

HOUSE OF REPRESENTATIVES

EIGHTY-SEVENTH SESSION

H. F. No. 1865

01/24/2012 Authored by Mack, Westrom, Kelly, Garofalo, McNamara and others
The bill was read for the first time and referred to the Committee on Civil Law
03/14/2012 Adoption of Report: Pass as Amended and Read Second Time

1.1 A bill for an act
1.2 relating to skier liability; establishing standards; limiting liability in certain
1.3 circumstances; proposing coding for new law as Minnesota Statutes, chapter
1.4 184C.

1.5 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MINNESOTA:

1.6 Section 1. **[184C.01] TITLE.**

1.7 This chapter constitutes the "Minnesota Ski Safety Act."

1.8 Sec. 2. **[184C.02] DEFINITIONS.**

1.9 Subdivision 1. **Application.** As used in this chapter, the terms defined in this section
1.10 have the meanings given them.

1.11 Subd. 2. **ANSI Ski Lift Code.** "ANSI Ski Lift Code" means the American National
1.12 Standard for Passenger Ropeways-Aerial Tramways, Aerial Lifts, Surface Lifts, Tows and
1.13 Conveyors Safety Requirements, B77.1-2011, as published by the American National
1.14 Standards Institute.

1.15 Subd. 3. **Competition.** "Competition" means any event operated by a ski area
1.16 operator or any other party authorized by the ski area operator at a ski area involving
1.17 comparison of skills, including a ski race, mogul contest, jumping event, freestyle event,
1.18 snowcross contest, or other similar contest or event. Competition includes training
1.19 sessions for a contest or event.

1.20 Subd. 4. **Training session.** "Training session" means skiing by a skier who is
1.21 registered to participate in a competition and who engages in skiing for the purposes
1.22 of preparing for the competition.

1.23 Subd. 5. **Conditions and risks of skiing.** "Conditions and risks of skiing" means:

2.1 (1) changes in weather and visibility;

2.2 (2) surface or subsurface conditions, including, but not limited to, snow in any
2.3 condition, ice, crust, slush, soft spots, ridges, rollers, knobs, holes, grooves, tracks from
2.4 ski area vehicles, bare spots, rocks, boulders, stumps, and logs, brush, or other forest
2.5 growth or debris or piles thereof;

2.6 (3) variations in difficulty of terrain and surface and subsurface conditions on a
2.7 single trail or route or within a single trail difficulty designation category at a ski area
2.8 or from one ski area to another;

2.9 (4) ski trails that have, fall away, or drop off toward natural or man-made obstacles
2.10 or hazards including, but not limited to, sharp corners, ridges, jumps, bumps, rollers,
2.11 moguls, valleys, dips, compressions, cliffs, ravines, drop-offs, streams, rivers, ponds,
2.12 lakes, stream beds, open water or water with thin ice, holes, steep sections, flat sections,
2.13 and uphill sections, and all variants and combinations thereof;

2.14 (5) the potential for collision with other skiers, spectators, or persons, including ski
2.15 area personnel, or with equipment such as ski area infrastructure and stationary or moving
2.16 ski area vehicles, not including a collision:

2.17 (i) that is caused by the failure of the ski area operator to comply with the
2.18 requirements of this chapter; or

2.19 (ii) with ski area vehicles, ski area infrastructure, or ski area personnel that could
2.20 not have been avoided by a reasonably prudent skier who complies with the requirements
2.21 of this chapter;

2.22 (6) the location, construction, design, layout, configuration, and condition of ski
2.23 trails, freestyle terrain, competition terrain, and tree skiing areas;

2.24 (7) that use of ski trails, freestyle terrain, competition terrain, and tree skiing areas
2.25 and participation in or being near races or other competitions or events, including but not
2.26 limited to participation as a skier, employee, spectator, or observer, involves the risk of
2.27 serious injury to person or property or death; and

2.28 (8) any other equivalent, comparable, or similar conditions or risks not referenced in
2.29 clauses (1) through (7).

2.30 Subd. 6. **Freestyle terrain.** "Freestyle terrain" means terrain that includes, but is
2.31 not limited to, terrain parks and terrain park features such as rails, boxes, jumps, hits,
2.32 jibs, tabletops, spines, ramps, banks, half-pipes, quarter-pipes, picnic tables, logs, pipes,
2.33 snowcross terrain and features, and other constructed or natural features, but does not
2.34 include moguls, bumps or rollers, or jumps not built by the ski area operator, unless they
2.35 are within a designated terrain park area.

