

to amend HB61

HOUSE BILL NO. 61

INTRODUCED BY D. BROWN

Paul Clark
GRAY Bill

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| EXHIBIT | 3 |
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| HB | 61 |

A BILL FOR AN ACT ENTITLED: "AN ACT CREATING THE MONTANA RECREATION RESPONSIBILITY ACT; PROVIDING THAT A PERSON WHO ENGAGES IN A SPORT OR RECREATIONAL OPPORTUNITY ASSUMES WILL BE EDUCATED ABOUT THE INHERENT RISKS IN THAT SPORT OR RECREATIONAL OPPORTUNITY AND IS MAY BE RESPONSIBLE FOR INJURIES AND DAMAGES RESULTING FROM THOSE INHERENT RISKS; ~~LIMITING THE LIABILITY OBLIGATION~~ OF THE PROVIDERS OF A SPORT OR RECREATIONAL OPPORTUNITY TO EDUCATE ABOUT INHERENT RISKS; CLARIFYING THAT A PROVIDER IS NOT REQUIRED TO ELIMINATE, ALTER, OR CONTROL THE INHERENT RISKS WITHIN A PARTICULAR SPORT OR RECREATIONAL OPPORTUNITY; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND AN APPLICABILITY DATE." [further edits of title and section renumbering will be needed]

WHEREAS, all sports and recreational activities involve inherent risks that provide the challenge and excitement that entice recreationists to participate in those activities; and

WHEREAS, sports and recreational providers have an obligation to inform recreationists of the risks inherent in their particular sports or recreational activities; and

WHEREAS, recreationists should knowingly accept the risks inherent in sports and recreational activities and be responsible for injury or damage resulting from those inherent risks; and

WHEREAS, the state has a legitimate interest in maintaining the economic viability of the sports and recreational industries by ~~discouraging claims based on damages resulting from~~ assuring the education of participants of the risks inherent in a sport or recreational activity thereby discouraging claims;

WHEREAS, providers of recreational opportunities should not be required to alter the challenge and excitement of recreational activities by ~~controlling~~ eliminating risks inherent in the activities; and

WHEREAS, the liability of providers of recreational opportunities inherent risks should be limited to negligence that is not ~~associated with the inherent risks~~ willfully or by want of ordinary care brought upon a participant of in a sport or recreational activity by the participant's own acts or omissions.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

NEW SECTION. Section 1. Short title -- purpose. (1) [Sections 1 through 6] may be cited as the

"Montana Recreation Responsibility Act".

(2) The legislature finds that sports and recreational activities are major industries in Montana and that among the attractions of sports and recreation are risks, inherent and otherwise. The state has a legitimate interest in maintaining the economic viability of the sports and recreational industries by discouraging claims based on damages resulting from risks inherent in sports and recreation through the education of participants of the inherent risks.

(3) The purpose of [sections 1 through ~~4~~ **6**] is to ~~limit or eliminate the liability of~~ allow a provider of a sport or recreational opportunity ~~to a sport or recreational participant to assert inherent risk and the participant's own willful or negligent acts or omissions as a defense~~ when an injury or damage caused by or to the participant is alleged to be the result of risks inherent in the sport or recreational opportunity.

(4) The legislature intends that [sections 1 through ~~4~~ **6**] be broadly construed to effectuate the purpose of [sections 1 through 4] ~~to shield providers of a sport or recreational opportunity from liability for injuries and damages caused by~~ the determination of whether injury or damages are the result of the inherent risks of a recreational activity, and whether the participant's own willful or negligent acts or omissions are the cause of injury or damages, are questions of fact.

NEW SECTION. Section 2. Definitions. As used in [sections 1 through ~~4~~ **6**], the following definitions apply:

(1) "Inherent risks" means those dangers or conditions that are characteristic of, intrinsic to, or an integral part of any sport or recreational activity.

(2) "Provider" means a person or governmental entity that promotes, offers, or conducts a sport or recreational opportunity, for profit or otherwise.

(3) "Sport or recreational opportunity" means any commonly understood sporting activity, whether undertaken with or without permission, including but not limited to baseball, softball, football, soccer, basketball, bicycling, hiking, swimming, boating, hockey, dude ranching, nordic or alpine skiing, snow boarding, snow sliding, mountain climbing, river floating, whitewater rafting, canoeing, kayaking, hunting, fishing, backcountry trips, horseback riding and other equine activity, snowmobiling, off-highway vehicle use, and any similar recreational activity.

