

## 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 signs 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 Carriers and Railroad Safety, after receiving application from any person, firm or corporation, has the responsibility for determining if an existing or proposed private crossing is or will become utilized by the public to such an extent that is necessary to protect the public safety. If such is found to be the case, the division may order the installation of crossing warning devices and apportion the cost among the parties according to the benefits accruing to each. In the event of that the orders of the 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 gives the Commissioner of Transportation regulatory authority over new construction of private crossings. The Commissioner may also order alterations to existing ones. Any such private crossings must be located on an existing intercity rail passenger service corridor. If a new private crossing is approved by the Commissioner, he or she may prescribe the manner of the crossing, whether it is to be at-grade or grade separated, the location, the type of warning devices and the apportionment of responsibility for the maintenance thereof.

The statute defines "intercity rail passenger corridor as a continuous railroad route which contains one or more segments of railroad track or tracks where intercity rail passenger service is operated by the National Rail Passenger Corporation" (Amtrak). Emphasis author's.

The statute also provides a definition for private crossings. "Private rail crossing shall mean a crossing which traverses a railroad track or tracks and may be used by the owner by the owner of the right-of-way, the owner's invitees and others, including the public, but has not been declared or recognized as a public rail crossing by the Commissioner." N.Y. R.R. Law § 97 (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). See also, *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.