

1360

2011-2012 Regular Sessions

I N S E N A T E

January 6, 2011

Introduced by Sens. DILAN, DIAZ, HASSELL-THOMPSON -- read twice and ordered printed, and when printed to be committed to the Committee on Transportation

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.]

21 S 83-a. Operation of MOTOR VEHICLES, snowmobiles, AND OTHER RECRE-
22 ATIONAL VEHICLES on railroad property. Except in the case of a railroad
23 employee, CONTRACTOR OF THE RAILROAD CORPORATION OR PUBLIC OFFICIAL
24 acting in the performance of his [duty] OR HER DUTIES, no person shall

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

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1 KNOWINGLY operate a MOTOR VEHICLE, snowmobile, OR OTHER RECREATIONAL
2 VEHICLE, INCLUDING ALL TERRAIN VEHICLES AND MOTORCYCLES, upon abandoned
3 railroad property which is posted to prohibit the operation of [snowmo-
4 biles] ANY SUCH VEHICLES thereupon, or upon or along the track or tracks
5 of an operating railroad or within the fences or guards thereof, except
6 across or along streets or highways or at farm or forest crossings where
7 necessary to cross [said] SUCH tracks or property. [Any person violating
8 the provisions of this section shall be guilty of a violation punishable
9 by a fine of one hundred dollars for each separate offense.] A VIOLATION
10 OF THE PROVISIONS OF THIS SECTION SHALL CONSTITUTE A VIOLATION PUNISHA-
11 BLE BY A FINE OF NOT LESS THAN ONE HUNDRED DOLLARS NOR MORE THAN TWO
12 HUNDRED FIFTY DOLLARS. CONVICTION FOR A SECOND OR SUBSEQUENT VIOLATION
13 OF THE PROVISIONS OF THIS SECTION SHALL BE PUNISHABLE BY A FINE OF NOT
14 LESS THAN TWO HUNDRED FIFTY NOR MORE THAN FIVE HUNDRED DOLLARS OR A
15 PERIOD OF IMPRISONMENT NOT TO EXCEED FIFTEEN DAYS, OR BY BOTH SUCH FINE
16 AND SUCH IMPRISONMENT.

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

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

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

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

48 2. ANY PERSON RIDING, LEADING, OR DRIVING ANY HORSE OR OTHER ANIMAL
49 UPON ANY RAILROAD, OR WITHIN THE RIGHT-OF-WAY, FENCES, AND GUARDS THERE-
50 OF, OTHER THAN AT A FARM OR STREET OR FOREST CROSSING, WITHOUT THE
51 CONSENT OF THE CORPORATION, SHALL FORFEIT TO THE PEOPLE OF THE STATE A
52 SUM NOT TO EXCEED ONE HUNDRED DOLLARS AS A CIVIL PENALTY PURSUANT TO
53 SECTION 60.30 OF THE PENAL LAW.

54 3. (A) NO PERSON SHALL KNOWINGLY, RECKLESSLY OR INTENTIONALLY ENGAGE
55 IN ANY CONDUCT THAT RESULTS IN DAMAGE TO OR SUBSTANTIAL DEFAACEMENT OF
56 RAILROAD PROPERTY. SUCH CONDUCT SHALL INCLUDE, BUT IS NOT LIMITED TO,

1 THROWING OBJECTS THAT STRIKE RAILROAD FACILITIES, STRUCTURES OR ROLLING
2 STOCK, PLACING OBJECTS ON OR IMMEDIATELY ADJACENT TO RAILROAD TRACKS,
3 DEFACING, DISARMING, OR IN ANY WAY INTERFERING WITH SIGNALS OR SWITCHES.
4 A VIOLATION OF THE PROVISIONS OF THIS SUBDIVISION SHALL BE A MISDEMEANOR
5 PUNISHABLE BY A FINE OF NOT LESS THAN FIVE HUNDRED DOLLARS NOR MORE THAN
6 ONE THOUSAND FIVE HUNDRED DOLLARS, IMPRISONMENT FOR A PERIOD NOT TO
7 EXCEED ONE YEAR, OR BY BOTH SUCH FINE AND SUCH IMPRISONMENT. WHERE
8 APPROPRIATE, THE COURT MAY AUTHORIZE THE PAYMENT OF RESTITUTION IN
9 ACCORDANCE WITH THE PROVISIONS OF SECTION 60.27 OF THE PENAL LAW.

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

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

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

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

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

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