

# SB0228S01 compared with SB0228

~~{deleted text}~~ shows text that was in SB0228 but was deleted in SB0228S01.

inserted text shows text that was not in SB0228 but was inserted into SB0228S01.

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~~{SKI RESORT LIABILITY ACT}~~ 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: \_\_\_\_\_

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### LONG TITLE

#### General Description:

This bill ~~{enacts and repeals}~~ amends provisions ~~{related to ski resort liability}~~ of the [Inherent Risks of Skiing Act](#).

#### Highlighted Provisions:

This bill:

- ▶ ~~{defines terms;~~
- ▶ ~~provides that a ski resort is liable for claims arising from intentional or malicious conduct by the ski resort}~~ modifies definitions;
- ▶ allows for ~~{individuals}~~ an individual and a ski ~~{resorts}~~ area operator to enter into ~~{agreements}~~ an agreement regarding liability~~;~~
- ▶ ~~bars an individual from bringing a claim against a ski resort for certain claims}~~ but does not allow an agreement on behalf of a minor;

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- ▶ provides for a limitation on damages for noneconomic losses for certain claims; and
- ▶ ~~{repeals statutory provisions on liability for the inherent risks of skiing}~~ makes technical and conforming changes.

### Money Appropriated in this Bill:

None

### Other Special Clauses:

None

### Utah Code Sections Affected:

~~{ENACTS:~~

~~———— 78B-4-701, Utah Code Annotated 1953~~

~~———— 78B-4-702, Utah Code Annotated 1953~~

~~———— 78B-4-703, Utah Code Annotated 1953~~

~~———— 78B-4-704, Utah Code Annotated 1953~~

~~REPEALS}~~ 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

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

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*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]

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(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~~ or other natural objects;

(d) variations or steepness in terrain, whether natural or as a result of slope design, snowmaking or grooming operations, ~~and~~ or other terrain modifications ~~such as~~ including:

(i) terrain parks ~~and~~;

(ii) terrain features ~~such as~~ including jumps, rails, or fun boxes ~~and~~; or

(iii) all other constructed and natural features ~~such as~~ including half pipes, quarter pipes, or freestyle-bump terrain;

(e) impact with lift towers ~~and~~, other structures ~~and~~, or their components ~~such as~~, including signs, posts, fences or enclosures, hydrants, or water pipes;

(f) collisions with other skiers;

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(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]~~ an individual 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]~~ or 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, no]~~, 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 ~~{1}~~ 5. Section ~~{78B-4-701}~~ 78B-4-405 is enacted to read:

~~{Part 7. Ski Resort Liability Act~~

~~}~~ {78B-4-701. Definitions:

As used in this part:

(1) "Minor" means an individual who is under 18 years old.

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~~(2) (a) "Recreational activity" means an outdoor activity provided by a ski resort.~~

~~(b) "Recreational activity" includes alpine skiing, nordic skiing, freestyle skiing, ski jumping, snowboarding, snowbiking, pondskimming, split-boarding, mountain biking, monoskiing, sledding, and tubing.~~

~~(3) "Ski area" means any area designated by a ski resort to be used for a recreational activity.~~

~~(4) (a) "Ski resort" means a person that operates a ski area.~~

~~(b) "Ski resort" includes any agent, officer, employee, or representative of the person that operates a ski area.~~

~~(5) "Skier" means any individual present in a ski area for the purpose of participating in a recreational activity.~~

~~Section 2. Section 78B-4-702 is enacted to read:~~

~~78B-4-702. Liability of a ski resort -- Liability}~~ **78B-4-405. Liability** agreements.

~~(1) A skier{, or a person authorized by law to bring a claim on behalf of the skier, may bring a claim against a ski resort for:~~

~~(a) an intentional or malicious failure to protect or warn the skier against a dangerous use of a ski area, or a dangerous condition, structure, or activity in a ski area; or~~

~~(b) intentional or malicious conduct that results in an injury to the skier or damage to the skier's property.~~

~~(2) (a) A skier and a ski resort} may enter into an agreement with a ski area operator before an injury to:~~

~~{i) modify, eliminate, or expand a right or protection allowed} 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{ for the skier or the ski resort; or~~

~~{ii) limit, extinguish, or expand any right or liability for the skier or the ski resort related to a tort claim}.~~

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

~~(3) A ski area operator that is an agent, an officer, an employee, or a representative must be authorized to enter into the agreement described in Subsection (~~{2}~~)(a) on behalf of the~~

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skier:

~~Section 3. Section 78B-4-703 is enacted to read:~~

~~78B-4-703. Bar against recovery.~~

~~(1) Except for a claim allowed under Section 78B-4-702, a skier, or a person authorized by law to bring a claim on behalf of the skier, may not bring a claim against a ski resort for a personal injury to the skier, the skier's death, or damage to the skier's property that results from:~~

~~(a) a change in weather conditions in the ski area;~~

~~(b) any snow, ice, or surface condition that exists or changes in the ski area, including hard pack, powder, packed powder, wind pack, stumps, streambeds, cliffs, trees, or other natural objects;~~

~~(c) a variation or steepness in terrain in the ski area, whether the variation or steepness is natural or is a result of slope design, snowmaking or grooming operations, or other terrain modifications, including a terrain park, a competition venue, a jump, a rail, a fun box, a half pipe, a quarter pipe, a freestyle-bump terrain, or any other constructed or natural terrain feature of the ski area;~~

~~(d) impact with a tree, a lift tower, or another manmade structure, including a sign, a post, a fence, an enclosure, a hydrant, or a water pipe;~~

~~(e) a collision with another individual;~~

~~(f) any injury, death, or property damage arising from participating in, practicing for, or training for a competition or a special event; or~~

~~(g) a failure to properly load or unload a ski lift or another passenger tramway.~~

~~(2) (a) Notwithstanding Subsection 78A-4-702(1), if a ski resort provides a visible sign or warning to a skier of any risk or hazard that may occur when participating in a recreational activity and the skier participates in the recreational activity, the skier shall:~~

~~(i) assume any risk of injury or damage to the skier or the skier's property that occurs with participating in the recreational activity; and~~

~~(ii) waive any right to recovery for an alleged tort that arises from participating in the recreational activity.~~

~~(b) If a visible sign or warning under this Subsection (2) conflicts with an agreement under Subsection 78A-4-702(2), the liability provisions of the agreement shall prevail over this~~

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### Subsection (2):

~~Section 4(1) by a ski area operator that is the person that operates a ski area.~~

Section 6. Section ~~{78B-4-704}~~78B-4-406 is enacted to read:

~~{78B-4-704}~~78B-4-406. ~~{ Limitations}~~ Limitation on damages.

(1) In an action arising on or after May 12, 2020, against a ski ~~{resort for an injury to a skier or damage to a skier's property}~~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 ~~{a}~~the skier, recovers for an injury and is awarded noneconomic losses, the amount of the award for noneconomic losses may not exceed ~~{\$450}~~\$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 {any liability described in Subsection 78B-4-702(1)}.

~~Section 5. Repealer:~~

~~This bill repeals:~~

~~Section 78B-4-401, Public policy:~~

~~Section 78B-4-402, Definitions:~~

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

~~Section 78B-4-404, Trail boards listing inherent risks and limitations on liability.~~  
~~{a wrongful death action.~~