists from driving to the left side of a roadway when the view is obstructed when approaching within one hundred feet of or at a highway-rail crossing. Mo. Rev. Stat. § 304.016(4)(2) (1999).

MONTANA

Montana prohibits drivers from stopping, standing or parking any vehicle within fifty 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(1i) (1999).

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) (1999).

Montana law prohibits motorists from driving to the left side of the center of the highway (passing) when approaching within one hundred feet of or moving over a highway-rail crossing. Mont. Code Ann. § 61-8-325(2b) (1999).

All motorists in Montana, when approaching a highway-rail crossing, are required to stop within fifteen to fifty 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 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 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) (1999).

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 fifteen to fifty 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 (1999).

NEBRASKA

When approaching a highway-rail crossing, all motorists are required to come to a full stop within fifteen to fifty feet of the nearest rail of the crossing. A motorists 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 (1999).

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 fifteen to fifty feet of the nearest rail of the tracks and may not proceed across without exercising due care. Neb. Rev. Stat. § 60-6,171 (1999).

Nebraska law prohibits motorists from overtaking and passing another vehicle to the left of the center of the roadway when approaching within one hundred feet or traversing any highway-rail crossing. Neb. Rev. Stat. § 60-6,136(b) (1999).

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 (1999).

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 fifty 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) (1999).

NEVADA

Nevada law requires all motorists to stop within fifteen to fifty 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 fifteen 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 (Michie 1998).

The Nevada Department of Transportation and local authorities with the approval of the Department of Transportation have 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 fifteen to fifty feet of the nearest rail of the tracks and may not proceed across without exercising due care. Nev. Rev. Stat. Ann. § 484.351 (Michie 1998).

Nevada law prohibits motorists from overtaking and passing another vehicle by driving to the left of the center of the roadway within one hundred feet of a highway-rail crossing. Nev. Rev. Stat. Ann. § 484.299 (Michie 1998).

NEW HAMPSHIRE

New Hampshire law requires that motorists come to a full stop within fifteen to fifty 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 fifteen hundred 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) When 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 (1999).

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 fifteen to fifty feet of the nearest rail of the tracks and may not proceed across without exercising due care. N.H. Rev. Stat. Ann. § 265:49 (1999).

It is unlawful for motorists to drive to the left side of the roadway when approaching within one hundred feet of or moving through a highway-rail crossing. N.H. Rev. Stat. Ann. § 265:21 (1999).

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(TV) (1999).

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 (1999).

New Jersey prohibits the parking of vehicles within fifty 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. § 39:4-138(j) (1999).

New Jersey law requires motorists to keep vehicles to the right half of the roadway in traversing a highway-rail crossing. N.J. Rev. Stat. § 39:4-83 (1999).

New Jersey law requires motorists approaching a highway-rail crossing to come to a full stop within fifteen to fifty feet of the nearest rail of the railroad. They 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 fifteen hundred 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 (1999).

NEW MEXICO

New Mexico law prohibits the parking of any vehicle within fifty 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) (Michie 1999).

New Mexico requires the drivers of all vehicles, when approaching a highway-rail crossing, to come to a stop between fifteen and fifty 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 fifteen hundred 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) When 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) (Michie 1999).

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 fifteen and fifty 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 (Michie 1999).

New Mexico law prohibits drivers from driving to the left side of the roadway when approaching within one hundred feet of or traversing any highway-rail crossing. N.M. Stat. Ann. § 66-7-313 (Michie 1999).

NEW YORK

All motorists in New York are prohibited from driving through a highway-rail crossing without first coming to a full stop within fifteen to fifty 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 fifteen hundred 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) When 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) (McKinney 1999).

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) (McKinney 1999).

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 one hundred feet of or traversing any highway-rail crossing. N.Y. [Veh. & Traf.] Law § 1125 (McKinney 1999).

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 (McKinney 1999).

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 fifty 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) (McKinney 1999).

NORTH CAROLINA

It is unlawful for any motorists 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) (1999).

Also, motorists are 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 (1999).

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 (1999).

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 (1999).

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 (1999).

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 fifteen to fifty 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 (1999).

Penalty

Any motorist violating any provision of § 20-142.2, is guilty of an infraction and may be punished. N.C. Gen. Stat. § 20-142.2 (1999). 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 fifteen to fifty 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 fifteen 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) 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) (1999).

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) (1999).

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) (1999). 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 fifteen to fifty 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 thirteen hundred 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) (1999).

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 fifteen to fifty feet of the nearest rail of the tracks and may only proceed after exercising due care. N.D. Cent. Code § 39-10-42 (1999).

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 fifty 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 two hundred 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 four hundred feet in each direction from the crossing." N.D. Cent. Code § 39-09-02(a) (1999).

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 (1999).

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 one hundred feet of or when moving over a highway-rail crossing. N.D. Cent. Code § 39-10-14 (1999).

North Dakota law prohibits the stopping, standing or parking of a vehicle within fifteen feet of the nearest rail of a highway-rail crossing. N.D. Cent. Code § 39-10-49(9) (1999).

OHIO

Ohio law requires motorists approaching a highway-rail crossing to bring their vehicles to a full stop within fifteen to fifty feet of the nearest rail of the railroad. They 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 fifteen hundred 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) (Anderson 1999).

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 fifteen to fifty 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 (Anderson 1999).

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 (Anderson 1999).

Ohio prohibits motorists from standing or parking a vehicle within fifty feet of the nearest rail of a highway-rail crossing. Ohio Rev. Code Ann. § 4511.68(I) (Anderson 1999).

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 (Anderson 1999).

Penalty

Ohio lists first and subsequent offenses of all of the foregoing sections as misdemeanors of different degrees. The reader may locate 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 fifteen to fifty feet of the nearest rail of the

railroad. The drive 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 fifteen hundred 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) (1999).

Oklahoma motorists are prohibited from stopping, standing or parking a vehicle within fifty 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 (1999).

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) (1999).

It is unlawful in Oklahoma for motorists to drive to the left side of a roadway when approaching within one hundred feet of or over any highway-rail crossing. Okla. Stat. tit. 47, § 11-306(a) (1999).

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 fifteen to fifty 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) (1999).

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) (1999).

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) (1999).

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) (1999).

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) (1999).

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).

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 fifteen to fifty 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 fifteen hundred 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) (1999).

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) (1999).

Pennsylvania law prohibits anyone from parking a vehicle within fifty feet of the nearest rail of a highway-rail crossing. 75 Pa. Cons. Stat. § 3353(3) (1999).

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) (1999).

It is unlawful in Pennsylvania for a motorist to drive any vehicle on the left side of the roadway when approaching with one hundred feet of or traversing a highway-rail crossing. 75 Pa. Cons. Stat. § 3306(a)(2) (1999).

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 (1999).

RHODE ISLAND

Rhode Island law requires drivers approaching a highway-rail crossing to come to a full stop within fifteen to fifty 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 fifteen hundred 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 (1999).

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 (1999).

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 fifteen to fifty feet of the nearest rail of the tracks and may only proceed after exercising due care. R.I. Gen. Laws § 31-20-3 (1999).

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 (1999).

Motorists in Rhode Island are prohibited from driving to the left side of the roadway when approaching within one hundred feet of or traversing any highway-rail crossing. R.I. Gen. Laws § 31-15-7(2) (1999).

SOUTH CAROLINA

South Carolina law prohibits motorists from traversing a highway-rail crossing without first bringing their vehicle to a complete stop within fifteen to fifty 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 fifteen hundred 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) (Law. Co-op. 1998).

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 fifteen to fifty feet from the nearest rail and must proceed only upon exercising due care. S.C. Code Ann. § 56-5-2715 (Law. Co-op. 1998).

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 (Law. Co-op. 1998).

It is unlawful in South Carolina 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 (Law. Co-op. 1998).

No person may park a vehicle, whether occupied or not, within fifty 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) (Law. Co-op. 1998).

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 fifteen to fifty feet of the nearest rail of the tracks and may not proceed except upon exercising due care. S.D. Codified Laws Ann. § 32-29-7 (1999).

Penalty

A violation of Section 32-29-7 is a Class 2 misdemeanor. S.D. Codified Laws Ann. § 32-29-7 (1999).

South Dakota law prohibits motorists from driving any vehicle on the left side of the highway when approaching within one hundred feet of or traversing a highway-rail crossing. S.D. Codified Laws Ann. § 32-26-36 (1999). 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 (1999).

