CHAPTER 15

Railroad, Street Railway, Steamboat and Canal Companies

ARTICLE 1

Incorporation and Organization Generally

**SECTION 58‑15‑10.** Petition for incorporation of railroad, street railway, steamboat or canal company.

 Three or more persons desiring to form themselves into a corporation for the purpose of building and operating a railroad or for the purpose of carrying on a street railway, steamboat or canal business may file with the Secretary of State a written declaration and petition, signed by themselves, setting forth:

 (1) The names and residences of the declarants;

 (2) The name of the proposed corporation;

 (3) The place at which it proposes to have its principal place of business;

 (4) The general nature of the business it proposes to do, giving in detail all the powers and privileges which it proposes to assume or claim under the provisions of the Constitution and laws of the State and

 (a) in case of a railroad corporation, its termini and route and the counties, townships, cities and towns through which the proposed road shall pass; the total length of the road; whether any portion of it has already been constructed and, if so, how much; the motive power proposed to be used, whether steam or electricity; the gauge of the road, whether standard or narrow; whether the proposed road will be altogether within the limits of this State or will be extended into some other state and, if it is proposed that such road shall be constructed to a point without the State, whether the corporation organizing expects to operate the line as an independent corporation or to consolidate with some other established railroad or company; and any other matter which the declarants may deem important,

 (b) in case of steamboat companies, the termini of the line; the nature of the proposed equipment and whether it is proposed to operate a passenger or freight line or both,

 (c) in case of a street railway, the city or town it proposes to do business in and the motive power and

 (d) in the case of a canal company, the termini of the canal proposed to be constructed; the river or rivers, stream or streams or body or bodies of water to be used or connected; and whether the canal is to be used for navigation, hydroelectric power and lighting or water supply, or for any or all such purposes;

 (5) The minimum amount of the capital stock upon which the corporation may organize and the maximum amount to which such capital stock may thereafter be increased and the par value thereof and how payable, if subscriptions are to be payable in installments and the date of payment and amount of installments; and

 (6) That it is proposed to organize such corporation under the provisions of this chapter, naming it by its title.

HISTORY: 1962 Code Section 58‑651; 1952 Code Section 58‑651; 1942 Code Section 8179; 1932 Code Section 8179; Civ. C. ‘22 Section 4359; Civ. C. ‘12 Section 2873; Civ. C. ‘02 Section 1917; 1899 (23) 64; 1921 (32) 146; 1927 (35) 30.

CROSS REFERENCES

Constitutional provision for regulation of common carriers, see SC Const. Art. IX, Section 1.

Prohibition against ownership of railroad stock in certain cases, see Section 58‑17‑770.

Library References

Corporations and Business Organizations 1100.

Railroads 14.

Urban Railroads 1.

Water Law 2929.

Westlaw Topic Nos. 101, 320, 396A, 405.

C.J.S. Canals Section 3.

C.J.S. Corporations Sections 1, 4 to 5.

C.J.S. Railroads Sections 33 to 36, 51 to 52.

C.J.S. Street and Urban Railroads Section 114.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Carriers Section 20, Original Incorporation.

NOTES OF DECISIONS

In general 1

1. In general

Section applicable to railroad extended from other states. This section [Code 1962 Section 58‑651] and Code 1962 Sections 58‑655 to 58‑661 are applicable in case where owners or projectors of railroad company, already incorporated in another state, wish to extend their road into this State. Lyles v. McCown (S.C. 1909) 82 S.C. 127, 63 S.E. 355, 17 Am.Ann.Cas. 436.

The terminus is determined by charter. Northeastern R. Co. v. Payne (S.C. 1855) 8 Rich. 177.

**SECTION 58‑15‑20.** Publication of notice of application.

 If the corporation will have the power to condemn lands for rights‑of‑way, if the charter is granted, the parties proposing to ask for it shall give notice for four weeks before the application is made that such application will be made, stating the time and the place of the application. Such notice shall be published in each county in which the right to condemn lands will be acquired under such charter, in some newspaper published in each such county once each week, for four weeks, before such application is made.

HISTORY: 1962 Code Section 58‑653; 1952 Code Section 58‑653; 1942 Code Section 8179; 1932 Code Section 8179; Civ. C. ‘22 Section 4359; Civ. C. ‘12 Section 2873; Civ. C. ‘02 Section 1917; 1899 (23) 64; 1921 (32) 146; 1927 (35) 30.

Library References

Railroads 14.

Westlaw Topic No. 320.

C.J.S. Railroads Sections 33 to 36, 51 to 52.

**SECTION 58‑15‑30.** Opponents of application may appear; action on application.

 Any person desiring to oppose the application may appear and oppose it, setting forth such facts as may sustain his reasons for such opposition, by affidavit or otherwise. The Secretary of State may, on such showing, refuse to grant such charter or may grant it according to his judgment in the matter.

HISTORY: 1962 Code Section 58‑654; 1952 Code Section 58‑654; 1942 Code Section 8179; 1932 Code Section 8179; Civ. C. ‘22 Section 4359; Civ. C. ‘12 Section 2873; Civ. C. ‘02 Section 1917; 1899 (23) 64; 1921 (32) 146; 1927 (35) 30.

Library References

Railroads 14.

Westlaw Topic No. 320.

C.J.S. Railroads Sections 33 to 36, 51 to 52.

**SECTION 58‑15‑40.** Issuance of commission to incorporators; authorization for opening books of subscription after giving of notice.

 Upon the filing of the declaration of the petitioners and the payment of a fee of three dollars for filing and indexing it, the Secretary of State shall file the declaration under a proper number and index it and shall issue to any two or more of the petitioners a commission constituting them a board of incorporators and authorizing them to open books of subscription to the capital stock of such proposed company, after such public notice, not less than thirty days, as he may require in such commission. Such notice to be published in some newspaper in each of the counties through which the proposed road shall pass and, in the case of steamboat companies, such notice shall be given at the termini only.

HISTORY: 1962 Code Section 58‑655; 1952 Code Section 58‑655; 1942 Code Section 8180; 1932 Code Section 8180; Civ. C. ‘22 Section 4360; Civ. C. ‘12 Section 2874; Civ. C. ‘02 Section 1918; 1899 (23) 64.

Library References

Railroads 14 to 16.

Westlaw Topic No. 320.

C.J.S. Railroads Sections 33 to 36, 38 to 41, 51 to 52.

NOTES OF DECISIONS

In general 1

1. In general

Stockholders of a foreign railroad corporation must, as a condition of incorporation in the state, open books of subscription, take subscriptions to the amount of $500 per mile, elect officers, and take the other steps set out in Civ.Code 1902, Sections 1918‑1921 (See Code 1942, Sections 8180‑8183), full incorporation in the state being required by Const. art. 9, Section 8, and Act Feb. 25, 1902, 23 St. at Large, p. 1053, passed subsequent to the adoption of the Code. Lyles v. McCown (S.C. 1909) 82 S.C. 127, 63 S.E. 355, 17 Am.Ann.Cas. 436.

**SECTION 58‑15‑50.** Manner in which subscriptions shall be payable; action against subscriber for failure to perform.

 All subscriptions to the capital stock of any corporation organized under this chapter shall be payable in money or in labor or in property at its money value. The labor or the property, or the value thereof, shall be named in the list of subscription, to be approved by the board of incorporators. In the case of a failure to perform the labor or to deliver the property subscribed according to the terms of subscription, or pay the true money value thereof, the board of incorporators, in behalf of the corporation, or the corporation itself after it shall have been organized, shall have a cause of action against such subscribers as in case of other subscriptions to the capital stock of corporations as provided by law.

HISTORY: 1962 Code Section 58‑656; 1952 Code Section 58‑656; 1942 Code Section 8181; 1932 Code Section 8181; Civ. C. ‘22 Section 4361; Civ. C. ‘12 Section 2875; Civ. C. ‘02 Section 1919; 1899 (23) 64.

Library References

Railroads 14 to 16.

Westlaw Topic No. 320.

C.J.S. Railroads Sections 33 to 36, 38 to 41, 51 to 52.

**SECTION 58‑15‑60.** Organization of company.

 When not less than fifty per cent of the capital stock shall have been subscribed by bona fide subscribers, in the case of canal, steamboat and street railway companies and when not less than five hundred dollars per mile shall have been subscribed by bona fide subscribers in the case of railroad companies, the board of incorporators shall call the subscribers together and proceed to organize the company, with not less than three nor more than fifteen directors. The election of officers shall be had in all respects as is provided for in the case of industrial corporations organizing under Sections 33‑11‑30, 33‑11‑40, and 33‑11‑200.

HISTORY: 1962 Code Section 58‑657; 1952 Code Section 58‑657; 1942 Code Section 8182; 1932 Code Section 8182; Civ. C. ‘22 Section 4362; Civ. C. ‘12 Section 2876; Civ. C. ‘02 Section 1920; 1899 (23) 64; 1927 (35) 29.

Library References

Railroads 14.

Westlaw Topic No. 320.

C.J.S. Railroads Sections 33 to 36, 51 to 52.

**SECTION 58‑15‑70.** Filing and contents of incorporators’ return.

 Upon the completion of the organization of any such corporation, the incorporators shall immediately file in the office of the Secretary of State a return, under their hands and seals, duly attested, sworn to or acknowledged before some officer qualified to administer an oath, that the requirements of Sections 58‑15‑10 to 58‑15‑60 have been complied with, that at least fifty per cent of the capital stock has been subscribed, that at least twenty per cent of the amount subscribed has been paid in or secured and, in the case of a railroad company, that at least five hundred dollars per mile has been subscribed and at least twenty per cent of the amount subscribed has been paid or secured. In the event that a survey of the proposed route of a railroad company shall have been made a copy of the profile map of such route shall be filed with such return and in case no survey shall have been made the return shall aver an intention to file such map within one year from the date of such return. Such return shall further show the names and residences of the subscribers, the amount subscribed by each and the names and residences of the members of the board of directors, the president and the secretary of the company.

HISTORY: 1962 Code Section 58‑658; 1952 Code Section 58‑658; 1942 Code Section 8183; 1932 Code Section 8183; Civ. C. ‘22 Section 4363; Civ. C. ‘12 Section 2877; Civ. C. ‘02 Section 1921; 1899 (23) 64.

Library References

Railroads 14.

Westlaw Topic No. 320.

C.J.S. Railroads Sections 33 to 36, 51 to 52.

**SECTION 58‑15‑80.** Effect of failure to file return within twelve months.

 Should no return as herein provided be made to the Secretary of State within twelve months from the granting of the incorporators’ commission, all proceedings hereunder shall be void and the incorporators shall be deemed to have waived all rights acquired under their declaration and such commission.

HISTORY: 1962 Code Section 58‑659; 1952 Code Section 58‑659; 1942 Code Section 8183; 1932 Code Section 8183; Civ. C. ‘22 Section 4363; Civ. C. ‘12 Section 2877; Civ. C. ‘02 Section 1921; 1899 (23) 64.

Library References

Railroads 14.

Westlaw Topic No. 320.

C.J.S. Railroads Sections 33 to 36, 51 to 52.

**SECTION 58‑15‑90.** Issuance of charter.

 Upon the filing of the return and the payment of charter fees required by Chapter 29 of Title 33 the Secretary of State shall issue to the board of directors a certificate, to be known as a charter, that the corporation has been fully organized, according to the laws of this State under the name and for the purpose indicated in the written declaration; that it is fully authorized to commence business under its charter; that it is a body politic and corporate and as such may sue and be sued in any of the courts of this State; and, in the case of a railroad corporation, that it is entitled to all the rights and privileges and subject to all the liabilities of railroad corporations under the laws of this State.

HISTORY: 1962 Code Section 58‑660; 1952 Code Section 58‑660; 1942 Code Section 8183; 1932 Code Section 8183; Civ. C. ‘22 Section 4363; Civ. C. ‘12 Section 2877; Civ. C. ‘02 Section 1921; 1899 (23) 64.

Library References

Railroads 14.

Westlaw Topic No. 320.

C.J.S. Railroads Sections 33 to 36, 51 to 52.

**SECTION 58‑15‑100.** Recordation and filing of charter and other documents.

 The charter of any such corporation shall be recorded in the office of the register of deeds or clerk of the court in each county in which such corporation shall have a business office. In case of street railway and steamboat companies, such charter shall be recorded in the office of the register of deeds or clerk of the court of the county in which their respective termini shall be or in which such street railway may be. The declaration, commission, corporators’ return and charter shall be filed or recorded by the Secretary of State and properly indexed in books kept by him for that purpose as required by law with respect to the organization of business corporations.

HISTORY: 1962 Code Section 58‑661; 1952 Code Section 58‑661; 1942 Code Section 8183; 1932 Code Section 8183; Civ. C. ‘22 Section 4364; Civ. C. ‘12 Section 2877; Civ. C. ‘02 Section 1921; 1899 (23) 64; 1997 Act No. 34, Section 1, eff January 1, 1998.

Library References

Railroads 14.

Westlaw Topic No. 320.

C.J.S. Railroads Sections 33 to 36, 51 to 52.

NOTES OF DECISIONS

In general 1

1. In general

Where there has been no notice to produce the original charter of a railroad company, a certified copy of the record of the Secretary of State’s office of a charter of a company formed by consolidation of original railroad companies is inadmissible; there being no provision of law requiring such charter to be recorded. Montgomery v. Seaboard Air Line Ry. (S.C. 1906) 73 S.C. 503, 53 S.E. 987.

**SECTION 58‑15‑110.** Effect of irregularity in incorporation.

 No irregularity in complying with the provisions of Sections 58‑15‑10 to 58‑15‑100 shall be held to vitiate the corporation until a direct proceeding to set aside and annul the charter be instituted by the proper authority of the State and all acts done and contracts entered into by any such de facto corporation shall have the same force and effect as if no irregularity had existed.

HISTORY: 1962 Code Section 58‑662; 1952 Code Section 58‑662; 1942 Code Section 8184; 1932 Code Section 8184; Civ. C. ‘22 Section 4364; Civ. C. ‘12 Section 2878; Civ. C. ‘02 Section 1922; 1899 (23) 64.

Library References

Railroads 14.

Westlaw Topic No. 320.

C.J.S. Railroads Sections 33 to 36, 51 to 52.

**SECTION 58‑15‑120.** Incorporators shall turn over subscription lists and other papers to corporation.

 Upon the issuance of a charter by the Secretary of State, the board of incorporators shall turn over to the proper officers of the corporation all subscription lists or other papers they have taken as incorporators and all such papers shall be as valid as if taken and made by the corporation.

HISTORY: 1962 Code Section 58‑663; 1952 Code Section 58‑663; 1942 Code Section 8185; 1932 Code Section 8185; Civ. C. ‘22 Section 4365; Civ. C. ‘12 Section 2879; Civ. C. ‘02 Section 1923; 1899 (23) 64; 1900 (23) 387.

Library References

Railroads 14.

Westlaw Topic No. 320.

C.J.S. Railroads Sections 33 to 36, 51 to 52.

**SECTION 58‑15‑130.** Forfeiture of charter for failure to commence or complete construction or operation within certain time.

 A railroad, street railway or canal company organized under this chapter shall be deemed to have waived its charter rights, franchises and privileges unless it shall begin the construction of the proposed road within two years from the date of the issuance of its charter and complete it within a period to be fixed by the Secretary of State in his certificate of incorporation, which shall in no case exceed fifteen years. A steamboat company organized under this chapter shall commence operating its line within two years from the date of issuance of its charter or its charter rights shall be deemed forfeited.

HISTORY: 1962 Code Section 58‑664; 1952 Code Section 58‑664; 1942 Code Section 8191; 1932 Code Section 8191; Civ. C. ‘22 Section 4371; Civ. C. ‘12 Section 2885; Civ. C. ‘02 Section 1928; 1899 (23) 68.

Library References

Railroads 19, 32.

Westlaw Topic No. 320.

C.J.S. Railroads Sections 53 to 61.

NOTES OF DECISIONS

In general 1

1. In general

A similar proviso as to time within which they should commence operations, was held not to be a condition precedent. Cheraw & C. R. Co. v White, 14 SC 51 (1880). Cheraw & C. R. Co. v Garland, 14 SC 63 (1880).

The object of the state’s reservation in corporate charters of right to repeal and amend is to prevent the grant of corporate rights and privileges in a form precluding legislative interference with their exercise if the public interest should require such interference, and to preserve to the state control over its contract with the corporators. Tomlinson v. Jessup (U.S.S.C. 1872) 82 U.S. 454, 21 L.Ed. 204, 15 Wall. 454.

Failure to complete work in time limited. A corporation is not ipso facto dissolved by failure to commence or complete work in time limited; and the court will not declare the charter forfeited on a mere motion in an action brought for such purpose. State v. Spartanburg, C. & G.R. Co. (S.C. 1897) 51 S.C. 129, 28 S.E. 145.

**SECTION 58‑15‑140.** Capital stock shall not be issued until price paid; exception.

 No capital stock shall be issued by any corporation organized under this chapter until the subscription price therefor has been fully paid, except when, by the terms of the petition, the capital stock is to be paid for in installments and payment of the deferred portion has been secured.

HISTORY: 1962 Code Section 58‑665; 1952 Code Section 58‑665; 1942 Code Section 8193; 1932 Code Section 8193; Civ. C. ‘22 Section 4373; Civ. C. ‘12 Section 2887; Civ. C. ‘02 Section 1930; 1899 (23) 68.

