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

2070

2009-2010 Regular Sessions

I N A S S E M B L Y

January 15, 2009

Introduced by M. of A. BENJAMIN -- Multi-Sponsored by -- M. of A. CLARK, MILLER -- read once and referred to the Committee on Judiciary

AN ACT to amend the general obligations law and the labor law, in relation to safety and the use of helmets when skiing, sledding and snowboarding

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

Section 1. Subdivisions 1, 4 and 7 of section 18-102 of the general obligations law, as added by chapter 711 of the laws of 1988, are amended and two new subdivisions 8 and 9 are added to read as follows:

1. "Lift ticket" means any item issued by a ski area operator to any skier, SLEDDER OR SNOWBOARDER that is intended to be affixed to the outerwear of the skier, SLEDDER OR SNOWBOARDER, or otherwise displayed by a skier, SLEDDER OR SNOWBOARDER, to signify lawful entry upon and use of the passenger tramways or ski slopes or trails maintained by the ski area operator.

4. "Ski area" means all ski slopes, ski trails, SLEDDING SLOPES, SLEDDING TRAILS, SNOWBOARD SLOPES, SNOWBOARD TRAILS and passenger tramways administered as a single enterprise within this state.

7. "Ski slopes and trails" mean those areas designated by the ski area operator for skiing, SLEDDING OR SNOWBOARDING.

8. "SNOWBOARDER" MEANS ANY PERSON WEARING A SNOWBOARD AND ANY PERSON ACTUALLY ON A SKI SLOPE OR TRAIL LOCATED AT A SKI AREA, FOR THE PURPOSE OF SNOWBOARDING.

9. "SLEDDER" MEANS ANY PERSON USING A SLED, WHICH IS ANY VEHICLE USED FOR CARRYING PEOPLE OR LOADS OVER ICE AND SNOW, ACTUALLY ON A SLOPE OR TRAIL LOCATED AT A SKI AREA, FOR THE PURPOSE OF SLEDDING.

S 2. Section 18-103 of the general obligations law is amended by adding three new subdivisions 15, 16 and 17 to read as follows:

15. TO INCORPORATE AND APPLY ALL OF THE DUTIES AND RESPONSIBILITIES OF THIS SECTION TO SLEDDING, SLEDDERS, SNOWBOARDING AND SNOWBOARDERS.

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

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16. TO CONSPICUOUSLY POST AND MAINTAIN APPROPRIATE SIGNAGE REGARDING THE HELMET REQUIREMENT, AS PROVIDED IN SECTION 18-106-A OF THIS ARTICLE.

17. TO MAKE AVAILABLE FOR SALE OR RENTAL, AT A REASONABLE FEE, PROTECTIVE HEADGEAR FOR PERSONS UNDER FOURTEEN YEARS OF AGE TO WEAR WHILE SKIING, SLEDDING OR SNOWBOARDING, AS PROVIDED IN SECTION 18-106-A OF THIS ARTICLE.

S 3. The section heading and the opening paragraph of section 18-105 of the general obligations law, as added by chapter 711 of the laws of 1988, are amended to read as follows:

Duties of skiers, SLEDDERS AND SNOWBOARDERS. All skiers shall have the following duties AND ALL SLEDDERS AND SNOWBOARDERS SHALL HAVE THE SAME DUTIES AS APPLICABLE TO SNOWBOARDING AND SNOWBOARDING SLOPES AND TRAILS:

S 4. The section heading and opening paragraph of section 18-106 of the general obligations law, as added by chapter 711 of the laws of 1988, are amended to read as follows:

Duties of skiers, SLEDDERS, SNOWBOARDERS and ski area operators with respect to inherent risks. It is recognized that skiing [is a], SLEDDING AND SNOWBOARDING ARE voluntary [activity] ACTIVITIES that may be hazardous regardless of all feasible safety measures that can be undertaken by ski area operators. THEREFORE THE DUTIES IMPOSED UPON SKIERS AND SKI AREA OPERATORS BY THIS SECTION, SHALL ALSO APPLY TO SLEDDERS, SLEDDING, SNOWBOARDERS AND SNOWBOARDING. Accordingly:

S 5. The general obligations law is amended by adding a new section 18-106-A to read as follows:

S 18-106-A. SKIERS, SLEDDERS AND SNOWBOARDERS UNDER FOURTEEN YEARS OF AGE TO WEAR PROTECTIVE HEADGEAR. 1. NO SKIER, SLEDDER OR SNOWBOARDER ONE OR MORE YEARS OF AGE AND LESS THAN FOURTEEN YEARS OF AGE, SHALL SKI, SLED OR SNOWBOARD UNLESS SUCH PERSON IS WEARING A HELMET MEETING SAFETY STANDARDS ESTABLISHED BY THE COMMISSIONER OF LABOR PURSUANT TO SECTION TWO HUNDRED TWO-C OR EIGHT HUNDRED SIXTY-SEVEN OF THE LABOR LAW. FOR THE PURPOSES OF THIS SECTION WEARING A HELMET MEANS HAVING A HELMET OF GOOD FIT FASTENED SECURELY UPON THE HEAD WITH THE HELMET STRAPS.

2. (A) ANY PERSON WHO VIOLATES THE PROVISIONS OF SUBDIVISION ONE OF THIS SECTION SHALL PAY A CIVIL FINE NOT TO EXCEED FIFTY DOLLARS.

(B) THE COURT SHALL WAIVE ANY FINE FOR WHICH A PERSON WHO VIOLATES THE PROVISIONS OF SUBDIVISION ONE OF THIS SECTION WOULD BE LIABLE IF SUCH PERSON SUPPLIES THE COURT WITH PROOF THAT BETWEEN THE DATE OF VIOLATION AND THE APPEARANCE DATE FOR SUCH VIOLATION SUCH PERSON PURCHASED OR RENTED A HELMET.

(C) THE COURT MAY WAIVE ANY FINE FOR WHICH A PERSON WHO VIOLATES THE PROVISIONS OF SUBDIVISION ONE OF THIS SECTION WOULD BE LIABLE IF THE COURT FINDS THAT DUE TO REASONS OF ECONOMIC HARDSHIP SUCH PERSON WAS UNABLE TO PURCHASE A HELMET.

3. THE FAILURE OF ANY PERSON TO COMPLY WITH THE PROVISIONS OF THIS SECTION SHALL NOT CONSTITUTE CONTRIBUTORY NEGLIGENCE OR ASSUMPTION OF RISK, AND SHALL NOT IN ANY WAY BAR, PRECLUDE OR FORECLOSE AN ACTION FOR PERSONAL INJURY OR WRONGFUL DEATH BY OR ON BEHALF OF SUCH PERSON, NOR IN ANY WAY DIMINISH OR REDUCE THE DAMAGES RECOVERABLE IN ANY SUCH ACTION.

4. A POLICE OFFICER SHALL ONLY ISSUE A SUMMONS FOR A VIOLATION OF SUBDIVISION ONE OF THIS SECTION BY A PERSON LESS THAN FOURTEEN YEARS OF AGE TO THE PARENT OR GUARDIAN OF SUCH PERSON IF THE VIOLATION BY SUCH PERSON OCCURS IN THE PRESENCE OF SUCH PERSON'S PARENT OR GUARDIAN AND WHERE SUCH PARENT OR GUARDIAN IS EIGHTEEN YEARS OF AGE OR MORE. SUCH SUMMONS SHALL ONLY BE ISSUED TO SUCH PARENT OR GUARDIAN, AND SHALL NOT BE ISSUED TO THE PERSON LESS THAN FOURTEEN YEARS OF AGE.

S 6. The section heading and subdivision 1 of section 867 of the labor law, as amended by chapter 711 of the laws of 1988, are amended to read as follows:

Safety in skiing, SLEDDING AND SNOWBOARDING code. 1. The commissioner, on the advice of the passenger tramway advisory council as created pursuant to section twelve-c of this chapter, shall promulgate rules and regulations, consistent with article eighteen of the general obligations law, intended to guard against personal injuries to downhill skiers, SLEDDERS AND SNOWBOARDERS which will, in view of such intent, define the duties and responsibilities of downhill skiers, SLEDDERS AND SNOWBOARDERS and the duties and responsibilities of ski area operators.

S 7. This act shall take effect on the one hundred eightieth 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 are authorized and directed to be made and completed on or before such effective date.