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 two hundred feet of approach to the crossing, a driver is unable to clearly see any railroad traffic within four hundred feet in each direction from the crossing. S.D. Codified Laws Ann. § 32-25-13 (1999).

Penalty

A violation of Section 32-25-13 is considered a Class 2 misdemeanor. S.D. Codified Laws Ann. § 32-25-13 (1999).

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 fifteen to fifty 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 (1999).

Penalty

A violation of Section 32-29-4 is considered a Class 2 misdemeanor. S.D. Codified Laws Ann. § 32-29-4 (1999).

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 (1999).

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 (1999).

TENNESSEE

All drivers in Tennessee are required to stop within fifteen to fifty 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 fifteen 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 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) (1999).

Penalty

A violation of Section 55-8-145 is a Class C misdemeanor. Tenn. Code Ann. § 55-8-145(c) (1999).

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 fifteen to fifty feet of the nearest rail of the tracks and may proceed only while exercising due care. Tenn. Code. Ann. § 55-8-146(a) (1999).

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) (1999).

It is unlawful in Tennessee for anyone to stop, stand or park a vehicle within fifty 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) (1999).

Penalty

Failure to comply with any provision of Section 55-8-160 is a Class C misdemeanor. Tenn. Code Ann. 55-8-160(d) (1999).

TEXAS

When approaching a highway-rail crossing in Texas, all motorists are required to come to a full stop within fifteen to fifty 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 fifteen hundred 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 fifteen feet or farther than fifty 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 (1999).

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 fifteen to fifty feet of the nearest rail of the tracks and may not proceed except upon exercising due care. Tex. [Transp.] Code Ann. § 545.252 (1999).

Penalty

An offense under Section 542.252 is punishable by a fine of not less than fifty dollars nor more than two hundred dollars.

No vehicle in Texas may be driven to the left side of the roadway when approaching within one hundred feet of or traversing a highway-rail crossing. Tex. [Transp.] Code Ann. § 545.056 (1999).

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 (1999).

Except to temporarily load or unload passengers or merchandise, no one in Texas may park a vehicle, whether occupied or not, within fifty feet of the nearest rail of a highway-rail crossing. Tex. [Transp.] Code Ann. § 545.302 (1999).

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 (1999).

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) (1999).

When operating a vehicle approaching a highway-rail crossing, motorists are required to come to a full stop within fifteen to fifty 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 fifteen hundred 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) (1999).

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 (1999).

No vehicle in Utah may be operated on the left side of the roadway when approaching within one hundred 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 (1999).

VERMONT

Vermont law requires motorists, when approaching a highway-rail crossing, to bring their vehicles to a stop within fifteen to fifty 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 (thirteen hundred and twenty 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) (1999). Also see Title 23, Section 1006.

Vermont's Section 1071 differs from other laws regulating stops at highway-rail crossings. Part (c) of the pertinent 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) (1999).

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 (1999).

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 one hundred feet of or traversing a highway-rail crossing. Vt. Stat. Ann. tit. 23, § 1035(b) (1999).

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) (1999).

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 fifteen to fifty 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 three hundred to six hundred yards from the crossing. See Section 56-414 for whistle and horn requirements in the chapter on Warning Device - Train Borne.
- 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 (Michie 1999).

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 (Michie 1999).

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 (Michie 1999).

WASHINGTON

Washington law requires any person driving a vehicle approaching a highway-rail crossing to bring their vehicle to a stop within fifteen to fifty 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 (West 1999).

Washington law prohibits the stopping, standing or parking of a vehicle on a railroad track or within fifty 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. In the case of the prohibition against parking within fifty feet of the nearest rail, an exception is made for the temporary loading or unloading of property or passengers. Wash. Rev. Code Ann. § 46.61.570(1)(c) (West 1999).

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 fifteen to fifty 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 (West 1999).

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) (West 1999).

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 fifteen to fifty 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 fifteen hundred 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) (1999).

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

with fifteen to fifty feet from the nearest rail and only proceed while exercising due care. W. Va. Code § 17C-12-2 (1999).

West Virginia law prohibits any driver from driving to the left side of the roadway when approaching within one hundred feet of or traversing any highway-rail crossing. W. Va. Code § 17C-7-6(a) (1999).

West Virginia law prohibits anyone from stopping, standing or parking a vehicle within fifty feet of the nearest rail of a railroad crossing. W. Va. Code § 17C-13-3(a) (1999).

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) (1999).

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 (1998).

Wisconsin prohibits vehicles from overtaking and passing any other vehicle proceeding in the same direction within one hundred 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) (1998).

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) (1998).

It is unlawful to stop or leave standing any vehicle, whether occupied or not, and whether temporary or otherwise, within twenty-five feet of the nearest rail of a highway-rail crossing. Wis. Stat. § 346.52(i) (1998).

WYOMING

Wyoming law requires any driver approaching a highway-rail crossing to bring their vehicle to a stop within fifteen to fifty 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 fifteen hundred 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 (1999).

No vehicle in Wyoming may be driven to the left side of the roadway when approaching within one hundred feet of or traversing a highway-rail crossing. Wyo. Stat. § 31-5-205(a) (1999).

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) (1999).

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) (1999).

Wyoming law also prohibits anyone from parking a vehicle within fifty 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) (1999).

CHAPTER 9: TRESPASSING

CHAPTER OVERVIEW

Trespassing on railroad property and facilities has become a more serious problem in recent years. According to the Federal Railroad Administration's Railroad Safety Statistics, Annual Report 1998, there were 536 trespasser fatalities in calendar year 1998.

It is against the law in all states 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 their respective codes concerned with property crimes and general offenses. A number of the states specifically forbid trespassing on railroad property and facilities and codify it in their respective sections concerning railroads or utilities. When punishments are spelled out in the statutes, they are listed. As in other chapters, the relevant code sections are listed. Penalties are also listed if available.

STATE LAWS AND REGULATIONS AND PENALTIES

ALABAMA

Alabama has no trespass regulations or laws specifically targeted to railroad property. However, a person is guilty of criminal trespass in the second degree if he knowingly enters or remains unlawfully in a building or upon real property which is fenced or enclosed in a manner designed to exclude intruders. Ala. Code § 13A-7-3 (1999).

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 the 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 (1999).

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 (1999).

ARKANSAS

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 nor more than ten dollars. Ark. Stat. Ann. § 23-12-802.

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 (1999).

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. A violation of this section is a misdemeanor under California law. Cal. [Penal] Code § 369i (West 1999). Also see Cal. [Penal] Code § 554 (West 1999) regarding posting of property.

COLORADO

Colorado has no specific statute related to trespassing on railroad property but does forbid 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.

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 (1999).

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 (1999).

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 (1999).

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 (1999).

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. 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 5 days. Del. Code Ann. tit. 10, § 2715 (1999).

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 (1999).

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. A conviction is a misdemeanor of the second degree, punishable as provided in Sections 775.082 - 775.083. Fla. Stat. Ann. § 860.04 (1999).

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 (1999).

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 (1999).

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 (1999).

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 or are fences. Haw. Rev. Code 708-814 (1999).

IDAHO

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 (1999).

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) (1999).

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) (1999).

A violation of the statute would subject the violator to a fine not to exceed \$500. 625 ILCS 5/18c-7401(2) (1999).

INDIANA

Indiana code provides that it is 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 (1999).

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 yard, 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 (1999).

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 (1999).

KENTUCKY

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 (Baldwin (1999)).

LOUISIANA

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 (West 1999).

Louisiana has 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 (1999).

MAINE

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 (West 1999).

The state 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 (1999).

MARYLAND

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 (1998 Supplement).

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. 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 (Law. Co-op. 1999).

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. 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) (Law. Co-op. 1999). Also see § 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. Anyone doing so is guilty of a misdemeanor. Minn. Stat. Ann. § 609.85(6) (1999).

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. A person, if convicted is guilty of a misdemeanor and shall be fined not less than twenty-five dollars nor more than two hundred fifty dollars. Miss. Code Ann. § 97-25-7 (1999).

It is unlawful in Mississippi, other than passengers or employees, for anyone who shall wilfully climb, jump or step upon, or in any way attach himself to, or jump off a locomotive, tender or car while in motion on a railroad track or siding. 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 (1999).

