

“P” 22 (2016)

“M” 19 (2016)

Albany, New York

November 30, 2016

TO: All Enforcement Agencies and Magistrates

SUBJECT: Chapter 501 of the Laws of 2016 – Railroad Grade Crossings

Chapter 501 of the Laws of 2016 amends the Vehicle and Traffic Law as follows:

- Effective November 28, 2016, a new section 135-a is added to define a railroad grade crossing as a location where a public highway or private road, including sidewalks, crosses one or more railroad tracks at grade.
- Effective December 1, 2016, section 1170 and section 1171 are amended as follows:

- Section 1170 is amended to add a new subdivision 5 to provide the following penalties for convictions of a violation of this subdivision:

A first conviction is punishable by a fine of not more than \$150 and/or by imprisonment for not more than 15 days.

Conviction of a second violation, when both violations were committed within 18 months, is punishable by a fine of not more than \$500 and/or imprisonment for not more than 45 days.

Conviction of a third or subsequent violation, when all violations were committed within a period of 18 months, is punishable by a fine of not more than \$750 and/or by imprisonment for not more than 90 days.

- Section 1170(b) is amended to increase the penalties for second and subsequent convictions for driving through, around, or under any railroad crossing gate or barrier that is closed or is being opened or closed as follows:

Conviction of a second violation, when both violations were committed within 30 months, is punishable by a fine of \$350 to \$750 and/or imprisonment for not more than 90 days.

Conviction of a third or subsequent violation, when all violations were committed within a period of 30 months, is punishable by a fine of \$600 to \$1,000 and/or by imprisonment for not more than 180 days

- Section 1171 is amended to add a new subdivision (f) to provide the following penalties for convictions of a violation of this section:

A first conviction is punishable by a fine of not more than \$150 and/or by imprisonment for not more than 15 days.

Conviction of a second violation, when both violations were committed within 30 months, is punishable by a fine of not more than \$500 and/or imprisonment for not more than 45 days.

Conviction of a third or subsequent violation, when all violations were committed within a period of 30 months, is punishable by a fine of not more than \$750 and/or by imprisonment for not more than 90 days.

The enhanced penalties apply to violations committed on or after December 1, 2016.

A copy of Chapter 501 is attached for your reference. Please share this information with appropriate staff. Thank you.

Theresa L. Egan
Executive Deputy Commissioner

Attachment

STATE OF NEW YORK

8119

IN SENATE

June 13, 2016

Introduced by Sens. ROBACH, MURPHY, SERINO, CARLUCCI -- (at request of the Governor) -- read twice and ordered printed, and when printed to be committed to the Committee on Rules

AN ACT to amend the railroad law, the transportation law, the highway law, and the vehicle and traffic law, in relation to requiring joint inspection of traffic signals, increasing penalties for the failure to comply with regulations, aligning railroad bridge inspection requirements with federal regulations, establishing and increasing penalties for failure to obey certain signals and stops

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

1 Section 1. Short title. This act shall be known and may be cited as
2 the "rail safety act of 2016."

3 § 2. The railroad law is amended by adding a new section 53-f to read
4 as follows:

5 § 53-f. Joint inspection of traffic-control signals interconnected
6 with highway-rail at-grade crossing warning systems. 1. Notwithstanding
7 the provisions of any other law to the contrary, the commissioner is
8 authorized to establish, implement, and exercise oversight over a
9 program to coordinate the inspection of traffic-control signals inter-
10 connected with highway-rail at-grade crossing warning systems.

11 2. Pursuant to the program established under subdivision one of this
12 section, the department of transportation shall establish a procedure
13 applicable to every railroad corporation and each municipality having
14 jurisdiction of a highway on which there is an at-grade rail crossing
15 warning system interconnected with a traffic-control signal for the
16 coordinated operation and biennial inspection of any traffic-control
17 signal interconnected with a highway-rail at-grade crossing warning
18 system. Nothing in this section shall be deemed to alter or impair such
19 railroad corporation's existing responsibility for maintenance of, and
20 access to, the highway-rail at-grade crossing warning system.

