

Senator Daniel Hemmert proposes the following substitute bill:

INHERENT RISKS OF SKIING AMENDMENTS

2020 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Daniel Hemmert

House Sponsor: _____

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



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~~;~~;

65 (ii) terrain features ~~such as~~, including jumps, rails, or fun boxes~~;~~; 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 (3) A ski area operator that is an agent, an officer, an employee, or a representative
106 must be authorized to enter into the agreement described in Subsection (1) by a ski area
107 operator that is the person that operates a ski area.

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

109 **78B-4-406. Limitation on damages.**

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

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

116 (a) of punitive damages; or

117 (b) for a wrongful death action.