3.1 Subd. 7. **Qualified lift inspector.** "Qualified lift inspector" means a person
3.2 knowledgeable of the requirements of the ANSI Ski Lift Code and the design and
3.3 operation of ski lifts who is either a professional engineer registered in any state or
3.4 territory of the United States or who has been or is engaged as a lift inspector for an
3.5 insurance company that provides or has provided insurance coverage to any ski area.

3.6 Subd. 8. **Ski area.** "Ski area" means all ski trails or other areas of real property used
3.7 by skiers that is administered as a single enterprise by a ski area operator.

3.8 Subd. 9. **Ski area infrastructure.** "Ski area infrastructure" means the following
3.9 when the infrastructure is owned, leased, or operated by a ski area operator:

3.10 (1) ski lifts and any associated components including, but not limited to, lift towers,
3.11 concrete tower foundations, tower bolts, tower ladders, lift terminals, chairs, t-bars,
3.12 gondolas, conveyors, and other structures relating to ski lifts;

3.13 (2) snowmaking equipment;

3.14 (3) buildings, shacks, fixtures, furniture, and other structures, including utility
3.15 infrastructure, located on the ski area property; and

3.16 (4) signs, fences, ropes, flags, posts, and any other materials or structures used for
3.17 posting signs or to manage or direct skiers and spectators.

3.18 Subd. 10. **Ski area operator.** "Ski area operator" means any entity or person that
3.19 has responsibility for the operations of a ski area and the owners, partners and members,
3.20 managers, employees, agents, and affiliates and assigns of the entity or person.

3.21 Subd. 11. **Ski area vehicles.** "Ski area vehicles" means vehicles owned, leased, or
3.22 operated by a ski area operator that are used in the operation and maintenance of ski areas
3.23 and competitions or used in the transportation of skiers or other persons within the ski area.

3.24 Subd. 12. **Skier.** "Skier" means an individual of any age or physical or mental ability
3.25 who is engaged in skiing, or is a spectator while any individuals are engaged in skiing.

3.26 Subd. 13. **Skier responsibility code.** "Skier responsibility code" means the
3.27 following statement:

3.28 "(1) Always stay in control.

3.29 (2) People ahead of you have the right of way.

3.30 (3) Stop in a safe place for you and others.

3.31 (4) Whenever starting downhill or merging, look uphill and yield.

3.32 (5) Use devices to help prevent runaway equipment.

3.33 (6) Observe signs and warnings, and keep off closed trails.

3.34 (7) Know how to use the lifts safely.

3.35 KNOW THE CODE. IT'S YOUR RESPONSIBILITY."

4.1 Subd. 14. **Spectator or observer.** "Spectator" or "observer" means an individual
4.2 who is present on a ski trail for the purpose of observing a competition or observing or
4.3 accompanying a skier engaged in the act of skiing.

4.4 Subd. 15. **Skiing.** "Skiing" means:

4.5 (1) using a ski trail or other terrain at or near a ski area for sliding, jumping,
4.6 walking, or traveling for alpine, snowboarding, telemark, snowshoeing or nordic skiing,
4.7 tobogganing, sledding, or tubing, or use of a minibob, tray, snowbike, or comparable
4.8 device; or

4.9 (2) being a passenger on a ski lift.

4.10 Subd. 16. **Ski lift.** "Ski lift" means any chairlift, gondola, tramway, cable car, or
4.11 other aerial lift and any rope tow, conveyor, t-bar, j-bar, handle tow, or other surface
4.12 lift used by a ski area operator to transport skiers, tubing participants, spectators, or
4.13 pedestrians at a ski area.

4.14 Subd. 17. **Designated ski trail; ski trail; trail.** "Designated ski trail," "ski trail," or
4.15 "trail" means any slope, trail, run, freestyle terrain, competition terrain, tree skiing areas,
4.16 and tubing park areas or any other area at or near a ski area that is used by skiers for skiing
4.17 as designated by the trail map required in section 184C.03, and includes edges, transition
4.18 areas to other terrain, and areas used for loading and unloading ski lifts.

4.19 Subd. 18. **Snowmaking equipment.** "Snowmaking equipment" means any
4.20 snowmaking machine, snow gun, or snow or water stick and any associated towers,
4.21 components, pipe, hydrant, hose, or other structures.

4.22 Subd. 19. **Tubing park.** "Tubing park" means an area designated by a ski area
4.23 operator for sliding on inflatable tubes, minibobs, sleds, toboggans, or any comparable
4.24 devices down a prepared course or lanes at a ski area.

