

Chair Stevens and Committee Members,

Thank you for inviting me in to introduce H. 290. This bill proposes to require ski area operators to adopt a safety plan and annually report data concerning skiing accidents.

Background

I'd like to share how I came to introduce H. 290 and my rationale for it:

In a previous session, House Judiciary was taking testimony on S. 105 (a bill that looked at unconscionable contracts). A small part of the bill addressed ski areas and recreational areas as high-risk activities and the assumption of risk that a person takes when he or she goes skiing. Purchasing the lift pass, releases the ski area of liability. 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". This has been critically important to our sustainability. This section was one of many that were taken out of the bill to keep the bill alive.

Oddly enough, that same week, I had to drive back to Burlington in the middle of the day and listened to NPR on the way back to Montpelier. I heard a very compelling NPR story out of Colorado Public Radio (KUNC) about ski accidents that were related to negligence and resulted in deaths and serious injuries. Attorneys would not take the cases, as they are extremely hard to litigate given the release of liability. I have attached the link to the story at the end of this testimony and include a small portion of the story below:

From 2011 to 2017, there were approximately 100,000 emergency room visits and hospitalizations across Colorado for ski- and snowboard-related injuries.... a 6-year-old girl fell 29 feet from a chairliftThe incident prompted two moms in Boulder to launch an online petition demanding safety improvements. About 1,000 people signed it. Eldora responded, but their claim that such incidents are "extremely rare" did not sit right with the moms. "It said thank you for your feedback, but we basically stand by our public statement that says we're reviewing all of our policies," said Leigh Fiske, one of the moms. "But the problem with that is we don't know how rare it was because we can't get the data. "Though the girl was attending ski school, the mom's claim she wasn't properly loaded into her chair. This led Fiske and others to ask more questions about safety at Eldora, like why small children may ride lifts alone and what's being done to prevent future falls. But the moms said they couldn't even find out how many other similar chairlift incidents there were at the resort.

All of this transpired as KUNC was during its own two-month investigation into safety at ski resorts, which led to the discovery of little-known data held by the state that documents thousands of ski- and snowboard-related emergency room visits and hospitalizations across Colorado each year. But scant specific-injury numbers are available from resorts. The only resort-specific injury information KUNC could find was a small sliver of the overall injuries — those that occur on chairlifts. The state agency that oversees lifts — the Colorado Passenger Tramway Safety Board — provided a spreadsheet after KUNC filed an open records act request. It happened to answer one of the questions the moms in Boulder have been asking. It showed two other recent chairlift falls at Eldora, both in 2015, with one involving a child..

For most injuries, according to tramway board reports reviewed by KUNC, the "cause" of chairlift falls was attributed to "skier error," including the cases of Carter Jackson and Jacob Keeping.

KUNC asked the state tramway board what more it does after chairlift falls that are found to be the fault of the passengers. The board declined requests for an interview, but in an email said their focus is limited to the "structure and mechanics of the lift." It also provided an overview of chairlift incidents in recent years.

Between January 2013 and March 2018, there were 74 falls or slips from chairlifts at resorts around the state. About a third of those were children. Dave Byrd, director of risk and regulatory affairs for the Lakewood-based National Ski Areas Association, a major trade group, added that resorts educate passengers about proper chairlift use. He cited the long-standing skier responsibility code that states people must "know how to use the lifts safely," even children.

"Anatomically and developmentally, they are not capable of putting themselves on that lift," Wilder said, noting children are permitted to ride in chairs that were built with adults in mind. "There is a consistency of human error, which is why we as an industry and individual ski areas focus on guest education in loading, riding and unloading chairlifts," Byrd said. **But Larisa Wilder, one of the Boulder moms alarmed by the Eldora incident, said that the code goes too far by holding passengers, especially small children, so accountable. Wilder added that there needs to be more accountability on operators when there are chairlift falls and that the state tramway board should investigate falls independently to ensure future passengers don't face the same hazards.** The moms have begun reaching out to state lawmakers with questions about safety on chairlifts, like whether restraint bars should be required. Currently state law does not require their use, even on the lifts that have them.

My goal is really a consumer education effort. I am not trying to change the liability waiver. I merely believe that if we as consumers are going to take on our own liability when we ski, we should have fuller information about each ski area. What are their safety plans? How many injuries and deaths occurred at this location last year?

Ski resorts ought to be proud to share their information of their safety plans and data. It only stands to make them more appealing.

