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

5371--A

2011-2012 Regular Sessions

I N  S E N A T E

May 13, 2011

Introduced by Sen. ADAMS -- read twice and ordered printed, and when printed to be committed to the Committee on Codes -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee

AN ACT to amend the penal law and the railroad law, in relation to authorizing voluntary programs for conductors and motormen to carry tasers or electronic stun guns during the performance of his or her duties

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

Section 1. Subdivision a of section 265.20 of the penal law is amended by adding a new paragraph 17 to read as follows:

17. (A) POSSESSION OR USE OF A TASER OR ELECTRONIC STUN GUN BY CONDUCTORS OR MOTORMEN, AS SUCH TERMS ARE USED IN THE RAILROAD LAW, WHILE PERFORMING RAILROAD DUTIES.

(B) FOR THE PURPOSES OF THIS PARAGRAPH THE TERMS "TASER" AND "ELECTRONIC STUN GUN" SHALL MEAN ANY DEVICE DESIGNED PRIMARILY AS A WEAPON, THE PURPOSE OF WHICH IS TO STUN, CAUSE MENTAL DISORIENTATION, KNOCK OUT OR PARALYZE A PERSON BY PASSING A HIGH VOLTAGE ELECTRICAL SHOCK TO SUCH PERSON.

S 2. The railroad law is amended by adding a new section 65-a to read as follows:

S 65-A. USE OF TASERS BY CONDUCTORS AND MOTORMEN. 1. EVERY CONDUCTOR OR MOTORMAN WHO PARTICIPATES IN A PROGRAM TO BE ELIGIBLE TO CARRY A TASER OR STUN GUN IN THE STATE OF NEW YORK MUST SUCCESSFULLY COMPLETE A TRAINING PROGRAM IN THE USE OF DEADLY PHYSICAL FORCE AND TASERS OR ELECTRONIC STUN GUNS, WHICH SHALL BE PRESCRIBED BY THE SUPERINTENDENT OF STATE POLICE.

2. NO EMPLOYER WHO HAS VOLUNTARILY INCORPORATED INTO ITS ORGANIZATION A PROGRAM TO AUTHORIZE CONDUCTORS AND MOTORMEN TO CARRY TASERS OR STUN GUNS SHALL ALLOW ANY CONDUCTOR OR MOTORMAN IT EMPLOYS TO CARRY OR USE A

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

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TASER OR ELECTRONIC STUN GUN DURING ANY PHASE OF SUCH CONDUCTOR OR MOTORMAN'S OFFICIAL DUTIES, WHICH CONSTITUTES ON-DUTY EMPLOYMENT, UNLESS SUCH CONDUCTOR OR MOTORMAN HAS SATISFACTORILY COMPLETED A COURSE OF TRAINING APPROVED BY THE SUPERINTENDENT OF STATE POLICE IN THE USE OF DEADLY PHYSICAL FORCE AND TASERS OR ELECTRONIC STUN GUNS, AND ANNUALLY RECEIVES INSTRUCTION IN DEADLY PHYSICAL FORCE AND THE USE OF TASERS OR ELECTRONIC STUN GUNS AS APPROVED BY THE SUPERINTENDENT OF STATE POLICE. SUCH TRAINING SHALL RELATE TO THE SPECIAL NATURE OF THE DUTIES OF THE CONDUCTORS AND MOTORMEN.

3. UPON THE FAILURE OR REFUSAL TO COMPLY WITH THE REQUIREMENTS OF THIS SECTION, THE ATTORNEY GENERAL OF THE STATE OF NEW YORK SHALL APPLY TO THE SUPREME COURT FOR AN ORDER DIRECTED TO THE EMPLOYER RESPONSIBLE REQUIRING COMPLIANCE. UPON SUCH APPLICATION, THE COURT MAY ISSUE SUCH ORDER AS MAY BE JUST, AND A FAILURE TO COMPLY WITH THE ORDER OF THE COURT SHALL BE A CONTEMPT OF COURT AND PUNISHABLE AS SUCH.

4. EVERY EMPLOYER OF CONDUCTORS OR MOTORMEN SHALL REPORT TO THE SUPERINTENDENT OF STATE POLICE, IN SUCH FORM AND AT SUCH TIME AS THE SUPERINTENDENT MAY BY REGULATION REQUIRE, THE NAMES OF ALL CONDUCTORS AND MOTORMEN WHO HAVE SATISFACTORILY COMPLETED ANY OF THE TRAINING REQUIREMENTS PRESCRIBED BY THIS SECTION.

5. A CERTIFICATE ATTESTING TO SATISFACTORY COMPLETION OF THE TRAINING REQUIREMENTS IMPOSED UNDER THIS SECTION AWARDED TO ANY CONDUCTOR OR MOTORMAN PURSUANT TO THIS SECTION SHALL REMAIN VALID:

(A) DURING THE HOLDER'S CONTINUOUS SERVICE AS A CONDUCTOR OR MOTORMAN; AND

(B) FOR TWO YEARS AFTER THE DATE OF THE COMMENCEMENT OF AN INTERRUPTION IN SUCH SERVICE WHERE THE HOLDER HAD, IMMEDIATELY PRIOR TO SUCH INTERRUPTION, SERVED AS A CONDUCTOR OR MOTORMAN FOR LESS THAN TWO CONSECUTIVE YEARS; OR

(C) FOR FOUR YEARS AFTER THE DATE OF THE COMMENCEMENT OF AN INTERRUPTION IN SUCH SERVICE WHERE THE HOLDER HAD, IMMEDIATELY PRIOR TO SUCH INTERRUPTION, SERVED AS A CONDUCTOR OR MOTORMAN FOR TWO CONSECUTIVE YEARS OR LONGER.

6. FOR THE PURPOSES OF THIS SECTION:

(A) THE TERM "INTERRUPTION" SHALL MEAN A PERIOD OF SEPARATION FROM EMPLOYMENT AS A CONDUCTOR OR MOTORMAN BY REASON OF SUCH CONDUCTOR'S OR MOTORMAN'S LEAVE OF ABSENCE, RESIGNATION OR REMOVAL, OTHER THAN REMOVAL FOR CAUSE; AND

(B) THE TERMS "TASER" AND "ELECTRONIC STUN GUN" SHALL MEAN ANY DEVICE DESIGNED PRIMARILY AS A WEAPON, THE PURPOSE OF WHICH IS TO STUN, CAUSE MENTAL DISORIENTATION, KNOCK OUT OR PARALYZE A PERSON BY PASSING A HIGH VOLTAGE ELECTRICAL SHOCK TO SUCH PERSON.

S 3. This act shall take effect on the one hundred twentieth day after it shall have become a law. Effective immediately, the addition, amendment and/or repeal of any rule or regulation necessary for the implementation of this act on its effective date is authorized to be made on or before such date.