Library References

Railroads 15.

Westlaw Topic No. 320.

C.J.S. Railroads Sections 38 to 39.

**SECTION 58‑15‑150.** Railroads may issue no par common stock.

 A railroad corporation may issue common stock in shares having no par value on stating in its declaration and petition the number of such shares to be issued in lieu of the par value thereof and the minimum and maximum amount thereof.

HISTORY: 1962 Code Section 58‑666; 1952 Code Section 58‑666; 1942 Code Section 8179; 1932 Code Section 8179; Civ. C. ‘22 Section 4359; Civ. C. ‘12 Section 2873; Civ. C. ‘02 Section 1917; 1899 (23) 64; 1921 (32) 146; 1927 (35) 30.

Library References

Railroads 15.

Westlaw Topic No. 320.

C.J.S. Railroads Sections 38 to 39.

**SECTION 58‑15‑160.** Manner in which charters may be amended.

 Any corporation organized under the provisions of this article or chartered by the General Assembly prior to February 28, 1899 may have its charter amended by the Secretary of State, by filing with the Secretary of State a written declaration showing the desired changes in its charter and paying a fee of five dollars to cover the issuance, filing and indexing of the amended charter. After such notice as the Secretary of State may prescribe, upon a proper showing being made, the Secretary of State shall issue to any such corporation a certificate as a supplement to its charter, which shall be recorded and filed as charters are required to be under Section 58‑15‑100 and shall embody the changes, additions or alterations sought.

HISTORY: 1962 Code Section 58‑667; 1952 Code Section 58‑667; 1942 Code Section 8188; 1932 Code Section 8188; Civ. C. ‘22 Section 4368; Civ. C. ‘12 Section 2882; Civ. C. ‘02 Section 1925; 1899 (23) 68.

Library References

Railroads 19.

Westlaw Topic No. 320.

C.J.S. Railroads Sections 53 to 54.

**SECTION 58‑15‑170.** Stockholders’ meeting shall authorize amendment.

 Any railroad, steamboat, street railway or canal company in this State desiring to increase or decrease its capital stock, have its name changed or have its charter otherwise amended shall call a stockholders’ meeting, giving at least thirty days’ notice of the time, place and purpose of the meeting, and, if a majority of the stock of the corporation be present in person or by proxy, a resolution embodying the proposed changes, alterations or amendments be adopted, such resolution shall be attached to the petition filed with the Secretary of State under the provisions of Section 58‑15‑160.

HISTORY: 1962 Code Section 58‑668; 1952 Code Section 58‑668; 1942 Code Section 8189; 1932 Code Section 8189; Civ. C. ‘22 Section 4369; Civ. C. ‘12 Section 2883; Civ. C. ‘02 Section 1926; 1899 (23) 68; 1933 (38) 526.

Library References

Railroads 16, 19.

Westlaw Topic No. 320.

C.J.S. Railroads Sections 40 to 41, 53 to 54.

**SECTION 58‑15‑180.** Stockholders’ preemptive right.

 When any corporation organized under the provisions of this chapter or any corporation whose charter may be amended hereunder shall increase its capital stock its stockholders shall be given the preference of taking the increase in proportion to the amount of stock they may individually own.

HISTORY: 1962 Code Section 58‑669; 1952 Code Section 58‑669; 1942 Code Section 8190; 1932 Code Section 8190; Civ. C. ‘22 Section 4370; Civ. C. ‘12 Section 2884; Civ. C. ‘02 Section 1927; 1899 (23) 68.

Library References

Railroads 16.

Westlaw Topic No. 320.

C.J.S. Railroads Sections 40 to 41.

**SECTION 58‑15‑190.** Duration of charters.

 All charters granted under the provisions of this article shall continue in force perpetually, unless limited by the terms of the declaration or unless forfeited by failure to comply with the conditions of the charter or of this article.

HISTORY: 1962 Code Section 58‑670; 1952 Code Section 58‑670; 1942 Code Section 8191; 1932 Code Section 8191; Civ. C. ‘22 Section 4371; Civ. C. ‘12 Section 2885; Civ. C. ‘02 Section 1928; 1899 (23) 68.

Library References

Railroads 14.

Westlaw Topic No. 320.

C.J.S. Railroads Sections 33 to 36, 51 to 52.

**SECTION 58‑15‑200.** Fees shall be paid into State Treasury.

 All fees collected by the Secretary of State in accordance with the provisions of this article shall be paid into the State Treasury.

HISTORY: 1962 Code Section 58‑671; 1952 Code Section 58‑671; 1942 Code Section 8197; 1932 Code Section 8198; Civ. C. ‘22 Section 4378; Civ. C. ‘12 Section 2892; Civ. C. ‘02 Section 1934; 1899 (23) 68.

Library References

Railroads 14.

Westlaw Topic No. 320.

C.J.S. Railroads Sections 33 to 36, 51 to 52.

**SECTION 58‑15‑210.** Charters subject to repeal, alteration or amendment.

 Any such charter shall be subject to repeal, alteration or amendment by the General Assembly.

HISTORY: 1962 Code Section 58‑672; 1952 Code Section 58‑672; 1942 Code Section 8179; 1932 Code Section 8179; Civ. C. ‘22 Section 4359; Civ. C. ‘12 Section 2873; Civ. C. ‘02 Section 1917; 1899 (23) 64; 1921 (32) 146; 1927 (35) 30.

Library References

Railroads 19.

Westlaw Topic No. 320.

C.J.S. Railroads Sections 53 to 54.

**SECTION 58‑15‑220.** Reserved right of taxation.

 The State reserves the right to declare its policy in reference to the method of taxation to be applied to corporations chartered hereunder and to impose upon and collect such license or royalties upon corporations organized hereunder and the business authorized to be conducted as it may deem wise.

HISTORY: 1962 Code Section 58‑673; 1952 Code Section 58‑673; 1942 Code Section 8179; 1932 Code Section 8179; Civ. C. ‘22 Section 4359; Civ. C. ‘12 Section 2873; Civ. C. ‘02 Section 1917; 1899 (23) 64; 1921 (32) 146; 1927 (35) 30.

**SECTION 58‑15‑240.** Fictitious increase of stock or indebtedness shall be void.

 Neither stocks nor bonds shall be issued by any corporation organized under this chapter except for money paid, property delivered or labor done and all fictitious increase of stock or indebtedness shall be void.

HISTORY: 1962 Code Section 58‑682; 1952 Code Section 58‑682; 1942 Code Section 8195; 1932 Code Section 8195; Civ. C. ‘22 Section 4375; Civ. C. ‘12 Section 2889; Civ. C. ‘02 Section 1932; 1899 (23) 68.

Library References

Railroads 15, 145.

Westlaw Topic No. 320.

C.J.S. Railroads Sections 38 to 39, 466 to 468.

RESEARCH REFERENCES

Treatises and Practice Aids

Fletcher Cyclopedia Law of Private Corporations Section 2671, Consideration‑Constitutional and Statutory Provisions.

**SECTION 58‑15‑250.** Stockholder entitled to one vote for each share of stock held or owned by him.

 At all stockholders’ meetings each stockholder shall be entitled to one vote for each share of stock held or owned by him and shall be entitled to vote for directors, trustees or managers as provided in Section 33‑11‑200.

HISTORY: 1962 Code Section 58‑683; 1952 Code Section 58‑683; 1942 Code Section 8192; 1932 Code Section 8192; Civ. C. ‘22 Section 4372; Civ. C. ‘12 Section 2889; Civ. C. ‘02 Section 1932; 1899 (23) 68; 1981 Act No. 113, Section 1, eff June 16, 1981.

Library References

Railroads 16.

Westlaw Topic No. 320.

C.J.S. Railroads Sections 40 to 41.

NOTES OF DECISIONS

In general 1

1. In general

Stock voted by other than owner. There is no indication in the South Carolina Constitution and this section [Code 1962 Section 58‑683] that it is against the public policy of the State for stock in corporations to be held and voted by other than the true owners. Alderman v. Alderman (S.C. 1935) 178 S.C. 9, 181 S.E. 897, 105 A.L.R. 102.

**SECTION 58‑15‑260.** Stock transfer shall be valid, except between parties, only if entered on corporation’s books.

 No transfer of stock of a corporation organized under this chapter shall be valid, except as between the parties, until it shall have been regularly entered upon the books of the corporation.

HISTORY: 1962 Code Section 58‑684; 1952 Code Section 58‑684; 1942 Code Section 8193; 1932 Code Section 8193; Civ. C. ‘22 Section 4373; Civ. C. ‘12 Section 2887; Civ. C. ‘02 Section 1930; 1899 (23) 68.

Library References

Railroads 15, 16.

Westlaw Topic No. 320.

C.J.S. Railroads Sections 38 to 41.

**SECTION 58‑15‑270.** Stockholder’s right to inspect books.

 The books of any corporation organized under this chapter shall be at all times open to the inspection of any stockholder.

HISTORY: 1962 Code Section 58‑685; 1952 Code Section 58‑685; 1942 Code Section 8193; 1932 Code Section 8193; Civ. C. ‘22 Section 4373; Civ. C. ‘12 Section 2887; Civ. C. ‘02 Section 1930; 1899 (23) 68.

Library References

Railroads 16.

Westlaw Topic No. 320.

C.J.S. Railroads Sections 40 to 41.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Carriers Section 20, Original Incorporation.

ARTICLE 3

Provisions Affecting Canal Companies

**SECTION 58‑15‑410.** Powers of canal companies.

 When a canal company is organized under this chapter it has all the powers and privileges of electric light and power companies under the laws of this State and may own, build, maintain, purchase, lease, and operate the canal or canals specified in its charter and may build, maintain, purchase, lease, own, and operate all dams, locks, reservoirs, feeders, basins, wharves, appurtenances, ways, means, and appliances necessary to a canal. Any canal company may acquire by lease or purchase the lands necessary for the above purposes and when the canal is to be kept open for the use of the public for navigation, the company may condemn lands necessary to perform its purpose.

HISTORY: 1962 Code Section 58‑691; 1952 Code Section 58‑691; 1942 Code Section 8179; 1932 Code Section 8179; Civ. C. ‘22 Section 4359; Civ. C. ‘12 Section 2873; Civ. C. ‘02 Section 1917; 1899 (23) 64; 1921 (32) 146; 1927 (35) 30; 1987 Act No. 173 Section 46, eff nine months from approval by Governor (approved by Governor on June 30, 1987).

CROSS REFERENCES

Procedures for the condemnation of property, Eminent Domain Procedure Act, see Section 28‑2‑10 et seq.

Library References

Water Law 2930.

Westlaw Topic No. 405.

C.J.S. Canals Sections 3 to 5.

**SECTION 58‑15‑420.** Rights to compensation for damages not affected.

 Nothing herein contained shall be construed to prevent any owner of riparian rights or other landowner from recovering just compensation for any injury to or diminution of such rights sustained by reason of any corporation exercising any rights hereunder.

HISTORY: 1962 Code Section 58‑692; 1952 Code Section 58‑692; 1942 Code Section 8179; 1932 Code Section 8179; Civ. C. ‘22 Section 4359; Civ. C. ‘12 Section 2873; Civ. C. ‘02 Section 1917; 1899 (23) 64; 1921 (32) 146; 1927 (35) 30.

Library References

Water Law 2949.

Westlaw Topic No. 405.

C.J.S. Canals Sections 6, 22 to 37.

**SECTION 58‑15‑430.** Canal companies may mortgage property and franchises and issue bonds.

 Any canal company organized under this chapter may mortgage its property and franchises and issue bonds on such terms and conditions and for such purposes and uses of the corporation as it may from time to time deem necessary if the consent of the Commission to the issue of any bonds shall be obtained.

HISTORY: 1962 Code Section 58‑693; 1952 Code Section 58‑693; 1942 Code Section 8179; 1932 Code Section 8179; Civ. C. ‘22 Section 4359; Civ. C. ‘12 Section 2873; Civ. C. ‘02 Section 1917; 1899 (23) 64; 1921 (32) 146; 1927 (35) 30.

Library References

Water Law 2930.

Westlaw Topic No. 405.

C.J.S. Canals Sections 3 to 5.

**SECTION 58‑15‑440.** State may acquire property of canal companies.

 The State may acquire title to any property of any canal company chartered hereunder upon paying just compensation therefor. If the parties cannot agree upon just compensation it shall be determined by any court of competent jurisdiction.

HISTORY: 1962 Code Section 58‑694; 1952 Code Section 58‑694; 1942 Code Section 8179; 1932 Code Section 8179; Civ. C. ‘22 Section 4359; Civ. C. ‘12 Section 2873; Civ. C. ‘02 Section 1917; 1899 (23) 64; 1921 (32) 146; 1927 (35) 30.

Library References

Eminent Domain 23.

Westlaw Topic No. 148.

C.J.S. Eminent Domain Section 37.

**SECTION 58‑15‑450.** Transfer or other disposition of canal rights of State.

 No rights of the State in canals shall be transferred, leased, conveyed away or otherwise used or burdened except by act of the General Assembly.

HISTORY: 1962 Code Section 58‑695; 1952 Code Section 58‑695; 1942 Code Section 8179; 1932 Code Section 8179; Civ. C. ‘22 Section 4359; Civ. C. ‘12 Section 2873; Civ. C. ‘02 Section 1917; 1899 (23) 64; 1921 (32) 146; 1927 (35) 30.

Library References

Water Law 2957.

Westlaw Topic No. 405.

C.J.S. Canals Sections 59 to 62.

ARTICLE 5

Provisions Affecting Steamboat Companies

**SECTION 58‑15‑610.** Steamboat companies may exact tolls for use of wharves or landings.

 Any corporation organized under the provisions of this chapter or under Chapter 7 of Title 33 engaged in the transportation of freight or passengers, by means of steamboat or otherwise, upon any of the navigable waters of this State, may exact reasonable tolls or fees for the use of wharves or landings located upon lands that are the property of the corporation or that are under lease or under the control of such corporation.

HISTORY: 1962 Code Section 58‑701; 1952 Code Section 58‑701; 1942 Code Sections 7753, 8196; 1932 Code Sections 7753, 8196; Civ. C. ‘22 Sections 4327, 4376; Civ. C. ‘12 Sections 2858, 2890; Civ. C. ‘02 Sections 1900, 1933; 1896 (22) 99; 1899 (23) 68.

CROSS REFERENCES

Tax or toll for use of wharf in or over the waters of any navigable stream, see SC Const. Art. XIV, Section 4.

Library References

Ferries 22.

Wharves 16.

Westlaw Topic Nos. 172, 408.

C.J.S. Wharves Sections 3, 6, 22 to 25.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Shipping Law Section 42, Tolls for Use of Steamboat Company Landings.

S.C. Jur. Shipping Law Section 93, Tolls Allowed for Use of Docks.

S.C. Jur. Shipping Law Section 94, License to Transact Marine Insurance.

Forms

Am. Jur. Pl. & Pr. Forms Wharves Section 1 , Introductory Comments.

ARTICLE 7

Provisions Affecting both Railroad and Steamboat Companies

**SECTION 58‑15‑710.** Bicycles and baby carriages deemed baggage.

 Bicycles and baby carriages shall be deemed baggage for the purpose of transportation by steam railroads and steam ferries. Steam railroads and steam ferries shall carry bicycles and baby carriages under the same rules and subject to the same liabilities as govern trunks and other separate baggage of a passenger. No person shall be required to crate, cover, lock, box or otherwise protect bicycles or baby carriages as baggage under the provisions of this section. But such steam railroads and steam ferries shall not be required to carry more than one bicycle or baby carriage for any one person.

HISTORY: 1962 Code Section 58‑712; 1952 Code Section 58‑712; 1942 Code Section 8412; 1932 Code Section 8412; Civ. C. ‘22 Section 4960; Civ. C. ‘12 Section 3265; Civ. C. ‘02 Section 2167; 1897 (22) 427; 1904 (24) 417.

Library References

Carriers 387.

Westlaw Topic No. 70.

C.J.S. Carriers Sections 608 to 610, 616.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Shipping Law Section 43, Bicycles and Baby Carriages Deemed Baggage.

**SECTION 58‑15‑720.** Toilet facilities.

 All first class coaches and cabins shall be provided with a toilet compartment at each end of such coaches or cabins on one of which compartments shall be placed the word “women” and on the other the word “men.” The toilet compartment for women shall be provided with a hopper seat and, in addition, either with seats for at least two persons or a lavatory, as the carrier may elect.

HISTORY: 1962 Code Section 58‑713; 1952 Code Section 58‑713; 1942 Code Section 8396; 1932 Code Section 8396; Civ. C. ‘22 Section 4944; Civ. C. ‘12 Section 3249; Civ. C. ‘02 Section 2158; 1898 (22) 777; 1900 (23) 457; 1904 (24) 438; 1912 (27) 563; 1937 (40) 154.

Library References

Railroads 226.

Westlaw Topic No. 320.

C.J.S. Railroads Sections 744 to 745, 747 to 751, 758, 760, 765 to 766.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Shipping Law Section 44, Facilities for First Class Coaches and Cabins.