21 3. For the purposes of this section, the term "traffic-control signal"

22 shall have the same meaning as such term is defined by section one
23 hundred fifty-four of the vehicle and traffic law.

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

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1 § 3. The transportation law is amended by adding a new section 131-a
2 to read as follows:

3 § 131-a. Penalties for violations. 1. Any railroad company that oper-
4 ates as a common carrier that violates any provision of article five of
5 this chapter and regulations promulgated pursuant thereto shall, upon
6 direction by the commissioner, be liable for a penalty payable to the
7 people of the state of New York in the amount not to exceed five thou-
8 sand dollars.

9 2. Any railroad company that operates as a common carrier of property
10 that violates any provision of article five of this chapter and regu-
11 lations promulgated pursuant thereto with respect to one or more freight
12 cars required to be placarded by federal hazardous materials regulations
13 shall, upon direction by the commissioner, be liable for a penalty paya-
14 ble to the people of the state of New York in an amount not to exceed
15 fifteen thousand dollars.

16 3. Each violation shall be a separate and distinct offense, and, in
17 case of a continuing violation, every day's continuance thereof shall be
18 a separate and distinct offense.

19 4. Before imposing a penalty set forth in this section, the commis-
20 sioner shall afford the railroad company notice and an opportunity to be
21 heard. In assessing the penalty, the commissioner may consider the
22 following:

23 a. the railroad company's history of violating the law or the regu-
24 lations of the commissioner;

25 b. if the violation arises out of an accident, whether death or seri-
26 ous injury occurred as a result of the accident, whether the accident
27 resulted in an evacuation of the general public for one hour or more,
28 and whether the accident resulted in the closure of a major transporta-
29 tion artery or facility for one hour or more; and

30 c. any other factors the commissioner deems relevant.

31 5. If such penalty is not paid within four months, the amount thereof
32 may be entered as a judgment in the office of the clerk of the county of
33 Albany and in any other county in which the railroad company has a place
34 of business or through which it operates.

35 § 4. Section 236 of the highway law, as amended by chapter 455 of the
36 the laws of 1998, is amended to read as follows:

37 § 236. Program of railroad bridge inspection. 1. Program establish-
38 ment. Notwithstanding any other provision of law to the contrary, the
39 commissioner is authorized and directed to establish, implement and
40 exercise oversight over a program of railroad bridge inspection in
41 conformity with the rail safety improvement act of 2008, subchapter I of
42 chapter 201 of part A of subtitle V of title 49 of the United States
43 code as such law may, from time to time, be amended and part 237 of
44 title 49 of the code of federal regulations as such regulations may,
45 from time to time, be amended, by all railroads as defined herein which
46 shall apply to all railroad bridges whether publicly or privately owned.

47 2. Bridge inventory. [~~a~~] Each railroad shall provide to the commis-
48 sioner an inventory of every railroad bridge either owned or used by
49 such railroad whether exclusively or with another railroad or rail-

50 roads[. Each such inventory shall contain a statement as to the owner-
51 ship of all railroad bridges listed thereon and, if not owned by the
52 filing railroad, such railroad shall state the circumstances under which
53 it is operating over such railroad bridges. With regard to bridges owned
54 or maintained by the filing railroad, such inventory may be in the
55 format currently maintained by each railroad provided the inventory
56 identifies: (i) the owner of the railroad if different from the rail-
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1 road submitting the inventory; (ii) a description of each bridge
2 reflecting the condition of the bridge as determined by the latest
3 inspection report; and (iii) the maximum load for each of its lines.
4 Each inventory submitted shall contain the following administrative data
5 with regard to each bridge owned or maintained by the filing railroad:
6 the bridge identification number, the railroad bridge number, the rail-
7 road line code (if applicable), the railroad mile post, the county, the
8 operating railroad or railroads, other features carried (if applicable),
9 features intersected description, features intersected code, owner or
10 owners, maintenance responsibilities, and inspection responsibilities.
11 Each inventory submitted shall also contain the following general data
12 with regard to each bridge owned or maintained by the filing railroad:
13 the year built, the year rehabilitated, the number of tracks crossing
14 the bridge, the type of rail service, the number of spans, and the
15 bridge type] as required to be maintained by part 237 of title 49 of the
16 code of federal regulations as such regulations may, from time to time,
17 be amended.