MISSOURI

It is unlawful for anyone to walk upon the track of railroad, except at a crossing. Violation of this section is considered a trespass. Mo. Rev. Stat. § 389.650(6) (1999).

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. Except, however, that 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. (1999).

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 (1999).

MONTANA

See Chapter 6, Offenses Against Property, for general explanation concerning criminal trespass. A trespass specific to railroad property or equipment is not mentioned. Mont. Code Ann. § 45-6-201 (1999).

NEBRASKA

Nebraska has no trespass regulations or laws specifically targeted to railroad property or equipment.

NEVADA

Nevada has no trespass regulations or laws specifically targeted to railroad property or equipment.

NEW HAMPSHIRE

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 (1999). Also see § 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 (1999). Also see § 39:3C-19 for prohibition against the operation of a snowmobile upon a railroad right-of-way.

NEW MEXICO

New Mexico has no trespass regulations or laws specifically targeted to railroad property or equipment.

NEW YORK

A railroad corporation in New York shall not be liable for any injury to a 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 or 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. If convicted, a person shall forfeit to the people of the state the sum of ten dollars, and pay all damages sustained to the railroad. N.Y. [Railroad] Law § 83 (1999).

New York prohibits the operation of snowmobiles on railroad property except at the crossing of streets or highways, or at farm or forest crossings. 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 (1999).

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 (1999).

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 (1999).

NORTH CAROLINA

North Carolina has no trespass regulations or laws specifically targeted to railroad property or equipment.

NORTH DAKOTA

North Dakota has no trespass regulations or laws specifically targeted to railroad property or equipment.

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 (Baldwin 1999).

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 (1999).

OREGON

Oregon has no trespass regulations or laws specifically targeted to railroad property or equipment.

PENNSYLVANIA

Pennsylvania has no regulations or laws specifically targeted to railroad property or equipment.

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. 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 (1999).

SOUTH CAROLINA

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 (1999).

SOUTH DAKOTA

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 § 49-106A-105 (1998).

TENNESSEE

Tennessee has no trespass regulations or laws specifically targeted to railroad property or equipment.

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. 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) (1999).

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) (1999).

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 police- man. A conviction brings a fine of not more twenty dollars nor less than two dollars. Vt. Stat. Ann. tit. 5, 3734 (Lexis 1999).

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. 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 (Lexis 1999).

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.

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 1 misdemeanor. Va. Code Ann. § 18.2-159 (Michie 1999).

WASHINGTON

Washington has no trespass laws specifically targeted to railroad property or equipment.

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. 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 § (1999).

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 (1999).

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 (1999).

WYOMING

Wyoming has no trespass regulations or laws specifically targeted to railroad property or equipment.

CHAPTER 10: VANDALISM

CHAPTER OVERVIEW

Every state has a law 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 y 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 survey 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 citation.

STATE LAWS AND REGULATIONS

ALABAMA

Alabama lists no applicable statute.

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 (1999).

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 (1999).

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. 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) (1999).

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 nor 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 (1999).

CALIFORNIA

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 (West 1999).

COLORADO

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 (1999).

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 (1999).

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 (1999).

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 (1999).

CONNECTICUT

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 (1992).

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 (1999).

DELAWARE

In Delaware, if a person 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 (1999).

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 (1999).

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 fine may be imposed of not less than fifty dollars nor 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 nor 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 (1999).

DISTRICT OF COLUMBIA

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. If found guilty, a sentence can be imposed for not more than ten years. D. C. Code Ann. § 22-3119 (1999).

FLORIDA

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 (West 1999). Also see §§ 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 (West 1999).

It is unlawful in Florida for anyone, other than an employee or authorized agent of 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 (1999 Supplement).

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 (1999 Supplement).

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 (1999 Supplement).

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 (West 1994).

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 (1999). 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. 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 (1999). Also see Section 46-8-198 under Warning Devices - Passive.

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 (1999). Also see § 291C-161 as to penalty for violation.

IDAHO

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 branchway, 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 (1999).

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 (1999).

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 (1999).

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 (Lexis 1999).

ILLINOIS

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

tracks 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 (1999).

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 5/11-311 (1999).

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 (1999).

IOWA

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

Kansas law makes 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 (1999).

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 nonperson 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, nonperson felony. Kan. Stat. Ann. § 21-3761 (1999).

KENTUCKY

Kentucky law lists no applicable statute.

LOUISIANA

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 (1998).

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 (1998).

MAINE

It is unlawful in 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 found guilty, 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 (West 1999).

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 (1998 Supplement).

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 (1998 Supplement).

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 (1998 Supplement).

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 (1998 Supplement).

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 (West 1999).

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. 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 (West 1999).

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 (1999).

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) (1999).

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 (1999).

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. § 609-851 (1999).

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, accident or derailment. If the forgoing activity creates 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) (1999 Supplement).

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 (1999).

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 (1999).

MISSISSIPPI

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 nor more than five hundred dollars, or imprisoned in the county jail not more than six months, or both. Miss. Code Ann. § 97-15-1 (1999).

No one may wilfully 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 nor more than five hundred dollars, or be imprisoned in the county jail no exceeding three months, or both. Miss. Code Ann. § 97-2-5 (1999).

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 (1999).

No person in Mississippi shall wantonly or maliciously injure, or place any impediment or obstruction on any railroad, or do 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 nor more than ten years. Miss. Code Ann. § 97-25-23 (1999).

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 (1999).

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 nor 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 (1999).

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 (1999).

It is unlawful for any person not employed by a railroad to wilfully 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 (1999).

No person shall wilfully 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 nor more than five years, or both fine and incarceration. Miss Stat. Ann. § 97-25-47 (1999).

Mississippi has two more code sections for reference. See Sections 97-25-43, Conspiracy to impede railroad, carrier or utility, and 97-25-45 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 (1998). Also see entry in Chapter 9, Trespassing.

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 (1998)

MONTANA

Montana law lists no applicable statute.

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 (1999).

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.

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 (Lexis 1998).

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 (Lexis 1998).

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 (1998).

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:

(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 nor 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 (1998).

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 (1998).

NEW HAMPSHIRE

New Hampshire law lists no applicable statute.

NEW JERSEY

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 (1999).

Any person who vandalizes railroad signals or protection devices in New Jersey shall be guilty of a disorderly persons offense. For any subsequent violations, the offender is guilty of a crime of the fourth degree. N.J. Rev. Stat. § 2C:33-14.1 (1999).

NEW MEXICO

New Mexico law lists no applicable statute.

NEW YORK

A person shall be deemed guilty of unlawful propulsion of a missile at railroad train where he wilfully 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 (1999).

It is unlawful for any person to wilfully 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. Unlawful interference with a railroad train is a class D felony. N.Y. [Railroad] Law § 53-e (1999).

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.

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 1 felony. If there was no intent, the violation is a Class 2 misdemeanor. N.C. Gen. Stat. §§ 14-278 -279 (1999).

NORTH DAKOTA

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 (1993).

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. Incapacitation 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 (1999).

OHIO

Ohio law lists no applicable statute.

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.

Any person convicted of placing an obstruction on the rails or tracks may be imprisoned in the penitentiary for a period of time not to exceed four months or in a county jail for not less than six months. Okla. Stat. tit. 21, § 1751 (1)-(2) (1999).

OREGON

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 (1999).

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. C. S. § 3304.(1999).

RHODE ISLAND

Any person who unlawfully and intentionally injures, molest 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. Violation of the section brings a fine of up to one thousand dollars, by imprisonment for as much as three years or both. R.I. Gen. Laws §§ 11-36-4 -13 (1999).

SOUTH CAROLINA

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. Code Ann. § 58-15-860 (1999).

Whoever wilfully 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 (1999).

A person who wilfully does or causes an action, or aids or assists and 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 (1999).

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 (1999).

Any person who shall wilfully 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 (1999).

SOUTH DAKOTA

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 (1999).

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 (1999).

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 (1999).

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 § 49-106A-106 (1999).

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. Doing so constitutes a Class 1 misdemeanor. S.D. Codified Laws Ann. § 22-34-27 (1999).

TENNESSEE

Tennessee law makes it a Class E felony to destroy or interfere with any railroad property. Tenn. Code Ann. § 39-14-411 (1999). 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 (Michie 1997).

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 (Michie 1997). See 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." An offense is a Class C misdemeanor. Tex. [Transportation] Code Ann. § 471.005 (West 1999).

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 (1999). The sections 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 (1999).

