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***Bill Analysis***  
*Legislative Service Commission*

**Sub. S.B. 61**  
126th General Assembly  
(As Passed by the Senate)

**Sen. Wachtmann**

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**BILL SUMMARY**

- Creates an annual fee of \$100 for each conveyor that a passenger tramway operator operates.
- Adds the following to the list of inherent risks of skiing for which a skier assumes the risk of and legal responsibility for injury, death, or loss to person or property caused by the risk: changing weather conditions; hard pack, powder, packed powder, wind pack, corn, crust, slush, cut-up snow, and machine-made snow; variations in steepness or terrain, whether natural or as the result of snowmaking, slope design, freestyle terrain, jumps, catwalks, or other terrain modifications; and passenger tramways and related structures and equipment, and competition equipment.
- Adds the following to the list of legal responsibilities of a ski area operator: the responsibility, prior to the use of any portion of a freestyle terrain area made available by the ski area operator, to allow each freestyle skier or competitor an opportunity to reasonably inspect the course, venue, or area of the freestyle terrain; and to allow skiers using a tubing park visible access to the course.
- Exempts a ski area operator from liability for injury, death, or loss to person or property suffered by any competitor or freestyler using a freestyle terrain, which injury, death, or loss is caused by course, venue, or area conditions that visual inspection should have revealed or by collision with a spectator, competition official, ski area personnel, or another competitor or freestyler, provided the ski operator allows each freestyle skier or competitor an opportunity prior to use to reasonably inspect the course, venue, or area of freestyle terrain.

- Exempts a ski area operator from liability for injury, death, or loss to person or property suffered by any skier using a tubing park, which injury, death, or loss is caused by course design or maintenance or conditions that visual inspection should have revealed or by collision with another skier, provided that the ski operator allows the skier visible access to the course.
- Provides that if a skier is a competitor, freestyler, or user of freestyle terrain, the skier must assume the risk of all course, venue, or area conditions, including, but not limited to, weather and snow conditions; obstacles; course or feature location, construction, or layout; freestyle terrain configuration and conditions; and other courses, layouts, or configurations of the area to be used.
- Provides that if a skier is utilizing a tubing park, the skier must assume the risk of collision with others on the course.
- Provides that a freestyler or competitor is liable for injury, death, or loss to person or property caused by the freestyler's or competitor's failure to fulfill any of the responsibilities required by the Skiing Safety Law, is not liable for any injury, death, or loss to person or property caused by another's failure to fulfill any of the responsibilities required of another by the Skiing Safety Law, and is not entitled to recover for any injury, death, or loss to person or property caused by the freestyler's or competitor's failure to fulfill any of the responsibilities required by the Skiing Safety Law.
- Modifies the definitions of "skier" and "passenger tramway" and defines "competitor," "freestyler," "freestyle terrain," and "tubing park" for use in the Skiing Safety Law.

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## CONTENT AND OPERATION

### **Registration with Ski Tramway Board**

Current law requires a passenger tramway operator, before operating any passenger tramway in the state, to apply to the Ski Tramway Board, on forms prepared by the Board, for registration by the Board. The application must contain an inventory of the passenger tramways that the applicant intends to operate and such other information as the Board may reasonably require. The application must be accompanied by the following annual fees (R.C. 4169.03(A)):

- (1) Each aerial passenger tramway, \$500;
- (2) Each skimobile, \$200;
- (3) Each chair lift, \$200;
- (4) Each J bar, T bar, or platter pull, \$100;
- (5) Each rope tow, \$50;
- (6) Each wire rope tow, \$75.

The bill additionally requires the application to include a \$100 annual fee for each "conveyor" the applicant intends to operate (R.C. 4169.03(A)(7)). (See "**Definitions**," below.)

### **Assumption of risk and legal responsibility by a skier**

#### **Current law**

Current law states that the General Assembly recognizes that a skier expressly assumes the risk of and legal responsibility for any losses or damages that result from the inherent risks of skiing, which include, but are not limited to, losses or damages caused by variations in terrain; surface or subsurface snow or ice conditions; bare spots, rocks, trees, stumps, and other forms of forest growth or debris; lift towers or other forms of towers and their components, either above or below the snow surface; any other objects and structures, including, but not limited to, utility poles, fences, posts, ski equipment, slalom poles, ropes, out-of-bounds barriers and their supports, signs, ski racks, walls, buildings, and sheds, and plainly marked or otherwise visible snowmaking and snow-grooming equipment, snowmobiles, snow cats, and over-snow vehicles. (R.C. 4169.08(A)(1).)

