WEST VIRGINIA CODE CHAPTER 20 ARTICLE 15

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§20-15-1. Legislative findings.

The West Virginia Legislature finds that trail-oriented recreation for off-highway vehicle enthusiasts offered by the Hatfield-McCoy Regional Recreation Authority significantly contributes to the economy of West Virginia and is enjoyed by a large and growing number of residents and nonresidents alike. Since it is recognized that there are inherent risks in the operation of such off-highway vehicles which should be understood by each operator and which cannot be eliminated by the Hatfield -McCoy Regional Recreation Authority or its authorized outfitters or licensees, it is the purpose of this article to define the areas of responsibility and affirmative acts which authorized outfitters must perform or risk being liable for loss, damage or injury suffered by participants and to define the risk which the participants expressly assume and for which there can be no recovery.

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§20-15-2. Definitions.

The terms in this article have the following meaning, unless the context clearly requires a different meaning:

(1) “All-terrain vehicle” or “ATV” means any motor vehicle designed for off-highway use and designed to travel on not less than three low-pressure tires, having a seat designed to be straddled by the operator and handlebars for steering control and intended by the manufacturer to be used by a single operator or by an operator and no more than one passenger.

(2) “Authorized outfitter” or “licensee” means a commercial outfitter, which is a person, partnership, limited liability company, corporation, other organization, or any combination thereof, licensed by the Hatfield-McCoy Regional Recreation Authority, or other regional recreation authorities, who operates from any temporary or permanent camp, private or public lodge, or private home, who provides guided tours or the rental of all-terrain vehicles, utility-terrain vehicles or motorcycles for use on assigned lands for monetary profit or gain.

(3) “Low-pressure tire” means every tire in which twenty pounds per square inch or less of compressed air is designed to support the load.

(4) “Motorcycle” means any motor vehicle manufactured with no more than two wheels and having a seat or saddle for the use of the operator.

(5) “Off-highway vehicle”, “off-highway recreational vehicle” or “OHV” means a vehicle intended for off-highway use and includes all-terrain vehicles, utility-terrain vehicles, motorcycles and off-road vehicles. All permissible off-highway vehicles, including off-road vehicles, are incorporated by reference in this article.

(6) “Off-road vehicle” or “ORV” means a vehicle that is suitable for off-road use. It includes a four-wheel drive vehicle such as a Jeep, pickup or sport utility vehicle. It also includes a specially designed, modified or customized off-road vehicle that is of a similar size to a vehicle manufactured for highway use.

(7) “Participant” means any person using the land, trails and facilities of the Hatfield-McCoy Regional Recreation Authority or other regional recreation authorities.

(8) “Regional recreational authority” means the Hatfield-McCoy Regional Recreation Authority or any regional recreation authority established and organized pursuant to the provisions of article fourteen-a of this chapter; and

(9) “Utility-terrain vehicle” or “UTV” means any motor vehicle with four or more low-pressure tires designed for off-highway use, having bench or bucket seating for each occupant and a steering wheel for control.

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§20-15-3. Scope.

This article shall only apply to the Hatfield-McCoy Regional Recreation Authority, authorized outfitters or licensees and any participant as defined in section two of this article.

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§20-15-4. Duties of authorized outfitters or licensees.

(a) Every authorized outfitter or licensee shall:

(1) Mark for identification purposes all equipment and vehicles used in the business;

(2) Maintain all equipment and vehicles used in the business in such condition that the equipment and vehicles are safe to operate or use as intended and recommended by the manufacturer;

(3) Provide facilities, equipment and services conforming to safety and other requirements established by the rules promulgated by the Hatfield-McCoy Regional Recreation Authority;

(4) Provide facilities, equipment and services as advertised or as agreed to by the authorized outfitter or licensee and the participant;

(5) Provide protective helmets which are size appropriate and which meet the current performance specifications established by the American National Standards Institute standard, z 90.1, the United States Department of Transportation federal motor vehicle safety standard no. 218 or Snell safety standards for protective headgear for vehicle users as defined by subdivision (5), subsection (a), section one, article one, chapter seventeen-f of this code, to all persons using all-terrain vehicles, utility-terrain vehicles or motorcycles;

(6) Provide all-terrain vehicles or motorcycles which are age and size appropriate as recommended by the manufacturer;

(7) Make reasonable and prudent efforts to ensure that participants utilizing the facilities, equipment or services of the authorized outfitter or licensee have received the safety training required by the provisions of the legislative rule for the use of the Hatfield-McCoy Regional Recreation Area;

(8) Make certain that every guide offered to participants by the authorized outfitter or licensee has a current standard first aid training certificate and CPR certificate issued by the American Red Cross or its equivalent and ATV safety training by the Hatfield-McCoy Recreation Authority or its designee;

(9) Make certain that employees carry first aid kits when acting as guides; and

(10) Make known to any participant utilizing the facilities, equipment or services of the authorized outfitter or licensee any dangerous condition as to trail lands, facilities or equipment to be traversed or used which is known by the outfitter or licensee.