VERMONT

It is unlawful in Vermont for anyone to wilfully 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 wilfully 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. If as a consequence thereof a person is killed, the perpetrator shall be guilty of manslaughter. Vt. Stat. Ann. tit. 13, § 3101 (1999).

A person shall not wilfully and maliciously display, hide or remove a signal or light upon or near to a railroad; or by any other wilful and malicious act or wilful 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 (1999).

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 (1999).

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(1999)

VIRGINIA

Virginia 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 (Michie 1999).

WASHINGTON

"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 (West 1999).

WEST VIRGINIA

West Virginia law forbids anyone from interfering with any railroad sign or signal. It does not list a penalty. W. VA. Code § 17C-3-9 (1999).

WISCONSIN

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 (1993).

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. 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 (1999).

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 100,671 private highway-rail crossings on the U.S. rail system (Source: *Railroad Safety Statistics, Annual Report 1998, Table 9-10*). U.S. Department of Transportation, Federal Railroad Administration). 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

Alabama law lists no applicable statute.

ALASKA

Alaska law lists no applicable statute.

ARIZONA

Arizona law lists no applicable statute.

ARKANSAS

Arkansas law lists no applicable statute.

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 sign(s) would constitute an additional safety hazard. Cal. [PUB. UTIL.] Code § 7537 (West 1999).

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 (West 1999).

COLORADO

Colorado law lists no applicable statute.

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 (1992).

DELAWARE

Delaware law lists no applicable statute.

DISTRICT OF COLUMBIA

District of Columbia law lists no applicable statute.

FLORIDA

Florida law requires crossbuck signs be erected at all private highway-rail crossings. Fla. Stat. Ann. § 351.03 (West 1999).

GEORGIA

Georgia law lists no applicable statute.

HAWAII

Hawaii law lists no applicable statute.

IDAHO

Idaho law lists no applicable statute.

ILLINOIS

Illinois law lists no applicable statute.

INDIANA

Indiana law lists no applicable statute.

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 (1993).

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 (1993).

KENTUCKY

Kentucky law lists no applicable statute.

LOUISIANA

Louisiana law lists no applicable statute.

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 (West 1999).

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 (1999).

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 (1999).

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) (Law. Co-op. 1993).

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 (1999).

A railroad company is required when constructing a railroad to construct a proper farm crossing at a convenient place. Minn. Stat. § 219.13 (1999).

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 (1999).

MISSISSIPPI

Mississippi law lists no applicable statute.

MISSOURI

The Division of Motor Carrier and Railroad Safety, after receiving application from any person, firm or corporation, has 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 division are not complied with, the division may close the private crossing to public use. MO. Rev. Stat. § 389.610 (1993).

MONTANA

Montana law lists no applicable statute.

NEBRASKA

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. (1999).

Whenever a landowner owns land on both sides of the right-of-way of any railroad, the railroad is required to provide and keep in repair at least one adequate means for such landowner to cross the right-of-way. The interested landowner may file a written complaint with the Department of Roads against the railroad that the crossing is not adequate or is unsafe and dangerous to the life and property of those who use it. The Department is required to initiate an investigation, to hold a hearing, and issue such orders as it deems necessary, proper, and adequate. If the circumstances require it, the Department may order 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 is required to bear one-half of the expenses over that amount. Neb. Rev. Stat. § 74-1335 (1999).

NEVADA

Nevada law lists no applicable statute.

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 (1999).

NEW JERSEY

New Jersey places 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 (1999).

NEW MEXICO

New Mexico law lists no applicable statute.

NEW YORK

New York law allows the Commissioner of Transportation regulatory authority over the 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 (McKinney 1999).

NORTH CAROLINA

North Carolina law lists no applicable statute.

NORTH DAKOTA

North Dakota law lists no applicable statute.

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 (Baldwin 1999).

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 (1999).

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 (1999).

PENNSYLVANIA

Pennsylvania law lists no applicable statute.

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 (1999).

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 (1999).

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 (1999).

TENNESSEE

Tennessee law lists no applicable statute.

TEXAS

Texas law lists no applicable statute.

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 (1999).

VERMONT

Vermont law lists no applicable statute.

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 (Michie 1999). Also See The Virginia Highway Corporation Act of 1988, codified at § 56-548.

WASHINGTON

Washington law lists no applicable statute.

WEST VIRGINIA

West Virginia law lists no applicable statute.

WISCONSIN

Wisconsin law lists no applicable statute.

WYOMING

Wyoming law lists no applicable statute.

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 AND REGULATIONS

ALABAMA

Alabama has no such regulation.

ALASKA

Alaska has no such regulation.

ARIZONA

Arizona has no such regulation.

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 which 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 fifty feet on each side of the centerline between the rails for the maintenance width and for a distance of one hundred 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 one hundred dollars nor more than five hundred dollars for each violation. Ark. Code Ann. § 23-12-201 (1999).

CALIFORNIA

California has no applicable statute.

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 (1999).

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 may, 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, 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 one hundred and fifty feet in each direction from the crossing. The entire expense occasioned by any order of the Commissioner is to be paid for by the railroad company. Conn. Gen. Stat. § 13b-281(1999).

DELAWARE

Delaware has no applicable statute.

DISTRICT OF COLUMBIA

District of Columbia has no applicable statute.

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 publically 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.

Any person who violates the provisions of this section is guilty of a misdemeanor of the second degree. Fla. Stat. § 337.405 (1999 Supplement). See also Sections 775.082 and 775.083, concerning punishment.

GEORGIA

Georgia has no applicable statute.

HAWAII

Hawaii has no applicable statute.

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 three feet, or less than ten 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 forty feet along each highway and connecting the two points with a straight line. The sight distance obstruction restriction is also applicable to railroad-highway grade crossings with vision triangle defined by measuring forty feet along the railroad property line when intersecting with a highway.

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) (Lexis 1999 Supplement).

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 5/18c-7401 (1999).

INDIANA

Indiana law does not mention grade crossings per se; it does require 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 (1999).

Penalty

Any railroad failing to comply with these requirements will be liable for a penalty of twenty five dollars. Ind. Code Ann. § 8-3-7-2 (1999).

IOWA

Iowa law requires every railroad operating in the state to insure 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 (1999).

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 three hundred fifty feet of a highway-rail crossing ... and thereafter keep the same trimmed...". Kan Stat. Ann. § 19-2612 (1999).

KENTUCKY

Kentucky has no applicable code section.

LOUISIANA

Louisiana has no applicable code section.

MAINE

The Maine Department of Transportation has the authority to designate the highway-rail crossings in the state at which, from all points on the highway within three hundred feet of these crossing, a traveler can have a fair view (emphasis author's) of an approaching train continuously from the time the train is three hundred 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 (West 1999).

When the Department of Transportation deems that trees, bushes or other encroachments are obstructing the view at highway-rail 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 (West 1999).

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 must, through trimming brush and trees or by removing fences and signboards on their right-of-way, insure that the motorist or traveler through the crossing has a clear view of an approaching train three hundred feet from the crossing. Me. Rev. Stat. Ann. tit. 23, § 7222 (1999).

MARYLAND

Maryland has no applicable statute.

MASSACHUSETTS

If the view of a railroad crossing or highway at-grade is obstructed by standing wood in woodlands, the railroad corporation or ten 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 (1999).

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 (1999).

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 trains 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 fifty dollars for each day that the condition is not corrected. Minn. Stat. § 219-384(1)(2) (1998).

MISSISSIPPI

Mississippi has no applicable code section.

MISSOURI

All railroads operating in Missouri are responsible for the maintenance of their right-of-way at highway-rail crossings. The crossing must be kept clear of vegetation, undergrowth or other debris for a distance of two hundred and fifty feet each way from the near edge of the crossing. Mo. Rev. Stat. § 389.665 (1993).

MONTANA

Montana has no applicable code section.

NEBRASKA

Nebraska has no applicable code section.

NEVADA

Nevada has no applicable code section.

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 (1998).

NEW JERSEY

New Jersey has no applicable code section.

NEW MEXICO

New Mexico has no applicable code section.

NEW YORK

New York has no applicable code section.

NORTH CAROLINA

North Carolina has no applicable code section.

NORTH DAKOTA

North Dakota has no applicable code section.

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 six hundred 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 ten-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 thirty 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 (1999).

OKLAHOMA

Oklahoma has no applicable code section.

OREGON

Oregon has no applicable code section.