4.25 **Sec. 3. [184C.03] SKI AREA OPERATOR RESPONSIBILITIES.**

4.26 Subdivision 1. **Required signage; notice of risks.** (a) Each ski area shall post and
4.27 maintain a reasonably visible sign at least six square feet in size at or near each of the
4.28 ski area's ticket sales buildings that states:

4.29 "WARNING: ASSUMPTION OF RISKS AND LIABILITY FOR INJURY:

4.30 Under the Minnesota Ski Safety Act, a skier is deemed to have accepted and to have
4.31 knowledge of the risk of injury to person or property that may result. Under this act, every
4.32 skier has the responsibility to take precautions necessary to avoid injury to person or
4.33 property. The Minnesota Ski Safety Act sets forth certain other limitations on the liability
4.34 of ski areas for injuries to person or property or death of skiers. A complete copy of this
4.35 act is available for review in the ticket sales or customer service area of this ski area. An

5.1 action for any injury to person or property or death against a ski area operator shall be
5.2 commenced within two years after the incident or earliest of incidents giving rise to the
5.3 action and shall be preceded by a notice of intent to file a claim, sent via certified or
5.4 registered mail, return receipt requested, that is received by the ski area operator within
5.5 180 days of such incident. The notice shall include the time, place, and circumstances of
5.6 the incident, and the names of the individuals known to be involved or known to have
5.7 witnessed the incident."

5.8 (b) Each ski area ticket sales building shall provide a copy of the skier responsibility
5.9 code, and a copy of this chapter in its entirety, to any skier upon request.

5.10 Subd. 2. **Required notice; tickets and season passes.** Every ski area shall print on
5.11 each ticket or season pass issued by the ski area for skiing the following statement:

5.12 "WARNING: Under the Minnesota Ski Safety Act, each skier:

5.13 (1) assumes the risk of injury to person or property or death resulting from conditions
5.14 and risks deemed to be inherent to this recreational activity;

5.15 (2) has a number of responsibilities to adhere to while skiing; and

5.16 (3) is subject to limitations on the ability to recover damages against a ski area
5.17 operator for injuries to person or property or death of a skier.

5.18 A complete copy of this act and the skier responsibility code are available for review
5.19 in the ticket sales or customer service area of this ski area. An action for any injury to
5.20 person or property or death against a ski area operator shall be commenced within two
5.21 years after the incident or earliest of incidents giving rise to the action and shall be
5.22 preceded by a notice of intent to file a claim, sent via certified or registered mail, return
5.23 receipt requested, that is received by the ski area operator within 180 days of such incident.
5.24 The notice shall include the time, place, and circumstances of the incident, and the names
5.25 of the individuals known to be involved or known to have witnessed the incident."

5.26 Subd. 3. **Required signage; difficulty levels.** (a) Every ski area operator shall
5.27 install and maintain at or near the beginning of each designated ski trail a sign that
5.28 contains the name of the trail and any of the applicable difficulty level words and emblems
5.29 contained in this subdivision, as determined by the ski area operator. The sign must be at
5.30 least six square feet in size if the ski area encompasses 150 acres or more, and at least
5.31 three square feet in size if the ski area encompasses less than 150 acres. As applicable,
5.32 the signs shall state:

5.33 (1) "Easiest," and include a green circle emblem;

5.34 (2) "Difficult" or "More Difficult," and include a blue square emblem;

5.35 (3) "Most Difficult," and include a black diamond emblem;

5.36 (4) "Expert" or "Extreme Terrain," and include a two black diamond emblem;

6.1 (5) "Freestyle Terrain," and include an orange oval emblem; or

6.2 (6) "Tree skiing - CAUTION," designed with an orange background color or orange
6.3 lettering with black or white background, and the additional statement "This back country
6.4 is not groomed or patrolled - Never ski alone."

6.5 (b) Directional arrows may be included on any sign, but must be included if the sign
6.6 is located at such a distance or position relative to the beginning of a trail that it would not
6.7 be understandable by a reasonably prudent skier without directional arrows.

6.8 Subd. 4. **Trail maps.** (a) Each ski area operator shall provide trail maps at least
6.9 eight inches by 11 inches in unfolded size. The maps must be easily accessible to skiers.

6.10 (b) If the designated ski trails encompass more than 150 acres, the operator shall
6.11 post at least one reasonably visible trail map board at least 32 square feet in size at, near,
6.12 or en route to the principal chalet.

