

4478

2009-2010 Regular Sessions

I N S E N A T E

April 23, 2009

Introduced by Sen. DILAN -- read twice and ordered printed, and when printed to be committed to the Committee on Transportation

AN ACT to amend the railroad law and the state finance law, in relation to trespass on railroad property and the establishment of the railroad crossing safety fund

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 OR INSIDE CERTAIN RAIL CARS; [walking along
6 track] LIMITATIONS ON LIABILITY. 1. No railroad corporation shall be
7 liable for any injury to any passenger while on the platform of a
8 PASSENGER car, or [in any] WITHIN A baggage[, wood or freight] car[, in
9 violation of the printed regulations of the corporation, posted up at
10 the time in a conspicuous place inside of the passenger cars, then in
11 the train, if there shall be at the time sufficient room for the proper
12 accommodation of the passenger inside such passenger cars. No person
13 other than those connected with or employed upon the railroad shall walk
14 upon or along its track or tracks, except where the same shall be laid
15 across or along streets or highways, in which case he shall not walk
16 upon the track unless necessary to cross the same. Any person riding,
17 leading or driving any horse or other animal upon any railroad, or with-
18 in the fences and guards thereof, other than at a farm or street or
19 forest crossing, without the consent of the corporation, shall forfeit
20 to the people of the state the sum of ten dollars, and pay all damages
21 sustained thereby to the party aggrieved] OR LOCOMOTIVE, OR ANY AREA
22 WITHIN ANY CAR FROM WHICH THE PUBLIC IS EXPRESSLY PROHIBITED, PROVIDED
23 THAT CONSPICUOUS NOTICE HAS BEEN POSTED IN OR ON THE PASSENGER TRAIN
24 STATING THAT ENTRANCE ONTO SUCH PLATFORM, CAR OR AREA IS PROHIBITED.

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

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1 2. NO RAILROAD CORPORATION SHALL BE LIABLE FOR ANY INJURY TO ANY
2 PERSON WHILE WITHIN OR ON THE EXTERIOR OF ANY FREIGHT CAR OR LOCOMOTIVE
3 WITHOUT THE EXPRESS AUTHORIZATION OF THE RAILROAD CORPORATION.

4 3. ANY SUCH LIMITATION OF LIABILITY PROVIDED IN THIS SECTION SHALL NOT
5 APPLY WITH REGARD TO ANY PERSON WHO IS AN EMPLOYEE OR CONTRACTOR OF THE
6 RAILROAD CORPORATION OR AUTHORIZED PUBLIC OFFICIAL, AND ANY SUCH PERSON
7 IS ACTING IN THE PERFORMANCE OF HIS OR HER DUTIES, NOR SHALL IT APPLY IN
8 THE CASE OF ANY PERSON, INCLUDING, BUT NOT LIMITED TO, FIRST RESPONDERS,
9 POLICE, FIRE OR EMERGENCY PERSONNEL, ACTING IN THE GOOD FAITH BELIEF
10 THAT HE OR SHE MUST ENTER UPON ANY AREA OF A FREIGHT OR PASSENGER TRAIN
11 FOR THE PURPOSES OF RESPONDING TO AN EMERGENCY SITUATION THAT ENDANGERS
12 THE PHYSICAL SAFETY OF ONE OR MORE PERSONS.

13 4. NO RAILROAD CORPORATION SHALL BE UNDER A DUTY TO KEEP ITS PREMISES
14 SAFE FOR CERTAIN USES AS SET FORTH IN SECTION 9-103 OF THE GENERAL OBLI-
15 GATIONS LAW.

16 5. NOTHING CONTAINED IN THIS SECTION SHALL RESTRICT OR IMPAIR ANY
17 OTHER LIMITATION OF LIABILITY PROVIDED BY LAW.

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

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

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

52 S 2. The railroad law is amended by adding three new sections 83-c,
53 83-d and 93-c to read as follows:

54 S 83-C. TRESPASS UPON RAILROAD PREMISES; DAMAGE TO RAILROAD PROPERTY.

55 1. NO PERSON OTHER THAN THOSE WITH PERMISSION FROM THE RAILROAD CORPO-
56 RATION OR EMPLOYED BY THE RAILROAD CORPORATION SHALL ENTER OR REMAIN ON

1 RAILROAD PROPERTY OR RIGHT-OF-WAY INCLUDING, BUT NOT LIMITED TO, WALKING
2 UPON OR ALONG ITS TRACK OR TRACKS, EXCEPT WHERE THE SAME SHALL BE LAID
3 ACROSS OR ALONG STREETS OR HIGHWAYS, IN WHICH CASE HE OR SHE SHALL NOT
4 WALK UPON THE TRACK UNLESS NECESSARY TO CROSS THE SAME AT AN ESTABLISHED
5 GRADE CROSSING. A VIOLATION OF THE PROVISIONS OF THIS SUBDIVISION SHALL
6 CONSTITUTE A VIOLATION PUNISHABLE BY A FINE OF NOT LESS THAN ONE HUNDRED
7 DOLLARS NOR MORE THAN TWO HUNDRED FIFTY DOLLARS. CONVICTION FOR A
8 SECOND OR SUBSEQUENT VIOLATION OF THE PROVISIONS OF THIS SUBDIVISION
9 SHALL BE PUNISHABLE BY A FINE OF NOT LESS THAN TWO HUNDRED FIFTY DOLLARS
10 NOR MORE THAN FIVE HUNDRED DOLLARS, A PERIOD OF IMPRISONMENT NOT TO
11 EXCEED FIFTEEN DAYS, OR BY BOTH SUCH FINE AND SUCH IMPRISONMENT.

