WEST VIRGINIA CODE CHAPTER 21 ARTICLE 15

WV Legislature

§21-15-1. Legislative purpose.

The Legislature finds that:

(1) The sport of ziplining and canopy touring is practiced by a large number of citizens of West Virginia and also attracts to West Virginia a large number of nonresidents, significantly contributing to the economy of West Virginia; and

(2) There are inherent risks in the sport of ziplining and canopy touring which should be understood by each participant and which are essentially impossible to eliminate by the zipline or canopy tour operator.

WV Legislature

§21-15-2. Definitions.

As used in this article:

(1) "ACCT" means the Association for Challenge Course Technology;

(2) "Canopy tours" means a facility not located in an amusement park or carnival which is a supervised or guided educational or recreational activity including, but not limited to, beams, bridges, cable traverses, climbing walls, nets, platforms, ropes, swings, towers and ziplines, which may be installed on or in trees, poles, portable structures or buildings, or be part of self-supporting structures.

(3) "Challenge course standards" means the Challenge Course Standards: Association for Challenge Course Technology, Seventh Edition (2008), or substantially equivalent standards.

(4) "Division" means the West Virginia Division of Labor.

(5) "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 zipline operator.

(6) "Operator" means any person, partnership, corporation or other commercial entity and their agents, officers, employees or representatives, who has operational responsibility for any zipline or canopy tour.

(7) "Participant" means any person who engages in activities on a zipline or canopy tour individually or in a group activity supervised by a zipline or canopy tour operator.

(8) "Special inspector" means a professional inspector who meets the qualifications set forth in ACCT or substantially equivalent standards and is certified by the division pursuant to section eight;

(9) "Zipline" means a commercial recreational activity where participants, by the use of a permanent cable or rope line suspended between support structures, enables a participant attached to a pulley to traverse from one point to another, for the purpose of giving the participants amusement, pleasure, thrills or excitement.

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§21-15-3. Duties of a zipline or canopy tour operators.

Every operator shall:

(1) Construct, install, maintain and operate all ziplines and canopy tours in accordance with ACCT challenge course standards or substantially equivalent standards;

(2) Ensure that ziplines and canopy tours are inspected at least annually by the Division or a special inspector;

(3) Train employees operating ziplines and canopy tours in accordance with national standards associated with their profession;

(4) Procure and maintain commercial general liability insurance against claims for personal injury, death and property damages occurring upon, in or about the zipline or canopy tour which affords protection to the limit of not less than $1 million for injury or death of a single person, to the limit of $2 million in the aggregate, and to the limit of not less than $50,000 for property damage; and

(5) Maintain records for a period of at least three years from the date of the creation of the record of:

(A) Proof of insurance;

(B) Inspection reports;

(C) Maintenance records; and

(D) Participant acknowledgment of risks and duties.

WV Legislature

§21-15-4. Responsibilities of participants; prohibited acts.

(a) It is the duty of each participant to participate as instructed by the operator.

(b) Participants have a duty to act as would a reasonably prudent person when engaging in the sport of ziplining or canopy touring offered by a operator.

(c) No participant may:

(1) Use a zipline or canopy tour without the authority, supervision and guidance of the zipline operator;

(2) Drop, throw or expel any object from a zipline or canopy tour except as authorized by the operator;

(3) Perform any act which interferes with the running or operation of a zipline or canopy tour; or

(4) Engage in any harmful conduct, or willfully or negligently engage in any type of conduct with contributes to cause injury to any person.

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§21-15-5. Liability of zipline operators.

(a) A zipline operator shall be liable for injury, loss or damage caused by failure to follow the duties and standard of care set forth in section three of this article where the violation of duty is causally related to the injury, loss or damage suffered.

(b) A zipline operator 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 operator.

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§21-15-6. Rules.

The division shall promulgate rules for the safe installation, repair, maintenance, use, operation and inspection of all ziplines and canopy tours consistent with ACCT Challenge Course Standards. The rules shall be in addition to any existing applicable safety orders and shall be concerned with the installation, repair, maintenance, use, operation and inspection of ziplines and canopy tours consistent with ACCT Challenge Course Standards. The rules shall be promulgated and designed for the purpose of developing ziplines and canopy tours as a recreational activity and additional tourist attraction in West Virginia. All rules shall be promulgated in accordance with the provisions of article three, chapter twenty-nine-a of this code.

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§21-15-7. Inspection and permit fees.

(a) The division shall charge inspection and permit fees. The annual permit fee is $100 for each zipline or canopy tour.

(1) The annual inspection fee, if an inspection is to be done by the division, is $100 for each zipline or canopy tour.

(2) The annual inspection fee, if an inspection is to be done by the division, is due at the time of application for the annual permit.