6.13 (c) All trail maps shall indicate the skill level designations for each respective trail
6.14 consistent with the standards provided in subdivision 3.

6.15 Subd. 5. **Freestyle terrain.** (a) A ski area operator must construct a barricade
6.16 through fencing, flagging, or similar means at the entrance to any ski trail containing
6.17 freestyle terrain. The barricade must contain an entrance opening not wider than 30 feet.

6.18 (b) The ski area operator shall post at or near the route to the entrance a reasonably
6.19 visible sign at least three square feet in size that indicates the location of the freestyle
6.20 terrain. The sign shall be denoted by an orange oval emblem, a stop sign emblem,
6.21 the statement "Freestyle Skills Required," and either "Helmets are recommended"
6.22 or "Consider wearing a helmet." The sign shall also include any freestyle language
6.23 recommended by the National Ski Areas Association.

6.24 Subd. 6. **Tubing park.** (a) Each ski area operator that operates a tubing park shall
6.25 install and maintain reasonably visible signs at least six square feet in size, as follows:

6.26 (1) at, near, or on the route to the loading area of the tubing park ski lift or entrance
6.27 to the tubing park, a sign that includes the statement:

6.28 "WARNING: Under the Minnesota Ski Safety Act, each participant and rider in
6.29 a tubing park:

6.30 (1) assumes the risk of injury to person or property or death resulting from conditions
6.31 and risks deemed to be inherent to this recreational activity;

6.32 (2) has a number of responsibilities to adhere to while tubing; and

6.33 (3) is subject to limitations on the ability to recover damages against the tubing area
6.34 operator in the event of injury to person or property or death.

6.35 A complete copy of this act is available for review in the ticket sales or customer
6.36 service area of this tubing park. An action for any injury to person or property or death

7.1 against a ski area operator shall be commenced within two years after the incident or
 7.2 earliest of incidents giving rise to the action and shall be preceded by a notice of intent to
 7.3 file a claim, sent via certified or registered mail, return receipt requested, that is received
 7.4 by the ski area operator within 180 days of such incident. The notice shall include the
 7.5 time, place, and circumstances of the incident, and the names of the individuals known to
 7.6 be involved or known to have witnessed the incident."; and

7.7 (2) at or near the route to the loading area of the tubing park ski lift or the entrance to
 7.8 the tubing park, a sign that includes the statement:

7.9 "WARNING: TUBING PARTICIPANT RESPONSIBILITIES: Under the Minnesota
 7.10 Ski Safety Act, each tubing park participant or rider is responsible for:

7.11 (1) knowing the range of one's ability to negotiate and control one's speed down the
 7.12 tubing area and observing all posted information, signs, and other warnings;

7.13 (2) assessing the surface conditions, layout, steepness, and difficulty of the tubing
 7.14 trail by observing the trail and the descent of other riders and participants;

7.15 (3) tubing within one's ability and maintaining control of speed and direction at all
 7.16 times by such steps as dragging one's feet and observing limits on weight and the number
 7.17 of other riders on the same tube; and

7.18 (4) attaining the knowledge and ability to safely load, ride, and unload the tubing
 7.19 park ski lift before boarding such lift and to not load or unload from such lift except at
 7.20 designated areas."

7.21 (b) A ski area operator may also comply with this subdivision by maintaining
 7.22 one sign of at least 12 square feet in size at or near the route to the loading area of the
 7.23 tubing park ski lift or entrance to the tubing park that contains both warnings provided in
 7.24 paragraph (a).

7.25 Subd. 7. **Lift signs.** (a) If any of the ski lifts at a ski area do not service ski trails that
 7.26 are designated by the ski area operator as "easiest," the ski area operator shall place at,
 7.27 near, or on the route to the loading area of the lift a reasonably visible sign at least six
 7.28 square feet in size that states the following statement:

7.29 "WARNING: This lift does not service any trails that are "easiest" (green circle
 7.30 emblem); all of the trails serviced by this lift are as applicable "more difficult" (blue
 7.31 square emblem), "most difficult" (black diamond emblem), "expert" (two black diamond
 7.32 emblem), or "freestyle terrain" (orange oval emblem)."

7.33 (b) This subdivision does not apply to tubing areas.

7.34 Subd. 8. **Ski area vehicles.** (a) All ski area vehicles present on designated ski trails
 7.35 that are open to skiers during operating hours of the ski lifts at a ski area must have an
 7.36 operating flashing light on or near the top of the vehicle whenever the vehicle is present

8.1 on a designated ski trail. All snowmobiles, all-terrain vehicles, and any other similarly
8.2 sized vehicles present on designated ski trails that are open to skiers during operating
8.3 hours of the ski lifts at a ski area must, in addition, have a red or orange flag that is at least
8.4 40 square inches in size and mounted at least five feet from the bottom of the tracks or
8.5 tires while the vehicle is present on a designated ski trail.

