§ 202-h. High-voltage proximity. 1. This section may be known as the "high-voltage proximity act".

2. Definitions. For the purpose of this section:

(a) "High-voltage lines" means electrical conductors installed above ground and having a voltage differential in excess of six hundred volts between any pair of conductors or between any conductor and ground. In the case of alternating current, the voltage shall be measured in R.M.S. value. This definition shall not include approved armored cable used to supply power to portable equipment and insulated power cables enclosed in approved metallic raceways.

(b) "Dangerous proximity" means a distance within ten feet of high-voltage lines, or within such greater distances as are set forth in the current editions and any subsequent revisions of the regulations of the United States Occupational Safety and Health Administration (29 CFR parts 1910 and 1926), the New York industrial code (12 NYCRR part 23) and the national electrical safety code.

3. Prohibited activity. (a) No employer or supervising agent of an employer shall require or permit an employee to, and no self-employed individual, independent contractor having no employees or homeowner shall, participate in the operation, erection, transportation, handling, or storage of any tools, machinery, equipment, supplies, materials or apparatus, or the moving of any building, if in the course of such operation, erection, transportation, handling, storage or moving it is possible for such tools, machinery, equipment, supplies, materials, apparatus or building, to come within dangerous proximity of a high-voltage line; or participate in any activity which would cause the employee, self-employed individual, independent contractor or homeowner to come within dangerous proximity of a high-voltage line; unless precautionary action has been taken to protect against the danger from contact with such high-voltage line, either by de-energizing such high-voltage line and grounding it where necessary, or other effective methods or devices which have been approved in advance by the owner or person in charge of such high-voltage lines for the particular case and for the particular location.

(b) Employers whose employees operate, erect, transport, handle or

store any tools, machinery, equipment, supplies, materials or apparatus, or move any building, which in the course of such operation, erection, transportation, handling, storing or moving might come within dangerous proximity of a high-voltage line, shall advise such employees of the dangers inherent in such work, highlight precautions which are to be taken under such circumstances and encourage employees to communicate with and advise employers or their supervising agents of conditions which would require precautionary action by the employer as required by paragraph (a) of this subdivision.

(c) In no case shall the required clearance be provided by moving or displacing any conductor, except where the same is temporarily relocated pursuant to arrangements made with the owner or person in charge of the high-voltage line, and such actions are performed by such owner or person in charge.

(d) All high-voltage lines shall be considered as energized high-voltage lines until assurance has been given that they are otherwise by qualified representatives of the owners or persons in charge of such lines.

4. Warning sign required. (a) The owner, agent, lessee, bailee, user, or employer responsible for the operations of equipment capable of coming within dangerous proximity of a high-voltage line in the course of its operation, shall post and maintain in plain view of the operator on each piece of such equipment, an approved durable warning sign legible at a distance of twelve feet reading "Danger Unlawful To Operate Any Part Of This Equipment Within 10 Feet of High-Voltage Lines". Additional warning signs shall be placed on various parts of the equipment providing similar warnings to others in the vicinity of the high-voltage lines.

Notwithstanding the foregoing, all such posted warnings shall specify the actual distance by which the term "dangerous proximity" is defined by paragraph (b) of subdivision two of this section. The owner, agent, lessee, bailee, user, or employer responsible for the operations of equipment shall provide such other warning signs on equipment or at the work site as may be required by regulations promulgated hereunder. The requirement that warning signs be posted shall not apply to railway

equipment operating on railway right-of-way in relation to high-voltage conductors of such railway system under conditions for which exemption is granted under subdivision eight of this section.

(b) If for any reason and for any time period, the operator of the equipment is unable to assess visually the clearance of the equipment from overhead high-voltage lines, a second person shall be designated to observe the clearance and provide timely warning to the equipment operator.

5. Notification to power company and responsibility for safeguards. Whenever any activity is to be performed requiring precautionary action under this section, the employer, contractor or other person responsible for the activity shall promptly notify the owner or person in charge of the high-voltage line of the intended activity, such notification to be submitted at least five normal work days before the activity is to be performed. The owner or person responsible for the high-voltage line shall perform all necessary precautionary actions, and the employer, contractor or other person responsible for the activity shall be responsible for all costs of such precautionary actions. Under no circumstances shall activities requiring precautionary actions be undertaken before such precautionary actions have been completed.

6. Enforcement. The commissioner shall administer and enforce the provisions of this section and is hereby empowered to prescribe and promulgate rules and regulations consistent herewith. Such regulations shall include a requirement that clearances greater than the dangerous proximity distance must be maintained where, in the judgment of the board, safety so requires.

7. Civil penalty. (a) Any person violating any of the provisions of this section shall be liable for a penalty of not less than one hundred dollars nor more than one thousand dollars to be collected in a civil action by a summary proceeding. Any violation of this section by an officer, agent or employee shall be a violation by the employer if such employer had knowledge of and actual control over the cause of such violation. Where the violation is of a continuing nature, each day during which it continues shall constitute an additional, separate and

distinct offense.

(b) The commissioner is hereby authorized and empowered to compromise and settle any claim for a penalty under this section in such amount in the discretion of the commissioner as may appear appropriate and equitable under the circumstances.

8. Exceptions. (a) This section shall not be construed as applying to, shall not apply to, and is not intended to apply to, the construction, reconstruction, operations, and maintenance of overhead electrical conductors and their supporting structures and associated equipment by authorized and qualified electrical workers; nor to the authorized and qualified employees of any person engaged in the construction, reconstruction, operation, and maintenance of overhead electrical circuits or conductors and their supporting structures and associated equipment of rail transportation systems, or electrical generating, transmission, distribution, and communication systems. This exception when applied to railway systems shall be construed as permitting operation of standard rail equipment, which is normally used in the transportation of freight or passengers or both and the operation of relief trains, or other equipment in emergencies, or in maintenance of way service, within dangerous proximity of and high-voltage conductor of such railway system; but this section shall be construed as prohibiting normal repair or construction operations within dangerous proximity of any high-voltage conductor by other than properly qualified and authorized persons or employees under the direct supervision of an authorized person who is familiar with the hazards involved, unless there has been compliance with the safety provisions hereof.

(b) This section shall not be construed as applying to motor vehicle transportation across or along a public road or highway where the combined vehicle and load shall not be in excess of thirteen and one-half feet high and thirteen feet wide. Nevertheless, this section shall apply to motor vehicle transportation across or along a public road or highway during such time as the combined vehicle and load shall for any reason and for any period of time be in excess of thirteen and one-half feet high and thirteen feet wide.

9. Severability. In case any provisions of this section shall be

adjudged unconstitutional or void for any reason, such adjudication shall not affect any of the other provisions of this section.