

## SENATE BILL NO. 556

INTRODUCED BY W. CURDY

A BILL FOR AN ACT ENTITLED: "AN ACT CREATING THE BOARD OF PASSENGER ROPEWAY SAFETY; PROVIDING FOR COMPOSITION AND DUTIES OF THE BOARD; REQUIRING REGISTRATION OF PASSENGER ROPEWAYS THROUGH AN APPLICATION AND CERTIFICATION PROCESS; PROVIDING FOR FEES AND ASSESSMENTS OF RECEIPTS; PROVIDING RULEMAKING AUTHORITY; AMENDING SECTIONS 23-2-702 AND 23-2-734, MCA; AND REPEALING SECTION 23-2-731, MCA."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

**NEW SECTION. Section 1. Purpose.** (1) The legislature finds that:

(a) skiing is a major recreational sport and a major industry in the state, and among the attractions of the sport are the inherent dangers and risks of skiing;

(b) the state has a legitimate interest in maintaining the economic viability of the ski industry by discouraging claims based on damages resulting from the inherent dangers and risks of skiing, defining the inherent dangers and risks of skiing, and establishing the duties of skiers and ski area operators; and

(c) in order to safeguard the life, health, property, and welfare of the citizens of the state while using passenger ropeways, as defined in 23-2-702, the policy of the state must be to:

(i) protect its citizens and visitors from unnecessary mechanical hazards in the design, construction, and operation of passenger ropeways;

(ii) ensure that each passenger ropeway in the state is registered and undergoes periodic inspections to meet the rules set forth by the board of passenger ropeway safety;

(iii) establish reasonable standards of design, construction, and operational practices for passenger ropeways; and

(iv) create and fund a board of passenger ropeway safety to assist in carrying out the policies set forth in this section.

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2           NEW SECTION. Section 2. Board of passenger ropeway safety. (1) There is a board of passenger  
3 ropeway safety.

4           (2) The board consists of seven members appointed by the governor.

5           (3) Members of the board shall serve staggered 4-year terms, commencing on January 1 of each  
6 year of appointment. A member who has served two complete consecutive terms is not eligible for  
7 reappointment for 1 year. On notice and hearing, the governor may remove a member for neglect of duty or  
8 other just cause. A vacancy on the board must be filled in the same manner as the original appointment and  
9 only for the unexpired portion of the term.

10          (4) The members include:

11           (a) one licensed attorney who is a member of the skiing public;

12           (b) one employee from the United States forest service or another federal agency land  
13 management agency;

14           (c) one person who is a Montana-licensed professional engineer;

15           (d) one person who is a first responder; and

16           (e) three persons involved with the operation of active ski areas.

17           (5) Board members shall receive compensation for performance of board duties as provided in 2-  
18 15-124.

19           (6) The board is allocated to the department of commerce for administrative purposes only as  
20 prescribed in 2-15-121.

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22           NEW SECTION. Section 3. Liability limits. (1) The board, individual board members, and any  
23 independent contractors with whom the board contracts must be provided all protections of governmental  
24 immunity granted to public employees by 2-9-305, including but not limited to:

25           (a) the provision of legal defense;

26           (b) the payment of court costs; and

27           (c) the payment of judgments and settlements.

28           (2) The protections in subsection (1) are provided only with regard to actions brought because of

1 acts or omissions committed by the board, individual board members, or any independent contractors with  
2 whom the board contracts in the course of official board duties.

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4 **NEW SECTION. Section 4. Registration of passenger ropeways required.** (1) A passenger  
5 ropeway may not be operated in the state unless it is registered with the board of passenger ropeway safety.

6 (2) An initial application for the registration of a passenger ropeway allows the operator to operate  
7 the passenger ropeway until final action on the application has been taken by the board.

8 (3) If an operator files an application with the board for the registration of a passenger ropeway,  
9 which at the time is registered, then the operator may continue the operation of the passenger ropeway under  
10 the existing registration until the board takes final action on the pending application and either:

11 (a) issues a certificate to the operator; or

12 (b) gives written notice to the operator that the passenger ropeway has not qualified for  
13 certification.

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15 **NEW SECTION. Section 5. Application for registration.** (1) Each year on or before October 1,  
16 each operator of a passenger ropeway shall apply to the board, on forms prepared by the board, for registration  
17 of the passenger ropeways owned, operated, or managed by the operator.