PENNSYLVANIA

Pennsylvania has no applicable code section.

RHODE ISLAND

Rhode Island has no applicable code section.

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 cross bucks 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, and the governing body of each municipality are responsible for inspecting railroad crossings on road and street right-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 crossings 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 right-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 obstructing a motorist's view.

Penalty

The railroad is then required to cut or remove the vegetation, growth, and objects within sixty days of receipt of the notice. Failure on the part of the railroad company to do so within the specified period of time will result in a civil penalty of not less one hundred dollars nor more than five hundred dollars. The railroad company is subject to an additional civil penalty of one hundred dollars 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 are then 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 orad right-of-way of the state, county or municipality, he or she must give appropriate notice. The owner of the property shall then have sixty 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 (1999).

SOUTH DAKOTA

South Dakota has no applicable code section.

TENNESSEE

Tennessee has no applicable code section.

TEXAS

Texas has no applicable code section.

UTAH

Utah has no applicable code section.

VERMONT

Vermont has no applicable code section.

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 five hundred dollars for each offense, to be imposed by the State Corporation Commission after due notice and hearing. Va. Code Ann. § 56-411 (1999).

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 one hundred 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 their right-of-way clear for one hundred feet in both directions. Wash. Rev. Code § 36.86.100 (1999).

Every railroad is required to keep its right-of-way clear of all brush and timber in the vicinity of a railroad grade crossing with a state highway for a distance of one hundred 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 (1999).

WEST VIRGINIA

West Virginia has no applicable code section.

WISCONSIN

Every railroad operating in Wisconsin must keep its right-of-way clear of brush or trees for a distance of at least three hundred thirty 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) (1999).

WYOMING

Wyoming has no applicable code section.

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 effort to enforce speed limits, and ticketing red light violators. In the last year of so it has entered the discussions as a possible tool for monitoring highway-railroad grade crossings. The success of several research projects that used 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.

This chapter presents an overview of state laws concerning photographic enforcement of traffic laws. Several states now have such laws, but only a couple allow for specific application to railroad crossings.

STATE LAWS AND REGULATIONS

ALABAMA

Alabama has no law concerning photographic enforcement of traffic laws.

ALASKA

Alaska has no law.

ARIZONA

Arizona has no law.

ARKANSAS

Arkansas has no law.

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 (West 1999).

Section 210 of California's Vehicle Code defines an "automated enforcement system" as "...any system...that photographically records a driver's response to a rail or rail transit signal or crossing gate, or both, or to an official traffic control signal...and is designed to obtain a clear photograph of a vehicles's license plate and the driver of the vehicle." Automated enforcement

systems are authorized for permanent use at railroad crossings. However, under sec. 2145.5, the devices could only be used at traffic light intersections until January 1, 1999.

Both sec. 21362.5 and sec 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 systems' presence.

Sec. 22451 states that violations detected by an automated enforcement system are subject to the procedures established by sec. 40518. Under sec. 40518, a written notice to appear, issued by peace officer or a qualified employee of a law enforcement agency and mailed with fifteen 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

Declaring that the enforcement of traffic laws through the use of automated vehicle identification systems is a matter of statewide concern and an area in which uniform state standards are necessary, the general assembly of Colorado passed a law allowing municipalities to adopt an ordinance authorizing the use of an automated vehicle identifications system to detect violations of traffic regulations adopted by the municipality, or the state, a county , or a municipality may utilize an automated vehicle identification system to detect traffic violations under state law, subject to the following conditions and limitations:

(a)(I) In order for a municipal court to establish personal jurisdiction over a defendant in any case involving an automated vehicle identification system, a penalty assessment notice or summons and complaint shall be served upon the defendant in accordance with the Colorado municipal court rules of procedure. In order for the state or county to establish personal jurisdiction over a defendant in any case involving an automated vehicle identification system, a penalty assessment notice or summons and complaint shall be personally served upon the defendant. Nothing in this section may be deemed to prevent the state, a county, or a municipality from mailing a written notice to the defendant advising the defendant of the alleged violation and permitting the defendant to waive such process of service.

(II) If the state, a county, or a municipality detects any alleged violation of a municipal traffic regulation or a traffic violation under state law through the use of automated vehicle identification systems, then the state, county or municipality shall serve the penalty assessment notice or summons and complaint for the alleged violation no later than ninety days after the violation occurred.

(b) Notwithstanding any other provision of the statutes to the contrary, the state, county, or a municipality may not report to the Department of Transportation any conviction or entry of judgment against a defendant for violation of a municipal traffic regulation or a traffic violation under state law if the violation was detected through the use of an automated vehicle identification system.

(c) The state, a county, or a municipality may not report to the Department of Transportation any outstanding judgment or warrant for purposes of section 42-2-107(5) or 42-2-118(3) based upon

any violation or alleged violation of a municipal traffic regulation or traffic violation under state law detected through the use of an automated vehicle identification system.

(3) The Department of Transportation has no authority to assess any points against a license under section 42-2-127 upon entry of a conviction or judgment for a violation of a municipal traffic regulation or a traffic violation under state law if the violation was detected through the use of an automated vehicle identification system. The department may not keep any record of such violation in the official records maintained by the department under section 42-2-121.

(4)(a) If the state, a county, or a municipality detects a speeding violation of less than ten miles per hour over the reasonable and prudent speed under a municipal traffic regulation or under state law through the use of an automated vehicle identification system and the violation is the first violation by such driver that the state, county, or municipality has detected using an automated vehicle identification system, they the state, county, or municipality shall mail such driver a warning regarding the violation and the state, county, or municipality may not impose any penalty or surcharge for such first violation.

(b) If the state, a county, or a municipality detects a second or subsequent traffic violation under a municipal traffic regulation or under state law by a driver, or a first such violation by the driver if the provisions of paragraph (a) of this subsection (4) do not apply, through the use of an automated vehicle identification system, the maximum penalty that the state, county, or municipality may impose for such violation, including any surcharge, is forty dollars.

(5) If the state, a county, or a municipality has established an automated vehicle identification system for the enforcement of municipal traffic regulations or state traffic laws, then no portion of any fine collected through the use of such system may be paid to the manufacturer or vender of the automated vehicle identification system equipment. The compensation paid by the state, county, or municipality for such equipment shall be based upon the value of such equipment and may not be based upon the number of traffic citation issued or the revenue generated by such equipment.

(6) As defined in this section of the statute, the term "automated vehicle identification system" means a system whereby:

(a) A machine is used to automatically detect a violation of a traffic regulation and simultaneously record a photograph of the vehicle, the operator of the vehicle, and the license plate of the vehicle; and

(b) A penalty assessment notice or summons and complaint is issued to the registered owner of the motor vehicle.

Colo. Rev. Stat. § 42-4-110.5 (West 1998). See also related Sections 13-10-111, 42-2-107(5), 42-2-118(3), and 42-2-121.

CONNECTICUT

Connecticut has no law pertaining to automated enforcement systems.

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.

(2) The owner of the vehicle shall be liable for a monetary penalty imposed pursuant to this subsection if such vehicle is found, as evidenced by information obtained from a traffic light signal violation monitoring system, to have failed to comply with a traffic light signal.. Enforcement, arrest, bail, appeal, procedures for payment of penalties and distribution of penalty payment collected shall be governed in the same manner as any parking or other non-moving violation under Chapter of this title and such penalties shall be subject to the voluntary assessment provisions of § 709 of this title.

(3) Proof of a violation of this subsection shall be evidenced by information obtained from a traffic light signal violation monitoring system authorized pursuant to this subsection. A certificate, sworn to or affirmed by a technician employed by a governmental body authorized to impose penalties pursuant to this subsection, or a facsimile thereof, based upon inspection of photographs, microphotographs, videotape or other recorded images produced by a traffic light signal violation monitoring system shall be prima facie evidence of the facts contained therein. Any photographs, microphotographs, videotape or other recorded images evidencing such a violation shall be available for inspection in any proceeding to adjudicate the liability for such violation pursuant to regulation, ordinance or other law adopted pursuant to this subsection.

(4) The owner of any vehicle found to be in violation of this subsection shall be held prima facie responsible for such violation in the same manner as provided for under § 7003 of this title.