12 2. ANY PERSON RIDING, LEADING, OR DRIVING ANY HORSE OR OTHER ANIMAL
13 UPON ANY RAILROAD, OR WITHIN THE RIGHT-OF-WAY, FENCES, AND GUARDS THERE-
14 OF, OTHER THAN AT A LEGALLY ESTABLISHED FARM OR STREET OR FOREST CROSS-
15 ING, WITHOUT THE CONSENT OF THE CORPORATION, SHALL FORFEIT TO THE PEOPLE
16 OF THE STATE A SUM NOT TO EXCEED ONE HUNDRED DOLLARS AS A CIVIL PENALTY
17 PURSUANT TO SECTION 60.30 OF THE PENAL LAW.

18 3. (A) NO PERSON SHALL KNOWINGLY, RECKLESSLY OR MALICIOUSLY ENGAGE IN
19 ANY CONDUCT THAT RESULTS IN DAMAGE TO OR DEFAACEMENT OF RAILROAD PROPER-
20 TY. SUCH CONDUCT SHALL INCLUDE, BUT IS NOT LIMITED TO, THROWING OBJECTS
21 AT RAILROAD FACILITIES, STRUCTURES OR ROLLING STOCK, PLACING OBJECTS ON
22 TRACKS, DEFACING PROPERTY AND DISARMING, OR IN ANY WAY INTERFERING WITH
23 SIGNALS OR SWITCHES. A VIOLATION OF THE PROVISIONS OF THIS SUBDIVISION
24 SHALL BE A MISDEMEANOR PUNISHABLE BY A FINE OF NOT LESS THAN FIVE
25 HUNDRED DOLLARS NOR MORE THAN ONE THOUSAND FIVE HUNDRED DOLLARS, IMPRI-
26 SONMENT FOR A PERIOD NOT TO EXCEED ONE YEAR, OR BOTH SUCH FINE AND SUCH
27 IMPRISONMENT.

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

34 (C) IF A VIOLATION OF THE PROVISIONS OF PARAGRAPH (A) OR (B) OF THIS
35 SUBDIVISION RESULTS IN THE DEATH OF OR SERIOUS PHYSICAL INJURY, AS
36 DEFINED IN SECTION 10.00 OF THE PENAL LAW, TO ANY OTHER PERSON, SUCH
37 CONDUCT SHALL BE A FELONY PUNISHABLE BY A FINE OF NOT LESS THAN TWO
38 THOUSAND FIVE HUNDRED DOLLARS NOR MORE THAN FIVE THOUSAND DOLLARS,
39 IMPRISONMENT FOR A PERIOD AUTHORIZED BY THE PENAL LAW FOR A CLASS D
40 FELONY, OR BOTH SUCH FINE AND SUCH IMPRISONMENT.

41 4. FOR THE PURPOSES OF THIS SECTION, A PERSON IS DEEMED TO HAVE ACTED
42 KNOWINGLY AND ACTUAL NOTICE THAT A PERSON IS ILLEGALLY TRESPASSING ON
43 RAILROAD PROPERTY IS NOT NECESSARY IF THE SURROUNDING CIRCUMSTANCES,
44 SUCH AS CLOSE PROXIMITY TO RAILROAD TRACKS, BUILDINGS, EQUIPMENT OR
45 OTHER FACILITIES, WOULD ALERT REASONABLE PERSONS THAT HE OR SHE IS ON
46 RAILROAD PROPERTY OR EQUIPMENT. PERMISSION TO ENTER ON RAILROAD PROPERTY
47 OR EQUIPMENT NOT DESIGNATED FOR PUBLIC USE BY THE RAILROAD CORPORATION
48 SHALL NOT BE IMPLIED, BUT SHALL BE IN WRITING OR BY ANOTHER ACCEPTABLE
49 AFFIRMATIVE MANNER OF CONSENT, UNLESS OTHERWISE PROVIDED BY LAW.

