

STATE OF NEW YORK

1830

2021-2022 Regular Sessions

IN ASSEMBLY

January 11, 2021

Introduced by M. of A. PRETLOW -- read once and referred to the Committee on Judiciary

AN ACT to amend the general obligations law and the labor law, in relation to the duty of ski area operators to provide protective headgear and requiring skiers and snowboarders under the age of fourteen to wear protective headgear

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

Section 1. The article heading of article 18 of the general obligations law, as added by chapter 711 of the laws of 1988, is amended to read as follows:

SAFETY [~~IN-SKIING~~] ON THE SLOPES CODE

§ 2. Section 18-101 of the general obligations law, as added by chapter 711 of the laws of 1988, is amended to read as follows:

§ 18-101. Legislative purpose. The legislature hereby finds that alpine or downhill skiing [~~is both a~~] and snowboarding are major recreational [~~sport~~] sports and a major industry within the state of New York. The legislature further finds: (1) that downhill skiing and snowboarding, like many other sports, [~~contains~~] contain inherent risks including, but not limited to, the risks of personal injury or death or property damage, which may be caused by variations in terrain or weather conditions; surface or subsurface snow, ice, bare spots or areas of thin cover, moguls, ruts, bumps; other persons using the facilities; and rocks, forest growth, debris, branches, trees, roots, stumps or other natural objects or man-made objects that are incidental to the provision or maintenance of a ski facility in New York state; (1-a) that downhill skiing or snowboarding without protective headgear substantially increases the risk of serious head injury and death resulting from such injury; (2) that downhill skiing or snowboarding, without established rules of conduct and care, may result in injuries to persons and property; (3) that it is appropriate, as well as in the public interest, to

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

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1 take such steps as are necessary to help reduce the risk of injury to
2 downhill skiers and snowboarders from undue, unnecessary and unreason-
3 able hazards; and (4) that it is also necessary and appropriate that
4 skiers and snowboarders become apprised of, and understand, the risks
5 inherent in the [~~sport~~] sports of skiing and snowboarding so that they
6 may make an informed decision of whether or not to participate in
7 [~~skiing~~] such sports notwithstanding the risks. Therefore, the purpose
8 and intent of this article is to establish a code of conduct for down-
9 hill skiers, snowboarders and ski area operators to minimize the risk of
10 injury to persons engaged in the [~~sport~~] sports of downhill skiing and
11 snowboarding and to promote safety in the downhill ski [~~industry~~] and
12 snowboarding industries.

13 § 3. Subdivisions 1 and 2 of section 18-102 of the general obligations
14 law, as added by chapter 711 of the laws of 1988, are amended to read as
15 follows:

16 1. "Lift ticket" means any item issued by a ski area operator to any
17 skier or snowboarder that is intended to be affixed to the outerwear of
18 the skier or snowboarder, or otherwise displayed by a skier or snow-
19 boarder, to signify lawful entry upon and use of the passenger tramways
20 or ski slopes or trails maintained by the ski area operator.

21 2. "Passenger tramway" means a mechanical device intended to transport
22 skiers or snowboarders for the purpose of providing access to ski slopes
23 and trails as defined by the commissioner of labor pursuant to section
24 two hundred two-c or eight hundred sixty-seven of the labor law.

25 § 4. Section 18-102 of the general obligations law is amended by
26 adding a new subdivision 8 to read as follows:

27 8. "Snowboarder" means any person wearing a snowboard and any person
28 actually on a ski slope or trail located at a ski area, for the purpose
29 of snowboarding.

30 § 5. Subdivisions 2, 7, 13 and 14 and subparagraph (i) of paragraph c
31 of subdivision 6 of section 18-103 of the general obligations law, as
32 added by chapter 711 of the laws of 1988, are amended to read as
33 follows:

34 2. To post in a location likely to be seen by all skiers and snow-
35 boarders signs of such size and color as will enable skiers and snow-
36 boarders to have knowledge of their responsibilities under this article.