NEW SECTION. Section 3. Duties of a provider of a sport or recreational opportunity. (1) Providers of a sport or recreational activity have an obligation to educate participants about the risks inherent

in the activity being offered and disseminate written descriptions thereof, including:

(a) those inherent risks that cannot be eliminated;

(b) those inherent risks that cannot be altered or controlled; and

(c) those inherent risks that can be altered or controlled, but which the provider chooses not to alter or control because such alteration or control would eliminate an integral part of the activity.

(2) A provider is not required to eliminate, alter, or control the inherent risks within the particular sport or recreational opportunity that is provided.

(3) Providers of a sport or recreational activity have an obligation to properly use and maintain products or equipment used in a sport or recreational activity.

(4) Providers of a sport or recreational activity have an obligation to provide their services in a manner that is consistent with industry standards for the activity.

(5) Providers of a sport or recreational activity have an obligation to inform participants in writing of any physical requirements necessary to participate in the activity.

NEW SECTION. Section 4. Duties of a participant in a sport or recreational opportunity. (1) A participant in a sport or recreational activity has an obligation to review educational materials from providers about the risks inherent in the activity being offered.

(2) A participant in a sport or recreational activity has an obligation to follow rules and directions from providers to safely participate in the activity or to alleviate or lessen the risks in the activity being offered.

(3) A participant in a sport or recreational activity has an obligation to inform the provider of any physical limitations that affect their ability to meet the physical requirements identified by the provider pursuant to [new section 3, subsection (5)].

NEW SECTION. Section 3 5. Limitation on liability in sport or recreational opportunity. (1) A person who participates in any sport or recreational opportunity ~~assumes~~ acknowledges the inherent risks in that sport or recreational opportunity, ~~whether those risks are known or unknown,~~ and is may be legally responsible for all injury or death to the person ~~or other persons~~ and for all damage to the person's property that result from the inherent risks in that sport or recreational opportunity.

(2) A provider is not required to eliminate, alter, or control the inherent risks within the particular sport or recreational opportunity that is provided. The determination of whether injury or damages are the result of the inherent risks of a recreational activity is a question of fact. The determination of whether the participant's own

willful or negligent acts or omissions are the cause of injury or damages is a question of fact.

(3) [Sections 1 through 4 ~~6~~] do not preclude an action based on the negligence of the provider if the injury, death, or damage is not the result of an inherent risk of the sport or recreational opportunity.

(4) [Sections 1 through 4 ~~6~~] do not apply to a cause of action based on the design, use or manufacture of sports or recreational equipment or products or safety equipment used incidental to or required by the sport or recreational activity.

NEW SECTION. Section 4 6. Recreational activity -- applicability exceptions. [Sections 1 through ~~6~~] do not apply to duties, responsibilities, liability, or immunity related to:

- (1) recreational use of waters or land, as provided in 23-2-321;
- (2) snowmobiling, as provided in 23-2-653 and 23-2-654;
- (3) skiing, as provided in 23-2-733 through 23-2-736;
- (4) off-highway vehicle operation, as provided in 23-2-822;
- (5) instruction in firearms and hunter safety or hunter education, as provided in 27-1-721;
- (6) equine activity, as provided in 27-1-727;
- (7) sponsored rodeo and similar events, as provided in 27-1-733;
- (8) amusement rides, as provided in 27-1-743 and 27-1-744;
- (9) recreational use of land, as provided in 23-2-907, 70-16-302, 77-1-805, 87-1-266, 87-1-267, and 87-1-286;
- (10) wildcrafting, as provided in 76-10-106; and
- (11) placement of a sign or marker warning of a hazard in water legally accessible to the public, as provided in 87-1-287.

NEW SECTION. Section 5 7. Codification instruction. [Sections 1 through ~~6~~] are intended to be codified as an integral part of Title 27, chapter 1, part 7, and the provisions of Title 27, chapter 1, part 7, apply to [sections 1 through ~~6~~].

NEW SECTION. Section 6 8. Severability. If a part of [this act] is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

NEW SECTION. Section 7. Two-thirds vote required. Because [section 3] limits governmental liability, Article II, section 18, of the Montana constitution requires a vote of two-thirds of the members of each house of the legislature for passage.

NEW SECTION. Section 8. Effective date. [This act] is effective on passage and approval.

NEW SECTION. Section 9. Applicability. [This act] applies to injuries and deaths that occur on or after [the effective date of this act].

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