50 5. THE PROVISIONS OF THIS SECTION AND SECTIONS EIGHTY-THREE,
51 EIGHTY-THREE-A AND EIGHTY-THREE-B OF THIS ARTICLE SHALL NOT BE CONSTRUED
52 TO PROHIBIT OR LIMIT THE PROSECUTION OF ANY PERSON FOR ANY APPLICABLE
53 VIOLATION OF THE PROVISIONS OF ARTICLE ONE HUNDRED FORTY OF THE PENAL
54 LAW, NOR SHALL THE PROVISIONS OF THIS SECTION BE CONSTRUED TO PROHIBIT
55 OR LIMIT THE PROSECUTION OF ANY PERSON FOR ANY APPLICABLE PROVISION OF
56 THE PENAL LAW INCLUDING, BUT NOT LIMITED TO, ARTICLES ONE HUNDRED TWENTY

1 AND ONE HUNDRED TWENTY-FIVE OF SUCH LAW IF THE ACTIONS OF A PERSON
2 RESULT IN THE DEATH OF OR SERIOUS INJURY TO ANOTHER PERSON. PROVIDED,
3 FURTHER, THAT THE PROVISIONS OF THIS SECTION AND SECTIONS EIGHTY-THREE,
4 EIGHTY-THREE-A AND EIGHTY-THREE-B OF THIS ARTICLE SHALL NOT BE CONSTRUED
5 TO LIMIT THE RIGHTS, REMEDIES AND DAMAGES RECOVERABLE BY ANY PLAINTIFF
6 OR CLAIMANT IN ANY CIVIL ACTION AS PROVIDED BY APPLICABLE LAW.

7 S 83-D. FINES AND FORFEITURES. NOTWITHSTANDING ANY INCONSISTENT
8 PROVISION OF LAW, ALL FINES AND FORFEITURES COLLECTED PURSUANT TO THE
9 PROVISIONS OF SECTIONS EIGHTY-THREE-A AND EIGHTY-THREE-C OF THIS ARTI-
10 CLE, EXCEPT FOR ANY RESTITUTION OR REPARATION TO BE PAID TO AN AFFECTED
11 RAILROAD CORPORATION PURSUANT TO SECTION 60.27 OF THE PENAL LAW, SHALL
12 BE DEPOSITED TO THE CREDIT OF THE RAILROAD CROSSING SAFETY FUND AS
13 ESTABLISHED IN SECTION EIGHTY-NINE-H OF THE STATE FINANCE LAW.

14 S 93-C. OPERATION LIFESAVER PROGRAM. FOR THE PURPOSE OF PROVIDING
15 TRAINING AND EDUCATION EFFORTS TO IMPROVE SAFETY AT RAILROAD CROSSINGS
16 AND ALONG RAILROAD RIGHTS-OF-WAY LOCATED IN THE STATE, FUNDS OF THE
17 RAILROAD CROSSING SAFETY FUND ESTABLISHED PURSUANT TO SECTION
18 EIGHTY-NINE-H OF THE STATE FINANCE LAW MAY BE USED TO SUPPLEMENT BUT NOT
19 SUPPLANT FUNDING FROM ANY OTHER FEDERAL, STATE OR LOCAL SOURCE AVAILABLE
20 FOR SUCH PURPOSE. ALL EXPENDITURES FROM SAID FUND FOR SAID PURPOSE SHALL
21 BE DETERMINED BY THE COMMISSIONER, IN COOPERATION WITH THE STATE'S RAIL-
22 ROAD CORPORATIONS, AND SHALL BE SUBJECT TO THE OVERSIGHT OF THE COMMIS-
23 SIONER IN THE IMPLEMENTATION OF THE PROGRAM'S FUNCTIONS.

24 S 3. The state finance law is amended by adding a new section 89-h to
25 read as follows:

26 S 89-H. RAILROAD CROSSING SAFETY FUND. 1. THERE IS HEREBY CREATED IN
27 THE JOINT CUSTODY OF THE STATE COMPTROLLER AND THE COMMISSIONER OF TAXA-
28 TION AND FINANCE A SPECIAL REVENUE FUND TO BE KNOWN AS THE "RAILROAD
29 CROSSING SAFETY FUND".

30 2. SUCH FUND SHALL CONSIST OF ALL MONEYS COLLECTED PURSUANT TO
31 SECTIONS EIGHTY-THREE-A AND EIGHTY-THREE-C OF THE RAILROAD LAW, AND ALL
32 OTHER MONEYS CREDITED OR TRANSFERRED THERETO FROM ANY OTHER FUND OR
33 SOURCE PURSUANT TO LAW.

34 3. MONEYS IN THE FUND, FOLLOWING APPROPRIATION BY THE LEGISLATURE,
35 SHALL BE EXPENDED BY THE DEPARTMENT OF TRANSPORTATION IN COOPERATION
36 WITH THE STATE'S RAILROAD CORPORATIONS FOR THE PURPOSE OF PROVIDING
37 TRAINING AND EDUCATION EFFORTS DESIGNED TO IMPROVE SAFETY AT RAILROAD
38 GRADE CROSSINGS AND ALONG RAILROAD RIGHTS-OF-WAY LOCATED IN THE STATE
39 THROUGH THE OPERATION LIFESAVER PROGRAM ESTABLISHED BY SECTION
40 NINETY-THREE-C OF THE RAILROAD LAW.

41 S 4. This act shall take effect on the first of November next succeed-
42 ing the date on which it shall have become a law.