18 [(b) In any instance in which more than one railroad operates over a
19 bridge, the inventory shall identify which railroad has responsibility
20 for the inspection and maintenance.]

21 3. Bridge inspection. [(a) The department shall develop and publish
22 railroad bridge inspection standards. Such standards shall be developed
23 in consultation with representatives of railroads operating within the
24 state and insofar as practicable, shall not be inconsistent with current
25 American railway engineering and maintenance of way association recom-
26 mended practices.

27 (b)] (a) Each railroad shall develop a bridge safety management
28 program and submit to the department written bridge management and
29 inspection procedures[. Such procedures shall be developed under the
30 supervision of a licensed professional engineer, and shall be consistent
31 with generally accepted railway engineering standards and procedures for
32 railroad bridge inspection and shall be in conformance with the stand-
33 ards developed by the department as set forth in paragraph (a) of this
34 subdivision. The procedures shall contain a format for the reporting
35 document to be submitted to the department. Such reports shall contain
36 the qualifications of the individuals performing bridge inspection
37 activities] as required to be maintained and developed by part 237 of
38 title 49 of the code of federal regulations as such regulations may,
39 from time to time, be amended.

40 [(e)] (b) Railroad bridge inspections shall be performed [by techni-
41 cians whose training and experience enable them to detect and record
42 indications of distress on a bridge. Inspectors must provide accurate
43 measurements and other information about the condition of the bridge in
44 sufficient detail to a licensed professional engineer who shall make an
45 evaluation of the capacity and safety of the bridge] by railroad bridge
46 inspectors in conformity with part 237 of title 49 of the code of feder-
47 al regulations as such regulations may, from time to time, be amended.
48 The term "railroad bridge inspectors" shall have the same meaning as

49 such term is defined by section 237.53 of title 49 of the code of feder-
50 al regulations as such regulations may, from time to time, be amended.
51 ~~[(d)]~~ (c) Each railroad shall conduct an inspection of every railroad
52 bridge located in the state for which it has inspection responsibility[
53 ~~in accordance with the bridge inventory set forth in subdivision two of~~
54 ~~this section, at least once in each calendar year and following an~~
55 ~~occurrence which the railroad reasonably believes may have reduced the~~
56 ~~capacity of any bridge]~~ consistent with part 237 of title 49 of the code
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1 of federal regulations as such regulations may, from time to time, be
2 amended.

3 ~~[(e)]~~ (d) A copy of the inspection report for each railroad bridge
4 shall, consistent with part 237 of title 49 of the code of federal regu-
5 lations as such regulations may, from time to time, be amended, be main-
6 tained by the appropriate railroad for a period ~~[of not less than five~~
7 ~~years. The reports shall be comprehensible to a competent person without~~
8 ~~interpretation by the reporting inspector]~~ of not less than two years,
9 provided that each copy of an underwater inspection report shall be
10 retained until the completion and review of the next underwater
11 inspection of the bridge. If requested by the department, the railroad
12 shall submit the inspection report within thirty business days to the
13 department.

14 ~~[(f)]~~ (e) Not later than March fifteenth of each year, a licensed
15 professional engineer or other responsible officer of each railroad
16 shall file a certification that each bridge has been inspected in
17 accordance with ~~[the bridge management and inspection procedures and~~
18 ~~that every structure is safe for the loading imposed,]~~ part 237 of title
19 49 of the code of federal regulations as such regulations may, from time
20 to time, be amended, and additionally, shall advise the commissioner of
21 any change affecting bridge safety which has occurred since the last
22 certification.

