

HOUSE BILL NO. 313

INTRODUCED BY GRADY, HARPER, COHEN, GOOD, SPAETH,
CRIPPEN, HALLIGAN, O'KEEFE, MAZUREK, BOYLAN, ADDY,
HANNAH, B. BROWN, RASMUSSEN, HARP

IN THE HOUSE

JANUARY 19, 1989	INTRODUCED AND REFERRED TO COMMITTEE ON JUDICIARY.
JANUARY 20, 1989	FIRST READING.
FEBRUARY 11, 1989	COMMITTEE RECOMMEND BILL DO PASS AS AMENDED. REPORT ADOPTED.
FEBRUARY 13, 1989	PRINTING REPORT.
FEBRUARY 14, 1989	SECOND READING, DO PASS.
FEBRUARY 15, 1989	ENGROSSING REPORT.
FEBRUARY 16, 1989	THIRD READING, PASSED. AYES, 98; NOES, 1.
	TRANSMITTED TO SENATE.

IN THE SENATE

FEBRUARY 17, 1989	INTRODUCED AND REFERRED TO COMMITTEE ON JUDICIARY.
	FIRST READING.
MARCH 15, 1989	COMMITTEE RECOMMEND BILL BE CONCURRED IN. REPORT ADOPTED.
MARCH 17, 1989	SECOND READING, CONCURRED IN.
MARCH 20, 1989	THIRD READING, CONCURRED IN. AYES, 48; NOES, 0.
	RETURNED TO HOUSE.

MARCH 21, 1989

IN THE HOUSE

RECEIVED FROM SENATE.

SENT TO ENROLLING.

REPORTED CORRECTLY ENROLLED.

1 House BILL NO. 313
 2 INTRODUCED BY Brady, Hays, Gil, Smith, Kelly, Hefner, Mazurek, Boylan, Hays
 3 By Bob Brown Rasmussen HARP
 4 A BILL FOR AN ACT ENTITLED: "AN ACT TO CLARIFY THE SKIER
 5 RESPONSIBILITY LAW; TO PROVIDE THAT THOUGH LIABLE FOR
 6 NEGLIGENCE, A SKI AREA OPERATOR IS NOT LIABLE FOR AN INJURY
 7 CAUSED BY A RISK INHERENT IN THE SPORT; AMENDING SECTIONS
 8 23-2-731 THROUGH 23-2-733 AND 23-2-736, MCA; REPEALING
 9 SECTION 23-2-737, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE
 10 DATE AND AN APPLICABILITY DATE."
 11
 12 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:
 13 **Section 1.** Section 23-2-731, MCA, is amended to read:
 14 "23-2-731. Purpose. ~~It is recognized that there are~~
 15 ~~inherent risks in the sport of skiing that are essentially~~
 16 ~~impossible to eliminate by the ski area operator but that~~
 17 ~~should be known by the skier. It is the purpose of 23-2-731~~
 18 ~~through 23-2-737 to define those areas of responsibility and~~
 19 ~~affirmative acts for which the ski area operator is liable~~
 20 ~~for loss, damage, or injury and those risks for which the~~
 21 ~~skier expressly assumes or shall be considered to have~~
 22 ~~voluntarily assumed the risk of loss or damage and for which~~
 23 ~~there can be no recovery. The legislature finds that skiing~~
 24 is a major recreational sport and a major industry in the
 25 state and recognizes that among the attractions of the sport

1 are risks, inherent and otherwise. The state has a
 2 legitimate interest in maintaining the economic viability of
 3 the ski industry by discouraging frivolous lawsuits,
 4 defining inherent risks, and establishing the duties of
 5 skiers and ski area operators."

6 **Section 2.** Section 23-2-732, MCA, is amended to read:
 7 "23-2-732. Definitions. As used in 23-2-731 through
 8 23-2-737 23-2-736, the following definitions apply:

9 (1) "Ski area operator" or "operator" means a person,
 10 firm, or corporation, and its agents and employees, having
 11 operational and administrative responsibility for ski trails
 12 and improvements.