18 (2) The application must contain information required by the board in order for the board to  
19 determine whether the passenger ropeway complies with [section 3] and the rules created by the board in  
20 [section 9].

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22 **NEW SECTION. Section 6. Issuance of certificates.** (1) The board shall issue to the applying  
23 operator annual registration certificates for each passenger ropeway owned, managed, or operated by the  
24 operator when it is determined that:

25 (a) the facts stated in the application are sufficient to enable the board to fulfill its duties under this  
26 part; and

27 (b) each registered passenger ropeway complies with the rules created by the board pursuant to  
28 [section 9].

(2) In order to determine that the conditions described in subsection (1) have been fulfilled, the board may make inspections pursuant to [section 10] as it may reasonably consider necessary.

(3) When an operator installs a passenger ropeway subsequent to October 1 of any year, the operator shall file a supplemental application for registration of the passenger ropeway. On the receipt of the supplemental application, the board shall proceed immediately to initiate proceedings leading to the registration of the passenger ropeway pursuant to the provisions of this part.

(4) Each annual registration expires on September 30 of the year following the year of issuance.

**NEW SECTION. Section 7. Fees.** (1) The application for annual registration or supplemental application must be accompanied by an annual fee determined each year by the board not to exceed the following:

(a) for a rope tow or other device that pulls the skier while riding on skis, \$100 each;

(b) for a chair lift, \$200 each; and

(c) for an aerial tramway, \$300 each.

(2) All fees collected must be deposited in the state special revenue fund and used to support the duties of the board.

**NEW SECTION. Section 8. Assessment on passenger ropeway receipts.** (1) The board must impose an assessment of up to 1/4 of 1% on the gross receipts of all passenger ropeways operated in the state.

(2) The assessment must be collected annually from the owner of a facility with a passenger ropeway.

(3) The assessment is calculated from gross receipts received during the period of July 1 of any year to July 1 of the following year.

(4) The assessments must be collected by the department of revenue and remitted to the state special revenue fund by December 31 of each year.

(5) All proceeds of the gross receipts assessment must be used only to support the duties of the board.

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2           NEW SECTION. Section 9. Additional powers and duties of board. In addition to all other powers  
3 and duties conferred and imposed on the board by this part, the board shall:

4           (1)     adopt reasonable rules relating to public safety in the design, construction, and operation of  
5 passenger ropeways. In adopting these rules, the board shall:

6           (a)     use as a guideline the most current standards contained in the American National Standards  
7 Institute for Passenger Ropeways—Aerial Tramways, Aerial Lifts, Surface Lifts, Tows and Conveyors—Safety  
8 Standard, B77.1-2022;

9           (b)     hold hearings and take in all evidence relating to the adoption of these rules;

10          (c)     supply to each operator a copy of the rules and any amendments or revisions of those rules;

11          and

12          (d)     avoid discrimination in application of the rules to operators of passenger ropeways.

13          (2)     The board may:

14          (a)     hold hearings, take evidence, and produce records in all matters relating to the exercise and  
15 performance of the powers and duties vested in the board;

16          (b)     approve, deny, revoke, and renew the registrations provided for in this part; and

17          (c)     prescribe the duties of personnel as the board considers necessary.

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19           NEW SECTION. Section 10. Inspection of ropeways. (1) The board may cause to be made the  
20 inspection of the design, construction, operation, and maintenance of passenger ropeways as the board may  
21 reasonably require.

22          (2)     The board may employ qualified engineers to make the inspections for reasonable fees plus  
23 expenses.

24          (3)     If, as the result of an inspection, it is found that a violation of the board's rules exists or a  
25 condition in passenger ropeway design, construction, operation, or maintenance exists that endangers the  
26 safety of the public, an immediate report must be made to the operator whose passenger ropeway has received  
27 the inspection and to the board for appropriate investigation and order.

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1           **NEW SECTION. Section 11. Order for corrective action and compliance.** (1) If, after investigation,  
2 the board finds that a violation of this part or any rules exists or that there is a condition in passenger ropeway  
3 design, construction, operation, or maintenance endangering the safety of the public, the board shall issue a  
4 written order setting forth its findings and the corrective action to be taken and fixing a reasonable time for  
5 compliance.

6           (2) The order must be served on the operator involved in the violation personally or by registered  
7 or certified mail.