23 ~~[(g)]~~ (f) If, as a result of an inspection, a bridge is determined to
24 be unsafe, the railroad shall immediately notify the commissioner and
25 shall take appropriate remedial action to ensure that such structure is
26 safe. Upon completion of such remedial action, the railroad shall
27 provide the commissioner with a certification by a licensed professional
28 engineer or other responsible officer that the bridge is now safe for
29 the loadings imposed. If a railroad shall fail to take remedial action,
30 the commissioner may direct the railroad to take appropriate action,
31 including requiring the closing of the bridge. Any order of the commis-
32 sioner shall be reviewable in accordance with article seventy-eight of
33 the civil practice law and rules.

34 ~~[(h)]~~ (g) For purposes of this section, a "licensed professional engi-
35 neer" shall mean a professional engineer who is authorized to practice
36 engineering under title eight of the education law.

37 4. Powers of the commissioner. The commissioner shall have the power
38 to adopt, promulgate, amend and rescind such rules and regulations,
39 consistent with part 237 of title 49 of the code of federal regulations
40 as such regulations may, from time to time, be amended, as the commis-
41 sioner deems appropriate to carry out the provisions and purposes of
42 this article or to enforce any standards established hereunder. ~~[All~~
43 ~~existing rules and regulations requiring inspection and certification of~~
44 ~~railroad bridges shall remain in effect until such time as new rules and~~
45 ~~regulations are promulgated.]~~ Additionally the commissioner shall be
46 authorized to review the inspection reports, inventories and other
47 supporting documents, to compel the production of any books, papers,

48 records and documents relevant to the railroad bridge inspection
49 program, and to subpoena witnesses, administer oaths and take testimony,
50 and to maintain a civil suit against any public or private entity to
51 compel compliance with the provisions of this chapter.

52 ~~[5. Phase in of program. In order to permit the orderly implementation~~
53 ~~of the railroad bridge inspection program, the inventory of railroad~~
54 ~~bridges as herein provided shall be submitted to the commissioner by~~
55 ~~January twenty ninth, nineteen hundred ninety seven. All railroad bridg-~~
56 ~~es over which passenger rail service is provided shall be inspected not~~
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1 ~~later than January first, nineteen hundred ninety nine, and certif-~~
2 ~~ication submitted to the department not later than March fifteenth,~~
3 ~~nineteen hundred ninety nine. All other railroad bridges shall be~~
4 ~~inspected and certified not later than July first, nineteen hundred~~
5 ~~ninety nine.]~~

6 § 5. The vehicle and traffic law is amended by adding a new section
7 135-a to read as follows:

8 § 135-a. Railroad grade crossing. A location where a public highway or
9 private road, including associated sidewalks, crosses one or more rail-
10 road tracks at grade.

11 § 6. Section 1170 of the vehicle and traffic law, as amended by chap-
12 ter 300 of the laws of 1960, subdivision (b) as amended and subdivisions
13 (c) and (d) as added by chapter 430 of the laws of 1996, is amended to
14 read as follows:

15 § 1170. Obedience to signal indicating approach of train. (a) Whenever
16 any person driving a vehicle approaches a railroad grade crossing under
17 any of the circumstances stated in this section, the driver of such
18 vehicle shall stop not less than fifteen feet from the nearest rail of
19 such railroad, and shall not proceed until he can do so safely. The
20 foregoing requirements shall apply when:

21 1. An audible or clearly visible electric or mechanical signal device
22 gives warning of the immediate approach of a railroad train;

23 2. A crossing gate is lowered or when a human flagman gives or contin-
24 ues to give a signal of the approach or passage of a railroad train;

25 3. A railroad train approaching within approximately one thousand five
26 hundred feet of the highway crossing emits a signal audible from such
27 distance and such railroad train, by reason of its speed or nearness to
28 such crossing, is an immediate hazard; or

29 4. An approaching railroad train is plainly visible and is in hazard-
30 ous proximity to such crossing.