Since then, I have read about legislative efforts in California and Maine to require posting injury, and death information at each resort. And just today, a Senate bill was introduced in the Colorado Legislature, calling for this type of consumer information.

Problems This Bill Addresses:

Ski Industry is Unregulated and there is little to no Safety Oversight:

- ✓ "There are no laws of this kind in any state related to the ski industry," says Gregorie, who started a ski safety advocacy organization after the death of his 24-year-old daughter at a California resort in 2006. "The ski industry effectively has no regulation or safety oversight. "According to Gregorie: "The ski industry is not engaged in systematic safety management. Management decisions are basically driven by their lawyers and the liability concerns their lawyers have. They tell them don't document it so there are no standards they can be held to. And, as I know from my time in the medical industry, if you don't have a good process, you can't get good outcomes."

- ✓ No knowledge about chair lift condition. We lack the kind of regulation that France and Ontario, Canada have where lifts must receive an in-depth mechanical evaluation after 15 or 20 years in service to bring them up to current standards.
- ✓ There are no mandates that parts be checked for wear and replaced at regular intervals, as is required with aircrafts.

Hard to Quantify the Risks

- ✓ It is widely understood that there are risks associated with skiing and snowboarding. But quantifying those risks is notoriously difficult because there are no specific requirements for reporting injuries or accidents at U.S. ski areas.

State law that says skiers assume the legal responsibilities from injuries resulting from any of the inherent dangers and risks of skiing.

- ✓ We all agree that skiing and snowboarding are inherently risky sports and that we must assume the risk if we choose to ski or snowboard.
- ✓ Without having relevant and adequate information, we don't know what the risks are that we are being asked to assume, and what we are assuming liability for, as we release the ski resort from their liability.
- ✓ If a patient has to be admitted to the hospital in today's world because of an injury, that's a serious injury. People are not admitted for minor things and people go to emergency rooms for fairly serious injuries.

Resorts advertise themselves as family friendly but there's no way to know for sure which ones are safe or dangerous.

- ✓ Many parents would choose their passes, choose their ski school, based on what's safest for their kids just as they can do research to send their children to the best hospitals or universities.

Many safety hazards at resorts that are beyond the control of visitors.

- ✓ No evidence of each resort's particular safety management plan. If no proof is ever given of such a strategy, consumers are simply left to believe they exist and are being followed.

Lack of information:

- ✓ No evidence of each resort's particular safety management plan. If no proof is ever given of such a strategy, consumers are simply left to believe they exist and are being followed.
- ✓ no numbers are made public for the injuries.

Unwillingness to Share Information:

- ✓ “Resorts also track what they consider to be less serious injuries. “The individual ski patrols at ski areas are tracking those and analyze them — everything from a slip and fall in a parking lot to a cocoa burn in the lodge to sunstroke to a torn ACL, but resorts do not release information about those lesser injuries. Resort’s fear doing so for business reasons.” Dave Byrd, director of risk and regulatory affairs, National Ski Areas Association
- ✓ "Eagle Mountain Ski Area, a hypothetical ski area, doesn't want its competitors to know how many skiers visits they had. Injury data would only be useful if resorts put it in the context of overall visits." Dave Byrd, director of risk and regulatory affairs National Ski Areas Association

Potential Solutions

Improve Transparency and Provide Important Consumer Information to the Public:

- ✓ **Require Vermont ski resorts to file safety plans that would be available to the public.**
- ✓ The plans should include details like injuries and what's being done to prevent them.
- ✓ **Require annual injury and fatality reports to be collected and made public.**
- ✓ **Included information such as the nature of the accidents, where on the mountain they happened, the experience level of the skier and whether alcohol or drugs were involved.**
- ✓ **additional information about the accidents could help identify how they could have been prevented and help focus safety efforts at resorts.**
- ✓ Provide information so that **Skiers can be educated which resorts are seeing the most accidents, and** Specific assurances for parents and senior citizens about safety.
- ✓ Look to the whitewater rafting industry, where accidents are compiled in the [American Whitewater Accident Database](#). **Consider a similar database to be created for ski area accidents. “That’s what we see as Step 1 is just transparency around the accidents that happen that can help then tailor education efforts.**
- ✓ The American Whitewater Accident Database catalogs over 1600 fatalities and close calls on whitewater rivers dating back to 1972. The project was initiated over 40 years ago, in 1975 when a fatality occurred due to foot entrapment at a slalom race. Charlie Walbridge was present for the race and described the risks of foot entrapment for the first time in a 1976 issue of the American Whitewater journal. Charlie continued to collect reports and share lessons through the American Whitewater Journal. In 2001 American Whitewater Safety Chair Tim Kelly led an effort to develop the American Whitewater Safety Database and in 2017 the database was further refined with enhanced search functionality through a website interface. There are three good reasons for writing (or sending in) a whitewater

accident report: it provides an opportunity to get the real story out, serves as a learning opportunity that can educate the paddling community, and it facilitates dialogue with river managers and decision makers. American Whitewater depends on its members to forward the reports and information on accidents on the water. First-hand accounts are best, but information from a newspaper article or social media post often provides the initial information that ultimately leads to more in-depth review and follow up.