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9           **NEW SECTION. Section 12. Remedies to enforce compliance.** If an operator fails to comply with a  
10 legal order or rule of the board, the board may:

11           (1) suspend the registration of the affected passenger ropeway until the operator complies; or

12           (2) bring injunctive proceedings in the district court of the judicial district in which the affected  
13 passenger ropeway is located to compel compliance.

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15           **NEW SECTION. Section 13. Judicial review.** (1) Any order of the board adverse to an operator may  
16 be appealed by the operator to the district court of the judicial district in which the passenger ropeway subject to  
17 the order is located.

18           (2) The district court may conduct a proceeding, and the decision of the court must be subject to  
19 appeal.

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21           **Section 14.** Section 23-2-702, MCA, is amended to read:

22           **"23-2-702. Definitions.** As used in this part, the following definitions apply:

23           (1) "Board" means the board of passenger ropeway safety provided for in [section 1].

24           ~~(1)~~(2) "Freestyle terrain" means terrain parks and terrain features, including but not limited to jumps,  
25 rails, fun boxes, half-pipes, quarter-pipes, and freestyle bump terrain, and any other constructed features.

26           ~~(2)~~(3) (a) "Inherent dangers and risks of skiing" means those dangers or conditions that are part of  
27 the sport of skiing, including:

28           ~~(a)~~(i) changing weather conditions;

(b)(ii) snow conditions as they exist or as they may change, including ice, hardpack, powder, packed powder, wind pack, corn snow, crust, slush, cut-up snow, and machine-made snow of any depth or accumulation, including but not limited to any depth or accumulation around or near trees or snowmaking equipment;

(c)(iii) avalanches, except on open, machine-groomed ski trails;

(d)(iv) collisions with natural surface or subsurface conditions, such as bare spots, forest growth, rocks, stumps, streambeds, cliffs, trees, and other natural objects;

(e)(v) collisions with lift towers, signs, posts, fences, enclosures, hydrants, water pipes, or other artificial structures and their components;

(f)(vi) variations in steepness or terrain, whether natural or the result of slope design, snowmaking, or snow grooming operations, including but not limited to roads, freestyle terrain, ski jumps, catwalks, and other terrain modifications;

(g)(vii) collisions with clearly visible or plainly marked equipment, including but not limited to lift equipment, snowmaking equipment, snow grooming equipment, trail maintenance equipment, and snowmobiles, whether or not the equipment is moving;

(h)(viii) collisions with other skiers;

(i)(ix) the failure of a skier to ski within that skier's ability;

(j)(x) skiing in a closed area or skiing outside the ski area boundary as designated on the ski area trail map; and

(k)(xi) restricted visibility caused by snow, wind, fog, sun, or darkness.

(b) The term does not include the safe functioning and operation of passenger ropeways.

(3)(4) "Passenger" means any person who is being transported or conveyed by a passenger ropeway.

(4)(5) "Passenger ropeway" means a device used to transport passengers by means of an aerial tramway or lift, surface lift, surface conveyor, or surface tow.

(5)(6) "Ski area operator" or "operator" means a person, firm, or corporation and its agents and employees having operational and administrative responsibility for ski slopes and trails and improvements.

(6)(7) "Ski slopes and trails" means those areas designated by the ski area operator to be used by

1 skiers for skiing.

2           ~~(7)~~(8) "Skier" means a person who is using any ski area facility for the purpose of skiing, including but  
3 not limited to ski slopes and trails.

4           ~~(8)~~(9) "Skiing" means any activity, including participation in or practice or training for competitions or  
5 special events, that involves sliding or jumping on snow or ice while using skis, a snowboard, or any other  
6 sliding device."

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8           **Section 15.** Section 23-2-734, MCA, is amended to read:

9           **"23-2-734. Duties of operator with respect to passenger ropeways.** A ski area operator shall  
10 construct, operate, maintain, and repair any passenger ropeway in accordance with the rules of the board. An  
11 operator has the duty of taking responsible actions to properly construct, operate, maintain, and repair a  
12 passenger ropeway in accordance with current standards."

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14           NEW SECTION. **Section 16. Repealer.** The following section of the Montana Code Annotated is  
15 repealed:

16 23-2-731.           Purpose.

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18           NEW SECTION. **Section 17. Codification instruction.** [Sections 1 through 13] are intended to be  
19 codified as an integral part of Title 23, chapter 2, part 7, and the provisions of Title 23, chapter 2, part 7, apply  
20 to [sections 1 through 13].

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