

4478--A

2009-2010 Regular Sessions

I N   S E N A T E

April 23, 2009

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Introduced by Sens. DILAN, DIAZ, HASSELL-THOMPSON, KLEIN -- read twice and ordered printed, and when printed to be committed to the Committee on Transportation -- recommitted to the Committee on Transportation in accordance with Senate Rule 6, sec. 8 -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee

AN ACT to amend the railroad law, in relation to trespass on railroad property

THE PEOPLE OF THE STATE OF NEW YORK, REPRESENTED IN SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

1     Section 1. Sections 83, 83-a and 83-b of the railroad law, section  
2     83-a as added by chapter 246 of the laws of 1977 and section 83-b as  
3     amended by chapter 428 of the laws of 1998, are amended to read as  
4     follows:  
5     S 83. Riding on platform; walking along track. No railroad corporation  
6     shall be liable for any injury to any passenger while on the platform of  
7     a car, or in any baggage, wood or freight car, in violation of the  
8     printed regulations of the corporation, posted up at the time in a  
9     conspicuous place inside of the passenger cars, then in the train, if  
10    there shall be at the time sufficient room for the proper accommodation  
11    of the passenger inside such passenger cars. [No person other than those  
12    connected with or employed upon the railroad shall walk upon or along  
13    its track or tracks, except where the same shall be laid across or along  
14    streets or highways, in which case he shall not walk upon the track  
15    unless necessary to cross the same. Any person riding, leading or driv-  
16    ing any horse or other animal upon any railroad, or within the fences  
17    and guards thereof, other than at a farm or street or forest crossing,  
18    without the consent of the corporation, shall forfeit to the people of  
19    the state the sum of ten dollars, and pay all damages sustained thereby  
20    to the party aggrieved.]

EXPLANATION--Matter in *ITALICS* (underscored) is new; matter in brackets  
[ ] is old law to be omitted.

LBD03655-03-0

1 S 83-a. Operation of MOTOR VEHICLES, snowmobiles, AND OTHER RECRE-  
2 ATIONAL VEHICLES on railroad property. Except in the case of a railroad  
3 employee, CONTRACTOR OF THE RAILROAD CONTRACTOR OR PUBLIC OFFICIAL  
4 acting in the performance of his [duty] OR HER DUTIES, no person shall  
5 KNOWINGLY operate a MOTOR VEHICLE, snowmobile, OR OTHER RECREATIONAL  
6 VEHICLE, INCLUDING ALL TERRAIN VEHICLES AND MOTORCYCLES, upon abandoned  
7 railroad property which is posted to prohibit the operation of [snowmo-  
8 biles] ANY SUCH VEHICLES thereupon, or upon or along the track or tracks  
9 of an operating railroad or within the fences or guards thereof, except  
10 across or along streets or highways or at farm or forest crossings where  
11 [necessary] SUCH PERSON IS LEGALLY AUTHORIZED to cross [said] SUCH  
12 tracks or property. [Any person violating the provisions of this section  
13 shall be guilty of a violation punishable by a fine of one hundred  
14 dollars for each separate offense.] A VIOLATION OF THE PROVISIONS OF  
15 THIS SECTION SHALL CONSTITUTE A VIOLATION PUNISHABLE BY A FINE OF NOT  
16 LESS THAN ONE HUNDRED DOLLARS NOR MORE THAN TWO HUNDRED FIFTY DOLLARS.  
17 CONVICTION FOR A SECOND OR SUBSEQUENT VIOLATION OF THE PROVISIONS OF  
18 THIS SECTION SHALL BE PUNISHABLE BY A FINE OF NOT LESS THAN TWO HUNDRED  
19 FIFTY NOR MORE THAN FIVE HUNDRED DOLLARS OR A PERIOD OF IMPRISONMENT NOT  
20 TO EXCEED FIFTEEN DAYS, OR BY BOTH SUCH FINE AND SUCH IMPRISONMENT.

21 S 83-b. Trespass upon railroad premises IN A CITY HAVING A POPULATION  
22 OF ONE MILLION OR MORE INHABITANTS AND IN CERTAIN COUNTIES. [1.] Any  
23 city with a population of one million or more and the counties of  
24 Monroe, Nassau, and Suffolk are authorized and empowered to adopt or  
25 amend a local law or ordinance designating any portion or portions of  
26 property consisting of a right-of-way or yard of a railroad or rapid  
27 transit railroad as a no-trespass railroad zone and providing for the  
28 conspicuous posting thereof for purposes of establishing criminal  
29 liability for trespass upon such property pursuant to subdivision (g) of  
30 section 140.10 of the penal law.

