

HOUSE BILL NO. 204

INTRODUCED BY G. HERTZ, J. BRENDEN, D. BROWN, B. HAMLETT, J. KEANE, S. MALEK, R. RIPLEY, S. SALES, F. THOMAS, J. WINDY BOY, G. BENNETT, M. BLASDEL, R. BRODEHL, S. FITZPATRICK, K. FLYNN, F. GARNER, S. HESS, D. JONES, L. JONES, R. LYNCH, A. OLSZEWSKI, L. RANDALL, M. ROSENDALE, K. WAGONER, R. WEBB, K. WHITE, T. WOODS, D. ANKNEY, C. SMITH

A BILL FOR AN ACT ENTITLED: "AN ACT REVISING LAWS RELATING TO LIABILITY WAIVERS AND RELEASES; ALLOWING THE USE OF PROSPECTIVE LIABILITY WAIVERS AND RELEASES TO LIMIT LIABILITY FOR DAMAGES OR INJURIES SUSTAINED FROM PARTICIPATING IN SPORTS OR RECREATIONAL OPPORTUNITIES; AMENDING SECTION 28-2-702, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE."

WHEREAS, the citizens of Montana and visitors to this state should enjoy the maximum ability to participate in sports or recreational opportunities; and

WHEREAS, public, private, and nonprofit entities that provide sports or recreational opportunities to citizens and visitors to this state need and deserve a measure of protection against lawsuits; and

WHEREAS, citizens and visitors to this state have a fundamental right and responsibility to make decisions concerning the activities in which they participate and the contracts and agreements in which they desire to enter; and

WHEREAS, individuals are accustomed to making conscious choices on their own behalf regarding the benefits and risks of various activities that are available; and

WHEREAS, such choices, when voluntarily made upon consideration of appropriate information, should not be ignored, but should be afforded the same value and legal effect as other choices and contractual obligations; and

WHEREAS, prospective liability waivers and releases encourage the availability and affordability of sports and recreational opportunities to citizens and visitors; and

WHEREAS, the Legislature intends to encourage the continued availability of sports or recreational opportunities in this state by shielding providers of such activities from claims resulting from conduct that constitutes ordinary negligence or for risks that are inherent in the sport or recreational opportunity; and

WHEREAS, the Legislature does not intend for liability waivers and releases to be used in a manner that



1 would allow a person to waive or release claims for willful, wanton, reckless, or grossly negligent acts or
2 omissions.

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

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6 **Section 1.** Section 28-2-702, MCA, is amended to read:

7 **"28-2-702. Contracts that violate policy of law -- exemption from responsibility -- exception. (1)**

8 All contracts that have for their object, directly or indirectly, to exempt anyone from responsibility for the person's
9 own fraud, for willful injury to the person or property of another, or for violation of law, whether willful or negligent,
10 are against the policy of the law.

11 (2) This section does not prohibit a written waiver or release entered into prior to engaging in a sport or
12 recreational opportunity for damages or injuries resulting from conduct that constitutes ordinary negligence or for
13 risks that are inherent in the sport or recreational opportunity.

14 (3) For purposes of this section, "sport or recreational opportunity" has the meaning provided in
15 27-1-752."

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17 NEW SECTION. **Section 2. Effective date.** [This act] is effective on passage and approval.

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