(5) For purposes of this subsection only, "owner" means the registered owner of such vehicle on record with the Division of Motor Vehicles; provided however, that in the event that the owner is a vehicle leasing company licensed to do business in this State; the "owner," for purposes of this subsection, shall mean the person shown on the records of the Division of Motor Vehicles to be the lessee of such vehicle. Vehicle rental companies are excluded from the definition of "owner" fro purposes of this subsection only. For purposes of this subsection, "traffic light signal violation monitoring system" means a vehicle sensor installed to work in conjunction with a traffic light that automatically produces 2 or more photographs, 2 or more microphotographs, a videotape or other recorded images of each vehicle at the time it is used or operated in violation of this subsection.

(6) Imposition of a penalty pursuant to this subsection shall not be deemed a conviction of the owner and shall not be make part of the operating record of the person upon whom such liability is imposed not shall it be used for insurance purposes in the provision of motor vehicle insurance coverage. No monetary penalty imposed under this subsection shall exceed \$50 but court costs and assessments for the Victim's Compensation Fund and the Videophone Fund may be imposed in addition to the maximum monetary penalty.

(7) A summons for a violation of this subsection may be executed by mailing by first-class mail a copy thereof to the address of the owner of the vehicle as shown on the records of the Division of Motor Vehicles.

(e) Notwithstanding any other provision in this section, if the motor vehicle which is found by the traffic light signal violation monitoring system to have failed to comply with a traffic light signal is commercially licensed, then the owner of that vehicle shall be sent notice of the date, time and location of the violation with 2 photographs thereof. Within 10 days of the receipt of said notice, the owner of the vehicle shall provide the law enforcement agency which has issued the summons with the name and address of the driver of the vehicle at the date, time and location of the violation and, within the same time period, shall provide the driver of the vehicle with the photographs of the violation. After receipt by the law enforcement agency which has issued the summons of the name and address of the driver of the vehicle at the time of the violation in the same manner as provided for under § 7003 of this title and shall be subject to the provisions of this section. Failure of the owner of the vehicle found to be in violation of subsection (d) to provide the name and address of the driver at the time of the violation within the period prescribed shall cause the owner to be held responsible as set forth in subsection (d)(4) of this section. Del. Code. Ann. tit. 21 §4101(d)(e) (1999).

DISTRICT OF COLUMBIA

(a) The Mayor of the District of Columbia is authorized to use an automated traffic enforcement system to detect moving violations. Any such violation detected by an automated traffic enforcement system shall constitute a moving violation. Proof of an infraction may be evidenced by information obtained through the use of an automated traffic enforcement system. For the purposes of this title, the term "automated traffic enforcement system" means equipment that takes a film or digital camera-based photograph which is linked with a violation detection system that synchronizes the taking a photograph with the occurrence of a traffic infraction.

(b) Recorded images taken by an automated traffic enforcement system are prima facie evidence of an infraction and may be submitted with authentication. See D.C. CODE § 40-751 (a)(b) (Michie 1998)

(a) The owner of a vehicle issued a notice of infraction will be liable for payment of the fine assessed for the infraction, unless the owner can furnish evidence that the vehicle was, at the time of the infraction, in the custody, care or control of another person. In the event that the registered owner claims that the vehicle was in the custody, care and control of another person, the registered owner of the vehicle must provide evidence in a sworn affidavit, under penalty of perjury, setting forth the name and address of the person who leased, rented, or otherwise had care, custody, or control of the vehicle

(b) When a violation is detected by an automated traffic enforcement system, the Mayor shall mail a summons and a notice of infraction to the name and address of the registered owner of the vehicle on file with the Bureau of Motor Vehicle Services or the appropriate state motor vehicle agency. The notice shall include the date, time, and location of the violation, the type of violation detected, the license plate number, and state of issuance of the vehicle detected, and a copy of the photo or digitized image of the violation.

(c) An owner or operator who receives a citation may request a hearing which shall be adjudicated pursuant to subchapter I of Chapter 6 of Title 40 of the District of Columbia Code.

(d) The owner or operator of a vehicle is not presumed liable for violations in the vehicle recorded by an automated traffic enforcement system when yielding the right of way to an emergency vehicle, when the vehicle or tags have been reported stolen prior to the citation, when

part of a funeral procession, or at the direction of a law enforcement officer. See D.C. CODE § 40-752 (a)(b)(c)(d) (Michie 1998).

The District of Columbia code allows for the Mayor to enter an agreement with a private entity to obtain relevant records regarding registration information or to perform tasks associated with the use of an automated traffic enforcement system, including, but not limited to, the operation, maintenance, administration or mailing of notices of violation. D.C. Code § 40-753 (Michie 1998).

FLORIDA

Florida has no such law.

GEORGIA

Georgia has no such law.

HAWAII

Hawaii has not such law.

IDAHO

Idaho has no such law.

ILLINOIS

(a) Illinois law provides for an Automated Railroad Crossing Enforcement System. It defines such a system as one 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 (Driver Action). The photograph or other recorded image must also display the time, date and location of the violation. 625 ILCS 5/11-1201.1(a) (1999).

(b) Beginning on January 1, 1996, the Illinois Commerce Commission and the Commuter Rail Board of the Regional Transportation Authority shall, in cooperation with local law enforcement agencies, establish a two-year pilot program within a county with a population of between 750,000 and 1,000,000 using an automated railroad grade crossing enforcement system. The Commission is required to determine the three (3) railroad grade crossings within that county that pose the greatest threat to human life based upon the number of accidents and fatalities at the crossings during the past 5 years and with approval of the local law enforcement agency equip the crossings with an automated railroad grade crossing enforcement system.

(c) For each violation of Section 11-1201 recorded by an automatic railroad grade crossing system, the local law enforcement agency with jurisdiction shall issue a written Uniform Traffic Citation of the violation to the registered owner of the vehicle. The Uniform Traffic Citation must

be delivered to the registered owner, by mail, within 30 days of the violation. It 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.

(e) Photographic or other recorded images evidencing a violation of Section 11-1201 shall be admissible in any proceeding resulting from the issuance of the Uniform Traffic Citation.

(f) Any rail crossing equipped with an automatic railroad grade crossing enforcement system must 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. (See Section 11-1201 providing for a mandatory fine of five hundred dollars or fifty hours of community service).

(g) The cost of the installation and maintenance of each automatic railroad grade crossing enforcement system shall be paid from the Grade Crossing Protection Fund if the rail line is not owned by Commuter Rail Board of the Regional Transportation authority. If the rail line is owned by the Commuter Rail Board of the Regional Transportation Authority, the costs of the installation and maintenance shall be paid from the Regional Transportation Authority's portion of the Public Transportation Fund.

(h) The Illinois Commerce Commission is required to issue a report to the General Assembly at the conclusion of the two year pilot program on the effectiveness of the automatic railroad grade crossing enforcement system. 625 ILCS 5/11.1201.1 (b)(c)(e)(f)(g)(h)(1999).

INDIANA

Indiana has no such law.

IOWA

Iowa has no such law.

KANSAS

Kansas has no such law.

KENTUCKY

Kentucky has no such law.

LOUISIANA

Louisiana has no such law.

MAINE

Maine has no such law.

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.

Unless the driver of the motor vehicle received a citation from a police officer at the time of the violation, the owner or the driver of a motor vehicle is subject to a civil penalty if the motor vehicle is recorded by a traffic control signal monitoring system while being operated in violation. A civil penalty under the subsection may not exceed one hundred dollars.

For purposes of this section, the District Court shall prescribe: A uniform citation form consistent with subsection (d) (1) of this section and § 7-302 of the Courts and Judicial Proceedings Article; and A civil penalty, which shall be indicated on the citation, to be paid by persons who choose to prepay the civil penalty without appearing in District Court.

An agency is required by this section to mail a citation to the owner liable which must include: The name and address of the registered owner of the vehicle; the registration number of the motor vehicle involved in the violation; the violation charged; the location of the intersection; the date and time of the violation; a copy of the recorded image; the amount of the civil penalty imposed and the date by which the civil penalty should be paid; a signed statement by a technician employed by the agency that, based on inspection of recorded images, the motor vehicle was being operated in violation of § 21-202; a statement that recorded images are evidence of a violation; and

Information advising the person alleged to be liable under this section informing him or her of the manner and time in which liability as alleged in the citation may be contested in the District Court; and warning that failure to pay the civil penalty or to contest liability in a timely manner is an admission of liability and may result in refusal or suspension of the motor vehicle registration.