(b) An authorized outfitter or licensee may not rent or lease an all-terrain vehicle, utility-terrain vehicle or motorcycle to a person under the age of eighteen years or allow any owner-operated all-terrain vehicle, utility-terrain vehicle or motorcycle on any guided tour when operated by any person under the age of eighteen years without first obtaining a

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written statement, signed by the minor's parent or guardian certifying that:

(1) Any machine to be operated by the minor or his or her parent or guardian is of a model that is recommended by the manufacturer as appropriate to the minor's age and size;

(2) All rules governing the use of the vehicle and the Hatfield-McCoy Recreation Area have been explained to the minor in sufficient detail to enable the minor to abide by the rules; and

(3) Any minor under the age of sixteen will remain under the supervision of and the sight of the parent or guardian at all times.

(c) An authorized outfitter or licensee may not rent or lease a utility-terrain vehicle to any person who is not at least sixteen years of age and in possession of a valid driver's license.

(d) An authorized outfitter or licensee shall provide a participant utilizing the facilities, equipment or services of the authorized outfitter or licensee with written notification of his or her duties as prescribed in section five of this article. The participant shall sign the notification prior to using the equipment. The signed notification, or an electronically stored copy thereof, shall be kept on file by the outfitter or licensee for not less than five years.

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§20-15-5. Duties of participants.

(a) All participants:

(1) Shall comply with any requirements established by law, including those in section one, article one, chapter seventeen-f of this code, which defines those acts prohibited by operators of all-terrain vehicles;

(2) Shall comply with the rules or regulations established for use of the Hatfield-McCoy Recreation Area;

(3) Shall, as to the Hatfield-McCoy Regional Recreation Authority or to any recreation area landowner, lessor, authorized outfitter or licensee, expressly assume the risk of and legal responsibility for any injury, loss or damage to person or property which results from participation in operating an all-terrain vehicle, utility-terrain vehicle or motorcycle, and caused by any of the following:

(A) Variations in terrain, slope or angle of terrain;

(B) Surface or subsurface conditions, including rocks, trees or other forms of forest growth or debris;

(C) Collisions with signs, markers, width restrictors, culverts, bridges, pipes, equipment, vehicles or any other objects or fixtures used in trail management, maintenance, construction or development;

(D) Collisions with signs, markers, pipes, equipment, vehicles or any component thereof used in natural resource maintenance, development or extraction;

(E) Collisions with electrical transmission poles, towers, lines, guy wires or any component thereof;

(4) Shall obey all rules or instructions announced by the Hatfield-McCoy Regional Recreation Authority, authorized outfitter or licensee with regard to the operation of the all-terrain vehicle or motorcycle he or she is operating; and

(5) Shall wear all safety equipment provided by the authorized outfitter or licensee, or which might otherwise be required by law.

(b) Each participant shall have the sole individual responsibility for:

(1) Knowing the range of his or her own ability to negotiate any slope or trail;

(2) Operating the ATV, UTV or motorcycle within the limits of the participant's own ability;

(3) Maintaining reasonable control of speed and course at all times;

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(4) Heeding all posted warnings;

(5) Operating only on trails designated by the Hatfield-McCoy Regional Recreation Authority; and

(6) Refraining from acting in a manner which a reasonable person would believe to be likely to cause or contribute to the injury of any person.

(c) If while riding an ATV, UTV or motorcycle any participant collides with any object or person, the responsibility for the collision shall be solely that of the participant or participants involved and not that of the Hatfield-McCoy Regional Recreation Authority, any recreation area landowner, lessor, authorized outfitter or licensee unless the Hatfield-McCoy Regional Recreation Authority, recreation area landowner, lessor, authorized outfitter or licensee or their agent caused the collision in a tortious manner.

(d) After an accident, a participant may not leave the area where the accident took place without:

(1) Leaving personal identification, including his or her name and address;

(2) Notifying the proper authorities; and

(3) Obtaining assistance when he or she knows or reasonably should know that any other person involved in the accident is in need of medical or other assistance.

(e) Where a participant is a lawful passenger, that participant may not distract or perform any act which might interfere with the safe operation of the all-terrain vehicle, utility-terrain vehicle or motorcycle of which he or she is a passenger.

(f) Any person under the age of sixteen years shall remain under the direct supervision and within sight of a parent or guardian both of whom must otherwise comply with state or federal laws and any rules or regulations promulgated thereunder.

(g) A participant may not make any alterations or tamper with the all-terrain vehicle, utility-terrain vehicle or motorcycle he or she is operating or of which he or she is a passenger in any way which would interfere with the continued safe operation of that machine.

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§20-15-6. Liability of authorized outfitters and licensees.

(a) Any authorized outfitter or licensee is liable for injury, loss or damage caused by failure to follow the duties set forth in section four of this article where the violation of duty is causally related to the injury, loss or damage suffered.

(b) An authorized outfitter or licensee is not liable for any injury, loss or damage caused by the negligence of any person who is not an agent or employee of the authorized outfitter or licensee.

(c) An authorized outfitter or licensee is not liable for any injury, loss or damage caused by a participant's violation of any duty described in section five of this article.

(d) An authorized outfitter or licensee is not liable for any injury, loss or damage caused solely by the participant's failure to negotiate the terrain or environment over which or through which the participant is operating his or her all-terrain vehicle, utility-terrain vehicle or motorcycle as described in section five of this article.

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§20-15-7. Liability of participants.

Any participant is liable for injury, loss or damage resulting from violations of the duties established in section five of this article where the violation of duty is causally related to the injury, loss or damage suffered.

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§20-15-8. Authorized outfitters required to carry insurance.

Every authorized outfitter or licensee shall carry public liability insurance in limits of not less than $300,000 per occurrence.

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