#### **Operation of the bill**

The bill adds the following to the list of inherent risks of skiing for which a skier assumes the risk of and legal responsibility for "injury, death, or loss to person or property" (instead of "any losses or damages" under current law) caused by the risk: changing weather conditions; hard pack, powder, packed powder, wind pack, corn, crust, slush, cut-up snow, and machine-made snow; variations in steepness or terrain, whether natural or as the result of snowmaking, slope design, freestyle terrain, jumps, catwalks, or other terrain modifications; and "passenger tramways" (see "**Definitions**," below) and related structures and equipment, and competition equipment (R.C. 4169.08(A)(1)).

### **Legal responsibilities of ski area operator**

Under current law, the legal responsibilities of a "ski area operator" to a "skier" (see "**Definitions**," below) with respect to any injury or death resulting in any way from an inherent risk of the sport is not those of the common law duty of premises owners to business invitees (see **COMMENT**). A ski area operator has, however, the following responsibilities (R.C. 4169.08(B)):

(1) To mark all trail maintenance vehicles and to furnish such vehicles with flashing or rotating lights that must be in operation whenever the vehicles are working or are moving in the "ski area" (see "**Definitions**," below);

(2) To mark with a visible sign or other warning implement the location of any hydrant or similar equipment that is used in snowmaking operations and located anywhere in the ski area;

(3) To mark, at the base of a slope or hill where skiers embark on a passenger tramway serving the slope or hill or at the top of a trail or slope, such slopes, trails, and hills with signs indicating their relative degree of difficulty. The signs must be the type that have been approved by the National Ski Areas Association and are in current use by the industry.

The bill includes among the legal responsibilities of a ski area operator the responsibility, prior to the use of any portion of a "freestyle terrain" area made available by the ski area operator, to allow each "freestyle skier" or "competitor" an opportunity to reasonably inspect the course, venue, or area of the freestyle terrain; and to allow skiers using a "tubing park" visible access to the course (R.C. 4169.08(B)(4) and (5)). (See "**Definitions**," below.)

### **Ski area operator's immunity from liability**

Under the bill, provided the ski operator allows each freestyle skier or competitor an opportunity to reasonably inspect the course, venue, or area of freestyle terrain prior to use, no liability attaches to a ski area operator for injury, death, or loss to person or property suffered by any competitor or freestyler using a freestyle terrain, which injury, death, or loss is caused by course, venue, or area conditions that visual inspection should have revealed or by collision with a spectator, competition official, ski area personnel, or another competitor or freestyler (R.C. 4169.08(A)(2)). The bill also states that, provided the ski operator allows skiers using a tubing park visible access to the course, no liability attaches to a ski area operator for injury, death, or loss to person or property suffered by any skier using a tubing park, which injury, death, or loss is caused by course design or maintenance or conditions that visual inspection should have revealed or by collision with another skier (R.C. 4169.08(A)(3)). The bill also modifies the

phrase "injury or death" in R.C. 4169.08(B) to include "or loss to person or property."

### **Skier's responsibilities**

Under current law, a skier has the following responsibilities (R.C. 4169.08(C)):

(1) To know the range of the skier's ability to negotiate any slope or trail or to use any passenger tramway that is associated with a slope or trail, to ski within the limits of the skier's ability, to ski only on designated slopes and trails, to maintain control of speed and course at all times while skiing, to heed all posted warnings, and to not cross the track of a passenger tramway except at a designated area;

(2) To refrain from acting in a manner that may cause or contribute to the injury of another person, to refrain from causing collision with any person or object while skiing, and to not place any object in a ski area that may cause another skier or a passenger (any person being transported or conveyed by a passenger tramway) to fall;

(3) When involved in a skiing accident in which another person is involved who needs medical or other assistance, to obtain assistance for the person, to notify the proper authorities, and to not depart from the scene of the accident without leaving personal identification.

The bill adds the following responsibilities for a skier (R.C. 4169.08(C)(4) and (5)):

(1) If the skier is a competitor, freestyler, or user of freestyle terrain, to assume the risk of all course, venue, or area conditions, including, but not limited to, weather and snow conditions; obstacles; course or feature location, construction, or layout; freestyle terrain configuration and conditions; and other courses, layouts, or configurations of the area to be used;

(2) If the skier is utilizing a tubing park, to assume the risk of collision with others on the course.

