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THE GENERAL ASSEMBLY OF PENNSYLVANIA

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**HOUSE BILL**

**No. 1080** Session of  
1989

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INTRODUCED BY LETTERMAN, APRIL 10, 1989

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REFERRED TO COMMITTEE ON JUDICIARY, APRIL 10, 1989

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AN ACT

1 Amending Title 42 (Judiciary and Judicial Procedure) of the  
2 Pennsylvania Consolidated Statutes, further providing for the  
3 liability of participants in recreational activities.

4 The General Assembly of the Commonwealth of Pennsylvania  
5 hereby enacts as follows:

6 Section 1. Section 7102 of Title 42 of the Pennsylvania  
7 Consolidated Statutes is amended to read:

8 § 7102. Comparative negligence.

9 (a) General rule.--In all actions brought to recover damages  
10 for negligence resulting in death or injury to person or  
11 property, the fact that the plaintiff may have been guilty of  
12 contributory negligence shall not bar a recovery by the  
13 plaintiff or his legal representative where such negligence was  
14 not greater than the causal negligence of the defendant or  
15 defendants against whom recovery is sought, but any damages  
16 sustained by the plaintiff shall be diminished in proportion to  
17 the amount of negligence attributed to the plaintiff.

18 (b) Recovery against joint defendant; contribution.--Where

1 recovery is allowed against more than one defendant, each  
2 defendant shall be liable for that proportion of the total  
3 dollar amount awarded as damages in the ratio of the amount of  
4 his causal negligence to the amount of causal negligence  
5 attributed to all defendants against whom recovery is allowed.  
6 The plaintiff may recover the full amount of the allowed  
7 recovery from any defendant against whom the plaintiff is not  
8 barred from recovery. Any defendant who is so compelled to pay  
9 more than his percentage share may seek contribution.

10 (c) [Downhill skiing.--

11 (1) The General Assembly finds that the sport of  
12 downhill skiing is practiced by a large number of citizens of  
13 this Commonwealth and also attracts to this Commonwealth  
14 large numbers of nonresidents significantly contributing to  
15 the economy of this Commonwealth. It is recognized that as in  
16 some other sports, there are inherent risks in the sport of  
17 downhill skiing.

18 (2) The doctrine of voluntary assumption of risk as it  
19 applies to downhill skiing injuries and damages is not  
20 modified by subsections (a) and (b).

21 (d)] Definitions.--As used in this section, the following  
22 words and phrases shall have the meanings given to them in this  
23 subsection:

24 "Defendant or defendants against whom recovery is sought."

25 Includes impleaded defendants.

26 "Plaintiff." Includes counterclaimants and cross-claimants.

27 Section 2. Title 42 is amended by adding a section to read:

28 § 7104. Recreational activity participant liability.

29 (a) Legislative intent.--The General Assembly intends, by  
30 this section, to establish the responsibilities of participants

1 in recreational activities in order to decrease uncertainty  
2 regarding the legal responsibility for injuries that result from  
3 participation in recreational activities and thereby to help  
4 assure the continued availability in this Commonwealth of  
5 enterprises that offer recreational activities to the public.

6 (b) General rule.--A participant in a recreational activity  
7 engaged in on premises owned or leased by a person who offers  
8 facilities to the general public for participation in  
9 recreational activities is responsible for doing all of the  
10 following:

11 (1) Acting within the limits of his ability.

12 (2) Heeding all warnings regarding participation in the  
13 recreational activity.

14 (3) Maintaining control of his person and the equipment,  
15 devices or animals the person is using while participating in  
16 the recreational activity.

17 (4) Refraining from acting in any manner that may cause  
18 or contribute to injury to himself or to other persons while  
19 participating in the recreational activity.

20 (c) Appreciation of risk.--A participant in a recreational  
21 activity engaged in on premises owned or leased by a person who  
22 offers facilities to the general public for participation in  
23 recreational activities accepts the risks inherent in the  
24 recreational activity of which the ordinary prudent person is or  
25 should be aware.

26 (d) Negligence.--A violation of subsection (b) constitutes  
27 negligence. The comparative negligence provisions of section  
28 7102 (relating to comparative negligence) shall apply to  
29 negligence under subsection (b).

30 (e) Downhill skiing.--

1           (1) The General Assembly finds that the sport of  
2           downhill skiing is practiced by a large number of citizens of  
3           this Commonwealth and also attracts to this Commonwealth  
4           large numbers of nonresidents significantly contributing to  
5           the economy of this Commonwealth. It is recognized that, as  
6           in some other sports, there are inherent risks in the sport  
7           of downhill skiing.

8           (2) The doctrine of voluntary assumption of risk as it  
9           applies to downhill skiing injuries and damages is not  
10          modified by section 7102.

11          (f) Definitions.--As used in this section, the following  
12          words and phrases shall have the meanings given to them in this  
13          subsection:

14          "Recreational activity." Any activity undertaken for the  
15          purpose of exercise, relaxation or pleasure, including practice  
16          or instruction in any such activity. Recreational activity  
17          includes, but is not limited to, hunting, fishing, trapping,  
18          camping, bowling, billiards, picnicking, exploring caves, nature  
19          study, dancing, bicycling, horseback riding, horseshoe-pitching,  
20          bird-watching, motorcycling, operating an all-terrain vehicle,  
21          ballooning, curling, throwing darts, hang gliding, hiking,  
22          tobogganing, sledding, sleigh riding, snowmobiling, skiing,  
23          skating, participation in water sports, weight and fitness  
24          training, sight-seeing, rock-climbing, cutting or removing wood,  
25          climbing observation towers, animal training, harvesting the  
26          products of nature and any other sport, game or educational  
27          activity.

28          Section 3. This act shall apply to:

29                 (1) Causes of action which accrue on or after the  
30                 effective date of section 7104 (relating to recreational

1 activity participant liability).

2 (2) Claims in which the negligent act or omission occurs  
3 on or after the effective date of section 7104.

4 Section 4. This act shall take effect in 60 days.