

**HOUSE . . . . . No. 4206**

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**The Commonwealth of Massachusetts**

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HOUSE OF REPRESENTATIVES, August 2, 2007.

The committee on Public Safety and Homeland Security, to whom was referred the joint petition (accompanied by bill, House No. 2317) of Mary E. Grant and others relative to the regulation of challenge courses and climbing wall facilities by the Department of Public Safety, reports recommending that the accompanying bill (House, No. 4206) ought to pass.

For the committee,

MICHAEL A. COSTELLO.

**The Commonwealth of Massachusetts**

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In the Year Two Thousand and Seven.

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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  
2 amended 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  
10 to, artificial climbing structures, beams, bridges, cable traverses,  
11 nets, platforms, ropes, swings, and zip wires that employ fall pro-  
12 tection systems in their operation. An artificial climbing structure  
13 wholly owned by a challenge course owner and intended by its  
14 design and construction to be portable shall be considered a chal-  
15 lenge course element for purposes of licensure.

16 “Climbing wall facility”, a climbing facility or facilities  
17 designed and built for the sport of rock climbing for customers  
18 pursuing athletics or recreation, that employ fall protection sys-  
19 tems in their operation, not located in an amusement park or as  
20 part of a challenge course. Mobile climbing structures not owned  
21 by the facility, inflatable climbing structures, or moving surface  
22 treadmill-type climbing structures are not included as climbing  
23 wall facilities.

24 (b) For the purposes of this section, the commissioner shall  
25 adopt rules and regulations establishing standards for the opera-  
26 tion and safety of challenge courses and climbing wall facilities  
27 for the safety of the public and criteria and procedures for the  
28 issuance, denial, renewal, suspension and revocation of a license

29 for such courses or facilities; provided, however, that said rules  
30 and regulations shall include a permanent advisory board to make  
31 recommendations on such standards and procedures; and further  
32 provided, that a final adjudication that there has been a violation  
33 of federal law, state law or an other rule adopted by the depart-  
34 ment, shall be cause for the denial, suspension or revocation of  
35 any license issued under this section. The operation of challenge  
36 courses or climbing wall facilities in violation of the regulations  
37 or without a valid license shall be considered a punishable viola-  
38 tion for the purposes of this section.

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

42 The commissioner, upon receipt of proof that a person has  
43 obtained the liability insurance as required by this section, has  
44 obtained the necessary equipment and training to operate a chal-  
45 lenge course or climbing wall facility, and has met the safety stan-  
46 dards established by the commissioner, may issue a license for the  
47 operation of the challenge course or climbing wall facility.

48 A qualified manufacturer's representative, or a person who pos-  
49 sesses a certificate of competency to inspect challenge courses or  
50 climbing wall facilities issued under Section 62 of Chapter 146  
51 shall provide documentation of periodic site inspections to owners  
52 of challenge courses or climbing wall facilities.

53 The fee for a license under this section shall be determined  
54 annually by said commissioner of administration and finance  
55 under Section 3B of Chapter 7 for the filing thereof. No fee shall  
56 be charged to public schools or municipalities for licenses issued  
57 under this Section. All licenses issued pursuant to this section  
58 shall expire annually on a date determined by the commissioner if  
59 insurance coverage is continuous, or on the date that the insurance  
60 certificate is no longer valid if insurance coverage is not contin-  
61 uous, unless revoked for cause, and shall be valid throughout the  
62 Commonwealth.

63 Applicants for licensure or licensees under the provisions of  
64 this section that are required to obtain criminal offender record  
65 information or juvenile data of all employees or volunteers prior  
66 to employment or volunteer service pursuant to Sections 172G,  
67 172H, or 172I of Chapter 6 or that are otherwise authorized to

68 receive criminal offender record information pursuant to the pro-  
69 visions of Section 172 of Chapter 6, and that have previously  
70 obtained such information or data, according to applicable law or  
71 regulation, for individuals employed or volunteering as challenge  
72 course managers, climbing wall facility managers, challenge  
73 course staff, or climbing wall facility staff, shall be exempt from  
74 any rules and regulations promulgated pursuant to this section  
75 requiring applicants or licensees to obtain additional criminal  
76 offender record information for such individuals. Applicants that  
77 are exempt pursuant to this provision shall attest in writing at the  
78 time of application that previously obtained criminal offender  
79 record information has been reviewed by the applicant or other  
80 authorized person employed by the applicant in accordance with  
81 Section 172 of Chapter 6.

