

CHAPTER 49-11

RAILROAD BRIDGES, CROSSINGS, INTERSECTIONS, AND FENCES

49-11-00.1. (Effective January 1, 2010) Definitions. In this chapter, unless the context otherwise requires:

1. "Public railroad crossing" means a location where a public highway, road, or street, including associated sidewalks or pathways, crosses one or more railroad tracks at grade. The term includes a crossing if a public authority maintains the roadway on both sides of the crossing.
2. "Private railroad crossing" means any railroad at grade crossing of a roadway which is not a public railroad crossing.

49-11-01. Obstruction of crossing by railroad - Provision for temporary way. Every railroad corporation while engaged in raising or lowering any railroad track or in making any other alterations, by means of which a railroad crossing may be obstructed, shall provide and keep in good order a suitable temporary way and crossing with adequate protection to enable travelers to avoid or pass such obstruction.

49-11-02. Railroad bridges must be in good repair. Every railroad corporation shall maintain and keep in good repair all bridges and their abutments which the corporation shall construct for the purpose of enabling its road to pass over or under any public highway, watercourse, or other way. Railroad corporations which have transferred railway property to the public service commission in trust for the purposes of reorganization or reopening are not liable for failure to maintain railroad bridges in good repair during the period of trust.

49-11-03. Railroad bridge must provide clear passage over highway. When it shall be necessary in the construction of a railroad to erect a bridge or culvert over any public highway or street, it shall be sufficient to construct the same so as to give a clear passageway of twenty feet [6.10 meters] or two passageways of fourteen feet [4.27 meters] each.

49-11-04. Highways and watercourses to be restored to former state. Every corporation constructing, owning, or using a railroad shall restore every stream of water, watercourse, street, highway, or canal across, along, or upon which such railroad may be constructed to its former state or to such condition that its usefulness shall not be materially impaired and thereafter shall maintain the same in such condition against any effects in any manner produced by such railroad.

49-11-05. Railroad to maintain sufficient highway crossings. Repealed by S.L. 1993, ch. 278, § 2.

49-11-06. Railroad crossings - Construction and maintenance.

1. A public highway-railroad crossing at grade shall be constructed of a grade of earth on one or both sides of the railroad track, as the location may require, for the entire width of the highway grade but in no case less than twenty feet [6.10 meters] in width, the middle point of which shall be as nearly as practicable at the middle point of the highway and such grade shall be of such slope as shall be necessary for the safety and convenience of the traveling public.
2. Firmly fastened planks, concrete, asphalt, or other suitable material for highway construction shall be used on and for the full length of the ties used in the roadbed of such railway where such crossing occurs. The highway material next inside of the rail shall not be more than two and one-half inches [6.35 centimeters] from the inside surface of such rail. The highway material used in the crossing shall not be less than three inches [7.62 centimeters] in thickness, and shall be laid so that the upper surface of the highway material shall be on a level with the upper surface of the rail.

3. At such time as tracks through a railroad crossing are raised or otherwise altered by the railroad, the railroad shall, unless otherwise ordered by the commission, adjust and restore the crossing and the highway approaches, surfaces, and grades as shall be necessary for the safety and convenience of the traveling public. At such time as a public highway at a railroad crossing is altered by the road authority, the road authority at its expense shall adjust and restore the crossing and the highway approaches, surfaces, and grades as shall be necessary for the safety and convenience of the traveling public.
4. It shall be the duty of the railroad to maintain all railroad crossings in a safe and convenient condition for the traveling public. Such responsibility for maintenance shall be limited to that portion of the crossing lying between the tracks and for two feet [.61 meters] beyond the ends of the crossties on each side of the crossing.

49-11-07. Railroad crossing - Failure to construct or maintain - Penalty. Repealed by S.L. 1975, ch. 106, § 673.

49-11-08. Making intersecting railroad crossing - No delay if bond filed. The making of an intersecting railroad crossing by a railroad corporation constructing a new railroad shall not be hindered, delayed, nor prevented pending the ascertainment and determination of the compensation to be paid the affected railroad, if said railroad corporation proposing to make such crossing shall execute and file a bond with the clerk of the district court in which such proceedings are pending in such amount as the judge of said court may order, conditioned that the railroad corporation executing the same shall pay whatever amount may be ascertained and determined and shall abide any judgment or order of the court made in relation to the matter in controversy. The amount of the bond and the sufficiency of the sureties shall be approved by said judge, but no corporation which shall have obtained the right of way and constructed its road at the point of intersection before the commencement of an action under the provisions of the chapter on eminent domain shall be required to alter the grade or change the location of its road or be required to bear any part of the expense of making and maintaining such crossing.