The agency may mail a warning notice in lieu of a citation to the owner liable. Except as otherwise provided, a citation issued under this section shall be mailed no later than 2 weeks after the alleged violation.

A person receiving a citation has the option of paying the civil penalty in accordance with instructions directly to the political subdivision or to the District court; or elect to stand trial for the alleged violation.

Certificate alleging that the violation occurred, sworn to or affirmed by a duly authorized agent of the agency, based on inspection of recorded images produced by a traffic control signal monitoring system shall be evidence of the facts and is admissible in any proceedings alleging a violation.

The District Court may consider in defense of the violation that the driver of the vehicle passed through the intersection in order to yield the right-of-way to an emergency vehicle; or did so as part of a funeral procession; or that the motor vehicle or registration plates of the motor vehicle were stolen before the violation occurred and were not under the control or possession of the owner

at the time of the violation; or is unenforceable against the owner because at the time and place of the alleged violation, the traffic control signal was not in proper position and legible enough to be seen by an ordinarily observant individual; or evidence that the person named in the citation was not operating the vehicle at the time of the violation. In order to demonstrate that the motor vehicle or the registration plates were stolen before the violation occurred and were not under the control or possession of the owner at the time of the violation, the owner must submit proof that a police report about the stolen motor vehicle or registration plates was filed in a timely manner.

To satisfy the evidentiary burden that the owner was not the driver at the time of the violation, the person named in the citation must provide to the District Court evidence to the satisfaction of the court of who was operating the vehicle at time of the violation, including, at a minimum, the operator's name and current address. Md. Code Ann., [Transp.] § 21-202.1(1998).

MASSACHUSETTS

Massachusetts has no such law.

MICHIGAN

Michigan has no such law.

MINNESOTA

Minnesota has no such law.

MISSISSIPPI

Mississippi has no such law.

MISSOURI

Missouri has no such law.

MONTANA

Montana has no such law.

NEBRASKA

Nebraska has no such law.

NEVADA

Nevada has no such law.

NEW HAMPSHIRE

New Hampshire has no such law.

NEW JERSEY

New Jersey has no such law

NEW MEXICO

New Mexico has no such law.

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. A sworn certificate by a city technician based upon inspection of the photographs, microphotographs, videotape or other recorded images produced by a monitoring system is prima facie evidence of the facts contained therein.

The owner of the vehicle has an affirmative defense if the vehicle was reported stolen prior to the time of the violation. (Sec. 1111-a(i).) Lessors are exempt from liability if they prove that the violating vehicle was leased at the time of the violation, and if they identify the lessee. (Sec 1111-a(j).) Under section. 1111-a(b) , there is no liability if the owner was not driving and the driver is convicted of the violation.

Liability as an owner shall not be deemed a conviction-as-operator for an owner's driving record or for insurance purposes. (Sec 1111-a(f).) An owner found liable under this section who was not the driver of the violating vehicle can bring an action for indemnification against the driver. (Sec.1111-a(k).).

When a violation occurs, a notice of liability is sent by the city having jurisdiction or its designee to the violation vehicle's owner by first class mail. The notice must contain the vehicle's registration number, the location, date and time of the violation, and the identification number of the camera which recorded the violation. The notice must provide information about how the owner may contest the citation, and must warn the owner that failure to contest results in a default judgment against the owner. (Sec.1111-a(g).)

Sec 1111-a originally provided that the photo-enforcement program would remain in effect until 12-1-96, and that photo-devices could only be installed at up to twenty-five intersections per

city. However, the statute was amended on 8-8-95. The plan is now effective until 12-1-99, and devices can be installed at up to fifty intersections per city. See N.Y. [Veh.& Traf.] Law §1111-a (McKinney 1998).

NORTH CAROLINA

North Carolina has no such law.

NORTH DAKOTA

North Dakota has no such law.

OHIO

Ohio has no such law.

OKLAHOMA

Oklahoma has no such law.

OREGON

Oregon has no such law.

PENNSYLVANIA

Pennsylvania has no such law.

RHODE ISLAND

Rhode Island has no such law.

SOUTH CAROLINA

South Carolina has no such law.

SOUTH DAKOTA

South Dakota has no such law.

TENNESSEE

Tennessee has no such law.

TEXAS

Texas has no such law.

UTAH

Utah has no such law.

VERMONT

Vermont has no such law.

VIRGINIA

A. Virginia statute provides for the governing body of any city having a population of more than 390,000, any city having a population of a least 200,000 but less than 225,000, any county having the urban county executive form of government, any county adjacent to such county, and any city or town adjacent to or surrounded by such county except any county having the county executive form of government and the cities surrounded by such county may provide by ordinance for the establishment of a demonstration program imposing monetary liability on the operator of a motor vehicle for failure to comply with traffic light signals in such locality in accordance with the provisions of this section. Each such locality may install and operate traffic light signal photo-monitoring systems at no more than twenty-five intersections within each locality at any one time. This section is in effect until July 1, 2005. Va. Code Ann. § 46.2-833.01(Michie 1999)

B. The operator of a vehicle shall be liable for a monetary penalty imposed pursuant to this section if such vehicle is found, as evidenced by information obtained from a traffic light signal violation monitoring system, to have failed to comply with a traffic light signal within such locality.

C. Proof of a violation shall be evidenced by information obtained from a traffic light signal violation monitoring system authorized pursuant to this section. A certificate, sworn to or affirmed by a technician employed by a locality authorized to impose penalties pursuant to this section, or a facsimile thereof, based upon inspection of photographs, microphotographs, videotape, or other recorded images produced by a traffic light signal violation monitoring system, shall be prima facie evidence of the facts contained therein. Any photographs, microphotographs, videotape, or other recorded images evidencing such a violation shall be available for inspection in any proceeding to adjudicate the liability for such violation pursuant to an ordinance adopted pursuant to this section.

D. In the prosecution of an offense established under this section, prima facie evidence that the vehicle described in the summons issued pursuant to this section was operated in violation of this section, together with proof that the defendant was at the time of such violation the registered owner of the vehicle, shall constitute in evidence a rebuttable presumption that such registered owner of the vehicle was the person who committed the violation. Such presumption shall be rebutted if the registered owner of the vehicle (i) files an affidavit by regular mail with the clerk of the general district court that he or she was not the operator of the vehicle at the time of the alleged

violation or (ii) testifies in open court under oath that he or she was not the operator of the vehicle at the time of the alleged violation. Such presumption shall also be rebutted if a certified copy of a police report, showing that the vehicle had been reported to the police as stolen prior to the time of the alleged violation of this section, is presented, prior to the return date established on the summons issued pursuant to this section, to the court adjudicating the alleged violation.

E. For purposes of this section "owner" means the registered owner of such vehicle on record with the Department of Motor Vehicles. For purposes of this section "owner" does not mean a vehicle rental or vehicle leasing company. For purposes of this section, "traffic light signal violation-monitoring system" means a vehicle sensor installed to work in conjunction with a traffic light that automatically produces two or more photographs, two or more microphotographs, a videotape, or other recorded images of each vehicle at the time it is used or operated in violation of this section.

F. Imposition of a penalty pursuant to this section shall not be deemed a conviction as an operator and shall not be made part of the operating record of the person upon whom such liability is imposed nor shall it be used for insurance purposes in the provision of motor vehicle insurance coverage. No mandatory penalty imposed under this section shall exceed fifty dollars nor shall it include court costs.

G. A summons for a violation of this section may be executed pursuant to § 19.2-76.2. Notwithstanding the provisions of § 19.2-76, a summons for a violation of this section may be executed by mailing by first-class mail a copy thereof to the address of the owner of the vehicle as shown on the records of the Department of Motor Vehicles. If the summoned person fails to appear on date of return set out in the summons mailed pursuant to this section, the summons shall be executed in the manner set out in § 19.2-76.3. No proceedings for contempt or arrest of a person summoned by mailing shall be instituted for failure to appear on the return date of the summons.

H. In any action at law brought by any person or entity as the result of personal injury or death or damage to property, such evidence derived from a photo-monitoring system shall be admissible in the same method prescribed as required in the prosecution of an offense established under this section without the requirements of authentication as otherwise required by law.

I. On behalf of a locality, a private entity may not obtain records regarding the registered owners of vehicles which fail to comply with traffic light signals. A private entity may enter into an agreement with a locality to be compensated for providing the traffic light signal violation monitor system or equipment, and all related support services, to include consulting, operations and administration. However, only an employee of the locality may swear to or affirm the certificate required by subsection C.

