

HOUSE BILL NO. 204

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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~~ SECTIONS 27-1-753 AND 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 27-1-753, MCA, IS AMENDED TO READ:**

7 **"27-1-753. Limitation on liability in sport or recreational opportunity.** (1) A person who participates  
 8 in any sport or recreational opportunity assumes the inherent risks in that sport or recreational opportunity,  
 9 whether those risks are known or unknown ~~or whether a written waiver or release is executed~~, and is legally  
 10 responsible for all injury or death to the person and for all damage to the person's property that result from the  
 11 inherent risks in that sport or recreational opportunity.

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

14 (3) (a) Sections 27-1-751 through 27-1-754 do not preclude an action based on the negligence of the  
 15 provider if the injury, death, or damage is not the result of an inherent risk of the sport or recreational opportunity.

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

19 (c) Any waiver or release for a sport or recreational opportunity; must:

20 (i) state known inherent risks of the sport or recreational opportunity; and

21 (ii) contain the following statement in bold typeface: By signing this document you ~~are~~ MAYBE waiving your  
 22 legal right to a jury trial to hold the provider legally responsible for any injuries OR DAMAGES RESULTING FROM RISKS  
 23 INHERENT IN THE SPORT OR RECREATIONAL OPPORTUNITY OR FOR ANY INJURIES OR DAMAGES you may suffer due to  
 24 the provider's ordinary negligence or for injuries or damages resulting from risks inherent in the sport or  
 25 recreational opportunity THAT ARE THE RESULT OF THE PROVIDER'S FAILURE TO EXERCISE REASONABLE CARE.

26 (d) Any waiver or release for a sport or recreational opportunity may still be challenged on any legal  
 27 grounds.

28 (e) Any waiver or release for a sport or recreational opportunity executed in compliance with this section  
 29 is not prohibited by or subject to the provisions of 28-2-702.

30 (4) Sections 27-1-751 through 27-1-754 do not apply to a cause of action based on the design,

1 manufacture, provision, or maintenance of sports or recreational equipment or products or safety equipment used  
2 incidental to or required by the sport or recreational activity."

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

5 **"28-2-702. Contracts that violate policy of law -- exemption from responsibility -- exception. (†)**

6 ~~All~~ EXCEPT AS PROVIDED IN 27-1-753, ALL contracts that have for their object, directly or indirectly, to exempt  
7 anyone from responsibility for the person's own fraud, for willful injury to the person or property of another, or for  
8 violation of law, whether willful or negligent, are against the policy of the law.

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

12 ~~—— (3) For purposes of this section, "sport or recreational opportunity" has the meaning provided in~~  
13 ~~27-1-752."~~

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15 NEW SECTION. **Section 3. Effective date.** [This act] is effective on passage and approval.

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