### **Liability for loss or damages**

Under current law, a ski area operator, a tramway passenger, or a skier is liable for losses or damages caused by his failure to fulfill any of the responsibilities required by the Skiing Safety Law (R.C. Ch. 4169.). A ski area operator, a tramway passenger, or a skier is not liable for any losses or damages caused by another's failure to fulfill any of the responsibilities required of another

by the Skiing Safety Law. A ski area operator, a tramway passenger, or a skier is not entitled to recover for any losses or damages caused by his failure to fulfill any of the responsibilities required by the Skiing Safety Law. The bill removes the phrase "losses or damages" and replaces it with "injury, death, or loss to person or property."

The bill also provides that a freestyler and a competitor also are subject to the liability for injury, death, or loss to person or property caused by the person's failure to fulfill any responsibilities required by the Skiing Safety Law, are not entitled to recover for injury, death, or loss to person or property caused by the person's failure to fulfill any of those responsibilities, and are not liable for injury, death, or loss to person or property caused by another person's failure to fulfill any responsibilities under that Law. (R.C. 4169.09.)

### **Definitions**

Current law, not changed by the bill, defines the following for purposes of the Skiing Safety Law (R.C. 4169.01(C), (D), and (E)):

"Ski area operator" means a person or organization that is responsible for the operation of a ski area, including an agency of this state or of a political subdivision thereof.

"Ski area" means all the ski slopes, ski trails, and passenger tramways that are administered or operated as a single enterprise within Ohio.

"Ski slopes" or "ski trails" means those sites that are reserved or maintained and are open for use, as designated by a ski area operator.

The bill modifies the current definition of "skier" that is used in the Skiing Safety Law by removing the provision that a person in order to meet the definition must be wearing skis or any other device and that skier means any person who for the purpose of skiing is on a ski slope or ski trail that is located at a ski area. It instead defines "skier" to mean any person who is using *the facilities of a ski area, including, but not limited to, the ski slopes and ski trails, for the purpose of skiing, which includes, without limitation, sliding or jumping on snow or ice on skis, a snowboard, sled, tube, snowbike, toboggan, or any other device.* The bill also modifies the current definition of "passenger tramway" that applies to the Skiing Safety Law by stating that it means a device used to transport passengers, *whether on skis or other devices or without skis or other devices,* or in cars on tracks or suspended in the air, by the use of steel cables, chains, or belts or by ropes, and is usually supported by trestles or towers with one or more spans (italicized language is added by the bill). It adds the following to the specified list of devices that "passenger tramway" includes: "conveyor," defined as a flexible moving element,

including a belt, that transports passengers on one path and returns underneath the uphill portion. (R.C. 4169.01(A) and (F)(7).)

The bill also adds the following new definitions for use in the Skiing Safety Law (R.C. 4169.01(G), (H), (I), and (J)):

(1) "Competitor" means a skier actually engaged in competition, a special event, or training or practicing for competition or a special event in any portion of the area made available by the ski area operator.

(2) "Freestyler" means a skier utilizing freestyle terrain marked with signage approved by the National Ski Areas Association.

(3) "Freestyle terrain" means, but is not limited to, terrain parks and terrain park features, such as jumps, rails, fun boxes, other constructed or natural features, half-pipes, quarter-pipes, and freestyle-bump terrain.

(4) "Tubing park" means a ski slope designated and maintained for the exclusive use of skiers utilizing tubes to slide to the bottom of the course and serviced by a dedicated passenger tramway.

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## COMMENT

Business invitees are persons who come upon the premises of another, by invitation, express or implied, for some purpose that is beneficial to the owner. *Scheibel v. Lipton* (1951), 156 Ohio St. 308. It is the duty of the owner of the premises to exercise ordinary care and to protect the invitee by maintaining the premises in a safe condition. *Presley v. Norwood* (1973), 36 Ohio St.2d 29.

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## HISTORY

ACTION	DATE	JOURNAL ENTRY
Introduced	02-15-05	p. 168
Reported, S. Judiciary on Civil Justice	03-10-05	p. 299
Passed Senate (32-0)	03-15-05	p. 304

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