J. The provisions of this section shall expire on July 1, 2005. Va. Code Ann. § 46.2-833.01 (Michie 1999).

WASHINGTON

Washington has no such law.

WEST VIRGINIA

West Virginia has no such law.

WISCONSIN

Wisconsin has no such law.

WYOMING

Wyoming has no such law.

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APPENDIX A

Uniform Vehicle Code and Model Traffic Ordinance

Since the Uniform Vehicle Code (UVC) was first published in 1926 it has played a major role in achieving uniformity among the various states. Today, its influence can be seen in nearly all the states, particularly in the codification of "rules of the road" provisions, included within the motor vehicle codes. Relevant parts of the UVC are reproduced here inviting the reader to make comparisons.

§ 11-206 - Display of unauthorized signs, signals, or markings

(a) No person shall place, maintain or display upon or in view of any highway any unauthorized sign, signal, marking, or device which purports to be or is an imitation of or resembles an official traffic-control device or railroad sign or signal, or which attempts to direct the movement of traffic, or which hides from view or interferes with the effectiveness of an official traffic-control device or any railroad sign or signal.

§ 11-207 - Interference with official traffic control devices

No person shall, without lawful authority, attempt to or in fact alter, twist, deface, injure, knock down, remove or interfere with the effective operation of any official traffic-control device or any railroad sign or signal or any inscription, shield or insignia thereon, or any part thereof. (Revised, 1975.)

§11-306 - Further limitations on driving on left of center of roadway

(a) No vehicle shall be driven on the left side of the roadway under the following conditions:

(1) When approaching or upon the crest of a grade or a curve in the highway where the driver's view is obstructed within such distance as to create a hazard in the event another vehicle might approach from the opposite direction;

(2) When approaching within 100 feet or traversing any intersection or railroad grade crossing unless otherwise indicated by official traffic control devices;

(3) When the view is obstructed upon approaching within 100 feet of any bridge, viaduct or tunnel;

Article V- Pedestrians' Rights and Duties

§ 11-513 - Bridge and Railroad Signals

(a) No pedestrian shall enter or remain upon any bridge or approach thereto beyond the bridge signal, gate, or barrier after a bridge operation signal indication has been given.

(b) No pedestrian shall pass through, around, over, or under any crossing gate or barrier at a railroad grade crossing or bridge while such gate or barrier is closed or is being opened or closed.

Article VII- Special Stops Required

§ 11-701- Obedience to signal indicating approach of train

(a) Whenever any person driving a vehicle approaches a railroad grade crossing under any of the circumstances stated in this section, the driver of such vehicle shall stop within 50 feet but not less than 15 feet from the nearest rail of such railroad, and shall not proceed until it is safe to do so. The forgoing requirements shall apply when:

1. A clearly visible electric or mechanical signal device gives warning of the immediate approach of a railroad train;
2. A crossing gate is lowered or when a human flagger gives or continues to give a signal of the approach or passage of a railroad train; (revised, 1992.)
3. A railroad train approaching within approximately 1,500 of the the highway crossing emits a signal audible from such distance and such railroad train, by reason of its speed or nearness to such crossing, is an immediate hazard;
4. An approaching railroad train is plainly visible and is in hazardous proximity to such crossing.

(b) No person shall drive any vehicle through, around or under any crossing gate or barrier at a railroad crossing while such gate or barrier is closed or is being opened or closed.

§ 11-702 - Certain vehicles must stop at all railroad grade crossings

(a) Except as provided in subsection (b), the driver of any vehicle described in regulations pursuant to subsection (c), before crossing at grade any track or tracks of a railroad, shall stop such vehicle within 50 feet but not less than 15 feet from the nearest rail of such railroad and while so stopped shall listen and look in both directions along such track for any approaching train, and for signals indicating the approach of a train and shall not proceed until it is safe to do so. After stopping as required herein and upon proceeding when it is safe to do so the driver of any said vehicle shall cross only in such gear of the vehicle that there will be no necessity for manually changing gears while traversing such crossing and the driver shall not manually shift gears while crossing the track or tracks. (Revised, 1992.)

(b) This section shall not apply at:

(1) Any railroad grade crossing at which traffic is controlled by a police officer or human flagger; (Revised, 1992.)

(2) Any railroad grade crossing at which traffic is regulated by a traffic-control signal;

(3) Any railroad grade crossing protected by crossing gates or an alternately flashing light signal intended to give warning of the approach of a railroad train;

(4) Any railroad grade crossing at which an official traffic control device gives notice that the stopping requirement imposed by this section does not apply.

(c) The (commissioner or other appropriate State official or agency) shall adopt such regulations as may be necessary describing the vehicles which must comply with the stopping requirements of this section. In formulating such regulations the (commissioner or other appropriate State official or agency) shall give consideration to the number of passengers carried by the vehicle and the hazardous nature of any substance carried by the vehicle in determining whether such vehicle shall be required to stop. Such regulations shall correlate with and so far as possible conform to the most recent regulation of the United States Department of Transportation. (This regulation can be found in 49 Code of Federal Regulations § 392.10.)

§ 11-703 - Moving heavy equipment at railroad grade crossings

(a) No person shall operate or move any crawler-type tractor, steam shovel, derrick, roller, or any equipment or structures have a normal operating speed of 10 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 any tracks at a railroad grade crossing without first complying with this section.

(b) Notice of any such intended crossing shall be given to a station agent of such railroad and a reasonable time be given to such railroad to provide proper protection at such crossing.

(c) Before making any such crossing the person operating or moving any such vehicle or equipment shall first stop the same not less than 15 feet nor more than 50 feet from the nearest rail of such railroad and while so stopped shall listen and look, in both directions along such track for any approaching train and for signals indicating the approach of a train, and shall not proceed until the crossing can be made safely.

(d) No such crossing shall be made when warning is given by automatic signal or crossing gates or a flagger or otherwise of the immediate approach of a railroad train or car. If a flagger is provided by the railroad, movement over the crossing shall be under the flagger's direction. (Section renumbered, 1986; Revised, 1992.)

§ 11-801 - Basic rule

No person shall drive a vehicle at a speed greater than is reasonable and prudent under the conditions and having regard to the actual and potential hazards then existing. Consistent with

the foregoing, every person shall drive a safe and appropriate speed when approaching and crossing an intersection or railroad grade crossing, when approaching and going around a curve, when approaching a hill crest, when traveling upon any narrow or winding roadway, and when special hazards exist with respect to pedestrians or other traffic or by reason of weather or highway conditions. (Revised, 1968.)

§ 11-1003 - Stopping, standing, or parking prohibited in specific places

(a) Except when necessary to avoid conflict with other traffic, or in compliance with law or the directions of a police officer or official traffic-control device, no person shall:

1. Stop, stand, or park a vehicle:
 - h. On any railroad tracks:
 2. Stand or park a vehicle, whether occupied or not, except momentarily to pick up or discharge a passenger or passengers;
 - d. Within 30 feet upon the approach to any flashing signal, stop sign, yield sign or traffic-control signal located at the side of a roadway; (Revised, 1968.)
 3. Park a vehicle, whether occupied or not, except temporarily for the purpose of and while engaged in loading or unloading property or passengers: (Revised, 1971.)
 - a. Within 50 feet of the nearest railroad crossing.

§ 11-1112 - Stop when traffic obstructed

No driver shall enter an intersection or a marked crosswalk or drive onto any railroad grade crossing unless there is sufficient space on the other side of the intersection, crosswalk or railroad grade crossing to accommodate the vehicle such driver is operating without obstructing the passage of other vehicles, pedestrians or railroad trains notwithstanding any traffic-control signal indication to proceed. New, 1971; Revised, 1992.)

§ 11-1114 - Railroad trains not to block crossings

No person or government agency shall operate any train in such a manner as to prevent vehicular use of any roadway for a period to time in excess of five consecutive minutes except:

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 disabled;
4. When the train is in motion except while engaged in switching operations;
5. When there is no vehicular traffic waiting to use the crossing; or
6. When necessary to comply with a governmental safety regulation.

This appendix was prepared using the Uniform Vehicle Code and Model Traffic Ordinance, 1992, Updates as of January, 1998. National Committee on Uniform traffic Laws and Ordinances, 107 S. West Street, #110, Alexandria, Virginia 22314. Available also at Internet Home Page www.nculto.org.