
WEST VIRGINIA CODE CHAPTER 20
ARTICLE 16

WV Legislature

§20-16-1. Short title.

This article may be cited as the "Nonprofit Adventure and Recreational Activity Responsibility Act".

WV Legislature

§20-16-2. Legislative purpose.

The Legislature finds that West Virginia is blessed by geography and natural features that make it ideal for a host of adventure and recreational activities attractive to nonprofit youth organizations interested in training and inspiring thousands of young people from other parts of the United States and throughout the world. The location by these organizations of facilities within the state will contribute significantly to the economy of West Virginia, and enhance the state's reputation as a place to visit and transact business. Because it is recognized that there are inherent risks in various adventure and recreational activities which should be understood by participants therein and which are essentially impossible for the organizations and their providers to eliminate, it is the purpose of this article to define those areas of responsibility and those affirmative acts for which these nonprofit organizations and their providers of adventure and recreational activities shall be liable for loss, damage or injury suffered by participants, and to further define those risks which the participants expressly assume and for which there can be no recovery.

§20-16-3. Definitions.

In this article, unless a different meaning plainly is required:

(1) "Adventure or recreational activity" means any program or activity sponsored by a nonprofit youth organization and conducted by the organization or its provider that involves inherent risks, including, but not limited to:

(A) All-terrain vehicle activities and similar activities, including all activities within the ATV Responsibility Act in article fifteen of this chapter;

(B) Biking, mountain-biking and similar activities;

(C) Canopy activities, zip-lines and similar activities;

(D) Climbing and repelling and similar activities in improved and natural areas, including climbing walls;

(E) Equestrian activities and similar activities, including all activities within the Equestrian Activities Responsibility Act in article four of this chapter;

(F) Firearms training and similar activities;

(G) Hiking, backpacking, camping and similar activities;

(H) Paintball and similar activities;

(I) Rope initiatives, cope and confidence courses, challenge courses, slacklines, challenge courses and similar activities;

(J) Skating, including ice skating, rollerblading, and similar activities;

(K) Snow activities, including snowshoeing, snow skiing, sledding, snowmobiling, and similar activities, including all activities within the Skiing Responsibility Act in article three-A of this chapter;

(L) Spelunking, caving, and similar activities;

(M) Water sports, including swimming, diving, canoeing, kayaking, boating, sailing, scuba diving, water skiing, and similar activities, including all activities within the Whitewater Responsibility Act in article three-b of this chapter;

(N) Windsurfing and similar activities.

(2) "Employee" means an officer, agent, employee, servant, or volunteer, whether compensated or not, whether full time or not, who is authorized to act and is acting within the scope of his or her employment or duties with the nonprofit youth organization or

provider.

(3) "Nonprofit youth organization" means any nonprofit organization, including any subsidiary, affiliate or other related entity within its corporate or other business structure, that has been chartered by the United States Congress to train young people to do things for themselves and others, and that has established an area of at least six thousand contiguous acres within West Virginia in which to provide adventure or recreational activities for these young people and others.

(4) "Participant" means any person engaging in an adventure or recreational activity.

(5) "Provider" means any individual, sole proprietorship, partnership, association, public or private corporation, the United States or any federal agency, this state or any political subdivision of this state, and any other legal entity which engages, with or without compensation, in organizing, promoting, presenting or providing or assisting in providing an adventure or recreational activity sponsored by a nonprofit youth organization, including one that allows the nonprofit youth organization the use of its land for the adventure or recreational activity.

§20-16-4. Duties of a nonprofit youth organization or provider.

Every nonprofit youth organization or provider shall:

- (1) Make reasonable and prudent efforts to determine the ability of a participant to safely engage in the adventure or recreational activity;
- (2) Make known to any participant any dangerous traits or characteristics or any physical impairments or conditions related to a particular adventure or recreational activity, of which the nonprofit youth organization or provider knows or through the exercise of due diligence could know;
- (3) Make known to any participant any dangerous condition as to land or facilities under the lawful possession and control of the nonprofit youth organization or provider, of which the nonprofit youth organization or provider knows or through the exercise of due diligence could know, by advising the participant in writing or by conspicuously posting warning signs upon the premises;
- (4) Assure that each participant has or is provided all equipment reasonably necessary for all activities covered by this article and, in providing equipment to a participant, make reasonable and prudent efforts to inspect such equipment to assure that it is in proper working condition and safe for use in the adventure or recreational activity;
- (5) Prepare and present to each participant or prospective participant, for his or her inspection and signature, a statement which clearly and concisely explains the liability limitations, restrictions and responsibilities set forth in this article: Provided, That said statement shall not contain nor have the effect of a waiver of a nonprofit youth organization or provider's duties set forth in this section;
- (6) Make reasonable efforts to provide supervision of participants while engaged in activities under this article.

§20-16-5. Duties of participants.

It is recognized that the adventure and recreational activities described in this article are hazardous to participants, regardless of all feasible safety measures which can be taken.

Each participant in an adventure or recreational activity expressly assumes the risk of and legal responsibility for any injury, loss or damage to person or property which results from participation in an activity. Each participant shall have the sole individual responsibility for knowing the range of his or her own ability to participate in a particular adventure or recreational activity, and it shall be the duty of each participant to act within the limits of the participant's own ability, to heed all posted warnings, to act in accordance with the instructions of any employee of the non-profit youth organization or provider, to perform an adventure or recreational activity only in an area or facility designated by the nonprofit youth organization or provider and to refrain from acting in a manner which may cause or contribute to the injury of anyone. There is a rebuttable presumption that any participant under the age of fourteen is incapable of comparative negligence or assumption of the risk. There is an irrebuttable presumption that any participant under the age of seven is incapable of comparative negligence or assumption of the risk. Any participant over the age of fourteen will be subject to the common law presumptions as to their acts and or omissions.

A participant involved in an accident shall not depart from the area or facility where the adventure or recreational activity took place without leaving personal identification, including name and address, or without notifying the proper authorities, or without obtaining assistance when that person knows or reasonably should know that any other person involved in the accident is in need of medical or other assistance.

§20-16-6. Liability of nonprofit youth organization or provider.

(a) A nonprofit youth organization or provider shall be 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. A nonprofit youth organization or provider shall not be liable for any injury, loss or damage caused by the negligence of any person who is not an agent or employee of the nonprofit youth organization or provider.

(b) A nonprofit youth organization or provider shall be liable for acts or omissions which constitute gross negligence or willful and wanton conduct which is the proximate cause of injury to a participant.

(c) A nonprofit youth organization or provider shall be liable for an intentional injury which he or she inflicts upon a participant.

(d) Every nonprofit youth organization and any provider for such non-profit youth organization shall carry public liability insurance in limits of no less than \$500,000 per person, \$1 million per occurrence and \$50,000 for property damage with coverage extending to any employee of the non-profit youth organization or provider in the course of their duties as an employee or volunteer. The failure to have in effect the insurance required by this section shall prevent the non-profit youth organization or provider from relying on the provisions of this article in any civil action brought by a participant.

§20-16-7. Liability of participants.

Any participant shall be liable for injury, loss or damage resulting from violations of the duties set forth in section five of this article: Provided, That none of the provisions in this article shall modify or eliminate any other statutory or common law provisions which specifically relate to or concern liability of minors or the capacity of minors to legally enter into contracts.

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§20-16-8. Applicability of article.

The provisions of this article are in addition to provisions of articles three-a, three-b, four and fifteen of this chapter, and are to be construed in pari materia.

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