

1 **INHERENT RISKS OF SKIING AMENDMENTS**

2 2020 GENERAL SESSION

3 STATE OF UTAH

4 **Chief Sponsor: Daniel Hemmert**

5 House Sponsor: Brady Brammer

7 **LONG TITLE**

8 **General Description:**

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

10 **Highlighted Provisions:**

11 This bill:

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

17 **Money Appropriated in this Bill:**

18 None

19 **Other Special Clauses:**

20 None

21 **Utah Code Sections Affected:**

22 AMENDS:

- 23 **78B-4-401**, as renumbered and amended by Laws of Utah 2008, Chapter 3
- 24 **78B-4-402**, as renumbered and amended by Laws of Utah 2008, Chapter 3
- 25 **78B-4-403**, as renumbered and amended by Laws of Utah 2008, Chapter 3
- 26 **78B-4-404**, as renumbered and amended by Laws of Utah 2008, Chapter 3

27 ENACTS:

- 28 **78B-4-405**, Utah Code Annotated 1953

29 **78B-4-406**, Utah Code Annotated 1953



31 *Be it enacted by the Legislature of the state of Utah:*

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

33 **78B-4-401. Public policy.**

34 (1) The Legislature finds that:

35 (a) the sport of skiing is practiced by a large number of residents of Utah and attracts a
36 large number of nonresidents, significantly contributing to the economy of this state~~[- It further~~
37 ~~finds that];~~

38 (b) few insurance carriers are willing to provide liability insurance protection to ski
39 area operators; and ~~[that]~~

40 (c) the premiums charged by ~~[those]~~ insurance carriers have risen sharply in recent
41 years due to confusion as to whether a skier assumes the risks inherent in the sport of skiing.

42 (2) It is the purpose of this act~~[- therefore,];~~

43 (a) to clarify the law in relation to skiing injuries and the risks inherent in ~~[that sport,]~~
44 the sport of skiing;

45 (b) to establish as a matter of law that certain risks are inherent in ~~[that sport,]~~ the sport
46 of skiing; and

47 (c) to provide that, as a matter of public policy, ~~[no person]~~ an individual engaged in
48 ~~[that sport shall]~~ the sport of skiing may not recover from a ski operator for injuries resulting
49 from ~~[those inherent risks]~~ the risks that are inherent in the sport of skiing.

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

51 **78B-4-402. Definitions.**

52 As used in this part:

53 (1) "Inherent risks of skiing" means ~~[those]~~ the dangers or conditions ~~[which]~~ that are
54 an integral part of the sport of recreational, competitive, or professional skiing, including~~[- but~~
55 ~~not limited to];~~

- 56 (a) changing weather conditions;
- 57 (b) snow or ice conditions as ~~[they]~~ the snow or ice conditions exist or may change,
- 58 ~~[such as]~~ including hard pack, powder, packed powder, wind pack, corn, crust, slush, cut-up
- 59 snow, or machine-made snow;
- 60 (c) surface or subsurface conditions ~~[such as]~~, including bare spots, forest growth,
- 61 rocks, stumps, streambeds, cliffs, trees, ~~[and]~~ or other natural objects;
- 62 (d) variations or steepness in terrain, whether natural or as a result of slope design,
- 63 snowmaking or grooming operations, ~~[and]~~ or other terrain modifications ~~[such as]~~, including:
- 64 (i) terrain parks~~;~~~~and~~;
- 65 (ii) terrain features ~~[such as]~~, including jumps, rails, or fun boxes~~;~~~~and~~; or
- 66 (iii) all other constructed and natural features ~~[such as]~~, including half pipes, quarter
- 67 pipes, or freestyle-bump terrain;
- 68 (e) impact with lift towers ~~[and]~~, other structures ~~[and]~~, or their components ~~[such as]~~,
- 69 including signs, posts, fences or enclosures, hydrants, or water pipes;
- 70 (f) collisions with other skiers;
- 71 (g) participation in, or practicing or training for, competitions or special events; and
- 72 (h) the failure of a skier to ski within the skier's own ability.
- 73 (2) "Injury" means any personal injury or property damage or loss.
- 74 (3) "Minor" means an individual who is under 18 years old.
- 75 ~~[(3)]~~ (4) "Skier" means ~~[any person]~~ an individual present in a ski area for the purpose
- 76 of engaging in the sport of skiing, nordic, freestyle, or other types of ski jumping, or using skis,
- 77 a sled, a tube, a snowboard, or any other device.
- 78 ~~[(4)]~~ (5) "Ski area" means any area designated by a ski area operator to be used for
- 79 skiing, nordic, freestyle~~;~~ or other type of ski jumping, ~~[and]~~ or snowboarding.
- 80 ~~[(5)]~~ (6) "Ski area operator" means ~~[those persons, and their agents, officers,~~
- 81 ~~employees or representatives, who operate a ski area]~~ a person that operates a ski area.
- 82 (b) "Ski area operator" includes an agent, an officer, an employee, or a representative

83 of the person that operates a ski area.

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

85 **78B-4-403. Bar against claim or recovery from operator for injury from risks**
86 **inherent in sport.**

87 Notwithstanding ~~[anything in]~~ Sections **78B-5-817** through **78B-5-823** ~~[to the contrary,~~
88 ~~no],~~ a skier may not make any claim against, or recover from, ~~[any]~~ a ski area operator for
89 injury resulting from ~~[any of the]~~ inherent risks of skiing.

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

91 **78B-4-404. Trail boards listing inherent risks and limitations on liability.**

92 ~~[Ski area operators]~~ A ski area operator shall:

93 (1) post trail boards at one or more prominent locations within each ski area [which
94 shall]; and

95 (2) include a list of the inherent risks of skiing[;] and the limitations on liability of ski
96 area operators[; as defined in this part] on the trail board.

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

98 **78B-4-405. Liability agreements.**

99 (1) A skier may enter into an agreement with a ski area operator before an injury to:

100 (a) waive a claim that the skier is permitted to bring against a ski area operator; or

101 (b) release the ski area operator from a claim that the skier is permitted to bring under
102 this part.

103 (2) If the skier is a minor, the skier, or the skier's parent or guardian on behalf of the
104 minor, may not enter into an agreement described in Subsection (1)(a).

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

106 **78B-4-406. Limitation on damages.**

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

110 the award for noneconomic losses may not exceed \$1,000,000.

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

113 (a) of punitive damages; or

114 (b) for a wrongful death action.