Consider Beefing up Vermont's ski lift mechanical evaluation laws and safety mandates.

- ✓ Look to the practices in France and Ontario, Canada where lifts must receive an in-depth mechanical evaluation after a certain number of years, in service to bring them up to safety standards. Mandate that parts and wear be checked at regular intervals, as is required with aircrafts.

APPENDIX A: What Other States Have Done

Colorado

[Some Colorado lawmakers want ski resorts to report injuries and fatalities \(coloradosun.com\)](https://coloradosun.com/2021/03/23/colorado-ski-resorts-report-injuries-legislation-tammy-story/) March 23, 2021. <https://coloradosun.com/2021/03/23/colorado-ski-resorts-report-injuries-legislation-tammy-story/>

Senate Bill 184, “[Ski Area Safety Plans and Accident Reporting](#),” also would require resorts to publish safety plans outlining “roles, responsibilities and practices of the ski area” to reduce accidents. The legislation’s prime sponsors are Democratic Sens. Tammy Story of Conifer and Jessie Danielson of Wheat Ridge. The bill, which does not yet have a sponsor in the Colorado House, requires all Colorado resorts to issue seasonal reports on accidents and deaths. The reports should include details about where and when the accident occurred, conditions at the time, the nature of the resulting injuries and other “non-private” information about the injured skier. The bill also requires resorts to report injuries that occur when a skier is loading or unloading from a chairlift. (Those injuries [do not have to be reported to the Colorado Passenger Tramway Safety Board](#), which only tracks injuries sustained while riding the chair, not loading or unloading.)

The resort industry has fought hard to defeat similar legislation in other states. California lawmakers in 2010 approved [a law requiring resorts to publish safety plans](#) and issue monthly reports on injuries and fatalities, but [then-Gov. Arnold Schwarzenegger vetoed the bill](#). He said it placed an “unnecessary burden on resorts without assurance of a significant reduction in ski and snowboard-related injuries and fatalities.”

That position reflects the resort industry’s long-held defense against injury reporting. The industry argues that injury reports don’t lead to fewer injuries and resorts do not need the added hassles of reporting every injury.

But resorts already record injuries. Statistics detailing most accidents at ski areas have been compiled and analyzed by the same researcher, Jasper Shealy, for several decades. Shealy’s analysis of private injury databases — published in more than 100 peer-reviewed articles — shows the rate of ski and snowboard injuries declining over the past several decades.

Safety advocates say opening injury statistics to public review has yielded advances in safety in automobiles, amusement parks and day care centers.

“The list of industries where improvements in safety have directly resulted from data transparency is long,” said Russ Rizzo with Safe Slopes Colorado. “This is common sense. We know skiers want this information and we feel they have a right to this information.”

California

The 2010 California legislation was based on the work of Dr. Dan Gregorie, a physician who has battled resorts to release injury and death statistics ever since his daughter died in an accident at California's Alpine Meadows resort in 2006.

When a negligence lawsuit against the northern California resort was thrown out by both a state and circuit court of appeals based on the state's law shielding ski areas from litigation, Gregorie found a state legislator to write and pass a bill mandating more transparency and safety standards in the industry. The bill passed the state house, twice, but was vetoed by Gov. Arnold Schwarzenegger in 2010, and then his successor, Gov. Jerry Brown, the following year. Gregorie and his foundation have now turned their focus toward public awareness campaigns to create the change he deems so necessary.

<https://leginfo.legislature.ca.gov/faces/billNavClient.xhtml>

Maine:

Two different bills introduced but not passed.