13 (1)(2) "Skier" means any person admitted to a ski area
 14 under the control of a ski area operator for the purpose of
 15 engaging in the sport of skiing by or using the ski slopes,
 16 trails, and areas and other improvements within the ski
 17 area. The term does not include a person using an aerial
 18 passenger tramway.

19 (2)(3) "Ski slopes, trails, and areas" means those
 20 areas designated by the ski area operator to be used by
 21 skiers for the purpose of participating in the sport of
 22 skiing."

23 **Section 3.** Section 23-2-733, MCA, is amended to read:
 24 "23-2-733. Duties of operator regarding ski areas. A
 25 ski area operator shall:

INTRODUCED BILL
 HB 313

(1) mark all trail maintenance grooming vehicles and furnish by furnishing the vehicles with flashing or rotating lights that must be in operation whenever the vehicles are working or are in movement in the ski area;

(2) mark with a visible sign or other warning implement the location of any hydrant or similar equipment used in snowmaking operations and located on ski slopes, trails, and areas;

(3) maintain one or more trail boards at prominent locations at each ski area displaying that area's network of ski trails and slopes and the relative degree of difficulty of the ski trails at that area;

(4) post a notice of the requirement for the requiring the use of ski-retention devices;

(5) designate at the start of each day, by trail board or otherwise, which trails or slopes are open or closed and amend those designations as openings and closures occur during the day;

(6) post in a conspicuous location the skier responsibility code that is published by the national ski areas association and that is current on [the effective date of this act]; and

(7) post a copy of 23-2-736 in a conspicuous location."

Section 4. Section 23-2-736, MCA, is amended to read:

"23-2-736. Skier's assumption---of---responsibility conduct -- duties inherent risks. {1}--A--skier--assumes--the risk--and--all--legal--responsibility--for--injury--to--himself--or--loss--of--property--that--results--from--participating--in--the sport---of--skiing--by--virtue--of--his--participation---The assumption-of-risk-and-responsibility--includes--but--is--not limited---to---injury--or--loss--caused--by--the--following: variations-in-terrain, surface-or--subsurface--snow--or--ice conditions,--bare-spots, rocks, trees, other-forms-of-forest growth-or-debris, lift-towers-and-components--thereof,--pole lines,--and--plainly-marked-or-visible-snowmaking-equipment. {2}--A--skier-is-responsible-for-knowing--the--range--of his--own--ability--to--ski--any--slope, trail, or area and for skiing within the limits of his ability,--skiing--only--on designated--slopes--and--trails, maintaining control of speed and course at all times while skiing,--heeding--all--posted warnings,--and--refraining--from--acting--in--a--manner--that--may cause--or--contribute--to--the--injury---of---anyone,---The responsibility for collisions with a person or object while skiing is the responsibility of the person--or--persons--and not the responsibility of the ski area operator.

(1) A skier has the duty to conduct himself at all times so that he avoids injury to himself and others and to be aware of the inherent risks of the sport.

(2) A skier:

1 (a) must know the range of his ability and safely
 2 conduct himself within the limits of that ability and his
 3 equipment so as to negotiate any section of terrain or ski
 4 trail safely and without injury or damage. A skier must know
 5 that his ability may vary because of trail changes caused by
 6 weather, grooming changes, or skier use.

7 (b) shall maintain control of speed and course so as
 8 to prevent injury to himself or others;

9 (c) must abide by the requirements of the skier
 10 responsibility code that is published by the national ski
 11 areas association and that is current on [the effective date
 12 of this act]; and

13 (d) shall obey all posted or other warnings and
 14 instructions of the ski area operator.

15 (3) A person who is skiing may not:

16 (a) place an object in the ski area or on the uphill
 17 track of a passenger tramway that may cause a passenger or
 18 skier to fall;

19 (b) cross the track of a passenger tramway except at a
 20 designated and approved area; point; or

21 (c) if involved in a skiing accident, depart from the
 22 scene of the accident without:

23 (i) leaving personal identification; or

24 (ii) before notifying the proper authorities or and
 25 obtaining assistance when the skier knows that a person

1 involved in the accident is in need of medical or other
 2 assistance.