ARTICLE 9

Provisions Affecting Railroads, Electric Railroads and the Like

**SECTION 58‑15‑810.** Protection of private crossings over railroads.

 Private roads crossing railroads shall be protected by the railroads as the law requires them to protect public highways.

HISTORY: 1962 Code Section 58‑732; 1952 Code Section 58‑732; 1942 Code Section 5848; 1932 Code Section 5848; Civ. C. ‘22 Section 2940; Civ. C. ‘12 Section 1964; 1902 (23) 1015.

CROSS REFERENCES

Obstruction of roads by railroad equipment, see Section 57‑7‑240.

Library References

Railroads 247.

Westlaw Topic No. 320.

**SECTION 58‑15‑820.** Wilful obstruction of railroad or electric railway.

 A person who wilfully does or causes an action, or aids or assists an action with intent to obstruct any engine, carriage, or car passing upon a railroad or with intent to endanger the safety of persons within these vehicles is guilty of a felony and, upon conviction, must be imprisoned not more than five years or fined not more than five hundred dollars. For each offense he shall forfeit to the corporation treble the amount of damages proved to have been sustained, to be recovered in an action in a court of competent jurisdiction.

HISTORY: 1962 Code Section 58‑733; 1952 Code Section 58‑733; 1942 Code Section 1199‑2; 1932 Code Section 1708; Cr. C. ‘22 Section 654; Cr. C. ‘12 Section 679; Cr. C. ‘02 Section 190; G. S. 1521; R. S. 179; 1906 (25) 46; 1993 Act No. 184, Section 85, eff January 1, 1994.

Library References

Railroads 255(5).

Westlaw Topic No. 320.

C.J.S. Railroads Sections 1278 to 1279.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Carriers Section 38, Miscellaneous Safety Issues.

**SECTION 58‑15‑830.** Placing explosives on railroad rails.

 It shall be unlawful for any unauthorized person to place any explosive substance whatever upon the rail of any railroad, whether operated by steam, electricity or otherwise, in this State and any person who violates the provisions of this section or aids or assists therein shall be guilty of a misdemeanor and, upon conviction thereof, 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 court or magistrate.

HISTORY: 1962 Code Section 58‑734; 1952 Code Section 58‑734; 1942 Code Section 1197; 1932 Code Sections 1197, 1711; Cr. C. ‘22 Sections 86, 656; Cr. C. ‘12 Sections 247, 681; 1905 (24) 904.

Library References

Explosives 5.

Railroads 255(5).

Westlaw Topic Nos. 164, 320.

C.J.S. Explosives Sections 95 to 118.

C.J.S. Railroads Sections 1278 to 1279.

**SECTION 58‑15‑840.** Taking or removing brasses, bearings, waste or packing from railroad cars.

 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 out any journal box or boxes of any locomotive, engine, tender, carriage, coach, car, caboose or truck used or operated upon any railroad, whether the same be operated by steam or electricity, shall be guilty of a misdemeanor and, upon conviction thereof, 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.

HISTORY: 1962 Code Section 58‑735; 1952 Code Section 58‑735; 1942 Code Section 1153; 1932 Code Section 1153; Cr. C. ‘22 Section 47; Cr. C. ‘12 Section 196; 1905 (24) 965; 1906 (25) 6.

Library References

Railroads 255(1).

Westlaw Topic No. 320.

C.J.S. Railroads Sections 805 to 806, 1280.

**SECTION 58‑15‑850.** Breaking and entering or shooting into cars.

 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.

HISTORY: 1962 Code Section 58‑736; 1952 Code Section 58‑736; 1942 Code Section 1199; 1932 Code Section 1199; Cr. C. ‘22 Section 88; Cr. C. ‘12 Section 249; Cr. C. ‘02 Section 192; G. S. 1522; R. S. 181; 1882 (18) 833; 1906 (25) 47.

CROSS REFERENCES

Shooting or throwing at trains being a felony, see Section 58‑17‑4100.

Library References

Railroads 255(1), 255(6).

Westlaw Topic No. 320.

C.J.S. Railroads Sections 805 to 806, 1280.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Carriers Section 38, Miscellaneous Safety Issues.

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One offense charged. An indictment under this section [Code 1962 Section 58‑736] which charges defendant, substantially in the language of the statute, with “breaking into a railroad car in the nighttime, with the intent to commit the crime of larceny,” and in addition thereto, charges that defendant committed larceny, does not charge two distinct offenses, and hence it is not error to refuse to require the State to elect on which charge it will try defendant. State v. Crawford (S.C. 1893) 38 S.C. 330, 17 S.E. 36. Indictment And Information 132(5)

**SECTION 58‑15‑860.** Injuring or destroying electric signals or other structures or mechanisms.

 Whoever unlawfully and intentionally injures, molests or destroys any of the electric signals of a railroad or electric railway corporation or any of the lines, wires, posts, or any other structure or mechanism used in connection with such signals on any railroad or electric railway or destroys or in any way interferes with the proper working of such signals shall be guilty of a misdemeanor and, upon conviction, shall be punished by a fine not exceeding five hundred dollars or by imprisonment not exceeding two years, or both.

HISTORY: 1962 Code Section 58‑737; 1952 Code Section 58‑737; 1942 Code Section 1200; 1932 Code Section 1200; Cr. C. ‘22 Section 89; Cr. C. ‘12 Section 250; Cr. C. ‘02 Section 193; G. S. 1523; R. S. 182; 1882 (18) 834; 1906 (25) 47.

Library References

Railroads 255(1).

Westlaw Topic No. 320.

C.J.S. Railroads Sections 805 to 806, 1280.

**SECTION 58‑15‑870.** Injury to railroad or electric railway; penalties.

 (A) It is unlawful for a person to wilfully and maliciously cut, mutilate, deface, or otherwise injure a railroad or electric railway, including anything appertaining to the railroad or electric railway or any material or instrument for the construction of the railroad or electric railway.

 (B) A person who violates this section is guilty of a misdemeanor, and, upon conviction, must be fined not less than one thousand dollars, or imprisoned not more than five years, or both.

 (C) A person who violates this section resulting in the endangerment of another person’s life or great bodily injury to another person is guilty of a felony, and, upon conviction, must be imprisoned not more than twenty years. “Great bodily injury” means bodily injury which creates a substantial risk of death or which causes serious, permanent disfigurement, or protracted loss or impairment of the function of any bodily member or organ.

 (D) A person who violates this section resulting in the death of another person is guilty of a felony, and, upon conviction, must be imprisoned not more than thirty years.

 (E) In addition to the penalties provided by subsections (B), (C), and (D), except in the case of an electric railway, the person shall forfeit to the railroad company for each offense treble the damages proved to have been sustained to be recovered in a tort action in the railroad company’s name.

HISTORY: 1962 Code Section 58‑738; 1952 Code Section 58‑738; 1942 Code Sections 1198, 8451; 1932 Code Sections 1198, 8468; Civ. C. ‘22 Section 5004; Cr. C. ‘22 Section 87; Civ. C. ‘12 Section 3306; Cr. C. ‘12 Section 248; Civ. C. ‘02 Section 2200; Cr. C. ‘02 Section 191; G. S. 1518, 1519; R. S. 180, 1733; 1881 (17) 832; 1906 (25) 47; 2014 Act No. 189 (S.560), Section 1, eff June 2, 2014.

Library References

Railroads 255(5).

Westlaw Topic No. 320.

C.J.S. Railroads Sections 1278 to 1279.

**SECTION 58‑15‑875.** Unlawful to purchase, sell, or transport railroad track materials for recycling; method of payment; penalties.

 (A) It is unlawful to purchase, sell, or transport railroad track materials for the purpose of recycling.

 (B) This section does not apply to:

 (1) a railroad company or a railroad company’s authorized agent;

 (2) a business that owns a railroad spur;

 (3) an independent railroad contractor; or

 (4) a person or business with a letter of authorization from a special agent of a railroad company class 1 or shortline. An entity removing or authorizing the removal of railroad track materials from private property must obtain a letter of authorization from the railroad company servicing the property.

 (C) Payment for railroad track materials only must be made to the railroad company or the company’s principals, the business that owns the railroad spur or the businesses’ principals, the independent railroad contractor or the contractor’s principals, or the person or business authorized by the railroad company or the businesses’ principals.

 (D) A person who violates this section:

 (1) for a first offense, is guilty of a misdemeanor, and, upon conviction, must be fined not less than two hundred and fifty dollars, or imprisoned not more than one year, or both;

 (2) for a second offense, is guilty of a misdemeanor, and, upon conviction, must be fined not less than five hundred dollars, or imprisoned not more than three years, or both; and

 (3) for a third or subsequent offense, is guilty of a felony, and, upon conviction, must be fined not less than one thousand dollars, or imprisoned not more than five years, or both.

HISTORY: 2014 Act No. 189 (S.560), Section 2, eff June 2, 2014.

Library References

Railroads 255(1).

Westlaw Topic No. 320.

C.J.S. Railroads Sections 805 to 806, 1280.

**SECTION 58‑15‑880.** Riotous or disorderly conduct on trains; ejection.

 Anyone who shall in any way be guilty of riotous or disorderly conduct or who shall conduct himself in any way to the annoyance of the traveling public on a train, coach or car of any common carrier shall be guilty of a misdemeanor and, upon conviction, shall be punished by a fine not exceeding one hundred dollars or imprisonment for not more than thirty days. Anyone conducting himself in the manner herein described shall be subject to be ejected from such train, coach or car. Anyone so ejected shall have no cause of action for such ejectment.

HISTORY: 1962 Code Section 58‑739; 1952 Code Section 58‑739; 1942 Code Section 1705; 1932 Code Section 1705; Cr. C. ‘22 Section 651; Cr. C. ‘12 Section 676; 1910 (26) 702.

Library References

Carriers 350.

Disorderly Conduct 138.

Westlaw Topic Nos. 70, 129.

C.J.S. Carriers Sections 601 to 604, 606 to 607.

C.J.S. Disorderly Conduct Sections 1 to 4.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Carriers Section 38, Miscellaneous Safety Issues.

S.C. Jur. Disorderly Conduct Section 6, Boisterous Conduct.

S.C. Jur. Disorderly Conduct Section 10, Particular Places.

**SECTION 58‑15‑890.** Use in advertisement of cross usually used as crossing sign by railroads.

 It shall be unlawful for any person to use for advertising purposes the kind of a cross usually used as a crossing sign by steam and electric railroads. Any violation of the provisions of this section shall be punishable by a fine of not more than one hundred dollars or imprisonment for not more than thirty days.

HISTORY: 1962 Code Section 58‑740; 1952 Code Section 58‑740; 1942 Code Section 1310; 1932 Code Section 1319; Cr. C. ‘22 Section 211; 1917 (30) 161.

CROSS REFERENCES

Display and removal of unauthorized signs imitating, blocking, etc., any railroad sign or signal, see Section 56‑5‑1020.

Library References

Antitrust and Trade Regulation 1013.

Westlaw Topic No. 29T.

C.J.S. Monopolies Sections 188 to 189, 191 to 194, 257 to 258.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Carriers Section 36, Regulation of Crossings.

**SECTION 58‑15‑900.** Making, selling or purchasing duplicate railroad switch keys.

 It shall be unlawful for any person to make, buy, sell or give away to any other person any duplicate key to any lock belonging to or in use by any railroad company in this State on its switches or switch tracks except upon the written order of that officer of such railroad company whose duty it is to distribute and issue switch lock keys to the employees of such railroad company. Any person violating any of the provisions of this section shall be guilty of a misdemeanor and for each and every offense shall be subject to a fine not exceeding one hundred dollars or imprisonment not exceeding thirty days.

HISTORY: 1962 Code Section 58‑742; 1952 Code Section 58‑742; 1942 Code Section 1710; 1932 Code Section 1710; 1924 (33) 1185.

Library References

Railroads 255(1).

Westlaw Topic No. 320.

C.J.S. Railroads Sections 805 to 806, 1280.

**SECTION 58‑15‑910.** Bell and whistle shall be installed on locomotives and sounded at crossings.

 A bell of at least thirty pounds’ weight and a steam or air whistle shall be placed on each locomotive engine or interurban car and such bell shall be rung or such whistle sounded by the engineer, fireman or motorman at the distance of at least five hundred yards from the place where the railroad crosses any public highway, street or traveled place and be kept ringing or whistling until the engine or interurban car has crossed such highway, street or traveled place. If such engine or car shall be at a standstill within less distance than one hundred rods of such crossing such bell shall be rung or such whistle sounded for at least thirty seconds before such engine or interurban car shall be moved and shall be kept ringing or sounding until such engine or interurban car shall have crossed such public highway or street or traveled place. A gong of not less than ten inches in diameter may be placed upon interurban cars in lieu of a bell as herein required and shall be sounded as herein provided.

HISTORY: 1962 Code Section 58‑743; 1952 Code Section 58‑743; 1942 Code Section 8355; 1932 Code Section 8355; Civ. C. ‘22 Section 4903; Civ. C. ‘12 Section 3222; Civ. C. ‘02 Section 2132; G. S. 1483; R. S. 1685; 1881 (17) 825; 1919 (31) 102.

CROSS REFERENCES

Liability of railroad to penalty and for damages where collision caused by neglect to give crossing signals, see Section 58‑17‑1440.

Railroad companies maintaining standard signs at all grade crossings, see Section 56‑5‑1010.

Library References

Railroads 233, 312.2.

Westlaw Topic No. 320.

C.J.S. Railroads Sections 782 to 783, 792, 984, 986.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Appeal and Error Section 80, Directed Verdict Motions.

S.C. Jur. Carriers Section 37, Crossing Injuries.

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Cited in Gleaton v Southern Ry. Co., 208 SC 507, 38 SE2d 710 (1946). Carter v Atlantic Coast Line R. Co., 192 SC 441, 7 SE2d 163 (1940). Spiers v Atlantic Coast Line R. Co., 174 SC 508, 178 SE 136 (1935). Myers v Atlantic Coast Line R. Co., 172 SC 236, 173 SE 812 (1934). Key v Carolina & N. W. Ry. Co., 165 SC 43, 162 SE 582 (1931). Stabler v Southern Ry. Co., 160 SC 191, 158 SE 267 (1931). Snipes v Davis, 143 SC 300, 141 SE 561 (1927). McBride v Atlantic Coast Line R. Co., 140 SC 260, 138 SE 803 (1927). Neely v Carolina & N. W. R. Co., 123 SC 449, 117 SE 55 (1923). Richardson v Northwestern R. Co., 124 SC 314, 117 SE 510 (1923). Drennan v Southern Ry. Co., 91 SC 507, 75 SE 45 (1912). Spears v Atlantic Coast Line R. Co., 92 SC 297, 75 SE 498 (1912). Gosa v Southern Ry. Co., 67 SC 347, 45 SE 810 (1903). Wilson v Southern Ry. Co., 64 SC 162, 36 SE 701, 41 SE 971 (1902). Sims v Southern Ry. Co., 59 SC 246, 37 SE 836 (1901). Wragge v South Carolina & G. R. Co., 47 SC 105, 25 SE 76 (1896). Strother v South Carolina & G. R. Co., 47 SC 375, 25 SE 272 (1896). Kinard v Columbia, N. & L. R. Co., 39 SC 514, 18 SE 119 (1893). Walker v Southern Ry. Co., 77 SC 161, 57 SE 764 (1907). Forrest v Southern R. Co., 20 F Supp 851 (1937). Swindler v Peay, 227 SC 157, 87 SE2d 296 (1955). Byrd v Atlantic Coast Line R.R., 249 SC 310, 154 SE2d 1 (1967). Seaboard Air Line R.R. v Coastal Distrib. Co., 273 F Supp 340 (D SC 1967). Ard v Seaboard Coast Line R.R., 487 F2d 456 (4th Cir 1973).

Purpose. This railroad statute was enacted solely to protect the traveler using, or about to use, a crossing. Lawrence v. Southern Ry. Co., 169 SC 1, 167 SE 839 (1933). Truett v Atlantic Coast Line R. Co., 206 SC 144, 33 SE2d 396 (1945). Seaboard Coast Line R.R. v Owen Steel Co., 348 F Supp 1363 (D SC 1972).

This statute by its terms fixes the duty of the railraod company at a public crossing, and imposes upon it a degree of liability upon its failure to obey the legislative mandate differing from that which would ordinarily exist in the circumstances. Lawrence v Southern Ry. Co., 169 SC 1, 167 SE 839 (1933). Seaboard Coast Line R.R. v Owen Steel Co., 348 F Supp 1363 (D SC 1972).

Applied in Bishop v Southern Ry. Co., 63 SC 532, 41 SE 808 (1902). Nohrden v Northeastern R. Co., 59 SC 87, 37 SE 228 (1900). Smith v Southern Ry. Co., 53 SC 121, 30 SE 697 (1898). Neely v Charlotte, C. & A. R. Co., 33 SC 136, 11 SE 636 (1890). Petrie v Columbia & G. R. Co., 29 SC 303, 7 SE 515 (1888). Taylor v Atlantic Coast Line R. Co., 217 SC 435, 60 SE2d 889 (1950). Rock v Atlantic Coast Line R. Co., 222 SC 362, 72 SE2d 900 (1952). Jones v Southern Ry. Co., 238 SC 27, 118 SE2d 880 (1961).