31 5. Every person convicted of a violation of this subdivision shall for
32 a first conviction thereof be punished by a fine of not more than one
33 hundred fifty dollars or by imprisonment for not more than fifteen days
34 or by both such fine and imprisonment; for a conviction of a second
35 violation, both of which were committed within a period of eighteen
36 months, such person shall be punished by a fine of not more than five
37 hundred dollars or by imprisonment for not more than forty-five days or
38 by both such fine and imprisonment; upon a conviction of a third or
39 subsequent violation, all of which were committed within a period of
40 eighteen months, such person shall be punished by a fine of not more
41 than seven hundred fifty dollars or by imprisonment for not more than
42 ninety days or by both such fine and imprisonment.

43 (b) No person shall drive any vehicle through, around, or under any
44 crossing gate or barrier at a railroad crossing while such gate or
45 barrier is closed or is being opened or closed. Every person convicted
46 of a violation of this subdivision shall for a first conviction thereof

47 be punished by a fine of not less than two hundred fifty dollars nor
48 more than four hundred dollars or by imprisonment for not more than
49 thirty days or by both such fine and imprisonment; for a conviction of a
50 second violation, both of which were committed within a period of [~~eigh-~~
51 ~~teen~~] thirty months, such person shall be punished by a fine of not less
52 than three hundred fifty dollars nor more than [~~five~~] seven hundred
53 fifty dollars or by imprisonment for not more than ninety days or by
54 both such fine and imprisonment; upon a conviction of a third or subse-
55 quent violation, all of which were committed within a period of [~~eigh-~~
56 ~~teen~~] thirty months, such person shall be punished by a fine of not less

1 than six hundred dollars nor more than [~~seven hundred fifty~~] one thou-
2 sand dollars or by imprisonment for not more than one hundred eighty
3 days or by both such fine and imprisonment.

4 (c) 1. Any person convicted of a violation of this section while driv-
5 ing any vehicle carrying passengers under eighteen years of age, any bus
6 carrying passengers, any school bus or any vehicle carrying explosive
7 substances or flammable liquids as a cargo or part of a cargo, shall,
8 upon conviction of a first offense, be guilty of a class A misdemeanor,
9 and shall, upon conviction of a second or subsequent offense committed
10 within five years of the prior offense, be guilty of a class E felony.

11 2. Any person convicted of a violation of this section resulting in an
12 accident which causes physical injury, as that term is defined pursuant
13 to subdivision nine of section 10.00 of the penal law, serious physical
14 injury, as that term is defined pursuant to subdivision ten of section
15 10.00 of the penal law, or death to another person, shall be guilty of a
16 class E felony.

17 (d) Nothing contained in this section shall be construed to prohibit
18 or limit the prosecution of any violation, crime or other offense other-
19 wise required or permitted by law.

20 § 7. Section 1171 of the vehicle and traffic law is amended by adding
21 a new subdivision (f) to read as follows:

22 (f) Every person convicted of a violation of this section shall for a
23 first conviction thereof be punished by a fine of not more than one
24 hundred fifty dollars or by imprisonment for not more than fifteen days
25 or by both such fine and imprisonment; for a conviction of a second
26 violation, both of which were committed within a period of thirty
27 months, such person shall be punished by a fine of not more than five
28 hundred dollars or by imprisonment for not more than forty-five days or
29 by both such fine and imprisonment; upon a conviction of a third or
30 subsequent violation, all of which were committed within a period of
31 thirty months, such person shall be punished by a fine of not more than
32 seven hundred fifty dollars or by imprisonment for not more than ninety
33 days or by both such fine and imprisonment.

34 § 8. This act shall take effect immediately; provided, that sections
35 three, six and seven of this act shall take effect on December 1, 2016;
36 provided further, that effective immediately, the commissioner of trans-
37 portation is authorized to promulgate any rules or regulations necessary
38 for the implementation of this act; and provided further, that effective
39 immediately, the commissioner of transportation shall coordinate with
40 every railroad corporation, relevant state authority, and municipality
41 having jurisdiction of a highway on which there is an at-grade rail
42 crossing warning system interconnected with a traffic-control signal, to
43 establish a public awareness and education campaign related to the
44 provisions of sections three, six and seven of this act.