WEST VIRGINIA CODE CHAPTER 20 ARTICLE 3B

WV Legislature

§20-3B-1. Legislative purposes.

Every year, in rapidly increasing numbers, the inhabitants of the State of West Virginia and nonresidents are enjoying the recreational value of West Virginia rivers and streams. The tourist trade is of vital importance to the State of West Virginia and the services offered by commercial whitewater outfitters and commercial whitewater guides significantly contribute to the economy of the State of West Virginia. The Legislature recognizes that there are inherent risks in the recreational activities provided by commercial whitewater outfitters and commercial whitewater guides which should be understood by each participant. It is essentially impossible for commercial whitewater outfitters and commercial whitewater guides to eliminate these risks. It is the purpose of this article to define those areas of responsibility and affirmative acts for which commercial whitewater outfitters and commercial whitewater guides are liable for loss, damage or injury.

WV Legislature

§20-3B-2. Definitions.

Unless the context of usage clearly requires otherwise:

(a) "Commercial whitewater outfitter" means any person, partnership, corporation or other organization, or any combination thereof, as defined in section twenty-three, article two of this chapter.

(b) "Commercial whitewater guide" means any person as defined in section twenty-three, article two of this chapter.

(c) "Participant" means any person using the services of a commercial whitewater outfitter or commercial whitewater guide on any river, portions of rivers or waters of the state.

WV Legislature

§20-3B-3. Duties of commercial whitewater outfitters and commercial whitewater guides.

(a) All commercial whitewater outfitters and commercial whitewater guides offering professional services in this state shall provide facilities, equipment and services as advertised or as agreed to by the commercial whitewater outfitter, commercial whitewater guide and the participant. All services, facilities and equipment provided by commercial whitewater outfitters and commercial whitewater guides in this state shall conform to safety and other requirements set forth in article two of this chapter and in the rules promulgated by the commercial whitewater advisory board created by section twenty-three-a, article two of this chapter.

(b) In addition to the duties set forth in subsection (a) of this section, all commercial whitewater guides providing services for whitewater expeditions in this state shall, while providing such services, conform to the standard of care expected of members of their profession.

WV Legislature

§20-3B-4. Duties of participants.

(a) Participants have a duty to act as would a reasonably prudent person when engaging in recreational activities offered by commercial whitewater outfitters and commercial whitewater guides in this state.

(b) No participant may:

(1) Board upon or embark upon any commercial whitewater expedition when intoxicated or under the influence of nonintoxicating beer, intoxicating beverages or controlled substances; or

(2) Fail to advise the trip leader or the trip guide of any known health problems or medical disability and any prescribed medication that may be used in the treatment of such health problems during the course of the commercial whitewater expedition; or

(3) Engage in harmful conduct or willfully or negligently engage in any type of conduct which contributes to or causes injury to any person or personal property; or

(4) Perform any act which interferes with the safe running and operation of the expedition, including failure to use safety equipment provided by the commercial whitewater outfitter or failure to follow the instructions of the trip leader or trip guide in regard to the safety measures and conduct requested of the participants; or

(5) Fail to inform or notify the trip guide or trip leader of any incident or accident involving personal injury or illness experienced during the course of any commercial whitewater expedition. If such injury or illness occurs, the participant shall leave personal identification, including name and address, with the commercial whitewater outfitter's agent or employee.

WV Legislature

§20-3B-5. Liability of commercial whitewater outfitters and commercial whitewater guides.

It is recognized that some recreational activities conducted by commercial whitewater outfitters and commercial whitewater guides are hazardous to participants regardless of all feasible safety measures which can be taken.

(a) No licensed commercial whitewater outfitter or commercial whitewater guide acting in the course of his employment is liable to a participant for damages or injuries to such participant unless such damage or injury was directly caused by failure of the commercial whitewater outfitter or commercial whitewater guide to comply with duties placed on him by article two of this chapter, by the rules of the commercial whitewater advisory board, or by the duties placed on such commercial whitewater outfitter or commercial whitewater guide by the provisions of this article.

(b) The limitations on liability created by this article apply only to commercial whitewater outfitters licensed under the provisions of article two of this chapter and to commercial whitewater guides who are agents or employees of licensed commercial whitewater outfitters, and only when the commercial whitewater outfitter or commercial whitewater guide is acting within the course of his employment.

WV Legislature