

Senate Fiscal Agency  
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**SFA****BILL ANALYSIS**

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House Bill 4198 (as reported without amendment)  
Sponsor: Representative Charles LaSata  
House Committee: Judiciary  
Senate Committee: Judiciary

Date Completed: 4-1-03

### **RATIONALE**

The Natural Resources and Environmental Protection Act (NREPA) states that each person who participates in snowmobiling accepts the risks associated with that sport, insofar as the dangers are obvious and inherent. Those risks include, but are not limited to, personal injuries or property damage that can result from variations in terrain; surface or subsurface snow or ice conditions; bare spots; rocks, trees, and other forms of natural growth or debris; and collisions with signs, fences, snow-grooming equipment, or other snowmobiles. This language was added to NREPA by Public Act 30 of 1998 (which otherwise pertained to snowmobile trails' intersecting with railroad grade crossings).

The effect of the "assumption of the risk" language is that people who incur injuries while snowmobiling are unable to recover damages from someone who may have been responsible the dangerous condition (unless the condition was not obvious and inherent). Evidently, this includes situations in which the responsible person was operating a snowmobile in a negligent manner or while under the influence of alcohol or drugs. It has been suggested that this unfairly denies recovery to injured snowmobilers and immunizes negligent individuals from claims against them.

### **CONTENT**

The bill would amend Part 821 (Snowmobiles) of the Natural Resources and Environmental Protection Act to provide that the accepted risks associated with snowmobiling would not include injuries to people or property that can result from another person's use of a snowmobile in a careless or negligent manner

likely to endanger people or property.

MCL 324.82126

### **BACKGROUND**

"Assumption of the risk" is a defense to a civil action for personal injury or property damage based on the defendant's alleged negligence. Essentially, it means that the plaintiff, in advance, agreed to take his or her chances from a known risk, and consented to relieve the defendant of an obligation of conduct toward the plaintiff. A person's consent to assume a risk can arise from an express agreement between the parties or, more commonly, it can be implied from the conduct of the plaintiff under the circumstances (such as golfing, watching a baseball game in person, or riding on a roller coaster). As a result of the plaintiff's consent, the defendant is relieved of all legal duty to the plaintiff and, therefore, cannot be held liable for negligence.

In some cases, a person's conduct might be contributory negligence, which reduces his or her recovery, but not assumption of the risk. For example, a jaywalker who crosses a busy street does not consent that the drivers will use no care and run the person down. While assumption of the risk may not apply, a court might find that the jaywalker's conduct amounted to contributory negligence.

In practice, some courts have refused to apply the common law assumption of the risk defense under various circumstances. These include, for example, situations in which the plaintiff has an obvious disadvantage in bargaining power; the defendant is performing a public service; or the defendant violates a safety statute.

## **ARGUMENTS**

*(Please note: The arguments contained in this analysis originate from sources outside the Senate Fiscal Agency. The Senate Fiscal Agency neither supports nor opposes legislation.)*

### **Supporting Argument**

It is reasonable to provide that a snowmobiler assumes the risk of collision in ordinary accidents, as well as other risks that can result from natural conditions. This can help prevent unwarranted litigation, protect property owners, and, indirectly promote the sport of snowmobiling, which is an important element of Michigan's tourism industry. On the other hand, it is unfair to hold that a snowmobiler assumes the risks created by a careless, reckless, and/or inebriated snowmobile operator. That party then is relieved of all liability toward the injured snowmobiler, even though his or her conduct may be a crime under the law. This is the result of NREPA's assumption of the risk language.

A representative of the Michigan Trial Lawyers Association submitted testimony about two incidents in which a snowmobiler was seriously injured due to the negligent action of another snowmobiler, but was unable to recover because of the statutory provision. In one case, while participating in Tip-Up-Town 2001 on Houghton Lake, a snowmobiler was broad-sided by another snowmobile operator who drove in off the lakeshore. In the other case, a snowmobiler was traveling in the woods on a two-way track, crested a hill, and encountered two snowmobilers heading in his direction on both sides of the track. In each case, the person causing the accident was found to be at fault, but the person's insurance company denied the injured party's claim due to the assumption of the risk language added to NREPA in 1998. In a third case, which did go to trial, the Wayne County Circuit Court granted the defendant's motion for summary disposition based on the language of the statute (*Palmieri v George and Maciejewski*, No. 99-910431-NI).

The bill would restore the legal rights of a limited category of injured snowmobilers, and eliminate the civil immunity that presently is extended to someone whose reckless snowmobiling causes property damage, personal injury, or death.

### **Supporting Argument**

Assumption of the risk is an outdated defense that can bar recovery in cases of genuine hardship, such as when the defendant acted wantonly, recklessly, or illegally. In some states, courts have abolished the defense either in specific areas, or entirely except in cases of express agreement between the parties. Although Michigan is among these states, the defense continues to exist in various statutes. The snowmobiling provision in NREPA is one example; another is the Ski Area Safety Act. While there may be a legitimate reason to retain the defense in some situations, such as to relieve property owners of liability, the negligence of snowmobile operators should not be protected misconduct at the expense of injured snowmobilers. Without the statutory defense, courts could examine both parties' conduct as well as the issue of the defendant's duty toward the plaintiff, and make an equitable and just decision.

Legislative Analyst: Suzanne Lowe

## **FISCAL IMPACT**

The bill would have no fiscal impact on State or local government.

Fiscal Analyst: Bethany Wicksall

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This analysis was prepared by nonpartisan Senate staff for use by the Senate in its deliberations and does not constitute an official statement of legislative intent.