49-11-09. Railroads intersecting - Compensation governed by law of eminent domain. Every corporation whose railroad shall be intersected by any new railroad shall unite with the owners of such new railroad in forming such intersection and connections and shall grant the facilities provided for in section 49-11-08. If the two corporations cannot agree upon the amount of compensation to be paid therefor, or the points and manner of such crossings and connections, the same shall be ascertained and determined in the manner provided for the taking of real property under the law of eminent domain.

49-11-10. Crossings of another railroad - Drawbridges - Stopping of trains. Repealed by S.L. 1997, ch. 284, § 8.

49-11-11. Crossing other railroad without stopping - Approval of commission. Repealed by S.L. 1997, ch. 284, § 8.

49-11-12. District court may review commission's disapproval of plan for crossing railroad without stopping. Repealed by S.L. 1997, ch. 284, § 8.

49-11-13. Grade crossings - Determination of their safety by commission. Repealed by S.L. 1981, ch. 476, § 6.

49-11-14. Notice to railroad of investigation of grade crossing. Repealed by S.L. 1981, ch. 476, § 6.

49-11-15. Penalty for violation of order. Repealed by S.L. 1981, ch. 476, § 6.

49-11-16. Caution signs - Specifications - Posting at crossings. Repealed by S.L. 1979, ch. 331, § 5.

49-11-17. Railroad crossing over land owned on both sides by one person - Penalty for failure to provide. When any person owns land on both sides of any railroad and contiguous to the railway, the corporation or individual owning or operating such railway shall make and keep in good repair a proper cattle guard and causeway or other adequate means of crossing such railway at such reasonable place as may be designated by the landowner or the landowner's agent, upon at least ten days' written notice by the commission to the railroad corporation provided an adequate crossing is not otherwise accessible. The type of all cattle guards required by law to be constructed in this state before being installed shall be approved by the commission. The owner or person in possession of the land through which the railroad passes may recover twenty-five dollars for every thirty days of default on the part of the person or corporation operating the railroad after at least a ten-day notice served on an officer, roadmaster, or section foreman of the operating company has designated the place for the erection of the cattle-guarded crossings or the road crossing, requested and a like penalty for failure to keep such cattle guards or road crossings in good repair after at least a ten-day written notice has been served upon the operating company that such repairs are necessary.

49-11-18. Construction of railroad - Crossing highway or waterway. Subject to the provisions of section 49-11-03, a railroad corporation shall have the power to:

1. Construct its railroad across, along, or up any stream of water, watercourse, street, highway, riverfront, steamboat, or other public landing, or canal which its route shall intersect or touch.
2. Carry any highway or street which it shall touch, intersect, or cross, over or under its track, as may be most expedient for the public good.
3. Change the course or direction of any highway or street when made necessary or desirable to secure more easy ascent or descent by reason of any embankment or cut made in the construction of the railroad and to take land necessary therefor, if such highway or road is not so changed from its original course more than six rods [30.18 meters] nor its distance thereby lengthened more than five rods [25.15 meters].

49-11-19. Blocking or obstructing crossing with train - Penalty.

1. A person may not operate any train in a manner as to prevent vehicular use of any roadway for a period of time in excess of ten consecutive minutes except:
 - a. When necessary to comply with safety signals affecting the safety of the movement of trains;
 - b. When necessary to avoid striking any object or person on the track;
 - c. When the train is disabled, by accident or otherwise;
 - d. When the train is in motion except when engaged in switching operations or loading or unloading operations;
 - e. When vehicular traffic is not waiting to use the crossing;
 - f. When necessary to comply with a government statute or regulation; or
 - g. When allowed by written agreement between the governmental entity that controls the roadway and the interested commercial entities. The agreement must indicate which party is responsible for the timely notification of local emergency service providers regarding the crossing that will be blocked and the period of time the crossing will be blocked.

2. A person that violates this section is guilty of a class B misdemeanor. This section does not apply to a city that has an ordinance covering the same subject matter.

49-11-19.1. Blocking or obstructing alternative crossings - Penalty. Any person operating a train who shall block or obstruct a public railroad crossing and who has the alternative of blocking or obstructing a crossing with active grade crossing traffic control devices or a crossing without such device shall, where feasible, and subject to the exception set forth in section 49-11-19, leave open the crossing with active grade crossing control devices. Any person who violates this section is guilty of an infraction.

49-11-20. Installation of flagman at crossings. Whenever it shall appear that owing to any construction work or repair work, or for any other cause, an unusual number of trains are being operated in or through any city in this state, the commission, upon complaint by the governing body of such city through its chief executive officer, shall compel the installation of a flagman, without a hearing. Such order shall be complied with within five days. The railroad corporation may remove such flagman whenever the movement of trains through such city assumes a normal condition.