31 [2. The provisions of sections eighty-three and eighty-three-a of this  
32 article shall not be construed to prohibit or limit the prosecution of  
33 any person for a violation of the provisions of subdivision (g) of  
34 section 140.10 of the penal law.]

35 S 2. The railroad law is amended by adding a new section 83-c to read  
36 as follows:

37 S 83-C. TRESPASS UPON RAILROAD PREMISES; DAMAGE TO RAILROAD PROPERTY.  
38 1. NO PERSON OTHER THAN THOSE WITH PERMISSION FROM THE RAILROAD CORPO-  
39 RATION OR EMPLOYED BY THE RAILROAD CORPORATION SHALL KNOWINGLY ENTER OR  
40 REMAIN ON RAILROAD PROPERTY OR RIGHT-OF-WAY INCLUDING, BUT NOT LIMITED  
41 TO, WALKING UPON OR ALONG ITS TRACK OR TRACKS, EXCEPT WHERE THE SAME  
42 SHALL BE LAID ACROSS OR ALONG STREETS OR HIGHWAYS, IN WHICH CASE HE OR  
43 SHE SHALL NOT WALK UPON THE TRACK UNLESS NECESSARY TO CROSS THE SAME AT  
44 AN ESTABLISHED GRADE CROSSING. A VIOLATION OF THE PROVISIONS OF THIS  
45 SUBDIVISION SHALL CONSTITUTE A VIOLATION PUNISHABLE BY A FINE OF NOT  
46 LESS THAN ONE HUNDRED DOLLARS NOR MORE THAN TWO HUNDRED FIFTY DOLLARS.  
47 CONVICTION FOR A SECOND OR SUBSEQUENT VIOLATION OF THE PROVISIONS OF  
48 THIS SUBDIVISION SHALL BE PUNISHABLE BY A FINE OF NOT LESS THAN TWO  
49 HUNDRED FIFTY DOLLARS NOR MORE THAN FIVE HUNDRED DOLLARS, A PERIOD OF  
50 IMPRISONMENT NOT TO EXCEED FIFTEEN DAYS, OR BY BOTH SUCH FINE AND SUCH  
51 IMPRISONMENT.

52 2. ANY PERSON RIDING, LEADING, OR DRIVING ANY HORSE OR OTHER ANIMAL  
53 UPON ANY RAILROAD, OR WITHIN THE RIGHT-OF-WAY, FENCES, AND GUARDS THERE-  
54 OF, OTHER THAN AT A LEGALLY ESTABLISHED FARM OR STREET OR FOREST CROSS-  
55 ING, WITHOUT THE CONSENT OF THE CORPORATION, SHALL FORFEIT TO THE PEOPLE

1 OF THE STATE A SUM NOT TO EXCEED ONE HUNDRED DOLLARS AS A CIVIL PENALTY  
2 PURSUANT TO SECTION 60.30 OF THE PENAL LAW.

3 3. (A) NO PERSON SHALL KNOWINGLY, RECKLESSLY OR INTENTIONALLY ENGAGE  
4 IN ANY CONDUCT THAT RESULTS IN DAMAGE TO OR DEFACEMENT OF RAILROAD PROP-  
5 ERTY. SUCH CONDUCT SHALL INCLUDE, BUT IS NOT LIMITED TO, THROWING  
6 OBJECTS AT RAILROAD FACILITIES, STRUCTURES OR ROLLING STOCK, PLACING  
7 OBJECTS ON TRACKS, DEFACING PROPERTY AND DISARMING, OR IN ANY WAY INTER-  
8 FERING WITH SIGNALS OR SWITCHES. A VIOLATION OF THE PROVISIONS OF THIS  
9 SUBDIVISION SHALL BE A MISDEMEANOR PUNISHABLE BY A FINE OF NOT LESS THAN  
10 FIVE HUNDRED DOLLARS NOR MORE THAN ONE THOUSAND FIVE HUNDRED DOLLARS,  
11 IMPRISONMENT FOR A PERIOD NOT TO EXCEED ONE YEAR, OR BOTH SUCH FINE AND  
12 SUCH IMPRISONMENT.