Business corporation owning railroad is subject to general laws relating to highway crossings and under same duty as railroad company to observe due care. Engelberg v. J.F. Prettyman & Sons (S.C. 1930) 159 S.C. 91, 156 S.E. 173. Railroads 256

This section [Code 1962 Section 58‑743] would not be applicable to electric railroads. Campbell v. Greenville, S. & A. Ry. Co. (S.C. 1914) 97 S.C. 383, 81 S.E. 676.

An engineer is not required to give statutory signals at crossings to warn a dog hunting near the track, but must take precautions to avoid injuring the dog, if seen on the track, and not in the possession of its faculties. Fowles v. Seaboard Air Line Ry. (S.C. 1906) 73 S.C. 306, 53 S.E. 534.

2. Construction with other laws

This section [Code 1962 Section 58‑743] and Code 1962 Section 58‑1004 are independent. This section [Code 1962 Section 58‑743] and Code 1962 Section 58‑ 1004 are commonly thought of together as the crossing or signal statutes. However, they are entirely independent of each other. King v. Southern Ry. Co. (S.C. 1967) 249 S.C. 236, 153 S.E.2d 690.

This section [Code 1962 Section 58‑743] is a safety statute which may be applicable in a common‑law action, while Code 1962 Section 58‑1004 creates a statutory cause of action, unfettered by the defense of contributory negligence. King v. Southern Ry. Co. (S.C. 1967) 249 S.C. 236, 153 S.E.2d 690.

3. Constitutional issues

Constitutionality. Kaminitsky v Northeastern R. Co., 25 SC 53 (1886). Cole v Blue Ridge Ry., 75 SC 156, 55 SE 126 (1906). Clifford v Southern Ry. Co., 87 SC 324, 69 SE 513 (1910). Ward v Richmond & D. R. Co., 43 F 422 (1890). Atlantic Coast Line R. Co. v Ford, 287 US 502, 53 S Ct 249, 77 L Ed 457 (1933).

The constitutionality of this section [Code 1962 Section 58‑743] was affirmed in Driggers v. Southern Ry. Co. (S.C. 1933) 169 S.C. 157, 168 S.E. 185.

This section [Code 1962 Section 58‑743] does not violate the due process clause, equal protection clause or the interstate commerce clause of the Federal Constitution nor the due process clause of the State Constitution, and is valid exercise of the State’s police power. Ford v. Atlantic Coast Line R. Co. (S.C. 1932) 169 S.C. 41, 168 S.E. 143, affirmed 53 S.Ct. 249, 287 U.S. 502, 77 L.Ed. 457.

4. Common‑law duty

Common‑law duty of railroad company independent of this section [Code 1962 Section 58‑743]. ‑ Independently of this section [Code 1962 Section 58‑743] it is common‑law duty of railroad company to give such signals as may be reasonably sufficient in view of situation and surroundings to put individuals using highway on their guard. Doremus v Atlantic Coast Line Railroad Company, 242 SC 123, 130 SE2d 370 (1963). King v Southern Ry., 249 SC 236, 153 SE2d 690 (1967).

It is the common‑law duty of a railroad to give such signals and to take such actions as are reasonably sufficient to protect travelers using a crossing. Graham v. Seaboard Air Line R. Co. (D.C.S.C. 1966) 250 F.Supp. 566.

Though a path across railroad tracks at a depot used by the public for several years in going to and from the depot was not such a highway, street, or traveled place as imposed on the railroad the duty of giving signals by bell or whistle, under this section [Code 1962 Section 58‑743], where it existed by its leave and license, the common‑law duty of exercising due care to give reasonable signal of the train’s approach was imposed on the company. Chisolm v. Seaboard Air Line Ry. (S.C. 1922) 121 S.C. 394, 114 S.E. 500, 35 A.L.R. 637. Railroads 312.5(2)

5. Restricted to crossings

Train standing across highway is within section. Littlejohn v Richmond & D. R. Co., 45 SC 181, 22 SE 789 (1895). Littlejohn v Richmond & D. R. Co., 49 SC 12, 26 SE 967 (1897).

The statute only applies to “traveled places.” Hale v Columbia & G. R. Co., 34 SC 292, 13 SE 537 (1891). Neely v Charlotte, C. & A. R. Co., 33 SC 136, 11 SE 636 (1890).

This section [Code 1962 Section 58‑743] was intended for the protection of travelers at crossings and does not apply where a person gets injured or killed on the track at any other place. Ellis v. Southern Ry. Co., 1908, 163 F. 686, 90 C.C.A. 270.

The first part of this statute clearly applies to moving trains, and does not apply where boy eight years old leaves highway, and, after being warned, persists in crossing track on shanty car some distance from highway. Hasting v. Southern Ry. Co., 1906, 143 F. 260, 74 C.C.A. 398, 74 C.C.A. 775, certiorari denied 26 S.Ct. 762, 201 U.S. 649, 50 L.Ed. 905.

Where truck struck twenty‑sixth car moving over a crossing, this section [Code 1962 Section 58‑743] was held inapplicable because of the distance that the engine had proceeded beyond the crossing before the collision had occurred. Jones v. Southern Ry. Co. (S.C. 1961) 238 S.C. 27, 118 S.E.2d 880.

This statute applies to train of cars across highway, the engine of which has already crossed not to return. Brown v. Southern Ry. (S.C. 1903) 65 S.C. 260, 43 S.E. 794.

6. Traveled place

A “traveled place” is a place where persons are both accustomed to and have a right to travel. Hale v Columbia & G. R. Co., 34 SC 292, 13 SE 537 (1891). Barber v Richmond & D. R. Co., 34 SC 444, 13 SE 630 (1891). Hankinson v Charlotte, C. & A. R. Co., 41 SC 1, 19 SE 206 (1894). Risinger v Southern Ry. Co., 59 SC 429, 38 SE 1 (1901). Strother v South Carolina & G. R. Co., 47 SC 375, 25 SE 272 (1896).

A “traveled place,” within this section [Code 1962 Section 58‑743] means a place traveled by legal right; but, independent of the statute, if a train is operated backward on a dark night, at a place accustomed to be used for a walkway, with the knowledge of the operators, then they must use due care to prevent injuries. Carter v. Seaboard Air Line Ry. Co. (S.C. 1920) 114 S.C. 517, 104 S.E. 186. Railroads 370

The term “traveled place,” in this section [Code 1962 Section 58‑743] means a place where the public have, in some manner, acquired the legal right to travel; that is, a right which may be legally enforced, and cannot legally be denied, or interfered with. Sanders v. Southern Ry. Co., Carolina Division (S.C. 1913) 97 S.C. 423, 81 S.E. 786.

What is a “traveled place” is question for jury. Ruddell v. Seaboard Air Line Ry. (S.C. 1906) 75 S.C. 290, 55 S.E. 528.

Where the right of the public to use a road has been established by proof of twenty years’ use, which road crosses a railway track, it is a “traveled place,” within this section [Code 1962 Section 58‑743]. Kirby v. Southern Ry. (S.C. 1902) 63 S.C. 494, 41 S.E. 765. Railroads 312.5(2)

An open space, which people have traversed for years in going from the streets of a town to a depot, is a “traveled place,” within this section [Code 1962 $ 58‑743]. Risinger v. Southern Ry. Co. (S.C. 1901) 59 S.C. 429, 38 S.E. 1. Railroads 370

Track held not to be a “traveled place.” Smalley v. Southern Ry. Co. (S.C. 1900) 57 S.C. 243, 35 S.E. 489.

“A traveled place,” within this section [Code 1962 Section 58‑743] is not a mere crossing by sufferance, but one of right, acquired, if not by express grant, by adverse user; and the mere fact that the company has left the crossing open when cars have remained there any length of time is not, by itself, proof of such acquisition. Hankinson v. Charlotte, C. & A.R. Co. (S.C. 1894) 41 S.C. 1, 19 S.E. 206. Railroads 312.5(2)

7. Applicability to Federal Government

All general laws of the State, whether common or statutory, relating to highway crossings by railroad corporations, are applicable to the United States in an action under the Tort Claims Act, charging the United States with negligent or reckless operation of a locomotive resulting in a crossing collision. Curry v. U.S., 1954, 129 F.Supp. 38.

Section applicable to Federal Government. Where the United States operates in South Carolina an electric locomotive for its own use, it must comply with the South Carolina statutes in regard to signals given at crossings. Carroll v. U.S., 1949, 87 F.Supp. 721.

8. Sufficiency of compliance

Continuous ringing or blowing. Drawdy v Atlantic Coast Line R. Co., 75 SC 308, 55 SE 444 (1906). Drawdy v Atlantic Coast Line R. Co., 78 SC 374, 58 SE 980 (1907). Dyson v Southern Ry. Co., 83 SC 354, 65 SE 344 (1909).

Starting car standing across public way without giving statutory signal. Burns v Southern Ry. Co., 61 SC 404, 39 SE 567 (1901). Littlejohn v Richmond & D. R. Co., 49 SC 12, 26 SE 967 (1897). Littlejohn v Richmond & D. R. Co., 45 SC 181, 22 SE 789 (1895). Weaver v Southern Ry. Co., 76 SC 49, 56 SE 657 (1907).

Duration of signal. This section [Code 1962 Section 58‑743] requires the bell to be rung or the whistle to be blown until the engine has crossed the highway. Curry v. U.S., 1954, 129 F.Supp. 38.

Both ringing of bell and blowing of whistle not required, either being sufficient signal of approach of train, hence, ordinance forbidding blowing of locomotive whistle within corporate limits was valid and not conflicting with this statute. McAbee v. Southern Ry. Co. (S.C. 1932) 166 S.C. 166, 164 S.E. 444. Railroads 313

Conditions making hearing improbable. Giving of statutory signal under conditions making hearing thereof improbable is insufficient. Glenn v. Southern Ry. Co. (S.C. 1928) 145 S.C. 41, 142 S.E. 801. Railroads 368

Lowering of gates does not take place of signal required by statute before train is started. Weaver v. Southern Ry. Co. (S.C. 1907) 76 S.C. 49, 56 S.E. 657, 121 Am.St.Rep. 934.

9. Negligence—In general

Failure to give the statutory signals is negligence per se. Bowen v Southern Ry. Co., 58 SC 222, 36 SE 590 (1900). Hankinson v Charlotte, C. & A. R. Co., 41 SC 1, 19 SE 206 (1894). Strother v South Carolina & G. R. Co., 47 SC 375, 25 SE 272 (1896). Smith v Southern Ry. Co., 53 SC 121, 30 SE 697 (1898). Petrie v Columbia & G. R. Co., 29 SC 303, 7 SE 515 (1888). White v Augusta & K. R. Co., 30 SC 218, 9 SE 96 (1889). Turbyfill v Atlantic & C. Air Line Ry., 83 SC 325, 65 SE 278 (1909). Timmons v Southern Ry. Co., 138 SC 82, 136 SE 27 (1926). Ford v Atlantic Coast Line R. Co., 169 SC 41, 168 SE 143 (1932), affirmed in 287 US 502, 53 S Ct 249, 77 L Ed 457 (1933). Limehouse v Southern Ry. Co., 216 SC 424, 58 SE2d 685 (1950). Seaboard Coast Line R.R. v Owen Steel Co., 348 F Supp 1363 (D SC 1972).

Failure to give proper signals at crossings may be shown to establish negligence. Davis v Southern Ry. Co., 68 SC 446, 47 SE 723 (1904). Davis v Atlanta & C. Air Line Ry. Co., 63 SC 370, 41 SE 468 (1902). Davis v Atlanta & C. Air Line Ry. Co., 63 SC 577, 41 SE 892 (1902). Boggero v Southern Ry. Co., 64 SC 104, 41 SE 819 (1902). Bamberg v Atlantic Coast Line R. Co., 72 SC 389, 51 SE 988 (1905).

What constitutes negligence. Mere failure to slacken speed of train when approaching a crossing is not, in the absence of special circumstances, negligence. Zeigler v Northeastern R. Co., 7 SC 402 (1876). Fletcher v South Carolina & G. E. R. Co., 57 SC 205, 35 SE 513 (1900).

The violation of a valid city ordinance regulating the speed of trains within a municipality, and the violation of the statutory law requiring the giving of crossing signals, resulting in injury to another, is negligence as a matter of law. Graham v. Seaboard Air Line R. Co. (D.C.S.C. 1966) 250 F.Supp. 566.

But is evidence thereof. Failure to give statutory crossing signals is evidence of negligence, willfulness and recklessness. Curry v. U.S., 1954, 129 F.Supp. 38.

Where the whistle or diesel horn admittedly was not blown until an engine pushing a line of cars crossed the highway, and the court found the bell was not rung at all, the defendant was held to have violated this section [Code 1962 Section 58‑743] and to have been guilty of willfulness, wantonness and recklessness. Curry v. U.S., 1954, 129 F.Supp. 38.

This section [Code 1962 Section 58‑743] was intended for the protection of persons using the highway or public place, and did not give a right of action to plaintiff working in a field nearby the railroad track, and about two hundred yards from the crossing, when injured by fright of his horse by the passing of a train which had failed to give the crossing signal. Hutto v. Southern Ry. Co. (S.C. 1915) 100 S.C. 181, 84 S.E. 719.

Failure to give signals required is negligence per se in action at common law for injury near crossing. Clifford v. Southern Ry. Co. (S.C. 1910) 87 S.C. 324, 69 S.E. 513.

Although the crossing be such as not to come under the statute, the failure to give the signals may be negligence. Fletcher v. South Carolina & G.E.R. Co. (S.C. 1900) 57 S.C. 205, 35 S.E. 513.

10. —— Proximate cause, negligence

Failure to give signals held not proximate cause of accident. The sounding of signals by a locomotive when only five hundred yards away from a crossing and coming at eighty miles per hour would have told the driver of a car stalled at the crossing nothing more than the horror he already knew. At that moment the shriek of the whistle would have been no more than a perfunctory and sadistic warning of imminent death. The tracks themselves had been the initial admonishment of peril; the oncoming locomotive confirmed it. Omission of the signal therefore played no part in the tragedy. Isgett v. Atlantic Coast Line R. Co. (C.A.4 (S.C.) 1964) 328 F.2d 364.

Any contributory negligence of the railroad is sufficient, regardless of degree or extent, if it contributes to injury as a proximate cause thereof, without which it would not have occurred. Seaboard Coast Line R. Co. v. Owen Steel Co. (D.C.S.C. 1972) 348 F.Supp. 1363.

11. —— Contributory negligence

Contributory negligence precluding recovery. Reynolds v Atlantic Coast Line R. Co., 44 F2d 338 (1930). Byrd v Atlantic Coast Line R. Co., 2 F2d 672 (1924). Southern Ry. Co. v Priester, 289 F 945 (1923).

Where there was evidence from which the trier of facts could have concluded that the defendant railroad failed in its duty to give warning, by bell or whistle, of the train’s approach at least five hundred yards before it reached the crossing, and this failure was a proximate contributing cause of the injury, the plaintiff would not be barred from recovery unless his own conduct amounted to gross or willful negligence contributing to the injuries. Westley v. Southern Ry. Co. (C.A.4 (S.C.) 1957) 250 F.2d 188, rehearing denied 252 F.2d 79.

This section [Code 1962 Section 58‑743] allows the railroad to escape liability only upon proving that the traveler was guilty of gross contributory negligence. Seaboard Coast Line R. Co. v. Owen Steel Co. (D.C.S.C. 1972) 348 F.Supp. 1363.

It does not follow that the railroad should recover if the traveler is found to be guilty of gross contributory negligence. Seaboard Coast Line R. Co. v. Owen Steel Co. (D.C.S.C. 1972) 348 F.Supp. 1363.

A plaintiff’s contributory negligence by virtue of violation of the statutory signal requirement would bar its claim no matter what degree of negligence is assigned to the defendant. Seaboard Coast Line R. Co. v. Owen Steel Co. (D.C.S.C. 1972) 348 F.Supp. 1363.

Counterclaim based on Code 1962 Section 58‑1004 may be defeated. A counterclaim based on Code 1962 Section 58‑1004, which requires a finding of contributory gross negligence or recklessness on the part of defendant motorist before recovery by the railroad, may be defeated in crossing cases where there is evidence that the statutory warning signals required by this section were not given by the train crew. Seaboard Coast Line R. Co. v. Owen Steel Co. (D.C.S.C. 1972) 348 F.Supp. 1363.

Contributory negligence is no defense if the railroad’s conduct leading to accident is reckless, willful or wanton. Curry v. U.S., 1954, 129 F.Supp. 38.

Where it is conceded that the statutory signals were not given by the employees of the railroad as required by this section, in order to require reversal of the judgment against the railroad, it must appear from the evidence that the deceased was guilty of contributory “gross or willful negligence” as a matter of law. Wingate v. Seaboard Air Line R. Co. (S.C. 1964) 244 S.C. 332, 137 S.E.2d 258.

Where jury believed that statutory crossing signal was not given, and that the failure to give it contributed to the accident, then plaintiff’s recovery could not be defeated by less than gross contributory negligence on part of the driver of the car in which the plaintiff’s decedent was a passenger. Johnson v. Charleston & W. C. Ry. Co. (S.C. 1959) 234 S.C. 448, 108 S.E.2d 777.

