

1 S.284

2 Introduced by Senator Flory

3 Referred to Committee on

4 Date:

5 Subject: Court procedures; assumption of risk; recreational activities; release

6 Statement of purpose: This bill proposes to permit adults to assume, for

7 themselves and for their minor children, the risks inherent in recreational

8 activities by releasing negligence claims arising out of the adult's or minor's

9 participation in the activity.

10 An act relating to express assumption of risk and release from liability

11 It is hereby enacted by the General Assembly of the State of Vermont:

12 Sec. 1. FINDINGS

13 The general assembly finds:

14 (1) Persons in this state, including minor children, should have the

15 maximum opportunity to participate in recreational, sporting, educational,

16 and other activities where certain risks, including risks of personal injury or

17 death, may exist.

18 (2) Public, private, and nonprofit entities providing recreational,

19 sporting, educational, and other activities with risks to adults and minor

20 children in Vermont need a measure of protection against lawsuits, without

1 which they may be unwilling or unable to provide the activities due to the
2 overwhelming financial exposure.

3 (3) Parents have a fundamental right and responsibility to make
4 decisions concerning the care, custody, and control of their minor children.
5 The law has long presumed that parents act in the best interest of their minor
6 children.

7 (4) Parents make conscious choices every day on behalf of their minor
8 children concerning the risks and benefits of participation in activities that
9 may involve risk. These are proper parental choices on behalf of minor
10 children that should not be ignored. So long as the decision is voluntary and
11 informed, the decision should be given the same dignity as decisions regarding
12 schooling, medical treatment, and religious education.

13 (5) It is the public policy of the state of Vermont to encourage the
14 availability of recreational, sporting, educational, and other activities with
15 risks in this state by affording providers, including landowners and occupiers,
16 instructors, and guides, with protection under the law where a participant in
17 the activity has agreed to expressly assume its risks and release potential
18 defendants from liability.

19 (6) It is the public policy of the state of Vermont to encourage the
20 affordability and availability of youth activities in this state by permitting a
21 parent of a minor child to release a negligence claim of the minor child arising

1 out of the child's participation in recreational, sporting, educational, or other
2 activities with risks.

3 Sec. 2. 12 V.S.A. § 1037 is amended to read:

4 § 1037. ACCEPTANCE OF INHERENT RISKS; WAIVER

5 (a) Notwithstanding the provisions of section 1036 of this title, a person
6 who takes part in any sport accepts as a matter of law the dangers that inhere
7 therein insofar as they are obvious and necessary.

8 (b) A participant in a recreational activity may expressly release another
9 person from negligence claims arising out of participation in the activity.

10 (c) A parent of a minor child who participates in a recreational activity may
11 expressly release another person from negligence claims arising out of the
12 minor child's participation in the activity.

13 (d) Nothing in this section shall be construed to permit a parent acting on
14 behalf of his or her minor child to waive a claim for the minor child based on a
15 willful and wanton act or omission, or a grossly negligent act or omission.

16 (e) As used in this section, unless the context otherwise requires:

17 (1) "Minor child" means a person under 18 years of age.

18 (2) "Parent" means a parent of a minor child or a person who has legal
19 guardianship of the child.