82 (c) If a serious injury requiring immediate admission, overnight  
83 hospitalization and observation by a licensed physician has  
84 occurred on such a challenge course or climbing wall facility, rea-  
85 sonably due to a defect or malfunction of the structure or a com-  
86 ponent of the structure, or if the structure or component of the  
87 structure constitutes a hazard to life, limb or property, as deter-  
88 mined by the commissioner, his designee, or by an agent of the  
89 responsible vendor, the structure or component of the structure  
90 involved shall be closed immediately and, within one hour, the  
91 owner or operator shall notify the commissioner or his designee in  
92 a manner approved by the commissioner and within 48 hours in  
93 writing upon a form approved by the commissioner. The structure  
94 or component of the structure in question shall remain closed until  
95 all necessary repairs have been completed to the satisfaction of  
96 the commissioner or his designee and the responsible vendor.  
97 Failure to follow this provision shall constitute the operation of an  
98 unsafe course or facility and shall be punishable by a fine not to  
99 exceed five thousand dollars. The licensee shall pay to the com-  
100 missioner a fee, as determined under Section 3B of Chapter 7, for  
101 each hour or fraction thereof spent by each inspector while  
102 engaged in an investigation.

103 (d) All third party inspectors authorized by this section to con-  
104 duct inspections shall maintain \$1,000,000 per occurrence limit in  
105 general liability insurance coverage. Challenge courses or  
106 climbing wall facilities of a permanent nature shall be inspected

107 periodically by a qualified manufacturer's representative or certi-  
108 fied third party inspector, as determined by the commissioner. The  
109 owner of a challenge course or climbing wall facility shall each  
110 maintain and preserve a log of all regular maintenance, service  
111 and repair reports, periodic inspections performed and any acci-  
112 dent or serious injury requiring medical treatment, which may  
113 have occurred on the challenge course or climbing wall facility.  
114 These documents shall be made available upon request to the  
115 department of public safety.

116 (e) Owners shall maintain permanent training, inspection, and  
117 maintenance policies relative to routine and emergency safety pro-  
118 cedures. All vendors responsible for equipment installed, and all  
119 owners will use the standards of The Association for Challenge  
120 Course Technology (ACCT), The Climbing Wall Association  
121 (CWA), or other similar standards and codes as approved by the  
122 commissioner. All challenge courses and climbing wall facilities  
123 of a permanent nature shall have at least one individual on staff  
124 who is designated to oversee the operation, routine maintenance  
125 and inspection of challenge courses or climbing wall facilities.  
126 For the purposes of this section, artificial climbing structures  
127 intended by their design and construction to be portable and that  
128 are wholly owned by the owner of a challenge course or climbing  
129 wall facility shall be considered an element of the challenge  
130 course or climbing wall facility for purposes of licensure. Portable  
131 artificial climbing structures intended by the owner for use as part  
132 of multiple challenge courses or climbing wall facilities operated  
133 by the owner shall be identified on the application for licensure of  
134 the challenge course or climbing wall facility where the portable  
135 artificial climbing structure will remain when not in use. The  
136 operator of any challenge course or climbing wall facility shall  
137 furnish to the commissioner proof that the challenge course or  
138 climbing wall facility is covered for an amount of at least  
139 \$1,000,000 per occurrence for combined single limit bodily injury  
140 and property damage, or the statutory limit, with a \$2,000,000  
141 general aggregate limit or the statutory limit, in a format that  
142 meets the rules and regulations as established by the commis-  
143 sioner. If the insurance contract expires or is cancelled, notice  
144 shall be furnished by the owner to the commissioner prior to the  
145 termination and the challenge course or climbing wall facility

146 shall be closed until insurance is obtained and a new license  
147 issued. Proof of coverage shall include, but not be limited to,  
148 proof of liability insurance issued by an insurance company  
149 approved to do business within the commonwealth, or a bond,  
150 security or other type of indemnity against liability providing sub-  
151 stantially equivalent coverage.