(3) The division shall waive the inspection fee for a zipline or canopy tour whose operator provides proof of nonprofit business status or for any zipline or canopy tour whose operator provides proof that an inspection has been completed within the last year by a certified special inspector as provided in §21-15-9 of this code.

(b) The division may charge additional inspection fees equal to the annual inspection fee for additional inspections required as the result of the condemnation of a device for safety standards violations and for inspections required as a result of accidents involving serious or fatal injury. If any operator requires an inspection as the result of a violation of the permitting requirements of §21-15-9 of this code, the division shall charge the operator $75 per hour in addition to the established inspection fee, including travel time.

(c) All fees paid pursuant to this article shall be paid to the Commissioner of Labor and deposited in an appropriated special revenue account in the State Treasury known as the Amusement Rides and Amusement Attractions Safety Fund and expended for the implementation and enforcement of this article. Through June 30, 2019, amounts collected which are found from time to time to exceed funds needed for the purposes set forth in this article may be utilized by the commissioner as needed to meet the division’s funding obligations: Provided, That beginning July 1, 2019, amounts collected may not be utilized by the commissioner as needed to meet the division’s funding obligations.

(d) No inspection fee may be charged public agencies.

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§21-15-8. Inspectors.

(a) The Division may hire or contract with inspectors to inspect zipline or canopy tours. The Division is responsible for oversight and review of the activities of special inspectors and may hire or contract with inspectors to review the activities of special inspectors.

(b) The Division shall certify all special inspectors. The Division may suspend or revoke any certification of a special inspector upon a showing of good cause. The Division shall propose rules for legislative approval in accordance with the provisions of article three, chapter twenty-nine-a of this code providing an application process and minimum qualifications for certification of special inspectors. The Division may charge an annual certification fee not to exceed $50.00.

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§21-15-9. Permits; application; annual inspection.

(a) No operator may knowingly permit the operation of a zipline or canopy tour without a permit issued by the Division.

(b) Each year and at least fifteen days before the first time the zipline or canopy tour is made available in this state for public use, an operator shall apply for a permit to the Division on a form furnished by the Division and containing any information the Division may require.

(c) The Division shall, upon application and within ten days of the first time the zipline or canopy tour is made available in this state for public use, inspect the zipline or canopy tour.

(d) The Division shall inspect all zipline or canopy tours at least once every year.

(e) The Division may conduct inspections at any reasonable time without prior notice: Provided, That in lieu of performing its own inspection, the Division shall accept inspection reports from special inspectors certified by the Division.

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§21-15-10. Issuance of permit; certificate of inspection; availability to public.

If, after inspection, a zipline or canopy tour, is found to comply with the rules of the division, the division shall issue a permit to operate. The permit shall be in the form of a certificate of inspection and shall be kept in the records of any operator for a three-year period and shall be readily accessible to the public for inspection at any reasonable time at the zipline location. A copy of the certificate, showing the last date of inspection, shall be affixed to the zipline upon issuance, or at any other location designated by the commissioner of the division: Provided, That the division shall take final action upon all completed permit applications within thirty days of receipt if the application is uncontested, or within ninety days if the application is contested.

WV Legislature

§21-15-11. Notice of serious physical injury or fatality; investigations; records available to public.

An operator of a zipline or canopy tour shall notify the division not later than twenty-four hours after any fatality or accident occurring as a result of the operation of the zipline or canopy tour that results in a serious physical injury to any person requiring medical treatment or results in a loss of consciousness to any person. Notice to the division may be oral, written or by electronic means, but this notice requirement in no way limits the an operators responsibility to notify emergency or law enforcement personnel of the incident as soon as is reasonably practicable. The division shall investigate each fatality or accident and any safety-related complaint involving a zipline or canopy tour in this state about which the division receives notice. Every operator of a zipline or canopy tour shall keep a record of each accident or fatality and the record shall be kept with the certificate of inspection required by this article and shall be readily accessible to the public for inspection at any reasonable time at the place where the zipline or canopy tour is located.

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§21-15-12. Service of process.

Any person, firm or corporation operating a zipline may be served with civil process in the same manner as if the owner or operator was a domestic or foreign corporation.

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§21-15-13. Temporary cessation of the operation of a zipline or canopy tour determined to be unsafe.

The division may order, in writing, a temporary cessation of operation of a zipline if it has been determined after inspection to be hazardous or unsafe. Operation may not resume until the conditions are corrected to the satisfaction of the division.

WV Legislature

§21-15-14. Regulation of ziplines by cities and counties.

Nothing contained in this article prevents cities and counties from regulating a zipline or canopy tour with regard to any aspect not relating to installation, repair, maintenance, use, operation and inspection of a zipline or canopy tour.

WV Legislature