SECTION-BY-SECTION ANALYSIS OF
MODEL STATE RAILROAD TRESPASS PREVENTION ACT

Section 1. Section one provides that the Act may be cited as the "Railroad Trespass Prevention Act."

Section 2. Section two provides that the purpose of the Act is to prevent accidents and casualties to persons who unlawfully enter upon railroad property, and generally, to enhance the safety of transportation by railroad. The purpose of "to enhance the safety of transportation by railroad" reflects the fact that trespassers not only present a danger to themselves, but also put train crews, other railroad employees, and the local community at risk. For example, in an attempt to avoid striking a trespasser, a locomotive engineer may initiate an emergency brake application. This emergency action of slamming on the brake of a train can cause a derailment. Not only can a derailment threaten the lives of the train crew, but should a hazardous materials release occur in the process, an entire neighboring community could also be put in jeopardy.

Section 3. Section three would permit, under stated conditions, prosecution of a broad range of trespassing activities on railroad rights-of-way, yards, and other defined railroad property. Section three divides section [ ] of Chapter [ ], [State General Laws], into four subsections, (a) through (d).

Subsection (a) covers all acts of trespassing on railroad property including rights-of-way and yards. The subsection lists, by way of illustration, examples of trespass activities that people have been known to engage in on such property and that are prohibited. Specifically subsection (a) is intended to discourage people from using railroad rights-of-way and yards as supplemental pathways to walk, jog, bicycle, or otherwise travel on such property, rather than using designated safer authorized routes. "Knowingly" describes the state of mind or "mens rea" a defendant must have in order to be convicted of engaging in the activities specified in subsection (a). "Knowingly" is intended to apply to the act or "actus reus," and the circumstance of the crime. In other words, a person must *know* he or she is engaged in the activity and must *know* that the property upon which he or she is engaged in the activity is a railroad right-of-way, yard, or other railroad property, in order to be convicted of trespassing. Accordingly, "I was sleepwalking" would be a defense to a charge of trespassing because the individual could not be said to have "known" he or she was engaged in the activity of walking at the time the crime was committed.

In addition, "I did not know that the land upon which I entered was railroad property" would also be a defense to a charge of trespassing.

Subsection (a) also describes a number of recreational activities which people have been known to engage in on railroad rights-of-way and yards. As enumerated, these activities include hiking, fishing, and hunting on such property. No distinction is made with respect to hunting from such property or hunting from another location but shooting onto such property. In either case, for purposes of this Act, both activities would be considered a trespass. The rationale behind abolishing this distinction in the hunting context is that presumably the hunter would cause to enter or remain upon the land a bullet or other projectile, thereby creating the trespass. In addition, should the hunter be so lucky as to successfully shoot a prey from a safe and lawful location, he or she would then probably have to enter upon the railroad property to get the carcass. Finally, shooting from the railroad right-of-way as opposed to shooting onto the railroad right-of-way creates a different yet no less unacceptable safety risk. Despite the fact that most States have recreational use statutes passed for the purpose of encouraging landowners to hold open to the public their lands for recreational use, railroad rights-of-way and yards should not be included in this category of land to be held open to the public. Through education, outreach, and law enforcement, people will come to understand that railroad rights-of-way and yards are not recreational playgrounds.

Subsection (a) provides a penalty of a fine of not more than $100, imprisonment for not more than 30 days, or both, for a conviction of trespassing on a railroad right-of-way or yard. This penalty reflects a compromise between the strongest and weakest penalties which currently exist under State law for committing this crime. See Louisiana law (punishment of a $500 fine, imprisonment for not more than 90 days, or both) and Maine law (punishment of not less than five dollars nor more than twenty dollars for trespassing onto railroad tracks). LA. REV. STAT. ANN. § 14:63.6 (West 1993) and ME. REV. STAT. ANN. Tit. 23, § 7007 (West 1994), respectively. The phrase "not more than" is intended to allow, within the set maximum, a range of fines commensurate with the relative seriousness of the trespass.

Subsection (b) prohibits stowing away on trains. Railroad carriers indicate that there is a growing trend, especially among teenagers, college students, and transients to try to travel by

train either by riding on top of, inside, or in between freight cars. Moreover, southern border States such as Texas and California face the growing problem of illegal aliens trying to enter the United States by hiding inside box cars. Persons who engage in the illegal activity described in this subsection are not "passengers" but are "stowaways." "Passengers" are defined in subsection (d). The penalty provision for stowing away, reflects the serious nature of this crime, but also reflects the reality that the majority of people who commit this crime will not be able to pay stiff penalties, but should nevertheless, in appropriate cases, be subject to punishment.

Subsection (c) enumerates nine categories of persons who may with lawful authority enter and remain upon railroad property. These categories of persons supplement existing privileges to trespass which may already exist under law. Paragraphs (1) and (2) are self-explanatory. Paragraph (3) allows a person to enter upon railroad property in emergency rescue situations for the purpose of trying to save lives. The word "animal" is limited to avoid an absurdly broad interpretation of that term. For example, insects, which arguably are "animals," are not intended to be covered. Paragraph (3) does not allow a person to enter upon railroad property for the purpose of rescuing inanimate objects such as a wristwatch. Such objects cannot be said to pose a safety hazard to passengers and crew traveling on a right-of-way. However, large or otherwise dangerous objects, such as a tree limb, shopping cart, or small explosive device, may be removed from the right-of-way if the person reasonably believes that the object poses an imminent threat to life or limb. The rest of the enumerated categories of persons who may with lawful authority enter and remain upon railroad property, paragraphs (4) through (9), are self-explanatory.

Subsection (d) defines certain statutory terms. For example, the definition of "railroad" excludes urban rapid transit operations by rail, such as trollies and subways not connected to the general railroad system of transportation. "Railroad" is defined as it is defined in the Federal railroad safety laws "does not include rapid transit operations in an urban area that are not connected to the general railroad system of transportation." 49 U.S.C. § 20102 (B). Therefore, this Act does not cover trespass on such rapid transit property. The definition of "railroad property" excludes administrative offices, office equipment, and intangible property such as computer software. Including this type of property would not have directly furthered the

Legislature's intent to enhance safety by preventing railroad trespass injuries and fatalities. Also, such acts of trespass may be covered by other local, State, and Federal laws.