Where there was some evidence that the bell on an engine was not ringing as required by this section [Code 1962 Section 58‑743], and a city ordinance prohibited the blowing of the whistle, it was incumbent upon the defendant railroad to show that the plaintiff truck driver, in addition to mere want of ordinary care, was guilty of gross or willful negligence, and that such gross or willful negligence contributed to the injury. Barnett v. Charleston & W. C. Ry. Co. (S.C. 1957) 230 S.C. 525, 96 S.E.2d 555.

To avoid liability for crossing accident where statutory signals were not given, railroad must show that person injured, or person having charge of his person or property, was grossly or willfully negligent or action in violation of law, and that such conduct contributed to injury. Ford v. Atlantic Coast Line R. Co. (S.C. 1932) 169 S.C. 41, 168 S.E. 143, affirmed 53 S.Ct. 249, 287 U.S. 502, 77 L.Ed. 457. Railroads 346(5.1)

Where a railroad company fails to give the statutory signals at a crossing required by this section [Code 1962 Section 58‑743] and a person on the crossing is killed thereby, the railroad company is liable, unless the person injured was at the time of the collision guilty of negligence, or was acting in violation of law, such negligence or unlawful act contributing to the injury. Hutto v. South Bound R. Co. (S.C. 1901) 61 S.C. 495, 39 S.E. 710. Railroads 313

12. —— Driver’s duty to look and listen, negligence

Failure to give signals does not relieve traveler of duty to exercise due care. While the railroad is required to give the statutory crossing signals, the failure of the railroad to give such signals does not relieve a traveler of the duty to exercise due care to observe the approach of trains at the crossing. Wingate v Seaboard Air Line R.R., 244 SC 332, 137 SE2d 258 (1964). Osborne v Southern Ry., 263 F Supp 718 (D SC 1967).

The duty of a motorist is to look and see what reasonably could be seen, to listen and hear what reasonably could be heard. There is no absolute duty to see what reasonably cannot be seen or to hear what reasonably cannot be heard. Seaboard Coast Line R. Co. v. Owen Steel Co. (D.C.S.C. 1972) 348 F.Supp. 1363. Railroads 327(4)

In the absence of circumstances reasonably tending to distract the attention or blunt the vigilance of a man of ordinary prudence and self‑possession, a traveler who enters upon a conspicuously marked crossing, or one with which he is familiar, in the path of an approaching train without the exercise of even slight care to discover the presence of so obvious and great a peril, when had he but looked or listened, he must have discovered it, is guilty of gross contributory negligence and recklessness as a matter of law. Graham v. Seaboard Air Line R. Co. (D.C.S.C. 1966) 250 F.Supp. 566.

The mere omission to give the statutory signals and the failure to observe a municipal speed ordinance do not relieve the traveler from the imputation of negligence if he fails on his part to exercise ordinary care in looking and listening. Graham v. Seaboard Air Line R. Co. (D.C.S.C. 1966) 250 F.Supp. 566.

Conditions which may qualify traveler’s duty to look and listen. The facts and conditions which may qualify the duty and excuse the failure to look and listen are usually: First, where looking and listening would not have availed to avert the injury; second, where the traveler enters upon the track under an express or implied assurance of safety, as where gates are open or signals are given by watchmen; third, the presence of some imminent danger or emergency, not brought about by the traveler’s own negligence; fourth, the presence and influence of unusual or extraordinary conditions, not created or controlled by the traveler himself, and especially where such conditions are brought about by the railway company, which are sufficient to distract and divert the attention of a man of ordinary prudence and self‑possession from the duty of looking and listening effectively, for an approaching train. Conversely, in the absence of circumstances reasonably tending to distract the attention or blunt the vigilance of a man or ordinary prudence and self‑possession, a traveler who enters upon a conspicuously marked crossing, or one with which he is familiar, in the path of an approaching train, without the exercise of even slight care to discover the presence of so obvious and great a peril, when had he but looked or listened, he must have discovered it, is guilty of gross contributory negligence and recklessness as a matter of law. Connelly v. Southern Ry. Co. (S.C. 1967) 249 S.C. 363, 154 S.E.2d 569.

A traveler when reaching a railroad crossing and before attempting to cross the track or tracks must use his senses of sight and hearing to the best of his ability under the existing circumstances, and must look and listen in both directions for approaching trains, if not prevented from doing so by the railroad’s fault and, to the extent the matter is under his control, he must look and listen at a place and in a manner that will make the use of his senses effective. This rule is not inflexible but may be qualified by the surrounding circumstances. Connelly v. Southern Ry. Co. (S.C. 1967) 249 S.C. 363, 154 S.E.2d 569. Railroads 327(5); Railroads 327(8)

A traveler who enters upon a conspicuously marked crossing, or one with which he is familiar, in the path of an approaching train, without the exercise of even slight care to discover the presence of so obvious and great a peril, when had he but looked or listened he must have discovered it, is guilty of gross contributory negligence and recklessness as a matter of law. Russell v. Seaboard Air Line R. Co. (S.C. 1965) 246 S.C. 516, 144 S.E.2d 799.

Where a traveler about to enter upon a crossing has an opportunity, by exercising his sense of hearing or sight, to discover an approaching train in time to stop in a place of safety, it is his duty under such circumstances to look and listen, and, if he fails to do so, or fails or neglects, as he approaches the crossing, to see or discover an approaching train dangerously near the crossing, which the evidence shows he could or must have discovered in the exercise of ordinary care, had he looked or listened, such failure to look and listen amounts not only to negligence, but to gross negligence as a matter of law. Wingate v. Seaboard Air Line R. Co. (S.C. 1964) 244 S.C. 332, 137 S.E.2d 258.

13. —— Driver’s negligence

Ordinary negligence of the traveler under the express terms of this statute does not defeat his right of recovery, if the signals are not given; only gross or willful negligence or violation of law is a defense reserved to the railroad in the absence of the statutory warning. Lawrence v Southern Ry. Co., 169 SC 1, 167 SE 839 (1933). Vernon v Atlantic Coast Line R. Co., 221 SC 376, 70 SE2d 862 (1952).

Where a car stalled at a railroad crossing was struck by a locomotive which gave no signals, the railroad would be responsible for the death of the driver of the car unless it could show that he was guilty of gross or willful negligence. Isgett v. Atlantic Coast Line R. Co. (C.A.4 (S.C.) 1964) 328 F.2d 364.

There is no absolute duty to stop at a railroad crossing. Seaboard Coast Line R. Co. v. Owen Steel Co. (D.C.S.C. 1972) 348 F.Supp. 1363.

Test in determining negligence of motorist. In determining the negligence of a motorist in a railroad crossing collision, the test is always the conduct of an average, reasonably prudent person under existing conditions. Seaboard Coast Line R. Co. v. Owen Steel Co. (D.C.S.C. 1972) 348 F.Supp. 1363. Railroads 324(1); Railroads 330(3)

When assumption of safety to cross railroad arises. When railroad whistles or other warnings are not being sounded a resulting assumption of safety to cross the railroad arises. Seaboard Coast Line R. Co. v. Owen Steel Co. (D.C.S.C. 1972) 348 F.Supp. 1363. Railroads 324(1); Railroads 330(3)

Doctrine of sudden emergency not available to traveler who negligently enters crossing. A traveler cannot invoke the doctrine of sudden emergency if he has been guilty of negligence in entering upon the crossing without taking the necessary precautions to ascertain whether or not the train or car was coming. In other words, if he has failed to exercise that degree of care of which a man of ordinary prudence would have availed himself, would have used in like circumstances, he cannot invoke the doctrine that he was placed under an overweening necessity to do what he did, which resulted in his injury. Connelly v. Southern Ry. Co. (S.C. 1967) 249 S.C. 363, 154 S.E.2d 569.

Railroad must show gross or willful negligence to bar recovery. If crossing signals were not given as required by this section [Code 1962 Section 58‑743] (and this was a question for the jury to determine), it became incumbent upon the railroad to show that plaintiff’s testator was guilty of gross or willful negligence in order to bar recovery. Allen v. Southern Ry. Co. (S.C. 1950) 218 S.C. 63, 61 S.E.2d 660. Railroads 346(2)

Failure to give statutory crossing signals is not recklessness, willfulness, or wantonness per se, but only affords basis of inference sufficient to carry such issues to jury. Ford v. Atlantic Coast Line R. Co. (S.C. 1932) 169 S.C. 41, 168 S.E. 143, affirmed 53 S.Ct. 249, 287 U.S. 502, 77 L.Ed. 457. Railroads 350(7.1)

Ordinary negligence of plaintiff in crawling between stationary cars did not preclude recovery for injuries caused by failure of railroad to give statutory signals before moving train. Glenn v. Southern Ry. Co. (S.C. 1928) 145 S.C. 41, 142 S.E. 801. Railroads 326(2)

Nonsuit sustained because of plaintiff’s intestate’s gross negligence in attempting to cross in front of approaching train. Drawdy v. Atlantic Coast Line R. Co. (S.C. 1907) 78 S.C. 374, 58 S.E. 980.

14. —— Comparative negligence

The doctrine of comparative negligence is not recognized in South Carolina unless required by statute. Seaboard Coast Line R. Co. v. Owen Steel Co. (D.C.S.C. 1972) 348 F.Supp. 1363.

To accept the theory that a railroad can recover even if it was negligent (assuming violation of this section [Code 1962 Section 58‑743]) if it shows defendant motorist was guilty of gross contributory negligence would be to recognize the doctrine of comparative negligence. Seaboard Coast Line R. Co. v. Owen Steel Co. (D.C.S.C. 1972) 348 F.Supp. 1363.

15. —— Presumptions and burden of proof, negligence

Violation of section presumed to cause injury. Where a railroad company violates this section [Code 1962 Section 58‑743], and a person is injured at the crossing, it will be presumed that the railroad’s negligence caused the injury, unless the evidence shows the contrary. Turbyfill v Atlanta & C. Air Line Ry., 83 SC 325, 65 SE 278 (1909). Cammer v Atlantic Coast Line R. Co., 214 SC 71, 51 SE2d 174 (1948).

The neglect to give crossing signals required by this section [Code 1962 $ 58‑743] would constitute negligence per se; however, to afford a basis for the recovery of damages, it must appear that the failure to give the signals contributed as a proximate cause of the injury, but from such failure to give the signals a disputable presumption arises in the first instance that such failure was the proximate cause thereof. Truett v Atlantic Coast Line R. Co., 206 SC 144, 33 SE2d 396 (1945). Isgett v Atlantic Coast Line R. Co., 328 F2d 364 (1964).

When the defendant violates the requirements of the statute as to ringing the bell or sounding the whistle, and a person is injured by its locomotive, while crossing a highway, street, or traveled place, it will be presumed that such negligence caused the injury, unless the testimony shows that the injury was caused in some other manner. Lawrence v Southern Ry. Co., 169 SC 1, 167 SE 839 (1933). Strother v South Carolina & G. R. Co., 47 SC 375, 25 SE 272 (1896).

Although traveler is entitled to presume that railroad will give statutory signals. A traveler approaching a railroad crossing has a right to presume that the railroad will obey the law and give the statutory signals: while the wrongful conduct of the railroad in this regard will not excuse the traveler from the exercise of slight care, yet in determining whether he did not use such care, his conduct is to be judged in the light of such presumption. Simmons v. Atlantic Coast Line R. Co. (S.C. 1967) 250 S.C. 199, 157 S.E.2d 172. Railroads 330(3)

Failure to give the signals required by this section [Code 1962 Section 58‑743], if found, gave rise to a rebutable presumption of its proximate cause of the collision, and was evidence of willfulness and wantonness which would justify an award of punitive damages. Vernon v. Atlantic Coast Line R. Co. (S.C. 1952) 221 S.C. 376, 70 S.E.2d 862. Railroads 346(7); Railroads 349

Railroad’s failure to give statutory signals for full prescribed period on moving stationary train is negligence per se and is presumed proximate cause of subsequent injury. Glenn v. Southern Ry. Co. (S.C. 1928) 145 S.C. 41, 142 S.E. 801. Railroads 346(7)

16. —— Admissibility of evidence, negligence

Admissibility of evidence. In an action at common law for negligence, testimony as to failure to give the statutory signals at a crossing a mile distant from scene of accident was held competent. Mason v Southern Ry. Co., 58 SC 70, 36 SE 440 (1900). Mack v South Bound R. Co., 52 SC 323, 29 SE 905 (1898).

Any admission by railroad’s counsel during opening statement in negligence action, that train engineer did not begin sounding horn at whistle post, did not relieve guardian ad litem (GAL) of minor automobile passenger who was injured in collision with train from renewing motion for directed verdict, which was made and denied at close of railroad’s evidence, after GAL had presented additional evidence of a stipulation with railroad that event recorder on train accurately showed that engineer failed to sound horn from the distance required under state statute. Stephens ex rel. Lillian C. v. CSX Transp., Inc. (S.C.App. 2012) 400 S.C. 503, 735 S.E.2d 505, rehearing denied, affirmed in part, reversed in part 415 S.C. 182, 781 S.E.2d 534. Appeal And Error 241

17. —— Question for the jury, negligence

Negligence of railroad employees for jury. The disregard by railroad employees, of their statutory duty, makes a case for the jury on the issue of defendant’s negligence, and their verdict is conclusive. Charleston & W.C.R. Co. v. Alwang, 1919, 258 F. 297, 169 C.C.A. 313.

Issue of punitive damages was for the jury in wrongful death action resulting from railroad crossing collision; there was evidence that train engineer failed to sound his horn for the statutorily prescribed distance, and there was evidence that the vegetation at the crossing was so overgrown that driver had to pull onto the tracks to see if a train was approaching. Code 1976, Sections Sections 58‑15‑910, 58‑ 17‑1350. Webb v. CSX Transp., Inc. (S.C. 2005) 364 S.C. 639, 615 S.E.2d 440, rehearing denied. Railroads 350(34)

Issue of whether train failed to give proper signals at crossing, and whether occupants of car that collided with train could have heard those signals if properly given was for the jury, in wrongful death case. Code 1976, Sections 58‑15‑910. Webb v. CSX Transp., Inc. (S.C. 2005) 364 S.C. 639, 615 S.E.2d 440, rehearing denied. Railroads 350(7.1); Railroads 350(32)

Where inference of trains excessive speed, fog, lack of warning until too late to avoid collision, and failure of railroad to properly maintain right of way, amply sustained award of both actual and punitive damages, it was for jury to decide whether respondent driver’s claim that he was unable to see was excusable or culpable, where railroad alleged contributory negligence. Lowery v. Seaboard Coastline R. Co. (S.C. 1978) 270 S.C. 113, 241 S.E.2d 158. Railroads 348(4); Railroads 348(5); Railroads 349; Railroads 350(16.1)

And favorable verdict establishes compliance with section. Where it is the duty of the engineer to give the statutory signals required by this section [Code 1962 Section 58‑743], the effect of a verdict in his favor is to establish that they were properly given. Carter v. Peace (S.C. 1956) 229 S.C. 346, 93 S.E.2d 113.

Negligence of railroad in failing to give statutory signals on moving stationary train and willful contributory negligence of plaintiff crawling through stationary cars are questions for determination of jury. Glenn v. Southern Ry. Co. (S.C. 1928) 145 S.C. 41, 142 S.E. 801. Railroads 350(5)

Failure of train obstructing public crossing to give statutory signals warrants submission of issue of negligence and willfulness to jury. Miller v. Atlantic Coast Line R. Co. (S.C. 1926) 140 S.C. 123, 138 S.E. 675, certiorari denied 48 S.Ct. 117, 275 U.S. 556, 72 L.Ed. 424. Railroads 350(34)

Negligence in not giving signals is for jury. Hutchinson v. Atlantic Coast Line R. Co. (S.C. 1922) 121 S.C. 218, 114 S.E. 323.

Failure of enginemen to give the highway crossing signals required by this section [Code 1962 Section 58‑743] warrants submission to the jury of the issue of recklessness and wantonness in an action for death of a traveler struck by the locomotive at a crossing. Easterling v. Atlantic Coast Line R. Co. (S.C. 1912) 91 S.C. 546, 75 S.E. 133. Railroads 350(34)

18. —— Instructions, negligence

Charge as to duty substantially given. Mercer v Southern Ry. Co., 66 SC 246, 44 SE 750 (1903). Betchman v Seaboard Air Line Ry., 75 SC 68, 55 SE 140 (1906). Cooper v Charleston & W. C. Ry. Co., 65 SC 214, 43 SE 682 (1903).

Neglect to give statutory signal renders railroad liable for all damages unless contributory gross negligence on part of other party is shown, and trial judge properly charged jury that if it determined statutory signals were not given, and such failure was proximate cause of accident, plaintiff railroad’s negligence would bar recovery unless defendant’s truck driver was shown to be guilty of gross or willful negligence which proximately caused accident. Central of Georgia Ry. v. Walker Truck Contractors (S.C. 1978) 270 S.C. 533, 243 S.E.2d 923. Railroads 312.2

In an action for death at a crossing, the court properly read to the jury the statute requiring signals and imposing liability for neglect to give signals, unless decedent was guilty of gross or willful negligence or violation of law contributing to the injury. Wideman v. Hines (S.C. 1921) 117 S.C. 516, 109 S.E. 123. Railroads 351(9)

Where there was no evidence that a pedestrian on a railroad track was using a public crossing as such, or that the place of injury was a public crossing or traveled place, it was not error for the court to fail to charge the law of this section [Code 1962 Section 58‑743] as to signals at public crossings. Tyler v. Atlantic Coast Line R. Co. (S.C. 1916) 104 S.C. 107, 88 S.E. 541.