13 (B) A VIOLATION OF THE PROVISIONS OF PARAGRAPH (A) OF THIS SUBDIVISION  
14 WHICH DISRUPTS, DELAYS OR IN ANY WAY INTERFERES WITH RAILROAD OPERATIONS  
15 SHALL BE A FELONY PUNISHABLE BY A FINE OF NOT LESS THAN ONE THOUSAND  
16 DOLLARS NOR MORE THAN TWO THOUSAND FIVE HUNDRED DOLLARS, IMPRISONMENT  
17 FOR A PERIOD AUTHORIZED BY THE PENAL LAW FOR A CLASS E FELONY, OR BOTH  
18 SUCH FINE AND SUCH IMPRISONMENT.

19 (C) IF A VIOLATION OF THE PROVISIONS OF PARAGRAPH (A) OR (B) OF THIS  
20 SUBDIVISION RESULTS IN THE DEATH OF ANOTHER PERSON OR SERIOUS PHYSICAL  
21 INJURY, AS DEFINED IN SECTION 10.00 OF THE PENAL LAW, TO ANY OTHER  
22 PERSON, SUCH CONDUCT SHALL BE A FELONY PUNISHABLE BY A FINE OF NOT LESS  
23 THAN TWO THOUSAND FIVE HUNDRED DOLLARS NOR MORE THAN FIVE THOUSAND  
24 DOLLARS, IMPRISONMENT FOR A PERIOD AUTHORIZED BY THE PENAL LAW FOR A  
25 CLASS D FELONY, OR BOTH SUCH FINE AND SUCH IMPRISONMENT.

26 4. FOR THE PURPOSES OF THIS SECTION, A PERSON IS DEEMED TO HAVE ACTED  
27 KNOWINGLY, AND ACTUAL NOTICE THAT A PERSON IS ILLEGALLY TRESPASSING ON  
28 RAILROAD PROPERTY IS NOT NECESSARY, IF THE SURROUNDING CIRCUMSTANCES,  
29 SUCH AS CLOSE PROXIMITY TO RAILROAD TRACKS, BUILDINGS, EQUIPMENT OR  
30 OTHER FACILITIES, WOULD ALERT REASONABLE PERSONS THAT HE OR SHE IS ON  
31 RAILROAD PROPERTY OR EQUIPMENT. PERMISSION TO ENTER ON RAILROAD PROPERTY  
32 OR EQUIPMENT NOT DESIGNATED FOR PUBLIC USE BY THE RAILROAD CORPORATION  
33 SHALL NOT BE IMPLIED, BUT SHALL BE IN WRITING OR BY ANOTHER ACCEPTABLE  
34 AFFIRMATIVE MANNER OF CONSENT, UNLESS OTHERWISE PROVIDED BY LAW.

35 5. THE PROVISIONS OF THIS SECTION AND SECTIONS EIGHTY-THREE,  
36 EIGHTY-THREE-A AND EIGHTY-THREE-B OF THIS ARTICLE SHALL NOT BE CONSTRUED  
37 TO PROHIBIT OR LIMIT THE PROSECUTION OF ANY PERSON FOR ANY APPLICABLE  
38 VIOLATION OF THE PROVISIONS OF ARTICLE ONE HUNDRED FORTY OF THE PENAL  
39 LAW, NOR SHALL THE PROVISIONS OF THIS SECTION BE CONSTRUED TO PROHIBIT  
40 OR LIMIT THE PROSECUTION OF ANY PERSON FOR ANY APPLICABLE PROVISION OF  
41 THE PENAL LAW INCLUDING, BUT NOT LIMITED TO, ARTICLES ONE HUNDRED TWENTY  
42 AND ONE HUNDRED TWENTY-FIVE OF SUCH LAW IF THE ACTIONS OF A PERSON  
43 RESULT IN THE DEATH OF OR SERIOUS INJURY TO ANOTHER PERSON.

44 6. THE PROVISIONS OF THIS SECTION AND SECTIONS EIGHTY-THREE,  
45 EIGHTY-THREE-A AND EIGHTY-THREE-B OF THIS ARTICLE SHALL NOT BE CONSTRUED  
46 TO LIMIT THE RIGHTS, REMEDIES AND DAMAGES RECOVERABLE BY ANY PLAINTIFF  
47 OR CLAIMANT IN ANY CIVIL ACTION AS PROVIDED BY APPLICABLE LAW.

48 S 3. This act shall take effect on the first of November next succeed-  
49 ing the date on which it shall have become a law.