3 (4) A skier must accept all legal responsibility for
 4 injury of any kind that he suffers that results from risks
 5 inherent in the sport of skiing. Risks inherent in the sport
 6 of skiing include but are not limited to:

7 (a) variations in skiing terrain, including surface
 8 and subsurface snow or ice conditions naturally occurring or
 9 resulting from weather changes, skier use, or grooming or
 10 snowmaking operations;

11 (b) bare spots and thin snow cover caused by limited
 12 snowfall, melting, wind erosion, skier action, grooming, or
 13 unconsolidated base;

14 (c) forest growth on designated trails;

15 (d) forest growth and forest debris (including rocks,
 16 stumps, snags, woodpiles, trees, underbrush, and branches),
 17 major terrain undulations, tree wells, or unstabilized snow,
 18 in areas within the ski area boundary but not designated as
 19 trails or typically maintained for skiing activity;

20 (e) clearly visible or plainly marked improvements,
 21 including but not limited to lift towers and terminals,
 22 buildings, decks, walkways, fences, snowguns, hydrants and
 23 hoses, roadways, and signs;

24 (f) clearly visible or plainly marked mobile equipment
 25 and attachments, whether moving or stationary, used by the

1 ski area operator;
2 (g) avalanches, except on open, designated ski trails;
3 and
4 (h) a collision with another skier who is not an
5 employee of the ski area operator acting in the course of
6 and within the scope of his employment duties."
7 NEW SECTION. Section 5. Repealer. Section 23-2-737,
8 MCA, is repealed.
9 NEW SECTION. Section 6. Effective date --
10 applicability. (1) [This act] is effective on passage and
11 approval.
12 (2) [This act] applies to courses of action arising
13 after [the effective date of this act].

-End-

APPROVED BY COMMITTEE
ON JUDICIARY

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INTRODUCED BY GRADY, HARPER, COHEN, GOOD, SPAETH,
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A BILL FOR AN ACT ENTITLED: "AN ACT TO CLARIFY THE SKIER
RESPONSIBILITY LAW; TO PROVIDE--THAT--THOUGH--LIABLE--FOR
NEGLECT, STATE THE DUTIES OF A SKI AREA OPERATOR IS--NOT
LIABLE--FOR--AN--INJURY--CAUSED--BY--A--RISK AND A SKIER; TO
PROVIDE THAT A SKIER ACCEPTS RESPONSIBILITY FOR RISKS
INHERENT IN THE SPORT; AMENDING SECTIONS 23-2-731 THROUGH
23-2-733 AND 23-2-736, MCA; REPEALING SECTION 23-2-737, MCA;
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~~BASED ON DAMAGES RESULTING FROM RISKS INHERENT IN THE SPORT,~~
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Section 2. Section 23-2-732, MCA, is amended to read:

"23-2-732. Definitions. As used in 23-2-731 through
23-2-737 23-2-736, the following definitions apply:

(1) "Ski area operator" or "operator" means a person,
firm, or corporation, and its agents and employees, having
operational and administrative responsibility for ski trails
and improvements.

(2) "Skier" means any person admitted to a ski area
under the control of a ski area operator for the purpose of
engaging in the sport of skiing by or using the ski slopes,
trails, and areas and other improvements within the ski
area. The term does not include a person using an aerial
passenger tramway.

(3) "Ski slopes, trails, and areas" means those
areas designated by the ski area operator to be used by

1 skiers for the purpose of participating in the sport of
2 skiing."