37 (i) skier or snowboarder use;

38 7. To develop and maintain a written policy consistent with the regu-
39 lations of the commissioner of labor upon the advice of the passenger
40 tramway advisory council for situations involving the reckless conduct
41 of skiers and snowboarders, which shall include, but not be limited to:

42 a. a definition of reckless conduct; and

43 b. procedures for approaching and warning skiers and snowboarders of
44 reckless conduct and procedures for dealing with such skiers and snow-
45 boarders which may include the revocation of the lift tickets of such
46 skiers and snowboarders.

47 13. To, within a reasonable amount of time after the inspection
48 required by subdivision six of this section, conspicuously mark with
49 such implements as may be specified by the commissioner of labor pursu-
50 ant to section eight hundred sixty-seven of the labor law and to provide
51 sufficient warning to skiers and snowboarders by such marking or remove
52 such obstacles or hazards which are located within the boundaries of any
53 ski slope or trail and were noted pursuant to paragraph c of subdivision
54 six of this section; and to also conspicuously mark with such implements
55 and provide such warning or remove such obstacles or hazards within a
56 reasonable amount of time after receipt of notice by the ski area opera-

tor from any skier or snowboarder as to the presence of such obstacles or hazards when notice is given at sites designated by the ski area operator for such receipt and the locations of which are made known to skiers or snowboarders pursuant to paragraph c of subdivision five of this section.

14. To have present at all times when skiing [~~activity is~~] or snowboarding activities are in progress, individuals properly and appropriately trained for the safe operation of on-slope vehicles; trail maintenance equipment; tramways; tramway evacuations; implementation of the reckless skier and snowboarder policy; first aid and outdoor rescue; and, to have present according to a schedule posted for access by skiers and snowboarders, by the ski area operator, personnel appropriately trained in the instruction of skiers, snowboarders and passengers in methods of risk reduction while using ski slopes and passenger tramways and the instruction of skiers and snowboarders with respect to the risks inherent in the sport.

§ 6. Section 18-105 of the general obligations law, as added by chapter 711 of the laws of 1988, is amended to read as follows:

§ 18-105. Duties of skiers and snowboarders. All skiers and snowboarders shall have the following duties:

1. Not to ski or snowboard in any area not designated for skiing or snowboarding;

2. Not to ski or snowboard beyond their limits or ability to overcome variations in slope, trail configuration and surface or subsurface conditions which may be caused or altered by weather, slope or trail maintenance work by the ski area operator, or skier or snowboarder use;

3. To abide by the directions of the ski area operator;

4. To remain in constant control of speed and course at all times while skiing or snowboarding so as to avoid contact with plainly visible or clearly marked obstacles and with other skiers, snowboarders and passengers on surface operating tramways;

5. To familiarize themselves with posted information before skiing or snowboarding any slope or trail, including all information posted pursuant to subdivision five of section 18-103 of this article;

6. Not to cross the uphill track of any surface lift, except at points clearly designated by the ski area operator;

7. Not to ski or snowboard on a slope or trail or portion thereof that has been designated as "closed" by the ski area operator;

8. Not to leave the scene of any accident resulting in personal injury to another party until such times as the ski area operator arrives, except for the purpose of summoning aid;

9. Not to overtake another skier or snowboarder in such a manner as to cause contact with the skier or snowboarder being overtaken and to yield the right-of-way to the skier or snowboarder being overtaken;

10. Not to willfully stop on any slope or trail where such stopping is likely to cause a collision with other skiers, snowboarders or vehicles;

11. To yield to other skiers or snowboarders when entering a trail or starting downhill;

12. To wear retention straps or other devices to prevent runaway skis or snowboards;

13. To report any personal injury to the ski area operator before leaving the ski area; [~~and~~]

14. Not to willfully remove, deface, alter or otherwise damage signage, warning devices or implements, or other safety devices placed and maintained by the ski area operator pursuant to the requirements of section 18-103 of this article[~~-~~]; and

15. To wear protective headgear while skiing or snowboarding if age fourteen or under.

§ 7. Section 18-106 of the general obligations law, as added by chapter 711 of the laws of 1988 and paragraph d of subdivision 1 as amended by chapter 322 of the laws of 1989, is amended to read as follows:

§ 18-106. Duties of skiers, snowboarders and ski area operators with respect to inherent risks. It is recognized that skiing [~~is a~~] and snowboarding are voluntary [~~activity~~] activities that may be hazardous regardless of all feasible safety measures that can be undertaken by ski area operators. Accordingly:

1. Ski area operators shall have the following additional duties:

a. To post at every point of sale or distribution of lift tickets, whether on or off the premises of the ski area operator, a conspicuous "Warning to Skiers and Snowboarders" relative to the inherent risks of skiing and snowboarding in accordance with regulations promulgated by the commissioner of labor pursuant to subdivision four of section eight hundred sixty-seven of the labor law, and to imprint upon all lift tickets sold or distributed, such text and graphics as the commissioner of labor shall similarly specify, which shall conspicuously direct the attention of all skiers and snowboarders to the required "Warning to Skiers and Snowboarders";

b. To post at every point of sale or distribution of lift tickets at a ski area notice to skiers, snowboarders and passengers that this article prescribes certain duties for skiers, snowboarders, passengers and ski area operators, and to make copies of this article in its entirety available without charge upon request to skiers, snowboarders and passengers in a central location at the ski area;

c. To make available at reasonable fees [~~, as required by subdivision thirteen of section 18-103 of this article,~~] instruction and education for skiers and snowboarders relative to the risks inherent in the [~~sport~~] sports of skiing and snowboarding and the duties prescribed for skiers and snowboarders by this article, and to conspicuously post notice of the times and places of availability of such instruction and education in locations where it is likely to be seen by skiers and snowboarders; [~~and~~]

d. To post notice to skiers and snowboarders of the right to a refund to the purchaser in the form and amount paid in the initial sale of any lift ticket returned to the ski area operator, intact and unused, upon declaration by such purchaser that he or she is unprepared or unwilling to ski or snowboard due to the risks inherent in [~~the sport~~] such sports or the duties imposed upon him or her by this article[~~-~~];

e. To offer for sale or rental protective headgear and prohibit any skier or snowboarder age fourteen or under who is not wearing protective headgear from skiing or snowboarding. Such headgear shall meet the standards of the American National Standards Institute and standards set forth in regulations promulgated by the commissioner of labor in accordance with the provisions of article twenty-six of the labor law; and

f. To post notice in bold and conspicuous type at the point or points of transaction the following: "NEW YORK STATE LAW REQUIRES THAT ALL SKIERS AND SNOWBOARDERS AGE FOURTEEN AND UNDER WEAR PROTECTIVE HEADGEAR."

2. Skiers and snowboarders shall have the following additional duties to enable them to make informed decisions as to the advisability of their participation in [~~the sport~~] such sports:

a. To seek out, read, review and understand, in advance of skiing or snowboarding, a "Warning to Skiers and Snowboarders" as shall be defined

1 pursuant to subdivision five of section eight hundred sixty-seven of the
2 labor law, which shall be displayed and provided pursuant to paragraph a
3 of subdivision one of this section; and

4 b. To obtain such education in the [~~sport~~] sports of skiing and snow-
5 boarding as the individual skier or snowboarder shall deem appropriate
6 to his or her level of ability, including the familiarization with
7 skills and duties necessary to reduce the risk of injury in such [~~sport~~]
8 sports.

9 § 8. Section 18-107 of the general obligations law, as added by chap-
10 ter 711 of the laws of 1988, is amended to read as follows:

11 § 18-107. Construction. Unless otherwise specifically provided in this
12 article, the duties of skiers, snowboarders, passengers, and ski area
13 operators shall be governed by common law.

14 § 9. Subdivision 4 of section 12-c of the labor law, as amended by
15 chapter 338 of the laws of 1978, is amended to read as follows:

16 4. The advisory council shall consider all matters in connection with
17 ski tows, other passenger tramways [~~and~~], downhill skiing and snowboard-
18 ing referred to it by the commissioner and advise him with respect ther-
19 eto, and on its own initiative, or upon the suggestion of others, may
20 make such recommendations to the commissioner in connection with ski
21 tows, other passenger tramways [~~and~~], downhill skiing and snowboarding
22 as, after consideration by it, may be deemed necessary.

