



April 17, 2018

RE: S. 105
Vermont Ski Areas Association
Molly Mahar, President

The Vermont Ski Areas Association represents 20 alpine and 30 cross-country ski areas across the state. Vermont is the number one ski state in the eastern US and fourth largest in the country. The industry is a significant contributor to Vermont's economy, bringing \$900M in direct spending each winter season, two-thirds of which occurs off mountain in surrounding towns and communities. This spending generates over \$120 million in tax revenues for the state. The ski industry is part of the larger recreation and tourism industries, which account for over \$330M and \$1.82B in spending, respectively.

We are very concerned about S.105: the Model State Consumer Justice Enforcement Act: Standard Form Contracts bill. This bill would have an extremely detrimental impact on the ski industry and all other recreational businesses in Vermont and significantly change the landscape for recreational providers, landowners and competitive events such as biking, running and challenge course races. Ski areas are often host sites for such competitive events.

Public, private and non-profit entities providing recreational, sporting, educational and other activities with inherent risks to participants need a measure of protection against lawsuits, without which they may be unwilling or unable to provide due to the overwhelming financial exposure.

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

Most recreation in Vermont is still subject to some form of waiver. In consumer skiing, we limit that waiver to "the full extent allowed by law" and to "inherent risk" under Vermont law due to specific case law which says that skiing is a "public interest". Other recreational activities including sporting contests, races (running, swimming, triathlons, bikes, car, motor cycles and challenge course races) and special events are still legally waivable even for negligence claims. This is important to maintain and is critical for recreation business sustainability.

Our concern is that in every ski area contract and every other voluntary participatory recreation activity contract in the state (bike races, running races, marathons, horseback riding, etc) there is limitation of liability language and forum selection included.

Under the provisions of this bill, if someone finds this unconscionable, they can bring a consumer fraud claim and sue for unfair and deceptive trade practices. Not only that, if any language is found to be unconscionable, a business could be fined for having the language in their contract and have to pay the plaintiff's legal fees.

Meanwhile, New Hampshire and Colorado are strengthening their Release and Waiver laws and their inherent risk laws in an effort to limit claims. In comparison, this bill will make it easier to sue recreational providers in Vermont.

This would make it more difficult for businesses offering recreational activities and competitive and other recreational events to secure liability insurance, as well as increase insurance premiums significantly.

This bill would have a very harmful impact on our state's economy as people look elsewhere to hold events and fewer insurers remain interested in insuring recreational businesses. Cost of doing business would increase, which will drive recreational businesses and events out of Vermont, or out of business entirely, and prevent others from coming into the state.

The Governor has identified recreation as a key component of our economic viability and this bill would do the opposite by making it more difficult for these businesses to survive and putting significant tourism spending and the resulting tax dollars at risk.

We thank the Committee for their consideration.