S T A T E O F N E W Y O R K

4478--B

Cal. No. 964

2009-2010 Regular Sessions

I N S E N A T E

April 23, 2009

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 -- reported favorably from said committee and committed to the Committee on Codes -- committee discharged and said bill committed to the Committee on Rules -- ordered to a third reading, amended and ordered reprinted, retaining its place in the order of third reading

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:

Section 1. Sections 83, 83-a and 83-b of the railroad law, section 83-a as added by chapter 246 of the laws of 1977 and section 83-b as amended by chapter 428 of the laws of 1998, are amended to read as follows:

S 83. Riding on platform; walking along track. No railroad corporation shall be liable for any injury to any passenger while on the platform of a car, or in any baggage, wood or freight car, in violation of the printed regulations of the corporation, posted up at the time in a conspicuous place inside of the passenger cars, then in the train, if there shall be at the time sufficient room for the proper accommodation of the passenger inside such passenger cars. [No person other than those connected with or employed upon the railroad shall walk upon or along its track or tracks, except where the same shall be laid across or along streets or highways, in which case he shall not walk upon the track unless necessary to cross the same. Any person riding, leading or driving any horse or other animal upon any railroad, or within the fences and guards thereof, other than at a farm or street or forest crossing, without the consent of the corporation, shall forfeit to the people of

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

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the state the sum of ten dollars, and pay all damages sustained thereby to the party aggrieved.]

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

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

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

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

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

2. ANY PERSON RIDING, LEADING, OR DRIVING ANY HORSE OR OTHER ANIMAL UPON ANY RAILROAD, OR WITHIN THE RIGHT-OF-WAY, FENCES, AND GUARDS THEREOF, OTHER THAN AT A FARM OR STREET OR FOREST CROSSING, WITHOUT THE

CONSENT OF THE CORPORATION, SHALL FORFEIT TO THE PEOPLE OF THE STATE A SUM NOT TO EXCEED ONE HUNDRED DOLLARS AS A CIVIL PENALTY PURSUANT TO SECTION 60.30 OF THE PENAL LAW.

3. (A) NO PERSON SHALL KNOWINGLY, RECKLESSLY OR INTENTIONALLY ENGAGE IN ANY CONDUCT THAT RESULTS IN DAMAGE TO OR SUBSTANTIAL DEFACEMENT OF RAILROAD PROPERTY. SUCH CONDUCT SHALL INCLUDE, BUT IS NOT LIMITED TO, THROWING OBJECTS THAT STRIKE RAILROAD FACILITIES, STRUCTURES OR ROLLING STOCK, PLACING OBJECTS ON OR IMMEDIATELY ADJACENT TO RAILROAD TRACKS, DEFACING, DISARMING, OR IN ANY WAY INTERFERING WITH SIGNALS OR SWITCHES. A VIOLATION OF THE PROVISIONS OF THIS SUBDIVISION SHALL BE A MISDEMEANOR PUNISHABLE BY A FINE OF NOT LESS THAN FIVE HUNDRED DOLLARS NOR MORE THAN ONE THOUSAND FIVE HUNDRED DOLLARS, IMPRISONMENT FOR A PERIOD NOT TO EXCEED ONE YEAR, OR BY BOTH SUCH FINE AND SUCH IMPRISONMENT. WHERE APPROPRIATE, THE COURT MAY AUTHORIZE THE PAYMENT OF RESTITUTION IN ACCORDANCE WITH THE PROVISIONS OF SECTION 60.27 OF THE PENAL LAW.

(B) A VIOLATION OF THE PROVISIONS OF PARAGRAPH (A) OF THIS SUBDIVISION WHICH DISRUPTS OR DELAYS RAILROAD OPERATIONS OR SUBSTANTIALLY INTERFERES WITH THE SAFE OPERATION OF THE RAILROAD SHALL BE A FELONY PUNISHABLE BY A FINE OF NOT LESS THAN ONE THOUSAND DOLLARS NOR MORE THAN TWO THOUSAND FIVE HUNDRED DOLLARS, IMPRISONMENT FOR A PERIOD AUTHORIZED BY THE PENAL LAW FOR A CLASS E FELONY, OR BY BOTH SUCH FINE AND SUCH IMPRISONMENT. WHERE APPROPRIATE, THE COURT MAY AUTHORIZE THE PAYMENT OF RESTITUTION IN ACCORDANCE WITH THE PROVISIONS OF SECTION 60.27 OF THE PENAL LAW.

(C) IF A VIOLATION OF THE PROVISIONS OF PARAGRAPH (A) OR (B) OF THIS SUBDIVISION RESULTS IN THE DEATH OF ANOTHER PERSON OR RESULTS IN SERIOUS PHYSICAL INJURY, AS DEFINED IN SECTION 10.00 OF THE PENAL LAW, TO ANY OTHER PERSON, SUCH CONDUCT SHALL BE SUBJECT TO PROSECUTION IN ACCORDANCE WITH THE PROVISIONS OF ARTICLES ONE HUNDRED TWENTY AND ONE HUNDRED TWENTY-FIVE OF THE PENAL LAW, AS APPLICABLE.

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

5. THE PROVISIONS OF THIS SECTION AND SECTIONS EIGHTY-THREE, EIGHTY-THREE-A AND EIGHTY-THREE-B OF THIS ARTICLE SHALL NOT BE CONSTRUED TO PROHIBIT OR LIMIT THE PROSECUTION OF ANY PERSON FOR ANY APPLICABLE VIOLATION OF THE PROVISIONS OF THE PENAL LAW, INCLUDING, BUT NOT LIMITED TO, THE APPLICABLE PROVISIONS OF ARTICLE ONE HUNDRED FORTY OF SUCH LAW.

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

S 3. This act shall take effect on the first of November next succeeding the date on which it shall have become a law.