<https://www.mainelegislature.org/legis/bills/getPDF.asp?paper=HP0825&item=1&snum=129>

https://www.mainelegislature.org/legis/bills/bills_129th/billtexts/HP082501.asp

APPENDIX B: DATA

- **Six people have died on Vermont's ski slopes this season, an increase over previous years.** 2017 BFP article- link in appendix- info below from that article:
- Three of the deaths involved resort visitors who were killed in accidents: two in crashes into trees, and one after falling into deep snow, according to a review of public records by the Burlington Free Press.
 - a 22-year-old University of Vermont student died a day after becoming trapped in deep powder in a section of in-bounds woods at Stowe Mountain Resort. Brett Cohen of Needham, Massachusetts, was missing for hours before rescuers found him. He died later at a hospital. At Stowe, Cohen's death was the first on the mountain in several years, said Karen Wagner, the resort's risk manager and a member of the ski patrol. The death was particularly tragic because Cohen, a senior at UVM, was following the rules and best safety practices, Wagner said. He was snowboarding in bounds. He had a friend with him. He was familiar with the area. But he died anyway. Cohen was found head-down, buried in snow, in a drainage dip in the woods about eight hours after the friend reported him missing. His death appears related to what's known as snow immersion, which occurs when a person falls into loosely packed powder and is unable to move. The risk of snow immersion is greater this winter, Wagner said, because the snow is deeper than it's been for a few years. "In some ways I like woods skiing because it slows people down, but in other ways, there are more hazards in there," she said. "Anytime you leave the maintained trail, you encounter risks that are obvious and other risks that you can't see."
 - James Meyers, 26, of Toms River, New Jersey, was snowboarding at Killington Resort when he went off the trail and struck a tree, according to the Vermont State Police. He was not wearing a helmet.
 - Jeffrey O'Connor, 39, of Hampden, Massachusetts, was skiing with his family at Sugarbush Resort when he went off a groomed trail and struck a tree, the police said. He was not wearing a helmet and suffered significant head injuries, according to investigators.
 - Two other skiers died of natural causes on the mountain, Walter Gorgas, 80, of Wappingers Falls, New York, collapsed on a trail and was pronounced dead. The police said Gorgas' death "appears to be a natural event." William Cusano, 65, of Lagrangeville, New York, collapsed and died on a trail, also apparently of natural causes, according to the police.

a resort employee was killed in a workplace accident. Jeffrey Chalk of Pittsford was working on the gondola inside the terminal building when he fell about 13 feet from a catwalk to the cement floor, according to the state police. The 53-year-old longtime employee suffered a serious head injury.

- The other three deaths — the ones the ski associations exclude from their tallies occurred all at Killington.
 - **Ski industry trade associations exclude employee deaths and those involving natural causes from official tallies of fatalities at resorts. The small numbers, experts caution, make it difficult to draw statistical conclusions. And skiing and riding remain safe, though risks are inherent in adventure sports.** The National Ski Areas Association says it reports only accident-related deaths involving resort visitors because the goal is to characterize the risk of skiing and snowboarding as accurately as possible. “Putting those risks into perspective and context is critical, especially from a fatality context, because our numbers tend to be low compared to the number of skier visits in the industry,” said Byrd, the association's risk, and regulatory affairs director.
- Three incidents in Vermont of resort guests killed in accidents represents the highest toll since five people died in the 2013-14 season, according to the Vermont Ski Areas Association. Two people a year were killed in each of the past two seasons.
- The three deaths in Vermont accidents this year are in keeping with the national rate from last winter of 0.74 deaths per 1 million visits, Byrd said. The National Ski Areas Association defines a visit as one person spending any part of a day or night skiing or snowboarding at a resort. Vermont records about 4 million visits annually.
- Nationwide, 39 people were killed in accidents at resorts in the 2015-16 season, according to the National Ski Areas Association. The Lakewood, Colorado-based group compiles the numbers at the end of each ski season.
- Chairlifts are not the only place where people can be injured at resorts — most injuries take place on the slopes. When asked about them, the National Ski Areas Association told KUNC there were **37 catastrophic injuries at resorts across the country for the 2017-18 ski season.** “**Catastrophic incidents** include a broken neck or back, or life-altering head injuries or paralysis. “The rate of catastrophic injuries per one million skier visits remains below one in one million”, Dave Byrd, director of risk and regulatory affairs National Ski Areas Association

- **National Ski Area Association (NSAA) Data on National Fatality data:**
 - 2019/2020: 42**
 - 2018/2019: 42**

The NSAA provides 10 years' worth of data, but none of it broken down by resort, state, or region.

- **National Ski Area Association (NSAA) Data on National ski catastrophic injury data:**
 - **10-year average: 45**
 - **2019/20: 29**

This data is believed to be incomplete because they don't account for deaths that occur off-site, or injuries that go unreported because someone judges it doesn't necessitate immediate care — only those that require an emergency room visit or in-patient hospital admission.