49-11-21. (Effective through December 31, 2009) Warning device sounded at crossing by locomotive - Exception. A warning device must be placed on each locomotive engine and must be sounded at a distance of at least eighty rods [402.34 meters] from the place where the railroad crosses any other road or street and must continue to be sounded until it has crossed the road or street. The governing body of a city may adopt a quiet zone ordinance, as allowed by federal law and implemented under the federal railroad administration's supplemental safety measures for at-grade crossings, prohibiting a locomotive engine from sounding a warning device at crossings within the quiet zone under regular crossing conditions. A crew member may sound a warning device as determined appropriate by that crew member.

(Effective after December 31, 2009) Warning device sounded at crossing by locomotive - Exceptions.

1. A warning device must be placed on each locomotive engine and the device on the lead locomotive must be sounded when approaching a public railroad crossing, and must continue to be sounded until the locomotive enters the public railroad crossing.
2. The warning device may not be sounded at a private railroad crossing. However, a party may petition the commission to request that a horn be sounded at a private railroad crossing. The commission shall review the request and issue an order approving or denying the request based on the safety concerns of the public. A party may not be subject to any liability as a result of not making a request.
3. The governing body of a city may adopt a quiet zone ordinance, as allowed by federal law and implemented under the federal railroad administration's supplemental safety measures for at-grade crossings, prohibiting a locomotive engine from sounding a warning device at crossings within the quiet zone under regular crossing conditions.
4. Notwithstanding any other provision of this section, a locomotive engineer may sound a locomotive horn at any crossing to provide a warning to animals, vehicle operators, pedestrians, trespassers, or crews on other trains in an emergency situation if in the locomotive engineer's judgment the action is appropriate to prevent imminent injury, death, or property damage.

49-11-22. (Effective through December 31, 2009) Liability for failure of locomotive to sound bell, horn, or whistle at crossing. A person that owns or has a leasehold interest in a locomotive that fails to sound its warning device at any road or street crossing as required by section 49-11-21 is guilty of an infraction and is liable for all damages that are sustained by any person by reason of the neglect. If a crew member of a locomotive does not sound a warning device at a crossing for which the sounding of a warning device is prohibited under a city

ordinance, any crew member or person with any interest in the locomotive is not liable for any damages sustained by a person by reason of the failure to sound a warning device. This section does not exempt a railroad corporation from any liability created under chapter 49-16 or the Federal Employers' Liability Act [45 U.S.C. 51 et seq.] for injuries to its employees or agents.

(Effective after December 31, 2009) Liability for failure of locomotive to sound bell, horn, or whistle at crossing.

1. A railroad that has operational control of a locomotive that fails to sound its warning device at any crossing as required by section 49-11-21 is guilty of an infraction.
2. If a crew member of a locomotive does not sound a warning device at a crossing for which the sounding of a warning device is not required, any crew member or railroad with operational control of the locomotive may not be liable for any damages sustained by a person by reason of the failure to sound a warning device.
3. This section does not exempt a railroad corporation from any liability created under chapter 49-16 or the Federal Employers' Liability Act [45 U.S.C. 51 et seq.] for injuries to its employees or agents.

49-11-23. Liability of engineer for failure to sound bell, horn, or whistle of locomotive at crossing. Every locomotive engineer who does not cause a warning device to be sounded as required by section 49-11-21 shall be guilty of an infraction.

49-11-24. Railroad right of way - Fences.

1. Every owner or lessee of land abutting any operating railroad's right of way who has a legal fence, as defined in section 47-26-01, along all sides of the land except the side abutting the right of way may make a written request of the owners or operators of the railroad to construct a fence along the right of way. Upon receipt of the request, the owners or operators shall erect, within a reasonable time, a legal fence along the right of way to confine livestock as required by section 36-11-01. The owners or operators shall maintain the fence so long as the owner or lessee maintains the fence around the other sides of the enclosure.
2. Where the railroad has a fence along its right of way, the owners or operators of the railroad shall maintain the fence without necessity of a request by the owner or lessee so long as the owner or lessee maintains a fence around the other sides of the enclosure.
3. Except for the penalty and liability imposed by sections 49-11-29 and 49-11-30, the failure to comply with the requirements of this section is not, in itself, evidence of negligence and the fact that this section has been violated is not admissible in any other action.