23 § 10. The article heading of article 26 of the labor law, as added by
24 chapter 338 of the laws of 1978, is amended to read as follows:

25 SAFETY [~~IN-SKIING~~] ON THE SLOPES

26 § 11. Section 865 of the labor law, as added by chapter 338 of the
27 laws of 1978, is amended to read as follows:

28 § 865. Short title. This article shall be known and may be cited as
29 the "safety [~~in-skiing~~] on the slopes act".

30 § 12. Section 866 of the labor law, as added by chapter 338 of the
31 laws of 1978, is amended to read as follows:

32 § 866. Declaration of legislative findings. The legislature hereby
33 finds that alpine or downhill skiing [~~is both a~~] and snowboarding are
34 major recreational [~~sport~~] sports and a major industry within the state
35 of New York. The legislature further finds: (a) that downhill skiing and
36 snowboarding, like many other sports, [~~is~~] are not without some inherent
37 risks; (b) that downhill skiing and snowboarding, without established
38 rules of conduct and care, may result in injuries to persons and proper-
39 ty; and (c) that it is necessary and appropriate, as well as in the
40 public interest, to take steps to protect downhill skiers and snowboard-
41 ers from undue, unnecessary and unreasonable hazards, and to encourage
42 and promote safety in the downhill ski [~~industry~~] and snowboarding
43 industries.

44 It is, therefore, the intent of this article to create and provide for
45 the promulgation of a code of conduct for downhill skiers, snowboarders
46 and ski area operators which will minimize the risk of injury to persons
47 and property engaged in the [~~sport~~] sports of downhill skiing and snow-
48 boarding.

49 § 13. The section heading, subdivision 1 and subdivision 5 of section
50 867 of the labor law, the section heading and subdivision 1 as amended
51 and subdivision 5 as added by chapter 711 of the laws of 1988, are
52 amended to read as follows:

53 Safety [~~in-skiing~~] on the slopes code. 1. The commissioner, on the
54 advice of the passenger tramway advisory council as created pursuant to
55 section twelve-c of this chapter, shall promulgate rules and regu-
56 lations, consistent with article eighteen of the general obligations

1 law, intended to guard against personal injuries to downhill skiers and
2 snowboarders which will, in view of such intent, define the duties and
3 responsibilities of downhill skiers and snowboarders and the duties and
4 responsibilities of ski area operators. Such duties shall include, but
5 not be limited to, the provision by ski area operators of protective
6 headgear, for purchase or rental and the requirement that skiers or
7 snowboarders under the age of fourteen wear protective headgear.

8 5. Upon advice of the passenger tramway advisory council, the commis-
9 sion shall, [~~on~~] prior to the fifteenth day of March, [~~nineteen hundred~~
10 ~~eighty-nine~~] two thousand twenty-two, promulgate updated rules which
11 shall set forth specifications for the uniform textual and graphic
12 content, physical description, and conspicuous posting of a "Warning to
13 Skiers and Snowboarders" regarding the risks inherent in the sport as
14 set forth in section 18-101 of the general obligations law, specifically
15 the risk of head injury, which shall be posted and provided to skiers
16 and snowboarders by ski [~~areas~~] area operators in accordance with subdi-
17 vision one of section 18-106 of the general obligations law, and shall
18 promulgate rules which shall set forth textual and graphic specifica-
19 tions designed to occupy not more than twenty-five percent of the
20 imprintable surface area of the face side nor more than eighty percent
21 of the imprintable surface area of the reverse side or backing paper of
22 all lift tickets sold or distributed in the state, as defined by section
23 18-102 of the general obligations law, which shall uniformly serve to
24 direct the attention of all skiers or snowboarders to the "Warning to
25 Skiers and Snowboarders" herein directed to be promulgated and required
26 by section 18-106 of the general obligations law.

27 § 14. This act shall take effect on the one hundred twentieth day
28 after it shall have become a law. Effective immediately, the addition,
29 amendment and/or repeal of any rule or regulation necessary for the
30 timely implementation of this act on its effective date are authorized
31 to be made and completed on or before such effective date.