- Safe Slopes Colorado, a coalition with the goal of increasing safety and transparency at ski areas, recently released a report detailing the number of traumatic snow sports injuries over the course of the 2017-18 ski season. The report includes data from the Colorado Trauma Registry and was compiled by the Colorado Department of Public Health and Environment.

- **The report tallies 1,426 injuries that took place at Colorado ski areas and were treated at Level I-III trauma centers from Nov. 14, 2017, to April 15, 2018.**
 - More than 1,400 traumatic injuries averages about nine for each day of the ski season.

- Of the 1,426 traumatic injuries reported,
 - 35% of patients were taken directly to the operating room, and
 - 8% received injuries serious enough for the intensive care unit.
 - Nearly three-quarters of injuries were fractures.
 - about one-fifth were internal organ injuries.

- As for the cause of injury, 99.4% of accidents occurred due to a fall or crash and 0.6% involved a ski lift/

APPENDIX C: Links to Information

- The Thousands of Colorado Ski Injuries That Resorts Don't Tell You About
March 20, 2019
KUNC | By Michael de Yoanna
<https://www.kunc.org/news/2019-03-20/the-thousands-of-colorado-ski-injuries-that-resorts-dont-tell-you-about>
- Falls from Chairlifts in Colorado 2013-2018:
<https://infogram.com/1pw22vge02njkgfv2l3j9zm9p1h9wwp216d>
- Fatalities Rise at Vermont Ski Resorts
<https://www.burlingtonfreepress.com/story/news/2017/02/20/fatalities-vermont-ski-resorts/98003266/>
- Outside Magazine, October 15, 2016: Is Your Local Chairlift a Death Trap? **Our nation's lifts are at the breaking point. We spent months researching past accidents and aging infrastructure—and found that it's time to act to avoid catastrophic failure.** <https://www.outsideonline.com/2069911/your-local-chairlift-death-trap#close>
- **Colorado appeals court agrees that ski pass waivers protect resorts from liability in chairlift injuries** <https://coloradosun.com/2021/01/11/colorado-appeals-court-waivers-resorts-safety-act/>
- Ski Resorts in Colorado and Beyond are Hiding Risks, Safety Advocate Says:
<https://www.westword.com/news/ski-resorts-are-hiding-risks-safety-advocate-says->
- Newly Released Data Sheds Light on Traumatic Injuries in Colorado Ski Resorts
[Newly released data sheds light on rate of traumatic injuries at Colorado ski resorts | SummitDaily.com](#) <https://www.summitdaily.com/news/regional/newly-released-data-sheds-light-on-rate-of-traumatic-injuries-at-colorado-ski-resorts/>
- Number of ski resort fatalities, injuries uncertain with lack of public data or oversight
<https://www.summitdaily.com/news/local/number-of-ski-resort-fatalities-injuries-uncertain-with-lack-of-public-data-or-oversight/>

- [60-Year-Old Skier Dies at Stowe Mountain in Vermont – CBS Boston \(cbslocal.com\)](#)
- <https://boston.cbslocal.com/2021/02/16/arthur-powers-skier-dies-stowe-mountain-vermont/>
- [Skier, 79, dies after collision at Okemo | News | rutlandherald.com](#)
https://www.rutlandherald.com/news/skier-dies-after-collision-at-okemo/article_f4063c77-ec19-5383-b09a-5141cd1ecb56.html
- Make Eldora Safe for Kids 1032 signed petition – comments.
<https://www.ipetitions.com/petition/make-eldora-safe-for-kids#comments>
- **National Ski Area Association (NSAA) Catastrophic Injury Fact Sheet**
Not state or resort specific data.
https://www.nsaa.org/NSAA/Resources/Industry_Stats/NSAA/Media/Industry_Stats.aspx?key=8247ed3b-e20e-46d2-9c5d-36b92782c297
- **National Ski Area Association (NSAA) Fact Sheet on Catastrophic Injuries 2020**
https://nsaa.org/webdocs/Media_Public/IndustryStats/catastrophic_injury_fact_sheet_2020-21.
- **New data sheds light on rate of traumatic injuries at Colorado ski resorts** -An estimated 0.01% of skiers sustained injuries that sent them to the hospital in winter 2017-18. January 8, 2021
<https://theknow.denverpost.com/2021/01/08/traumatic-injuries-colorado-ski-resorts/251573/>