19. —— Damages, negligence

Punitive damages for failure to give signals may be awarded. Cole v. Blue Ridge Ry. Co. (S.C. 1906) 75 S.C. 156, 55 S.E. 126.

20. —— Sufficiency of evidence, negligence

Conduct constituting gross, reckless and willful negligence. Under the particular circumstances, the jury was warranted in finding that the failure to give appropriate signal or warning of the approach of a train to a crossing, and the speed at which such train was being operated, when railroad company and its employees knew, or should have known, that this was a heavily traveled crossing, unprotected by flash lights or a flagman or watchman, constituted gross, reckless and willful negligence. Mock v. Atlantic Coast Line R. Co. (S.C. 1955) 227 S.C. 245, 87 S.E.2d 830.

Testimony as to omission of statutory signals was held responsive to charge of recklessness. Osteen v. Southern Ry., Carolina Division (S.C. 1907) 76 S.C. 368, 57 S.E. 196.

21. —— Review, negligence

Guardian ad litem (GAL) for minor automobile passenger injured in automobile‑train collision did not preserve for appeal the denial of a motion for directed verdict in negligence action against railroad and state department of transportation (DOT), made at close of defendants’ evidence, where GAL then introduced evidence in reply of a stipulation with railroad as to the accuracy of event recorder on train that indicated engineer sounded horn for a distance of less than 500 yards from crossing in violation of state statute, but failed to renew directed verdict motion after he presented that evidence. Stephens ex rel. Lillian C. v. CSX Transp., Inc. (S.C.App. 2012) 400 S.C. 503, 735 S.E.2d 505, rehearing denied, affirmed in part, reversed in part 415 S.C. 182, 781 S.E.2d 534. Appeal And Error 241

**SECTION 58‑15‑920.** Lien of judgments for certain injuries.

 Whenever a cause of action shall arise against any railroad or street railway corporation in favor of any person for personal injury or injury to property sustained by any person or in favor of any municipal corporation for any injuries to any of the streets or highways of such municipal corporation and such cause of action shall be prosecuted to judgment by the person injured, his legal representatives or such municipal corporation the judgment shall relate back to the date when the cause of action arose and shall be a lien as of that date upon the income, property and franchise of such corporation, enforceable in any court of competent jurisdiction by attachment or levy and sale under execution, and shall take precedence and priority of payment of any mortgage, deed of trust or other security given to secure the payment of bonds made by such railroad or street railway company if such action shall have been commenced within two years from the time that the injury was sustained.

HISTORY: 1962 Code Section 58‑744; 1952 Code Section 58‑744; 1942 Code Section 8376; 1932 Code Section 8376; Civ. C. ‘22 Section 4924; Civ. C. ‘12 Section 3229; Civ. C. ‘02 Section 2138; G. S. 1528; R. S. 1691; 1897 (22) 415; 1930 (36) 1363.

Library References

Railroads 161, 171(8).

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C.J.S. Railroads Sections 493, 568.

NOTES OF DECISIONS

In general 1

1. In general

For additional related cases, see Finance Co. v Charleston, C. & C. R. Co., 46 F 508 (1891). Mercer v Southern Ry. Co., 66 SC 246, 44 SE 750 (1903).

Priority of judgment over railroad mortgage. Southern Ry. Co. v. Bouknight, 1895, 70 F. 442, 17 C.C.A. 181.

This section [Code 1962 Section 58‑744] is valid. Central Trust Co. of New York v. Charlotte, C. & A.R. Co., 1894, 65 F. 257, affirmed 70 F. 442, 17 C.C.A. 181.

It applies to judgment rendered on cause of action arising in another state. Central Trust Co. of New York v. Charlotte, C. & A.R. Co., 1894, 65 F. 257, affirmed 70 F. 442, 17 C.C.A. 181.

Judgment anterior to passage of section. Such judgment will not have precedence over mortgage issued anterior to passage of section. Phinizy v. Augusta & K R Co, 1894, 63 F. 922, affirmed 70 F. 451, 17 C.C.A. 236.

But not to common‑law action for the recovery of damage to automobile. Gleaton v. Southern Ry. Co. (S.C. 1948) 212 S.C. 186, 46 S.E.2d 879.

Liability of property sold to another corporation. Although the property and franchise of a railroad company had been sold to another corporation, such property was liable to execution to satisfy a judgment for injury to property obtained against the company after the sale. Henry Mercantile Co. v. Graham (S.C. 1917) 108 S.C. 125, 93 S.E. 331. Railroads 129(1)

Applied in Mayo v. Spartanburg, U. & C.R. Co. (S.C. 1895) 43 S.C. 225, 21 S.E. 10.

**SECTION 58‑15‑930.** Liability of railroads having relief departments.

 When any railroad company has what is usually called a relief department for its employees, the members of which are required or permitted to pay some dues, fees, moneys or compensation to be entitled to the benefits thereof upon the death or injury of the employee, a member of such relief department, such railroad company shall pay to the person entitled to it the amount it was agreed the employee or his heirs‑at‑law should receive from such relief department. The acceptance of such amount shall not operate to estop or in any way bar the right of such employee or his personal representative to recover damages of such railroad company for injury or death caused by the negligence of such company, its agents or servants, as provided by law and any contract or agreement to the contrary shall be ineffective for that purpose.

HISTORY: 1962 Code Section 58‑746; 1952 Code Section 58‑746; 1942 Code Section 7171; 1932 Code Section 7171; Civ. C. ‘22 Section 3893; Civ. C. ‘12 Section 2577; 1903 (24) 79.

Library References

Railroads 230.

Westlaw Topic No. 320.

C.J.S. Railroads Sections 734 to 741.

NOTES OF DECISIONS

Construction with other laws 1

1. Construction with other laws

Section not repealed. This section [Code 1964 Section 58‑746] is not repealed by Code 1962 Section 40‑456 containing substantially the same language, but extending it so as to apply to any corporation, firm, or individual maintaining a relief department for employees and the enacting part declares that all acts inconsistent with it shall be repealed. Miller v. Atlantic Coast Line R. Co. (S.C. 1911) 90 S.C. 249, 73 S.E. 71, affirmed 34 S.Ct. 318, 231 U.S. 741, 58 L.Ed. 462.

**SECTION 58‑15‑940.** Fiscal year for railroads.

 The fiscal year for which reports shall be made by railroad companies in the State to the Office of Regulatory Staff and to other officers of the State shall terminate on the thirty‑first day of December, so as to conform to the calendar year and to the fiscal year as fixed by the Interstate Commerce Commission of the United States.

HISTORY: 1962 Code Section 58‑748; 1952 Code Section 58‑748; 1942 Code Section 8245; 1932 Code Section 8280; Civ. C. ‘22 Section 4828; 1917 (30) 163; 1935 (39) 25; 1982 Act No. 331, Section 4, eff April 9, 1982; 2006 Act No. 318, Section 100, eff May 24, 2006.

Library References

Railroads 9(1).

Westlaw Topic No. 320.

C.J.S. Railroads Sections 86, 716 to 717, 731 to 732, 741.

**SECTION 58‑15‑950.** Reports to conform to fiscal year.

 All reports required by law to be made by railroad companies to the Office of Regulatory Staff or to other officers of the State at specified times and based upon the operations of such railroad companies for the fiscal year preceding such reports shall be made after the thirty‑first day of December of every year.

HISTORY: 1962 Code Section 58‑749; 1952 Code Section 58‑749; 1942 Code Sections 2678, 8246; 1932 Code Sections 2678, 8281; Civ. C. ‘22 Section 4829; 1917 (30) 163; 1922 (32) 947; 1935 (39) 25; 1982 Act No. 331, Section 5, eff April 9, 1982; 2006 Act No. 318, Section 101, eff May 24, 2006.

Library References

Railroads 9(1).

Westlaw Topic No. 320.

C.J.S. Railroads Sections 86, 716 to 717, 731 to 732, 741.

**SECTION 58‑15‑960.** Time for filing annual reports.

 All annual reports required to be filed with the Office of Regulatory Staff by railroads doing business in this State shall be filed with the Office of Regulatory Staff within three months after the close of the year for which the report is made. But the Office of Regulatory Staff may, upon sufficient cause being shown, extend the time for the filing of such reports for a period not exceeding ninety days.

HISTORY: 1962 Code Section 58‑750; 1952 Code Section 58‑750; 1946 (44) 2597; 2006 Act No. 318, Section 102, eff May 24, 2006.

Library References

Railroads 9(1).

Westlaw Topic No. 320.

C.J.S. Railroads Sections 86, 716 to 717, 731 to 732, 741.

ARTICLE 11

Violations by Railroad Companies of Interstate Commerce Act

**SECTION 58‑15‑1110.** Violation by railroads of Interstate Commerce Act shall be unlawful.

 It shall be unlawful for any railroad corporation doing business in this State or any officer, agent or employee thereof to do herein any act which constitutes a violation of the act of Congress entitled “An Act to Regulate Commerce,” or the acts amendatory thereof, or any order of the Interstate Commerce Commission issued thereunder. Any such corporation violating the provisions of this section shall be guilty of a high misdemeanor and liable to indictment therefor in any county in which such offense is committed and, on conviction, shall be fined not less than one thousand dollars nor more than five thousand dollars for each such offense. And the doing of any such act shall constitute a ground for the forfeiture of the charter and franchise of any such corporation in this State and for the withdrawal and forfeiture of any franchise or license or right to operate railroads herein enjoyed or exercised herein by grant, contract, statute or comity by any such corporation chartered elsewhere and any person or corporation, public or private, injured by any such act of such railroad company, may maintain quo warranto in the circuit court of the residence or, if a nonresident, of the principal office of such corporation, to enforce such forfeiture, which said court is hereby given jurisdiction so to decree. Conviction and punishment for a misdemeanor under this section shall not prevent proceedings also for forfeiture and judgment.

 Any officer, agent or employee doing or engaged in any such act shall also be guilty of a misdemeanor and, on conviction, shall be punished by a fine not to exceed one thousand dollars and imprisonment not to exceed twelve months, or either or both of these penalties.

HISTORY: 1962 Code Section 58‑761; 1952 Code Section 58‑761; 1942 Code Section 1712; 1932 Code Section 1712; Cr. C. ‘22 Section 657; Cr. C. ‘12 Section 682; Cr. C. ‘02 Section 485; 1897 (22) 448.

Library References

Carriers 38(1).

Railroads 255(1).

Westlaw Topic Nos. 70, 320.

C.J.S. Carriers Sections 311 to 314, 316 to 324.

C.J.S. Railroads Sections 805 to 806, 1280.

**SECTION 58‑15‑1120.** County where violation deemed committed.

 Every violation of the provisions of Section 58‑15‑1110 shall equally be held to have been committed in the county in which such act is finally carried out or in which any illegal charge is collected, as well as that in which the act or charge is ordered or agreed upon or any step taken in execution thereof.

HISTORY: 1962 Code Section 58‑762; 1952 Code Section 58‑762; 1942 Code Section 1713; 1932 Code Section 1713; Cr. C. ‘22 Section 658; Cr. C. ‘12 Section 683; Cr. C. ‘02 Section 486; 1897 (22) 448.

Library References

Carriers 38(4).

Westlaw Topic No. 70.

C.J.S. Carriers Sections 320 to 324.

**SECTION 58‑15‑1130.** Taking part in violations shall be unlawful.

 Every person taking part in any such violation in any way, even in carrying out the orders of superior officers or in collecting the proceeds of any illegal charge, shall be equally guilty of a violation of Section 58‑15‑1110.

HISTORY: 1962 Code Section 58‑763; 1952 Code Section 58‑763; 1942 Code Section 1713; 1932 Code Section 1713; Cr. C. ‘22 Section 658; Cr. C. ‘12 Section 683; Cr. C. ‘02 Section 486; 1897 (22) 448.

Library References

Carriers 38(1).

Railroads 255(1).

Westlaw Topic Nos. 70, 320.

C.J.S. Carriers Sections 311 to 314, 316 to 324.

C.J.S. Railroads Sections 805 to 806, 1280.

**SECTION 58‑15‑1140.** Each violation shall constitute a separate offense.

 Each act done in violation of such Act to Regulate Commerce, its amendments or orders of said commission, and each separate failure to obey the same or discrimination, preference, or overcharge to each separate person shall constitute, both as to the railroad company offending or such officers, agents, or employees, separate offenses hereunder and render the corporation or person offending liable to successive indictments and punishment therefor.

HISTORY: 1962 Code Section 58‑764; 1952 Code Section 58‑764; 1942 Code Section 1714; 1932 Code Section 1714; Cr. C. ‘22 Section 659; Cr. C. ‘12 Section 684; Cr. C. ‘02 Section 488; 1897 (22) 448; 2006 Act No. 318, Section 103, eff May 24, 2006.

Library References

Criminal Law 29(5.5).

Westlaw Topic No. 110.

C.J.S. Gaming Sections 137, 150, 161 to 162.

ARTICLE 15

Commission Regulation of Railroad Crossings

**SECTION 58‑15‑1510.** Commission may provide rules and regulations with reference to crossing.

 The Public Service Commission may provide such rules and regulations with reference to the crossing of railroad tracks by public highways as in its judgment will be conducive to the public safety.

HISTORY: 1962 Code Section 58‑801; 1952 Code Section 58‑801; 1942 Code Section 8228; 1932 Code Section 8270; Civ. C. ‘22 Section 4818; 1920 (31) 1124; 1935 (39) 25.

CROSS REFERENCES

Grade crossings in municipalities, see Section 58‑17‑1350.

Prohibition against obstruction of highways at crossings by railroads, see Section 58‑17‑1330.

Railroad companies maintaining standard signs at all grade crossings, see Section 56‑5‑1010.

Signals to be given at crossings, see Section 58‑15‑910.

Signs at railroad crossings, see Section 58‑17‑1390.

Library References

Railroads 242.

Westlaw Topic No. 320.

C.J.S. Railroads Sections 788 to 789.

NOTES OF DECISIONS

In general 1

Review 2

1. In general

Gatemen, watchmen, or flagmen at highway crossings. A railroad may be required, under the police power of the State, to maintain gatemen, watchmen, or flagmen at highway crossings, where such measure to safeguard against danger is reasonable. Atlantic Coast Line R. Co. v. Public Service Commission (S.C. 1954) 225 S.C. 196, 81 S.E.2d 357. Railroads 243

2. Review

The rule of judicial review of a Commission order relating to railroad companies is that the Commission’s findings of fact are prima facie correct and should not be set aside unless clearly against the weight of the evidence. Such an order must be reasonable, but it is presumptively so and will not be reversed upon review unless it is shown to be clearly unjust and unreasonable. Atlantic Coast Line R. Co. v. Public Service Commission (S.C. 1954) 225 S.C. 196, 81 S.E.2d 357.

**SECTION 58‑15‑1520.** Investigation of crossings requiring overpass or underpass.

 The commission upon petition may request the Office of Regulatory Staff to investigate crossings and may require that any necessary crossing be made either above or below grade, so as to avoid, as far as possible, any grade crossings.

HISTORY: 1962 Code Section 58‑802; 1952 Code Section 58‑802; 1942 Code Section 8228; 1932 Code Section 8270; Civ. C. ‘22 Section 4818; 1920 (31) 1124; 1935 (39) 25; 2006 Act No. 318, Section 104, eff May 24, 2006.

Library References

Railroads 94(4), 242.1.

Westlaw Topic No. 320.

C.J.S. Railroads Sections 297, 788 to 789.

**SECTION 58‑15‑1530.** Payment of expense of elimination or relocation of grade crossings.

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

HISTORY: 1962 Code Section 58‑803; 1952 Code Section 58‑803; 1942 Code Section 8228; 1932 Code Section 8270; Civ. C. ‘22 Section 4818; 1920 (31) 1124; 1935 (39) 25.

CROSS REFERENCES

Elimination of grade crossings by Department of Transportation, see Section 58‑15‑1625.

Library References

Railroads 99.

Westlaw Topic No. 320.

C.J.S. Railroads Sections 322 to 326, 329 to 356.

**SECTION 58‑15‑1540.** Eliminated crossings shall be closed.

 Such crossings as are eliminated by virtue of this article shall be closed as public highways or travel places.

HISTORY: 1962 Code Section 58‑804; 1952 Code Section 58‑804; 1942 Code Section 8228; 1932 Code Section 8270; Civ. C. ‘22 Section 4818; 1920 (31) 1124; 1935 (39) 25.

Library References

Railroads 99.

Westlaw Topic No. 320.

C.J.S. Railroads Sections 322 to 326, 329 to 356.

ARTICLE 17

Elimination of Railroad and Interurban Electric Railroad Grade Crossings at Instance of Others Than Commission

**SECTION 58‑15‑1610.** Definitions.

 (1) The term “grade crossing” as used in this article means a crossing at grade of a public street or highway over a track or tracks of a railroad.

 (2) The term “department” as used in this article means any subdivision or agency of the State having authority to locate or construct roads or streets.

 (3) The term “railroad” as used in this article shall include all steam railroads and interurban electric railroads of more than twenty miles in length, which are operated as common carriers, but shall not include street railroads operated in whole or in part within the limits of any incorporated city or town or private logging roads.

