INHERENT RISKS OF SKIING AMENDMENTS

2020 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Daniel Hemmert

House Sponsor: Brady Brammer

LONG TITLE

General Description:

This bill amends provisions of the Inherent Risks of Skiing Act.

Highlighted Provisions:

This bill:

- modifies definitions;
- allows for an individual and a ski area operator to enter into an agreement regarding liability but does not allow an agreement on behalf of a minor;
- provides for a limitation on damages for noneconomic losses for certain claims; and
- makes technical and conforming changes.

Money Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:

78B-4-401, as renumbered and amended by Laws of Utah 2008, Chapter 3
78B-4-402, as renumbered and amended by Laws of Utah 2008, Chapter 3
78B-4-403, as renumbered and amended by Laws of Utah 2008, Chapter 3
78B-4-404, as renumbered and amended by Laws of Utah 2008, Chapter 3

ENACTS:

78B-4-405, Utah Code Annotated 1953
Be it enacted by the Legislature of the state of Utah:

Section 1. Section 78B-4-401 is amended to read:

78B-4-401. Public policy.

(1) The Legislature finds that:
(a) the sport of skiing is practiced by a large number of residents of Utah and attracts a large number of nonresidents, significantly contributing to the economy of this state; it further finds that:
(b) few insurance carriers are willing to provide liability insurance protection to ski area operators; and [that]
(c) the premiums charged by [those] insurance carriers have risen sharply in recent years due to confusion as to whether a skier assumes the risks inherent in the sport of skiing.

(2) It is the purpose of this act, therefore:
(a) to clarify the law in relation to skiing injuries and the risks inherent in [that sport,] the sport of skiing;
(b) to establish as a matter of law that certain risks are inherent in [that sport,] the sport of skiing; and
(c) to provide that, as a matter of public policy, [no person] an individual engaged in [that sport shall] the sport of skiing may not recover from a ski operator for injuries resulting from [those inherent risks] the risks that are inherent in the sport of skiing.

Section 2. Section 78B-4-402 is amended to read:

78B-4-402. Definitions.

As used in this part:
(1) "Inherent risks of skiing" means [those] the dangers or conditions [which] that are an integral part of the sport of recreational, competitive, or professional skiing, including[but not limited to]:
(a) changing weather conditions;
(b) snow or ice conditions as [they] the snow or ice conditions exist or may change, [such as] including hard pack, powder, packed powder, wind pack, corn, crust, slush, cut-up snow, or machine-made snow;
(c) surface or subsurface conditions [such as], including bare spots, forest growth, rocks, stumps, streambeds, cliffs, trees, and other natural objects;
(d) variations or steepness in terrain, whether natural or as a result of slope design, snowmaking or grooming operations, and other terrain modifications [such as], including:
   (i) terrain parks;
   (ii) terrain features [such as], including jumps, rails, or fun boxes; or
   (iii) all other constructed and natural features [such as], including half pipes, quarter pipes, or freestyle-bump terrain;
(e) impact with lift towers, other structures, or their components [such as], including signs, posts, fences or enclosures, hydrants, or water pipes;
(f) collisions with other skiers;
(g) participation in, or practicing or training for, competitions or special events; and
(h) the failure of a skier to ski within the skier's own ability.
(2) "Injury" means any personal injury or property damage or loss.
(3) "Minor" means an individual who is under 18 years old.
[(3)] (4) "Skier" means any person present in a ski area for the purpose of engaging in the sport of skiing, nordic, freestyle, or other types of ski jumping, or using skis, a sled, a tube, a snowboard, or any other device.
[(4)] (5) "Ski area" means any area designated by a ski area operator to be used for skiing, nordic, freestyle[-] or other type of ski jumping, and snowboarding.
[(5)] (6) "Ski area operator" means those persons, and their agents, officers, employees or representatives, who operate a ski area, a person that operates a ski area.
(b) "Ski area operator" includes an agent, an officer, an employee, or a representative
of the person that operates a ski area.

Section 3. Section 78B-4-403 is amended to read:

78B-4-403. Bar against claim or recovery from operator for injury from risks inherent in sport.

Notwithstanding anything in Sections 78B-5-817 through 78B-5-823 [to the contrary, a skier may not make any claim against, or recover from, any a ski area operator for injury resulting from any of the inherent risks of skiing.

Section 4. Section 78B-4-404 is amended to read:

78B-4-404. Trail boards listing inherent risks and limitations on liability.

[Ski area operators] A ski area operator shall:

(1) post trail boards at one or more prominent locations within each ski area [which shall]; and
(2) include a list of the inherent risks of skiing[,] and the limitations on liability of ski area operators[, as defined in this part] on the trail board.

Section 5. Section 78B-4-405 is enacted to read:

78B-4-405. Liability agreements.

(1) A skier may enter into an agreement with a ski area operator before an injury to:
(a) waive a claim that the skier is permitted to bring against a ski area operator; or
(b) release the ski area operator from a claim that the skier is permitted to bring under this part.
(2) If the skier is a minor, the skier, or the skier's parent or guardian on behalf of the minor, may not enter into an agreement described in Subsection (1)(a).

Section 6. Section 78B-4-406 is enacted to read:

78B-4-406. Limitation on damages.

(1) In an action arising on or after May 12, 2020, against a ski area operator for a claim not prohibited under this part, in which the skier, or a person authorized to bring a claim on behalf of the skier, recovers for an injury and is awarded noneconomic losses, the amount of
the award for noneconomic losses may not exceed $1,000,000.

(2) The limit on an award for noneconomic losses described in Subsection (1) does not apply to an award:

(a) of punitive damages; or

(b) for a wrongful death action.