8.6 (b) A ski area operator is not liable for injury to person or property or death resulting
8.7 from a collision with a ski area vehicle equipped as in paragraph (a) that is not on a
8.8 designated ski trail, or with a ski area vehicle when a designated ski trail is closed to skiers.

8.9 Subd. 9. **Variations of signs.** A ski area operator may vary from the specific
8.10 requirements set forth in this section related to posting of signs, provided that a reasonably
8.11 prudent skier abiding by all of the skier's responsibilities would be able to find and
8.12 understand the sign.

8.13 Subd. 10. **Ski lift inspections.** (a) During or prior to each ski season, but at least
8.14 once every 15 months, each ski area operator shall have all ski lifts in the operator's
8.15 ski area inspected by a qualified lift inspector for compliance with the requirements of
8.16 the ANSI Ski Lift Code.

8.17 (b) A ski area operator shall not be considered a common carrier under Minnesota
8.18 law, but shall be responsible for any injury to person or property, or death of a skier
8.19 sustained in a ski lift accident, if such incident is caused by the operator's failure to
8.20 comply with any mandatory provision of the ANSI Ski Lift Code or by the ski area
8.21 operator's negligence.

8.22 Subd. 11. **Accessibility of information.** The information required to be maintained
8.23 on a sign, trail map, ticket, or season pass under this section must be provided in an
8.24 accessible format to persons with disabilities upon request.

8.25 **Sec. 4. [184C.04] SKIER RESPONSIBILITIES; LIMITED OPERATOR**
8.26 **LIABILITY.**

8.27 Subdivision 1. **Duties of skiers.** (a) A skier at all times has a duty to comply with
8.28 each element of the skier responsibility code. A skier shall be presumed to have seen
8.29 and understood all postings, signs, and other warnings provided by the ski area operator
8.30 consistent with the requirements of this chapter.

8.31 (b) A person who engages in the act of skiing and is not authorized by the ski area
8.32 operator to use or be present at the ski area is a trespasser.

8.33 Subd. 2. **Helmets.** It is the responsibility of each skier to determine whether to wear
8.34 a helmet and to properly size, fit, and secure the helmet. Each skier is presumed as a
8.35 matter of law to know and assume the risk that failure to wear a helmet that is properly

9.1 sized, fit, and secured increases the risk of injury or death or the risk of a more severe
9.2 injury, and that helmets may not always be available for purchase or rental at ski areas.

9.3 Subd. 3. **Release of liability.** Notwithstanding any other law, in any action brought
9.4 by a skier against a ski area operator, if the skier has signed a valid release of liability,
9.5 such release shall be effective so long as it is not ambiguous.

9.6 Nothing in this section shall be construed as releasing a ski area operator for
9.7 damages caused by gross negligence or reckless or intentional acts.

9.8 Subd. 4. **Assumption of risks.** (a) A skier assumes knowledge of all conditions and
9.9 risks of skiing, even if a particular risk or condition was not specifically presented or stated
9.10 by the ski area operator to the skier. A ski area operator who substantially adheres to the
9.11 requirements of this chapter is not subject to liability for injury to or death of a person, or
9.12 injury to property occurring as a result of the conditions and risks of skiing.

9.13 (b) A court shall interpret this subdivision, and the definitions provided in section
9.14 184C.02, broadly. Whether a particular circumstance or set of circumstances meets the
9.15 definition of "conditions and risks of skiing" shall be determined as a question of law.

9.16 **Sec. 5. [184C.05] STATUTE OF LIMITATIONS; NOTICE OF CLAIM.**

9.17 An action for any injury to skier or property or death against a ski area operator shall
9.18 be commenced within two years after the incident or earliest of incidents giving rise to
9.19 the action and shall be preceded by a notice of intent to file a claim, sent via certified or
9.20 registered mail, return receipt requested, that is received by the ski area operator within
9.21 180 days of such incident. The notice shall include the time, place, and circumstances
9.22 of the incident, and the names of the individuals known to be involved and known to
9.23 have witnessed the incident.

9.24 **Sec. 6. EFFECTIVE DATE.**

9.25 This act is effective August 1, 2012, and applies to all actions arising out of incidents
9.26 occurring on or after that date.