

HOUSE No. 2317

By Representative Grant of Beverly and Senator Berry, joint petition of Mary E. Grant and others relative to the regulation of challenge courses and climbing wall facilities by the Department of Public Safety, Public Safety and Homeland Security.

The Commonwealth of Massachusetts

PETITION OF:

Mary E. Grant	Christine E. Canavan
Frederick E. Berry	Alice Hanlon Peisch
Anthony J. Verga	Dick Prouty
Benjamin B. Downing	

In the Year Two Thousand and Seven.

AN ACT REGULATING CHALLENGE COURSES AND CLIMBING WALL FACILITIES BY THE DEPARTMENT OF PUBLIC SAFETY.

Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:

1 SECTION 1. Chapter 140 of the General Laws is hereby amended
2 by inserting the following Section:—

3 Section 205B. (a) As used in this section and Section 62 of
4 Chapter 146, the following words shall have the following mean-
5 ings:—

6 “Challenge course”, a facility or facilities consisting of one or
7 more elements that challenge participants as part of a supervised
8 educational/recreational curriculum, not located in an amusement
9 park. Challenge course elements may include, but not be limited to,
10 artificial climbing structures, beams, bridges, cable traverses, nets,
11 platforms, ropes, swings, and zip wires that employ fall protection
12 systems in their operation.

13 “Climbing wall facility”, a climbing facility or facilities designed
14 and built for the sport of rock climbing for customers pursuing ath-
15 letics or recreation, that employ fall protection systems in their oper-
16 ation, not located in an amusement park or as part of a challenge

17 course. Mobile climbing structures, inflatable climbing structures, or
18 moving surface treadmill-type climbing structures are not included
19 as climbing wall facilities.

20 (b) For the purposes of this section, the commissioner shall adopt
21 rules and regulations establishing standards for the operation and
22 safety of challenge courses and climbing wall facilities for the safety
23 of the public and criteria and procedures for the issuance, denial,
24 renewal, suspension and revocation of a license for such courses or
25 facilities; provided, however, that a final adjudication that there has
26 been a violation of federal law, state law or an other rule adopted by
27 the department, shall be cause for the denial, suspension or revoca-
28 tion of any license issued under this section. The operation of chal-
29 lenge courses or climbing wall facilities in violation of the
30 regulations or without a valid license shall be considered a punish-
31 able violation for the purposes of this section.

32 No person shall individually or through an agent operate or cause
33 to be operated a challenge course or climbing wall facility unless
34 such person has obtained a license from the commissioner.

35 The commissioner, upon receipt of proof that a person has
36 obtained the liability insurance as required by this section, has
37 obtained the necessary equipment and training to operate a challenge
38 course or climbing wall facility, and has met the safety standards
39 established by the commissioner, may issue a license for the opera-
40 tion of the challenge course or climbing wall facility.

41 A qualified manufacturer's representative, or a person who pos-
42 sesses a certificate of competency to inspect challenge courses or
43 climbing wall facilities issued under Section 62 of Chapter 146, and
44 who has furnished to the commissioner proof of liability insurance
45 for an amount of at least \$1,000,000 for general liability, shall pro-
46 vide documentation of periodic site inspections.

47 The fee for a license under this section shall be determined annu-
48 ally by said commissioner of administration and finance under
49 Section 3B of Chapter 7 for the filing thereof. All licenses issued
50 pursuant to this section shall expire annually on a date determined
51 by the commissioner if insurance coverage is continuous, or on the
52 date that the insurance certificate is no longer valid if insurance cov-
53 erage is not continuous, unless revoked for cause, and shall be valid
54 throughout the Commonwealth.

55 (c) If a serious injury requiring immediate admission, overnight
56 hospitalization and observation by a licensed physician has occurred
57 on such a challenge course or climbing wall facility, reasonably due
58 to a defect or malfunction of the structure or a component of the
59 structure, or if the structure or component of the structure constitutes
60 a hazard to life, limb or property, as determined by the commis-
61 sioner, his designee, or by an agent of the responsible vendor, the
62 structure or component of the structure involved shall be closed
63 immediately and, within 8 hours, the owner or operator shall notify
64 the commissioner or his designee in a manner approved by the com-
65 missioner and within 48 hours in writing upon a form approved by
66 the commissioner. The structure or component of the structure in
67 question shall remain closed until all necessary repairs have been
68 completed to the satisfaction of the commissioner or his designee
69 and the responsible vendor. Failure to follow this provision shall
70 constitute the operation of an unsafe course or facility and shall be
71 punishable by a fine not to exceed five thousand dollars. The
72 licensee shall pay to the commissioner a fee, as determined under
73 Section 3B of Chapter 7, for each hour or fraction thereof spent by
74 each inspector while engaged in an investigation.

