

HB 204 Senate Committee Testimony

For the Judiciary Committee

Exhibit No. 10
 Date: 3/5/16
 Bill No. HB 204

Patrick M. Tabor – Swan Lake, MT Owner Swan Mountain Group of Companies
 President Elect – Montana Outfitters & Guides Association Past President – Professional Wilderness Outfitters Association

Purpose

Succinctly put, this bill is seeking to put Montana on even par with other states in the protection of businesses and organizations that provide recreational services to visitors to Montana.

History

The Legislature passed the Montana Recreation Responsibility Act in 2009 codifying for jurists contemporary definitions of inherent risks and defining recreation and sporting activities. This was a crucial piece of legislation, but lacked one critical component, to negate the effects of a judicial opinion prohibiting the use of pre-activity release and waiver documents by recreational service providers. As a result Dave Leishman, owner of the Bar W guest ranch, and I formed a coalition of like-minded organizations to improve the legal protective climate for Montana businesses, non-profit organizations, and state agencies.

Parties Represented

Our goal was to establish a widespread coalition of non-profits, associations, state agency and commercial service providers. The end result is an impressive representation of just about every type of citizen in Montana; please refer to the ever-growing list of coalition members.

Salient Facts

1. Recreational Service providers are getting squeezed by rising insurance costs, and are constantly in fear of losing insurance all together since there is no legal waiver to protect providers.
2. Some non-profit organizations have stopped providing certain services due to the inability to obtain insurance.
3. Montana needs to allow service providers a legal mechanism to contract with participants pre-activity to agree to share the risk of the activity.
4. You might ask why doesn't current law provide sufficient protection? Currently there is no barrier or consideration for a plaintiff attorney to file a lawsuit. The end result is regardless if the plaintiff has a case, they can file a lawsuit, even though they have acknowledged there are inherent risks with outdoor recreation and even agreed to assume those risks and the insurance companies will simply settle to avoid the high cost of litigating to fruition. This will serve as an initial hurdle to prevent unwarranted lawsuits
5. We are not seeking to remove injured parties' right to sue. We agree that when a provider is proven to be guilty of gross negligence or fails to exercise reasonable care in the provision of services as established in common law, a participant should be able to sue. This legislation will not prevent that from happening. However, it is fair to ask the participant to share the responsibility in the case of ordinary negligence, as is the case in all other states other than West Virginia and Louisiana through the use of pre-activity release and waiver contracts.

Conclusion

We need to move past the idea that releases do one horrible thing (allowing operators to run amuck and operate unsafely, releases are really just a contract/agreement that is done between the operator and the client/participant in advance of the activity.

Please support HB204!