3 **Section 3.** Section 23-2-733, MCA, is amended to read:

4 "23-2-733. Duties of operator regarding ski areas. A
5 CONSISTENT WITH THE DUTY OF REASONABLE CARE OWED BY A SKI
6 AREA OPERATOR TO A SKIER, A ski area operator shall:

7 (1) mark all trail maintenance grooming vehicles and
8 furnish by furnishing the vehicles with flashing or rotating
9 lights that must be in operation whenever the vehicles are
10 working or are in movement in the ski area;

11 (2) mark with a visible sign or other warning
12 implement the location of any hydrant or similar equipment
13 used in snowmaking operations and located on ski slopes,
14 trails, and areas;

15 (3) maintain one or more trail boards at prominent
16 locations at each ski area displaying that area's network of
17 ski trails and slopes and the relative degree of difficulty
18 of the ski trails at that area;

19 (4) post a notice of the requirement for the requiring
20 the use of ski-retention devices;

21 (5) designate at the start of each day, by trail board
22 or otherwise, which trails or slopes are open or closed and
23 amend those designations as openings and closures occur
24 during the day;

25 (6) post in a conspicuous location the skier

1 responsibility code that is published by the national ski
2 areas association and that is current on (the effective date
3 of this act); and

4 (7) post a copy of 23-2-736 in a conspicuous
5 location."

6 **Section 4.** Section 23-2-736, MCA, is amended to read:

7 "23-2-736. Skier's assumption---of---responsibility
8 conduct -- duties inherent risks. {1}--A--skier--assumes--the
9 risk--and--all--legal--responsibility--for--injury--to--himself--or
10 loss--of--property--that--results--from--participating--in--the
11 sport---of--skiing--by--virtue--of--his--participation;--The
12 assumption--of--risk--and--responsibility--includes--but--is--not
13 limited---to---injury--or--loss--caused--by--the--following:
14 variations--in--terrain;--surface--or--subsurface--snow--or--ice
15 conditions;--bare--spots;--rocks;--trees;--other--forms--of--forest
16 growth--or--debris;--lift--towers--and--components--thereof;--pole
17 lines;--and--plainly--marked--or--visible--snowmaking--equipment;

18 {2}--A--skier--is--responsible--for--knowing--the--range--of
19 his--own--ability--to--ski--any--slope;--trail;--or--area--and--for
20 skiing--within--the--limits--of--his--ability;--skiing--only--on
21 designated--slopes--and--trails;--maintaining--control--of--speed
22 and--course--at--all--times--while--skiing;--heeding--all--posted
23 warnings;--and--refraining--from--acting--in--a--manner--that--may
24 cause--or--contribute--to--the--injury---of---anyone;---The
25 responsibility--for--collisions--with--a--person--or--object--while

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 25 in--areas-within-the-ski-area-boundary-but-not-designated-as

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(e) ~~clearly visible or plainly marked improvements,~~
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NEW SECTION. **Section 5.** Repealer. Section 23-2-737,
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12 ~~(h) a collision with another skier who is not an~~
13 ~~employee of the ski area operator acting in the course of~~
14 ~~and within the scope of his employment duties."~~

15 NEW SECTION. Section 5. Repealer. Section 23-2-737,
16 MCA, is repealed.

17 NEW SECTION. Section 6. Effective date --
18 applicability. (1) [This act] is effective on passage and
19 approval.

20 (2) [This act] applies to courses of action arising
21 after [the effective date of this act].

-End-

HOUSE BILL NO. 313

INTRODUCED BY GRADY, HARPER, COHEN, GOOD, SPAETH,
CRIPPEN, HALLIGAN, O'KEEFE, MAZUREK, BOYLAN, ADDY,
HANNAH, B. BROWN, RASMUSSEN, HARP

A BILL FOR AN ACT ENTITLED: "AN ACT TO CLARIFY THE SKIER
RESPONSIBILITY LAW; TO PROVIDE--THAT--THOUGH--LIABLE--FOR
NEGLIGENCE, STATE THE DUTIES OF A SKI AREA OPERATOR IS--NOT
LIABLE--FOR--AN--INJURY--CAUSED--BY--A--RISK AND A SKIER; TO
PROVIDE THAT A SKIER ACCEPTS RESPONSIBILITY FOR RISKS
INHERENT IN THE SPORT; AMENDING SECTIONS 23-2-731 THROUGH
23-2-733 AND 23-2-736, MCA; REPEALING SECTION 23-2-737, MCA;
AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND AN
APPLICABILITY DATE."

