

Sen. Dick SEARS

Recreational Liability Case

David A. Mickenberg <mickenberg@gmail.com>

Fri 5/4/2018 6:35 AM

To: Richard Sears <RSEARS@leg.state.vt.us>;

Senator,

S. 105 has not impact on the ability to include or enforce waivers for people participating in recreational activities in Vermont. Current law dictates that, including a 1995 Supreme Court case which found that such waivers are currently unenforceable (although routinely put in standard form contracts):

<https://law.justia.com/cases/vermont/supreme-court/1995/op94-236.html>

The fact is that the provision they're worried about in S.105 says that it is presumptively unconscionable to limit a person's "statutory" rights or remedies. Negligence is a common law right. S. 105 would have no impact on the recreation industries waivers of liability. If passed it would however allow for the terms listed in the bill to be presumptively unconscionable if listed in standard form contracts, terms which courts have already routinely found to be unconscionable. S. 105 would assist the consumer in litigation over such contracts and would hopefully deter their inclusion in the contracts in the first place.

I hope this helps, and I'm sure that Julio will be able to answer all of the questions or concerns that may be raised on this issue.

Best,

David