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

1 SECTION 2. Section 60 of Chapter 146 of the General laws, as  
2 appearing in the 2005 Official Edition, is hereby amended by  
3 striking out, after the word “boilers” in line 2, the words “or an  
4 inspector of amusement devices.”

1 SECTION 3. Section 60 of Chapter 146 of the General Laws,  
2 as so appearing, is hereby further amended by inserting after the  
3 word “administration” in line 5, the following sentence: —

4 The application of a person desiring to act as an inspector of  
5 amusement devices shall be accompanied by a fee, the amount of  
6 which shall be determined annually by the commissioner of  
7 administration under Section 3B of Chapter 7.

1 SECTION 4. Section 61 of Chapter 146 as so appearing, is  
2 hereby amended by striking out, in lines 5 through 7, the  
3 following words: “and, in the case of an applicant for a certificate  
4 of competency to inspect amusement devices, shall be examined  
5 in such matters as the inspectors shall deem relevant.”

1 SECTION 5. Said Chapter 146 is hereby amended by inserting  
2 after Section 61 the following sections:—

3 Section 61A. The applicant for a certificate of competency to  
4 inspect amusement devices shall be examined pursuant to rules  
5 and regulations established by the department.

6 Section 61B. The applicant for a certificate of competency to  
7 inspect challenge courses shall be examined pursuant to rules and  
8 regulations established by the department after receiving recom-  
9 mendations from the advisory board established under the provi-  
10 sions of section 205B of chapter one hundred and forty.

11 Section 61C. The applicant for a certificate of competency to  
12 inspect climbing wall facilities shall be examined pursuant to  
13 rules and regulations established by the department after receiving  
14 recommendations from the advisory board established under the  
15 provisions of Section 205B of Chapter one hundred and forty.

1 SECTION 6. Chapter 146 of the General Laws is hereby  
2 amended by striking out Section 62, as appearing in the 2004  
3 Official Edition, and inserting in place thereof the following  
4 section:—

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

18 If any such certificate of competency to inspect steam boilers,  
19 amusement devices, challenge courses or climbing wall facilities  
20 or the renewal thereof expires in any even year, any subsequent  
21 renewal shall expire on the next anniversary of the holder's date  
22 of birth occurring in an even year.

23 If any such certificate of competency to inspect steam boilers or  
24 to inspect amusement devices, challenge courses or climbing wall  
25 facilities or renewal thereof expires in an odd year, any subse-  
26 quent renewal shall expire on the next anniversary of the holder's  
27 date of birth occurring in an odd year. A certificate of competency  
28 to inspect steam boilers or to inspect amusement devices, chal-  
29 lenge courses or climbing wall facilities issued to a person born  
30 on February 29th shall, for the purposes of this section, expire on  
31 March 1st. The fee for the renewal of the certificate of compe-  
32 tency shall be determined pursuant to the aforementioned Chapter  
33 7. Certificates not renewed at expiration date shall become void,

34 and shall after one year be reinstated only by reexamination of the  
35 former holder of the certificate. A notice of the date of expiration  
36 of a certificate of competency to inspect steam boilers or to  
37 inspect amusement devices, challenge courses or climbing wall  
38 facilities shall, at least 30 days prior to such date, be sent to the  
39 holder of the certificate. A person whose certificate of compe-  
40 tency is suspended or revoked shall surrender his certificate to the  
41 commissioner.

1 SECTION 7. Section 63 of Chapter 146 as so appearing is  
2 hereby amended by inserting after the word “competency” in line  
3 1, the following words: — to inspect boilers.

1 SECTION 8. Chapter 146 of the General Laws is hereby  
2 amended by inserting after section 63 the following section: —  
3 Section 63A. A person who is refused a certificate of compe-  
4 tency to inspect amusement devices, challenge courses, or  
5 climbing wall facilities, or whose certificate is revoked, may  
6 appeal such decision to the commissioner who shall make a final  
7 determination.