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S.18 S.18 Model State Consumer Justice Enforcement Act
Senate Judiciary Committee

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Thank you, Chairman Sears, for allowing me to speak to the Committee on Monday January 24th about S18 and my concerns that the bill as written might negatively impact our robust outdoor recreation and tourism sectors. Senators White and Baruch asked me which of the five provisions in S18 were problematic and why. I asked our general counsel to provide that feedback, which is included below.

Of all five of the provisions in S.18 identifying unconscionable terms, the following are problematic.

9 V.S.A. 6605(a)(1) Inconvenient venue

It would seem reasonable to allow some flexibility on the venue and governing law where an out-of-state provider is involved, particularly where the provider is active throughout the states. The court decision involving a claim against the United States Ski Association based on a race held at Okemo rejected the provision in the release form establishing Colorado as the governing law and Colorado courts as the venue. With its headquarters in Utah and the race having been held in Vermont, the court couldn't find any relationship between the parties that involved Colorado. However, the written decision appeared to leave open the possibility that a host/provider could require the state where its headquarters is located to determine the applicable laws and courts to hear a claim. That argument would seem more viable for a host/provider active throughout the states and wanting to consolidate all litigation in the state where it is based.

9 V.S.A. 6605(a)(4) Statue of limitations

Assumption of the risk supports looking at some adjustment in the statute of limitations. In many outdoor recreation activities, particularly where written releases inform participants of associated risks and reinforce the potential for injury, a shortening of the three-year statute of limitations period and some relief from the discovery rule would not work an unfairness on the relationship between the host/provider and the participant.

Respectfully submitted,



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