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

Section 1. Section 23-2-731, MCA, is amended to read:

"23-2-731. Purpose. ~~it is recognized--that--there--are~~
~~inherent--risks--in--the--sport--of--skiing--that--are--essentially~~
~~impossible--to--eliminate--by--the--ski--area--operator--but--that~~
~~should--be--known--by--the--skier--it is the purpose of 23-2-731~~
~~through 23-2-737 to define those areas of responsibility and~~
~~affirmative acts for which the ski area operator is--liable~~
~~for--loss,--damage,--or--injury and those risks for which the~~
~~skier expressly assumes--or--shall--be--considered--to--have~~

~~voluntarily assumed the risk of loss or damage and for which~~
~~there--can--be--no--recovery. The legislature finds that skiing~~
~~is a major recreational sport and a major industry in the~~
~~state and recognizes that among the attractions of the sport~~
~~are risks, inherent and otherwise. The state has a~~
~~legitimate interest in maintaining the economic viability of~~
~~the ski industry by discouraging frivolous--lawsuits CLAIMS~~
~~BASED ON DAMAGES RESULTING FROM RISKS INHERENT IN THE SPORT,~~
~~defining inherent risks, and establishing the duties of~~
~~skiers and ski area operators."~~

Section 2. Section 23-2-732, MCA, is amended to read:

"23-2-732. Definitions. As used in 23-2-731 through
23-2-737 23-2-736, the following definitions apply:

(1) "Ski area operator" or "operator" means a person,
firm, or corporation, and its agents and employees, having
operational and administrative responsibility for ski trails
and improvements.

{1}(2) "Skier" means any person admitted to a ski area
under the control of a ski area operator for the purpose--of
engaging--in--the--sport--of--skiing--by or using the ski slopes,
trails, and areas and other improvements within the ski
area. The term does not include a person using an aerial
passenger tramway.

{2}(3) "Ski slopes, trails,--and--areas" means those
areas designated by the ski area operator to be used by

1 skiers for the purpose of participating in the sport of
2 skiing."

3 **Section 3.** Section 23-2-733, MCA, is amended to read:

4 "23-2-733. Duties of operator regarding ski areas. A
5 CONSISTENT WITH THE DUTY OF REASONABLE CARE OWED BY A SKI
6 AREA OPERATOR TO A SKIER, A ski area operator shall:

7 (1) mark all trail maintenance grooming vehicles and
8 furnish by furnishing the vehicles with flashing or rotating
9 lights that must be in operation whenever the vehicles are
10 working or are in movement in the ski area;

11 (2) mark with a visible sign or other warning
12 implement the location of any hydrant or similar equipment
13 used in snowmaking operations and located on ski slopes,
14 trails, and areas;

15 (3) maintain one or more trail boards at prominent
16 locations at each ski area displaying that area's network of
17 ski trails and slopes and the relative degree of difficulty
18 of the ski trails at that area;

19 (4) post a notice ~~of the requirement for the~~ requiring
20 the use of ski-retention devices;

21 (5) designate at the start of each day, by trail board
22 or otherwise, which trails or slopes are open or closed and
23 amend those designations as openings and closures occur
24 during the day;

25 (6) post in a conspicuous location the skier

1 responsibility code that is published by the national ski
2 areas association and that is current on [the effective date
3 of this act]; and

4 (7) post a copy of 23-2-736 in a conspicuous
5 location."

6 **Section 4.** Section 23-2-736, MCA, is amended to read:

7 "23-2-736. Skier's ~~assumption of responsibility~~
8 conduct -- duties inherent risks. (1) ~~A skier assumes the~~
9 ~~risk and all legal responsibility for injury to himself or~~
10 ~~loss of property that results from participating in the~~
11 ~~sport of skiing by virtue of his participation. The~~
12 ~~assumption of risk and responsibility includes but is not~~
13 ~~limited to injury or loss caused by the following:~~
14 ~~variations in terrain, surface or subsurface snow or ice~~
15 ~~conditions, bare spots, rocks, trees, other forms of forest~~
16 ~~growth or debris, lift towers and components thereof, pole~~
17 ~~lines, and plainly marked or visible snowmaking equipment;~~