HISTORY: 1962 Code Section 58‑811; 1952 Code Section 58‑811; 1942 Code Section 8472; 1932 Code Section 8447; 1924 (33) 1057.

Library References

Railroads 2.

Westlaw Topic No. 320.

C.J.S. Railroads Sections 1 to 22.

NOTES OF DECISIONS

Construction with other laws 1

1. Construction with other laws

Effect of considering this article with Article 11. When this article and Article 11 of this chapter are considered together, it is manifest that in enacting Article 11 the legislature used “grade separation structure” as a term with an established meaning. Southern Ry. Co. v. South Carolina State Highway Dept. (S.C. 1960) 237 S.C. 75, 115 S.E.2d 685.

**SECTION 58‑15‑1620.** Application of article.

 The provisions of this article shall apply throughout the State to the elimination of grade crossings, whether such elimination be made upon the order or request of the State Highway Commission, counties, cities, drainage districts or other subdivisions or departments of the State government.

HISTORY: 1962 Code Section 58‑812; 1952 Code Section 58‑812; 1942 Code Section 8462; 1932 Code Section 8437; 1924 (33) 1057.

CROSS REFERENCES

Elimination of grade crossings by Department of Transportation, see Section 58‑15‑1625.

Library References

Railroads 99.

Westlaw Topic No. 320.

C.J.S. Railroads Sections 322 to 326, 329 to 356.

NOTES OF DECISIONS

In general 1

1. In general

Where a bridge floor needed repairs in the way of rock asphalt replacement, and upon refusal of the county to do anything about it, the railroad company made such repairs itself and then brought an action to recover the sum of $252.92, the amount expended by it in doing so, it was held that this section [Code 1962 Section 58‑812] and Code 1962 Sections 58‑813 to 58‑835 apply only to the elimination of existing grade crossings and since these sections are in derogation of the common law, would have to be strictly construed and would not apply to a case of this kind. Powell v Greenwood County, 189 SC 463, 1 SE2d 624 (1939). State Highway Dept. v Southern Ry. Co., 186 SC 315, 195 SE 633 (1938).

This article authorizes the elimination of grade crossings by means of grade separation structures, and provides a scheme for the apportionment of costs between the Highway Department and the railroad. Southern Ry. Co. v. South Carolina State Highway Dept. (S.C. 1960) 237 S.C. 75, 115 S.E.2d 685.

Cases to which article not applicable. This chapter was held to be inapplicable where the State Highway Department built a new across defendant railroad company’s tracks, but there was conclusive evidence that no grade crossing had been eliminated. State ex rel. State Highway Dept. v. Piedmont & N. Ry. Co. (S.C. 1938) 186 S.C. 49, 194 S.E. 631.

**SECTION 58‑15‑1625.** Department of Transportation authorized to eliminate railroad grade crossings.

 Notwithstanding any other provision of law, the Department of Transportation may order legally closed and abolished as a public way, within the limits of a railroad right‑of‑way, a grade crossing then in existence at the time the department assumes jurisdiction of the matter, upon a finding that the enhancement of public safety resulting from such closing outweighs any inconvenience caused by increased circuitry of highway routes. This order by the department may be issued either in connection with, or independent of, an order relating to automatic train‑activated warning signals. The authority of the department legally to close and abolish grade crossings is in addition to authority granted by law to other state agencies or to local units of government to close and abolish grade crossings. Upon the issuance of the order by the department, the railroad or railroads involved shall physically remove the crossing from the tracks, and the governmental unit maintaining the highway shall remove or barricade the approaches to the crossing.

HISTORY: 1992 Act No. 399, Section 3, eff June 1, 1992; 1993 Act No. 181, Section 1554, eff July 1, 1993.

CROSS REFERENCES

Elimination of grade crossings by other agencies or parties, see Section 58‑15‑1610 et seq.

Elimination of grade crossings by Public Service Commission, see Section 58‑15‑1510 et seq.

Library References

Railroads 99(4).

Westlaw Topic No. 320.

C.J.S. Railroads Sections 329 to 331, 333 to 334, 337 to 346.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Carriers Section 36, Regulation of Crossings.

Attorney General’s Opinions

Various statutes provide for the opening and closing of roads, streets and highways in this State, and there is no exclusive manner of accomplishing such. SC Op.Atty.Gen. (Oct. 11, 2005) 2005 WL 2652376.

NOTES OF DECISIONS

Instructions 2

Notice 1

1. Notice

The Department of Transportation (DOT) was not statutorily required to give notice prior to closing railroad grade crossing. Mosteller v. County of Lexington (S.C. 1999) 336 S.C. 360, 520 S.E.2d 620. Highways 77(3)

2. Instructions

Railroad and Department of Transportation were entitled to jury instructions on statutes related to placement of signs at railroad crossings and Department’s authority to close unsafe crossings, in negligence action against railroad and Department for traumatic brain injury minor sustained when train collided with automobile; statutes were relevant, as plaintiff alleged that railroad was negligent in maintaining unreasonably hazardous and unsafe crossing, expert opined that crossing could have been made safer with installation of active traffic‑control devices, and jury was informed that railroad could not close crossing of its own accord. Stephens v. CSX Transp., Inc. (S.C. 2015) 415 S.C. 182, 781 S.E.2d 534, rehearing denied. Automobiles 309(2); Evidence 571(6); Railroads 351(1)

Evidence in negligence action against railroad and state department of transportation (DOT) arising from automobile‑train collision supported jury charge on statute authorizing DOT to close railroad crossings to public traffic when it found that increased public safety outweighed inconvenience to motorists; DOT’s traffic management engineer testified that railroad companies had closed crossings without asking DOT for permission, and instruction on the statute in question informed jury that railroad did not have authority to close crossings. Stephens ex rel. Lillian C. v. CSX Transp., Inc. (S.C.App. 2012) 400 S.C. 503, 735 S.E.2d 505, rehearing denied, affirmed in part, reversed in part 415 S.C. 182, 781 S.E.2d 534. Evidence 571(3); Railroads 351(1)

**SECTION 58‑15‑1630.** Notice to railroad and effort to agree on plan for elimination of grade crossing.

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

HISTORY: 1962 Code Section 58‑813; 1952 Code Section 58‑813; 1942 Code Section 8463; 1932 Code Section 8438; 1924 (33) 1057.

Library References

Railroads 99(3).

Westlaw Topic No. 320.

C.J.S. Railroads Sections 324 to 326.

NOTES OF DECISIONS

In general 1

1. In general

Effect of failure to give notice. Failure of the Highway Department to give to the railway company the notices and orders required by this section [Code 1962 Section 58‑813] deprived the railway company of valuable and substantial rights, and the Department could not be heard in its efforts to hold the railroad liable to it for a part of the costs of construction of the bridge over the railroad tracks. State ex rel. State Highway Dept. v. Southern Ry. Co. (S.C. 1938) 186 S.C. 315, 195 S.E. 633.

**SECTION 58‑15‑1640.** Procedure when agreement shall not be reached.

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

HISTORY: 1962 Code Section 58‑814; 1952 Code Section 58‑814; 1942 Code Section 8463; 1932 Code Section 8438; 1924 (33) 1057.

Library References

Railroads 99(3), 99(4).

Westlaw Topic No. 320.

C.J.S. Railroads Sections 324 to 326, 329 to 331, 333 to 334, 337 to 346.

**SECTION 58‑15‑1650.** Railroad company may select materials; minimum standards.

 The railroad company involved may select the material to be used in the construction of the grade separation structure, provided such material shall not be less durable than creosoted timber of a quality at least equal to that required by the standard specifications of the Department of Transportation for its own bridge work.

HISTORY: 1962 Code Section 58‑815; 1952 Code Section 58‑815; 1942 Code Section 8464; 1932 Code Section 8439; 1924 (33) 1057; 1993 Act No. 181, Section 1555, eff July 1, 1993.

Library References

Railroads 99(2).

Westlaw Topic No. 320.

C.J.S. Railroads Sections 334 to 336, 347 to 351.

**SECTION 58‑15‑1660.** Division of costs.

 The division of the costs of the elimination of the grade crossings by means of grade separation structures shall be as follows:

 (1) The total cost of a grade crossing elimination by the use of an overhead bridge shall be paid one half by the department or subdivision and one half by the railroad involved, the proportion to be paid by the railroad in no case to exceed the actual cost of that part of the structure over its tracks between the piers or abutments and foundations adjacent to such tracks and including the costs of such piers or abutments and foundations, except that in the case of a permanent structure of concrete, steel or other like substance, the railroad shall pay one half of the cost of such structure, including the approaches, for a distance of not exceeding one hundred and fifty feet on either side of the railroad, measured from the center of the space occupied by the tracks;

 (2) In case the elimination of such grade crossing shall be by the building of an underpass, the department or subdivision shall pay one half and the railroad involved the other half of the cost of the cut through the railroad fill and of the cost of the bridge carrying the railroad, including the foundations and piers or abutments for such bridge, but the cost of the approaches to such underpass shall be paid by the department or subdivision and such department or subdivision shall construct it at its own expense and maintain the necessary drainage; but the railroad will be charged with the duty and cost of maintaining the entire structure carrying the railroad tracks, including the foundations and supports thereof;

 (3) Whenever such railroad shall provide a floor for an overhead bridge, capable of carrying a road surface of rock asphalt or other like substance, the department or subdivision shall assume the duty and cost of the maintenance of the superstructure of such bridge and, if such floor is not so constructed, the department or subdivision shall assume the duty and cost of the maintenance of the superstructure of such bridge and render to the railroad company involved a bill for the cost thereof, which shall be paid by the railroad involved within sixty days after the rendition of such bill and, if not paid, interest shall be added thereto at the rate of seven per cent per annum; but in all cases of an overhead bridge, the railroad involved shall maintain at its own expense the foundations and piers or abutments supporting such superstructure;

 (4) When more than one railroad is involved in the separation of crossings at grades, such portion of the cost of construction and maintenance as this article provides shall be paid by the railroad shall be borne by such railroads in such proportion as will be equitable, to be agreed upon by the railroad companies, and in case they cannot agree, to be fixed by the Public Service Commission on a hearing to be held in the usual manner, with the usual right of appeal; and

 (5) In all cases of grade separation hereunder the railroad shall permit the use, free of cost, of so much of its right of way as is necessary and the department or subdivision involved shall be charged with the duty of acquiring such additional rights‑of‑way as shall be necessary and shall be chargeable with liability for any property damages or other damages resulting from the change in topographical conditions.

HISTORY: 1962 Code Section 58‑816; 1952 Code Section 58‑816; 1942 Code Section 8465; 1932 Code Section 8440; 1924 (33) 1057.

Library References

Railroads 99(2).

Westlaw Topic No. 320.

C.J.S. Railroads Sections 334 to 336, 347 to 351.

**SECTION 58‑15‑1670.** Specifications as to overhead bridges and approaches.

 The grade of approaches to an overhead bridge shall be such as to keep the cost as low as practicable consistent with the standard design practice of the State Highway Commission and in no event shall the approaches to creosote timber overhead bridges be considered to extend more than five hundred feet from the outside track. The overhead bridge shall be so constructed as to give a vertical clearance of not less than twenty‑two feet, six inches above the base of rail of railroad track and a horizontal clearance of not less than eight feet, measured from the center line of such track, and at right angles thereto, due allowance being made for curvature of track.

HISTORY: 1962 Code Section 58‑817; 1952 Code Section 58‑817; 1942 Code Section 8465; 1932 Code Section 8440; 1924 (33) 1057.

Library References

Railroads 99(2).

Westlaw Topic No. 320.

C.J.S. Railroads Sections 334 to 336, 347 to 351.

**SECTION 58‑15‑1680.** Underpasses and overhead bridges shall meet specifications of Department of Transportation.

 Underpasses or overhead bridges constructed in accordance with this article shall meet the specifications of the Department of Transportation.

HISTORY: 1962 Code Section 58‑818; 1952 Code Section 58‑818; 1942 Code Section 8465; 1932 Code Section 8440; 1924 (33) 1057; 1972 (57) 2631; 1993 Act No. 181, Section 1556, eff July 1, 1993.

Library References

Railroads 99(2).

Westlaw Topic No. 320.

C.J.S. Railroads Sections 334 to 336, 347 to 351.

**SECTION 58‑15‑1690.** Time within which railroad shall commence work; effect of failure so to do.

 Whenever any department or subdivision shall require a railroad, under the provisions of this article, to construct an overhead bridge or underpass, such railroad shall begin work thereon within sixty days after receipt of the order of such department or subdivision. And in case such railroad shall not comply with such order within the period specified, the department or subdivision may proceed with the work and, upon its completion, bill the railroad for its proportion thereof and the railroad shall pay such bill, together with interest at the rate of seven per cent per annum from the date of the completion of the work. But before the railroad is required under this provision to proceed with the construction of such grade separation structure the estimated pro rata share of the department or subdivision shall be arranged for and appropriated.

HISTORY: 1962 Code Section 58‑820; 1952 Code Section 58‑820; 1942 Code Section 8468; 1932 Code Section 8443; 1924 (33) 1057.

Library References

Railroads 99(2).

Westlaw Topic No. 320.

C.J.S. Railroads Sections 334 to 336, 347 to 351.

NOTES OF DECISIONS

In general 1

1. In general

The order to be made by the Highway Department is a prerequisite and a necessary step before the railroad company can be held under the terms of this section [Code 1962 Section 58‑820]. State ex rel. State Highway Dept. v. Southern Ry. Co. (S.C. 1938) 186 S.C. 315, 195 S.E. 633.

There shall be attached to the order and accompanying the same the plans and specifications. State ex rel. State Highway Dept. v. Southern Ry. Co. (S.C. 1938) 186 S.C. 315, 195 S.E. 633.

**SECTION 58‑15‑1700.** Appeal to Commission and to court.

 Whenever any railroad company shall be required by an order of a department or subdivision to provide a grade separation structure, as specified herein, and shall be of the opinion that such grade separation is not a public necessity, it may within ten days after receipt of such order, appeal to the Public Service Commission and the commission within twenty days thereafter shall hold a public hearing and determine the public necessity for such grade separation. From any order of the commission in the premises either party shall have the right to appeal to the courts, as provided by statute in matters within the jurisdiction of the commission. The commission shall not be a party to an appeal. The provisions of this section shall not apply to orders of the Commission of the Department of Transportation.

HISTORY: 1962 Code Section 58‑821; 1952 Code Section 58‑821; 1942 Code Section 8469; 1932 Code Section 8444; 1924 (33) 1057; 1935 (39) 25; 2006 Act No. 318, Section 105, eff May 24, 2006.

Library References

Railroads 99(4), 99(6.1).

Westlaw Topic No. 320.

C.J.S. Railroads Sections 329 to 346.

LAW REVIEW AND JOURNAL COMMENTARIES

Administrative Law ‑ The Scope of Judicial Review of Decisions of Administrative Agencies in South Carolina. 23 S.C. L. Rev. 472.

NOTES OF DECISIONS

In general 1

1. In general

The Highway Department could not hold railroad liable for part of cost of construction of grade‑crossing elimination project as provided by statute, in absence of a formal order directing the railroad to proceed with construction, in view of statute permitting railroad to appeal from an order requiring it to proceed with construction, since in absence of order there was nothing from which the railroad could appeal. Code 1932, Sections 8437‑8447. State ex rel. State Highway Dept. v. Southern Ry. Co. (S.C. 1938) 186 S.C. 315, 195 S.E. 633.

**SECTION 58‑15‑1710.** Direct appeal to court.

 Any railroad company may appeal to the courts from any order or finding of any department or subdivision hereunder, the appeal to be taken in the manner provided by statute for an appeal from an order of the Public Service Commission. The commission shall not be a party to any appeal.

HISTORY: 1962 Code Section 58‑822; 1952 Code Section 58‑822; 1942 Code Section 8470; 1932 Code Section 8445; 1924 (33) 1057; 2006 Act No. 318, Section 106, eff May 24, 2006.

Library References

Railroads 99(6.1).

Westlaw Topic No. 320.

C.J.S. Railroads Sections 332, 335 to 336.

LAW REVIEW AND JOURNAL COMMENTARIES

Administrative Law ‑ The Scope of Judicial Review of Decisions of Administrative Agencies in South Carolina. 23 S.C. L. Rev. 472.

NOTES OF DECISIONS

In general 1

1. In general

The Highway Department could not hold railroad liable for part of cost of construction of grade‑crossing elimination project as provided by statute, in absence of a formal order directing the railroad to proceed with construction, in view of statute permitting railroad to appeal from an order requiring it to proceed with construction, since in absence of order there was nothing from which the railroad could appeal. Code 1932, Sections 8437‑8447. State ex rel. State Highway Dept. v. Southern Ry. Co. (S.C. 1938) 186 S.C. 315, 195 S.E. 633.

**SECTION 58‑15‑1720.** Construction pending appeal.

 When any railroad company appeals from a decision of the Commission as provided for in Section 58‑15‑1700 or from an order or finding of any department or subdivision as provided for in Section 58‑15‑1710 the department or subdivision pending such appeal or appeals may proceed at its own risk and expense in constructing such grade crossing separation structure and without prejudice as to the division of the costs as herein provided should the appeal be decided adversely to such railroad.