49-11-25. How fence on railroad right of way to be constructed. A fence required under the provisions of section 49-11-24 shall be constructed as follows:

1. Good posts shall be set in the ground firmly, and such posts shall be not more than twenty feet [6.10 meters] apart.
2. There shall be securely fastened to such posts not less than four strands of barbed wire. The top wire shall be not less than fifty-four inches [137.16 centimeters] above the ground, the bottom wire shall be approximately sixteen inches [40.64 centimeters] above the ground, and the two center wires shall equally divide the distance between the top and bottom wires.
3. Instead of the barbed wire described in subsection 2, woven wire which is not less than forty-eight inches [121.92 centimeters] wide may be used.

49-11-26. Landowner may require railroad to build hog-tight fence. Every owner or lessee of a tract of land abutting upon any railroad or railway, or through which any railroad or railway has been or may be constructed, who has built a hog-tight fence along all sides of such land, except the side abutting against the railroad right of way, may demand of the owners or operators of such railroad or railway that the right of way adjacent to such tract of land be enclosed with a hog-tight fence. Upon such demand, such owners or operators shall erect the hog-tight fence and maintain the same in good repair so long as the owner of such tract of land shall continue to maintain a hog-tight fence around the other sides of the enclosure.

49-11-27. Requirements of hog-tight fence built by railroad on right of way. A fence built pursuant to a demand made under section 49-11-26 shall be constructed as follows:

1. The fence shall be not less than twenty-six inches [66.04 centimeters] high.
2. The woven wire shall have not less than seven cables and the meshes therein shall not exceed six inches [15.24 centimeters] in length.
3. The bottom mesh shall be not more than three inches [7.62 centimeters] wide; the second mesh shall be not more than three and one-half inches [8.89 centimeters] wide; the third mesh shall be not more than four inches [10.16 centimeters] wide; the fourth mesh shall be not more than four and one-half inches [11.43 centimeters] wide; the fifth mesh shall be not more than five inches [12.7 centimeters] wide; and the sixth mesh shall be not more than six inches [15.24 centimeters] wide.
4. The bottom wire of the fence shall be placed not to exceed two inches [5.08 centimeters] from the surface of the ground.
5. Not less than three barbed wires of not less than no. 13 standard gauge with barbs not exceeding six inches [15.24 centimeters] apart shall be placed above the woven wires. The first barbed wire shall be placed four inches [10.16 centimeters] above the woven wire; the second barbed wire shall be placed eight inches [20.32 centimeters] above the first barbed wire; and the third barbed wire shall be placed eight inches [20.32 centimeters] above the second barbed wire.
6. The posts used in such fence shall be of ordinary size for fence purposes, shall be set in the ground to a depth of at least two feet [.61 meters], and shall be not to exceed sixteen feet [4.88 meters] apart.

49-11-28. Swinging gates - When railroad required to maintain. Upon the written request of the owner or lessee of land abutting the railroad's right of way, the owners or operators of a railroad shall construct and maintain suitable and safe swinging gates on any side of a private crossing enclosed by the railroad under section 49-11-24. The request must be made at the same time a request is made under subsection 1 of section 49-11-24.

49-11-29. Failure to construct fence or swinging gate - Penalty. Any person owning or operating any line of railroad within this state and refusing or neglecting to comply with sections 49-11-24 through 49-11-28 is guilty of a class A misdemeanor. A prosecution or conviction under sections 49-11-24 through 49-11-28 does not relieve such person from liability for the maiming or killing of livestock on the right of way by reason of that person's negligence.

49-11-30. Failure of railroad to fence - Damage to owner of stock - How collected. Any corporation operating a railroad and failing to fence the same against livestock running at large where the duty to fence exists is liable to the owner of any stock killed or injured by reason of the want of such fence for the full amount of the damages sustained by the owner, unless the injury was occasioned by the grossly negligent act of the owner of the stock or the owner's agent. To recover, the owner of the stock must prove only the loss of or injury to the owner's property. Notice in writing that a loss or injury has occurred, accompanied by an affidavit thereof, must be served upon an officer of the corporation or upon a station or ticket agent employed by the corporation in the county where the loss or injury occurred. If the corporation fails or neglects to

pay the damages within ninety days after the notice is served on it, the owner is entitled to recover from the corporation double the amount of damages actually sustained by the owner, and a reasonable attorney's fee when it is adjudged by a court of competent jurisdiction that the claimant is entitled to the amount claimed.

49-11-31. Certain sections not applicable within corporate limits. The provisions of sections 49-11-24 through 49-11-30 shall not apply to street railways or the rights of way of railroads within the limits of an incorporated city.

49-11-32. Train crew exemption. In any circumstances involving an accident between a pedestrian or vehicle and a locomotive or part of a train in which the engineer or any other crew member of the train is interviewed by a law enforcement officer, the engineer or any other crew member may not be required to furnish a motor vehicle operator's license and no citation involving the operation of a train in violation of title 39 may be issued against the engineer or any other crew member of the train.