18 (2) ~~A skier is responsible for knowing the range of~~
19 ~~his own ability to ski any slope, trail, or area and for~~
20 ~~skiing within the limits of his ability, skiing only on~~
21 ~~designated slopes and trails, maintaining control of speed~~
22 ~~and course at all times while skiing, heeding all posted~~
23 ~~warnings, and refraining from acting in a manner that may~~
24 ~~cause or contribute to the injury of anyone. The~~
25 ~~responsibility for collisions with a person or object while~~

1 ~~skiing-is-the-responsibility-of-the-person--or--persons--and~~
2 ~~not-the-responsibility-of-the-ski-area-operator;~~

3 (1) A skier has the duty to conduct himself at all
4 times so that he avoids injury to himself and others and to
5 be aware of the inherent risks of the sport.

6 (2) A skier:

7 (a) must know the range of his ability and safely
8 conduct himself within the limits of that ability and his
9 equipment so as to negotiate any section of terrain or ski
10 trail safely and without injury or damage. A skier must know
11 that his ability may vary because of trail changes caused by
12 weather, grooming changes, or skier use.

13 (b) shall maintain control of speed and course so as
14 to prevent injury to himself or others;

15 (c) must abide by the requirements of the skier
16 responsibility code that is published by the national ski
17 areas association and that is current on [the effective date
18 of this act]; and

19 (d) shall obey all posted or other warnings and
20 instructions of the ski area operator.

21 (3) A person who-is-skiing may not:

22 (a) place an object in the ski area or on the uphill
23 track of a passenger tramway that may cause a passenger or
24 skier to fall;

25 (b) cross the track of a passenger tramway except at a

1 designated and approved area, point; or

2 (c) if involved in a skiing accident, depart from the
3 scene of the accident without;

4 (i) leaving personal identification; or

5 (ii) before notifying the proper authorities or and
6 obtaining assistance when the-skier HE knows that a person
7 involved in the accident is in need of medical or other
8 assistance.

9 (4) A skier must accept all legal responsibility for
10 injury OR DAMAGE of any kind that-he-suffers TO THE EXTENT
11 that THE INJURY OR DAMAGE results from risks inherent in the
12 sport of skiing. Risks inherent in the sport of skiing
13 include-but are not-limited-to:

14 (a) variations in skiing terrain, including surface
15 and subsurface snow or ice conditions naturally occurring or
16 resulting from weather changes, skier use, or grooming or
17 snowmaking operations;

18 (b) bare spots and thin snow cover caused by limited
19 snowfall, melting, wind erosion, skier action, grooming, or
20 unconsolidated base;

21 (c) forest growth on designated trails;

22 (d) forest--growth-and-forest-debris-(including-rocks,
23 stumps,-snags,-woodpiles,-trees,-underbrush,-and--branches);
24 major-terrain-undulations,-tree-wells,-or-unstabilized-snow;
25 in--areas-within-the-ski-area-boundary-but-not-designated-as

1 trails-or-typically-maintained-for-skiing-activity SKIING IN
2 AN AREA NOT DESIGNATED AS A SKI TRAIL;
3 (e) clearly visible or plainly marked improvements,
4 including--but--not--limited--to--lift-towers-and-terminals,
5 buildings,decks,walkways,fences,snowguns,--hydrants--and
6 hoses,roadways,and-signs OR EQUIPMENT;
7 (f) clearly visible or plainly marked mobile equipment
8 and attachments, whether moving or stationary, used by the
9 ski area operator; AND
10 (g) avalanches, except on open, designated ski trails,
11 and
12 (h)--a-collision-with--another--skier--who--is--not--an
13 employee--of--the--ski-area-operator-acting-in-the-course-of
14 and-within-the-scope-of-his-employment-duties."
15 NEW SECTION. Section 5. Repealer. Section 23-2-737,
16 MCA, is repealed.
17 NEW SECTION. Section 6. Effective date --
18 applicability. (1) [This act] is effective on passage and
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