HISTORY: 1962 Code Section 58‑823; 1952 Code Section 58‑823; 1942 Code Section 8471; 1932 Code Section 8446; 1924 (33) 1057.

Library References

Railroads 99(6.1).

Westlaw Topic No. 320.

C.J.S. Railroads Sections 332, 335 to 336.

**SECTION 58‑15‑1730.** Continuance of crossings as private crossings.

 All existing grade crossings replaced by grade separation structures or avoided by relocation of highways and no longer habitually used by the general public may be continued only as private crossings and not subject to the provisions of the statutes of this State relating to railroad crossings.

HISTORY: 1962 Code Section 58‑824; 1952 Code Section 58‑824; 1942 Code Section 8466; 1932 Code Section 8441; 1924 (33) 1057.

Library References

Railroads 102(7).

Westlaw Topic No. 320.

C.J.S. Railroads Sections 362 to 364.

**SECTION 58‑15‑1740.** Special agreements.

 Nothing in this article shall be construed to prevent the department or subdivision from reaching special agreements with railroad companies providing for grade crossing eliminations by means of relocation of either the roads or railroads involved or by any other means and arranging for joint participation in the cost of such elimination on an agreed basis.

HISTORY: 1962 Code Section 58‑825; 1952 Code Section 58‑825; 1942 Code Section 8467; 1932 Code Section 8442; 1924 (33) 1057.

Library References

Railroads 99(3).

Westlaw Topic No. 320.

C.J.S. Railroads Sections 324 to 326.

ARTICLE 19

Alteration of Railroad Grade Separation Structures

**SECTION 58‑15‑1910.** Department of Transportation shall cooperate in relation to grade separation structures.

 The Department of Transportation shall cooperate with any railroad company operating lines in the State in effecting necessary reconstruction, changes or alterations in grade separation structures on state highways where the tracks of such company cross such highways.

HISTORY: 1962 Code Section 58‑831; 1952 Code Section 58‑831; 1942 Code Section 8474; 1932 Code Section 8449; 1932 (37) 1106; 1993 Act No. 181, Section 1557, eff July 1, 1993.

Library References

Railroads 99(2).

Westlaw Topic No. 320.

C.J.S. Railroads Sections 334 to 336, 347 to 351.

NOTES OF DECISIONS

In general 1

1. In general

Purpose of article. This article authorizes the reconstruction, change or alteration of the structures originally built pursuant to Article 10 of this chapter, and provides a similar, but not identical, scheme for the apportionment of costs. Southern Ry. Co. v. South Carolina State Highway Dept. (S.C. 1960) 237 S.C. 75, 115 S.E.2d 685.

And meaning. It is proper in considering the meaning of this article to consider also other statutory provisions relating to the same subject matter. Southern Ry. Co. v. South Carolina State Highway Dept. (S.C. 1960) 237 S.C. 75, 115 S.E.2d 685. Statutes 1216(2)

It is to be strictly construed. This article, being in derogation of the common law, must be strictly construed. Southern Ry. Co. v. South Carolina State Highway Dept. (S.C. 1960) 237 S.C. 75, 115 S.E.2d 685. Statutes 1206(3)

“Grade separation.” ‑ The term “grade separation” was presumably used advisedly by the legislature to describe a structure having a particular function; that is, to separate the level of a road from the level of a railroad track at a point where such road and track cross. Southern Ry. Co. v. South Carolina State Highway Dept. (S.C. 1960) 237 S.C. 75, 115 S.E.2d 685.

When this article and Article 10 are considered together, it is manifest that in enacting this article the legislature used “grade separation structure” as a term with an established meaning. Southern Ry. Co. v. South Carolina State Highway Dept. (S.C. 1960) 237 S.C. 75, 115 S.E.2d 685.

Purpose of grade separation structure. A grade separation structure has for its purpose the promotion of safety and convenience from hazards partly of the railroad’s making. Southern Ry. Co. v. South Carolina State Highway Dept. (S.C. 1960) 237 S.C. 75, 115 S.E.2d 685.

**SECTION 58‑15‑1920.** Necessity of work shall be determined by Department; notice to companies.

 The necessity for any such reconstruction, changes or alterations shall be determined by the Department of Transportation and made in accordance with plans adopted by the department. But any railroad company concerned shall be given at least ten days’ notice before any such work is initiated by the department and shall be permitted by the department to offer suggestions and counsel as to the proposed reconstruction, changes or alteration.

HISTORY: 1962 Code Section 58‑832; 1952 Code Section 58‑832; 1942 Code Section 8475; 1932 Code Section 8450; 1932 (37) 1106; 1993 Act No. 181, Section 1558, eff July 1, 1993.

Library References

Railroads 99(2).

Westlaw Topic No. 320.

C.J.S. Railroads Sections 334 to 336, 347 to 351.

**SECTION 58‑15‑1930.** Apportionment of costs.

 The cost of effecting any reconstruction, changes or alterations as contemplated in Sections 58‑15‑1910 and 58‑15‑1920, including the grade separation structure and its approaches for a distance of five hundred feet, if so much be necessary, measured from the center line in each direction along the highway, but not including the pavement or wearing surface for either the structure or its approaches, shall be borne sixty per cent by the Department of Transportation and forty per cent by the railroad company concerned and, in case of failure on the part of any such company to furnish its pro rata share of the necessary funds for paying the cost of any such reconstruction, changes or alterations, the Department of Transportation may, after thirty days’ notice, proceed with the work and collect from the railroad company concerned a proper pro rata share of the cost on the basis established by Sections 58‑15‑1910 to 58‑15‑1950.

HISTORY: 1962 Code Section 58‑833; 1952 Code Section 58‑833; 1942 Code Section 8476; 1932 Code Section 8451; 1932 (37) 1106; 1993 Act No. 181, Section 1559, eff July 1, 1993.

Library References

Railroads 99(2).

Westlaw Topic No. 320.

C.J.S. Railroads Sections 334 to 336, 347 to 351.

NOTES OF DECISIONS

In general 1

1. In general

Reconstruction of highway bridge built to span cut in which there was a railroad track was not a “grade separation structure” within statute providing scheme for apportionment of costs between Highway Department and railroad for reconstructing, changing or altering a grade separation structure and railroad which owned tracks in cut was not liable for any portion of cost of reconstruction of bridge. Code 1952, Sections 58‑831 et seq., 58‑833, 58‑835. Southern Ry. Co. v. South Carolina State Highway Dept. (S.C. 1960) 237 S.C. 75, 115 S.E.2d 685. Railroads 99(2)

**SECTION 58‑15‑1940.** Grade separation structures to which article shall apply.

 This article shall apply to all cases where grade separation structures on state highways across railroads are, in the judgment of the Department of Transportation, for any reason inadequate for the traffic on the highway, but shall not apply to grade crossings. This article shall not be construed as relieving any railway company from any obligation or duty now borne by or resting upon such company in connection with any grade separation structure.

HISTORY: 1962 Code Section 58‑834; 1952 Code Section 58‑834; 1942 Code Section 8477; 1932 Code Section 8452; 1932 (37) 1106; 1993 Act No. 181, Section 1560, eff July 1, 1993.

Library References

Railroads 99(2).

Westlaw Topic No. 320.

C.J.S. Railroads Sections 334 to 336, 347 to 351.

NOTES OF DECISIONS

In general 1

1. In general

Bridge held not a grade separation structure. Where a bridge across a cut was for the purpose of spanning the cut, and would have been necessary whether there had been a track of the railway in the cut or not, the bridge was not a “grade separation structure” within the meaning of the above section, so that the railway company could not be compelled to pay a pro rata share of the cost of reconstructing such bridge. Southern Ry. Co. v. South Carolina State Highway Dept. (S.C. 1960) 237 S.C. 75, 115 S.E.2d 685.

**SECTION 58‑15‑1950.** Appeal to Supreme Court; stay of construction.

 Any railroad company affected by any decision or action of the Department of Transportation made or initiated pursuant to the provisions of this article may appeal to the Supreme Court in its original jurisdiction for a review of the department’s findings as to either the necessity for the proposed reconstruction, changes or alterations or determinations relating to divisions of costs. The appeal, however, shall not operate as a stay to prevent the department from proceeding with the work after notice, as provided in Section 58‑15‑1930, unless so ordered specifically by the court or some member thereof, after prima facie showing that the appellant’s property, or the use thereof, after the completion of the proposed reconstruction, changes or alterations would be definitely impaired and rendered less suitable for its intended purposes. But in case of any stay order by the court, or some member thereof, on the appellant’s showing and the subsequent finding by the court that such injury would result from the proposed reconstruction, changes or alterations to the appellant’s property, or the use thereof, the appellant shall be held liable for any damages or losses sustained by the Department of Transportation incident to, occasioned or brought about by the delay pending the appeal.

HISTORY: 1962 Code Section 58‑835; 1952 Code Section 58‑835; 1942 Code Section 8478; 1932 Code Section 8453; 1932 (37) 1106; 1993 Act No. 181, Section 1561, eff July 1, 1993.

Library References

Railroads 99(6.1).

Westlaw Topic No. 320.

C.J.S. Railroads Sections 332, 335 to 336.

ARTICLE 21

Construction and Maintenance of Railroad Grade Crossings of Highways

**SECTION 58‑15‑2110.** Railroads shall construct and maintain grade crossings of highways.

 (A) Whenever the public safety, convenience, or necessity so requires, all operators of railroads which are now or hereafter shall be crossed at grade by a public highway shall construct and maintain grade crossings meeting the requirements of the authorities responsible for such highways. This shall apply to crossings necessary for new highways, as well as to crossings needed to replace existing crossings rendered obsolete or unnecessary by the relocation or improvement of existing highways or roads.

 (B) The involved railroad shall be responsible for all costs associated with construction, modification, or relocation of rail‑highway grade crossings when such construction, modification, or relocation results from projects initiated by the railroad. Such railroad‑initiated projects shall include, but are not limited to, constructing a new line, adding an additional track to an existing line, and relocating an existing rail line.

 (C) The public authority responsible for a highway crossing a railroad track or tracks shall reimburse the involved railroad for all costs that railroad incurs by virtue of construction, modification, or relocation of rail‑highway grade crossings when such construction, modification, or relocation results from projects initiated by the public authority. A public authority is limited to the State Department of Transportation, which is required to reimburse the railroad for Department of Transportation authorized projects from within the funds appropriated to the Department of Transportation by the General Assembly. Such public authority‑initiated projects are limited to constructing a new highway, widening an existing highway, and relocating an existing highway.

HISTORY: 1962 Code Section 58‑841; 1956 (49) 1603; 1963 (53) 152; 1999 Act No. 100, Part II, Section 67, eff June 30, 1999.

Library References

Railroads 92.1 to 98, 303(1).

Westlaw Topic No. 320.

C.J.S. Railroads Sections 290 to 321, 327 to 328, 966 to 967.

Attorney General’s Opinions

There is no “grade crossing” for purposes of Code of Laws of South Carolina 59‑841, et seq. (1974 Cum Supp) [reference to Code 1962 apparently intended to be Sections 58‑841 et seq., Code 1976 reference then would be Sections 58‑15‑2110 et seq.] where railroad tracks penetrate the right‑of‑way of a state highway but fail to pass from one side of the improved portion of the highway to the other side. 1974‑75 Op.Atty.Gen., No 4102, p 180 (1975 WL 22398).

NOTES OF DECISIONS

Negligence 1

1. Negligence

Negligence in maintaining crossing held explorable issue in crossing accident case. Where a car stalled at a railroad crossing was struck by a locomotive and there was evidence of negligence on the part of the railroad company in respect to the physical features of the crossing, the reason why the car was where it was became an important and explorable issue. If the railroad was to blame, then the failure of the driver to get out of his car is not readily isolatable as the exclusive cause of his end. Again, if the railroad put him in the fatal predicament, it had the burden, at the risk of an adverse verdict, to prove his freedom to extricate himself. On the other hand, if the driver imperilled himself, his unexplained confrontation of death could defeat the plaintiff’s efforts at recovery. These were jury questions precluding direction of a verdict. Isgett v. Atlantic Coast Line R. Co. (C.A.4 (S.C.) 1964) 328 F.2d 364.

**SECTION 58‑15‑2120.** Department of Transportation may make specifications and enter into agreements concerning grade crossings of State highways; penalties may be waived by Department.

 In case of grade crossings of state highways over such railroads, the Department of Transportation, after due notice to the railroad, corporation, or operator, and hearing the railroad or operator involved, if application is made for such a hearing within ten days after receipt of the notice and after finding that the public safety, convenience, or necessity require it, shall have the power to specify the character of the grade crossings, and the operator of the railroad shall construct and maintain the crossings to meet the specifications of the Department of Transportation; provided, however, that the power to specify the character of grade crossings granted in this section shall not extend beyond five feet on either side of the center line of the track; provided, further, that the Department of Transportation shall have the power, in matters relating to such grade crossings, now pending or hereafter arising, to enter into such agreements with operators of railroads pertaining to the construction thereof as in its judgment may be to the best interest of the State, and to agree to pave the area across the tracks after the area is otherwise prepared for paving by the operator of the railroad. The Department of Transportation, with the advice and consent of the Attorney General, may waive any and all claims for penalties now existing, upon entry into such agreements.

HISTORY: 1962 Code Section 58‑842; 1956 (49) 1603; 1963 (53) 152; 1993 Act No. 181, Section 1562, eff July 1, 1993; 1999 Act No. 100, Part II, Section 67, eff June 30, 1999.

Library References

Railroads 11, 94(1).

Westlaw Topic No. 320.

C.J.S. Railroads Sections 295 to 296.

**SECTION 58‑15‑2130.** Penalty for noncompliance.

 Any person or corporation failing to comply with the provisions of this article, after a hearing, if one is applied for as set out in Section 58‑15‑2120, and after having been notified in writing of the decision of the proper authorities that the crossing is required by public safety, convenience and necessity, and after the lapse of thirty days from the date of such notice, shall, upon conviction, be fined ten dollars per day for each day’s delay in furnishing any crossing as required hereby. The Department of Transportation shall make a complaint to any court of competent jurisdiction within the county where the offense is committed, and shall furnish evidence before such court whenever a violation of this article may occur.

HISTORY: 1962 Code Section 58‑843; 1956 (49) 1603; 1963 (53) 152; 1993 Act No. 181, Section 1563, eff July 1, 1993.

Library References

Railroads 11, 94(6).

Westlaw Topic No. 320.

C.J.S. Railroads Sections 299 to 300.

NOTES OF DECISIONS

In general 1

1. In general

This section [Code 1962 Section 58‑843] imposes a penalty upon a railroad violating its terms, which may be collected in a civil action at the instance of the State Highway Department. South Carolina State Highway Dept. v. Southern Ry. Co. (S.C. 1961) 239 S.C. 227, 122 S.E.2d 422.

But does not make a violation of its terms a criminal offense. This section [Code 1962 Section 58‑843] provides that upon failure of any person to comply with the provisions thereof, upon conviction, a fine of ten dollars per day for each day’s delay shall be imposed, but does not make the violation of its terms a criminal offense. South Carolina State Highway Dept. v. Southern Ry. Co. (S.C. 1961) 239 S.C. 227, 122 S.E.2d 422.

Use of word “fine” ‑ While this section [Code 1962 Section 58‑843] provides for the imposition of a fine, the word “fine” is not used in the sense of punishment for violation of a criminal statute. Rather, the word “fine” is used in the broader sense of a penalty. South Carolina State Highway Dept. v. Southern Ry. Co. (S.C. 1961) 239 S.C. 227, 122 S.E.2d 422.

Distinction between fine and penalty. A fine is usually a sum of money exacted from a person guilty of a crime as pecuniary punishment; while a penalty is a sum of money exacted, by way of punishment for doing some act that is prohibited, or omitting to do some act that is required to be done, which may or may not be a crime. South Carolina State Highway Dept. v. Southern Ry. Co. (S.C. 1961) 239 S.C. 227, 122 S.E.2d 422.

“Conviction” is not necessarily restricted to criminal prosecutions, but in its most extensive sense the term signifies the giving of judgment against a defendant, and will apply to a civil as well as to a criminal action; also a condemnation. South Carolina State Highway Dept. v. Southern Ry. Co. (S.C. 1961) 239 S.C. 227, 122 S.E.2d 422.

The phrase “upon conviction,” as used in this section [Code 1962 Section 58‑843], does not have reference to the procedure for collection of the penalty, but refers to the determination that a violation of the act has occurred. South Carolina State Highway Dept. v. Southern Ry. Co. (S.C. 1961) 239 S.C. 227, 122 S.E.2d 422. Railroads 11

**SECTION 58‑15‑2140.** Article shall not affect certain penalties.

 Unless waived as provided in Section 58‑15‑2120, the provisions of Sections 58‑15‑2110 to 58‑15‑2130 shall not affect or in anywise relieve any railroad company or operator of any penalties incurred under Sections 58‑15‑2110 to 58‑15‑2130 or former Sections 58‑15‑2110 to 58‑15‑2130. The provisions of Section 58‑17‑1360 are not intended to be nor are they repealed or affected by amendment of Sections 58‑15‑2110 to 58‑15‑2130.

HISTORY: 1962 Code Section 58‑843.1; 1963 (53) 152.

Library References

Railroads 11.

Westlaw Topic No. 320.