75 (d) All third party inspectors authorized by this section to conduct
76 inspections shall maintain \$1,000,000 in general liability insurance
77 coverage. Challenge courses or climbing wall facilities of a perma-
78 nent nature shall be inspected periodically by a qualified manufac-
79 turer's representative or certified third party inspector, as determined
80 by the commissioner. The owner of a challenge course or climbing
81 wall facility shall each maintain and preserve a log of all regular
82 maintenance, service and repair reports, periodic inspections per-
83 formed and any accident or serious injury requiring medical treat-
84 ment, which may have occurred on the challenge course or climbing
85 wall facility. These documents shall be made available upon request
86 to the department of public safety.

87 (e) Owners shall maintain permanent training, inspection, and
88 maintenance policies relative to routine and emergency safety proce-
89 dures. All vendors responsible for equipment installed, and all
90 owners will use the standards of The Association for Challenge
91 Course Technology (ACCT), The Climbing Wall Association
92 (CWA), or other similar standards and codes as approved by the
93 commissioner. All challenge courses and climbing wall facilities of a

94 permanent nature shall have at least one individual on staff who is
95 designated to oversee the operation, routine maintenance and inspec-
96 tion of challenge courses or climbing wall facilities. The operator of
97 any challenge course or climbing wall facility shall furnish to the
98 commissioner proof that the challenge course or climbing wall
99 facility is covered for an amount of at least \$1,000,000 for combined
100 single limit bodily injury and property damage, or coverage to statu-
101 tory limits, and which meet the rules and regulations as established
102 by the commissioner. If the insurance contract expires or is can-
103 celled, notice shall be furnished by the owner to the commissioner
104 prior to the termination and the challenge course or climbing wall
105 facility shall be closed until insurance is obtained and a new license
106 issued. Proof of coverage shall include, but not be limited to, proof
107 of liability insurance issued by an insurance company approved to
108 do business within the Commonwealth, or a bond, security or other
109 type of indemnity against liability providing substantially equivalent
110 coverage.

111 (f) Whoever violates this section shall, for each such violation, be
112 punishable by a fine of not more than \$5,000.

1 SECTION 2. Chapter 146 of the General Laws is hereby amended
2 by striking out Section 62, as appearing in the 2004 Official Edition,
3 and inserting in place thereof the following section:—

4 Section 62. If the applicant is found competent he shall receive a
5 certificate of competency to inspect steam boilers or to inspect
6 amusement devices, challenge courses, or climbing wall facilities, as
7 the case may be; provided, however, that if the holder of a certificate
8 ceases to be employed as an inspector for a period of one year or
9 more his certificate shall lapse and he shall be required to submit to
10 reexamination for a new certificate. The fee for such reexamination
11 shall be determined annually by the commissioner of administration
12 under the provision of Section 3B of Chapter 7. Said certificate shall
13 continue in force until the date of birth of the holder of the certificate
14 occurring more than 12 months but not more than 24 months after
15 the effective date of such certificate unless sooner revoked.

16 If any such certificate of competency to inspect steam boilers,
17 amusement devices, challenge courses or climbing wall facilities or
18 the renewal thereof expires in any even year, any subsequent

19 renewal shall expire on the next anniversary of the holder's date of
20 birth occurring in an even year.

21 If any such certificate of competency to inspect steam boilers or
22 to inspect amusement devices, challenge courses or climbing wall
23 facilities or renewal thereof expires in an odd year, any subsequent
24 renewal shall expire on the next anniversary of the holder's date of
25 birth occurring in an odd year. A certificate of competency to inspect
26 steam boilers or to inspect amusement devices, challenge courses or
27 climbing wall facilities issued to a person born on February 29th
28 shall, for the purposes of this section, expire on March 1st. The fee
29 for the renewal of the certificate of competency shall be determined
30 pursuant to the aforementioned Chapter 7. Certificates not renewed
31 at expiration date shall become void, and shall after one year be rein-
32 stated only by reexamination of the former holder of the certificate.
33 A notice of the date of expiration of a certificate of competency to
34 inspect steam boilers or to inspect amusement devices, challenge
35 courses or climbing wall facilities shall, at least 30 days prior to such
36 date, be sent to the holder of the certificate. A person whose certifi-
37 cate of competency is suspended or revoked shall surrender his cer-
38 tificate to the commissioner.