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

4085

2009-2010 Regular Sessions

I N A S S E M B L Y

January 29, 2009

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

S 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:

S 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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take such steps as are necessary to help reduce the risk of injury to downhill skiers AND SNOWBOARDERS from undue, unnecessary and unreasonable hazards; and (4) that it is also necessary and appropriate that skiers AND SNOWBOARDERS become apprised of, and understand, the risks inherent in the [sport] SPORTS of skiing AND SNOWBOARDING so that they may make an informed decision of whether or not to participate in [skiing] SUCH SPORTS notwithstanding the risks. Therefore, the purpose and intent of this article is to establish a code of conduct for downhill skiers, SNOWBOARDERS and ski area operators to minimize the risk of injury to persons engaged in the [sport] SPORTS of downhill skiing AND SNOWBOARDING and to promote safety in the downhill ski [industry] AND SNOWBOARDING INDUSTRIES.

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

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

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

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

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.

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

2. To post in a location likely to be seen by all skiers AND SNOWBOARDERS signs of such size and color as will enable skiers AND SNOWBOARDERS to have knowledge of their responsibilities under this article.

(i) skier OR SNOWBOARDER use;

7. To develop and maintain a written policy consistent with the regulations of the commissioner of labor upon the advice of the passenger tramway advisory council for situations involving the reckless conduct of skiers AND SNOWBOARDERS, which shall include, but not be limited to:

a. a definition of reckless conduct; and

b. procedures for approaching and warning skiers AND SNOWBOARDERS of reckless conduct and procedures for dealing with such skiers AND SNOWBOARDERS which may include the revocation of the lift tickets of such skiers AND SNOWBOARDERS.

13. To, within a reasonable amount of time after the inspection required by subdivision six of this section, conspicuously mark with such implements as may be specified by the commissioner of labor pursuant to section eight hundred sixty-seven of the labor law and to provide sufficient warning to skiers AND SNOWBOARDERS by such marking or remove such obstacles or hazards which are located within the boundaries of any ski slope or trail and were noted pursuant to paragraph c of subdivision six of this section; and to also conspicuously mark with such implements and provide such warning or remove such obstacles or hazards within a 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.

S 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:

S 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.

S 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:

S 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

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

b. To obtain such education in the [sport] SPORTS of skiing AND SNOWBOARDING as the individual skier OR SNOWBOARDER shall deem appropriate to his or her level of ability, including the familiarization with skills and duties necessary to reduce the risk of injury in such [sport] SPORTS.

S 8. Section 18-107 of the general obligations law, as added by chapter 711 of the laws of 1988, is amended to read as follows:

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

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

4. The advisory council shall consider all matters in connection with ski tows, other passenger tramways [and], downhill skiing AND SNOWBOARDING referred to it by the commissioner and advise him with respect thereto, and on its own initiative, or upon the suggestion of others, may make such recommendations to the commissioner in connection with ski tows, other passenger tramways [and], downhill skiing AND SNOWBOARDING as, after consideration by it, may be deemed necessary.

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

SAFETY [IN SKIING] ON THE SLOPES

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

S 865. Short title. This article shall be known and may be cited as the "safety [in skiing] ON THE SLOPES act".

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

S 866. Declaration of legislative findings. 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: (a) that downhill skiing AND SNOWBOARDING, like many other sports, [is] ARE not without some inherent risks; (b) that downhill skiing AND SNOWBOARDING, without established rules of conduct and care, may result in injuries to persons and property; and (c) that it is necessary and appropriate, as well as in the public interest, to take steps to protect downhill skiers AND SNOWBOARDERS from undue, unnecessary and unreasonable hazards, and to encourage and promote safety in the downhill ski [industry] AND SNOWBOARDING INDUSTRIES.

It is, therefore, the intent of this article to create and provide for the promulgation of a code of conduct for downhill skiers, SNOWBOARDERS and ski area operators which will minimize the risk of injury to persons and property engaged in the [sport] SPORTS of downhill skiing AND SNOWBOARDING.

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

Safety [in skiing] ON THE SLOPES 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 AND SNOWBOARDERS which will, in view of such intent, define the duties and responsibilities of downhill skiers AND SNOWBOARDERS and the duties and responsibilities of ski area operators. SUCH DUTIES SHALL INCLUDE, BUT NOT BE LIMITED TO, THE PROVISION BY SKI AREA OPERATORS OF PROTECTIVE HEADGEAR, FOR PURCHASE OR RENTAL AND THE REQUIREMENT THAT SKIERS OR SNOWBOARDERS UNDER THE AGE OF FOURTEEN WEAR PROTECTIVE HEADGEAR.

5. Upon advice of the passenger tramway advisory council, the commission shall, [on] PRIOR TO the fifteenth day of March, [nineteen hundred eighty-nine] TWO THOUSAND TEN, promulgate UPDATED rules which shall set forth specifications for the uniform textual and graphic content, physical description, and conspicuous posting of a "Warning to Skiers AND SNOWBOARDERS" regarding the risks inherent in the sport as set forth in section 18-101 of the general obligations law, SPECIFICALLY THE RISK OF HEAD INJURY, which shall be posted and provided to skiers AND SNOWBOARDERS by ski [areas] AREA operators in accordance with subdivision one of section 18-106 of the general obligations law, and shall promulgate rules which shall set forth textual and graphic specifications designed to occupy not more than twenty-five percent of the imprintable surface area of the face side nor more than eighty percent of the imprintable surface area of the reverse side or backing paper of all lift tickets sold or distributed in the state, as defined by section 18-102 of the general obligations law, which shall uniformly serve to direct the attention of all skiers OR SNOWBOARDERS to the "Warning to Skiers AND SNOWBOARDERS" herein directed to be promulgated and required by section 18-106 of the general obligations law.

S 14. This act shall take effect on the one hundred twentieth day after it shall have become a law; provided, however, that effective immediately, the addition, amendment and/or repeal of any rule or regulation necessary for the timely implementation of this act on its effective date is authorized and directed to be made and completed on or before such effective date.