

SB0228S02 compared with SB0228S01

~~text~~ shows text that was in SB0228S01 but was deleted in SB0228S02.

text shows text that was not in SB0228S01 but was inserted into SB0228S02.

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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:

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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

78B-4-406, 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:

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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;

(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.

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(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 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).

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

‡ 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

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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.