

No. 1452

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WEST VIRGINIA LEGISLATURE

REGULAR SESSION, 1984



ENROLLED

Com. Sub. for
HOUSE BILL No. 1452

(By ~~the~~ *Del. Harman & Del. J. Martin*)



Passed March 10, 1984

In Effect Ninety Days from Passage



ENROLLED
COMMITTEE SUBSTITUTE
FOR

H. B. 1452

(By DELEGATE HARMAN and DELEGATE J. MARTIN)

[Passed March 10, 1984; in effect ninety days from passage.]

AN ACT to amend chapter twenty of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new article, designated article three-a, relating to ski areas generally; the operation of such areas and of aerial tramways in connection therewith; providing definitions of certain terms with respect thereto; the relative duties of operators, aerial tramway passengers and skiers; and setting forth the liabilities of such operators, passengers and skiers.

Be it enacted by the Legislature of West Virginia:

That chapter twenty of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended by adding thereto a new article, designated article three-a, to read as follows:

ARTICLE 3A. SKIING RESPONSIBILITY ACT.

§20-3A-1. Legislative purpose.

1 The Legislature finds that the sport of skiing is practiced
2 by a large number of citizens of West Virginia and also at-
3 tracts to West Virginia a large number of nonresidents, sig-
4 nificantly contributing to the economy of West Virginia. Since
5 it is recognized that there are inherent risks in the sport of
6 skiing which should be understood by each skier and which

7 are essentially impossible to eliminate by the ski area operator,
8 it is the purpose of this article to define those areas of
9 responsibility and affirmative acts for which ski area opera-
10 tors shall be liable for loss, damage or injury and those risks
11 which the skier expressly assumes for which there can be
12 no recovery.

§20-3A-2. Definitions.

1 Unless the context of usage clearly requires otherwise:

2 (a) "Aerial passenger tramway" means any device oper-
3 ated by a ski area operator used to transport passengers, by
4 single or double reversible tramway; chair lift or gondola
5 lift; T-bar lift, J-bar lift, platter lift or similar device; or a
6 fiber rope tow.

7 (b) "Passenger" means any person who is lawfully using
8 an aerial passenger tramway, or is waiting to embark or has
9 recently disembarked from an aerial passenger tramway and is
10 in its immediate vicinity.

11 (c) "Ski area" means any property owned or leased and
12 under the control of the ski area operator or operators within
13 West Virginia.

14 (d) "Ski area operator" means any person, partnership,
15 corporation or other commercial entity and their agents,
16 officers, employees or representatives, or the state of West
17 Virginia, or any political subdivision thereof, who has opera-
18 tional responsibility for any ski area or aerial passenger tram-
19 way.

20 (e) "Skiing area" means all slopes and trails not including
21 any aerial passenger tramway.

22 (f) "Skier" means any person present at a skiing area
23 under the control of a ski area operator for the purpose of
24 engaging in the sport of skiing by utilizing the ski slopes
25 and trails, but does not include a passenger using an aerial
26 passenger tramway.

27 (g) "Ski slopes and trails" means those areas designated
28 by the ski area operator to be used by skiers for the purpose
29 of participating in the sport of skiing.

§20-3A-3. Duties of ski area operators with respect to ski areas.

1 Every ski area operator shall:

2 (1) Mark all trail maintenance vehicles and furnish such
3 vehicles with flashing or rotating lights which shall be in
4 operation whenever the vehicles are working or are in
5 movement in the skiing area.

6 (2) Mark with a visible sign or other warning implement
7 the location of any hydrant or similar equipment used in
8 snowmaking operations and located on ski slopes and trails.

9 (3) Mark conspicuously the top or entrance to each ski
10 slope, trail or area to designate open or closed and relative
11 degree of difficulty using the appropriate symbols approved
12 by the national ski areas association as of the effective date
13 of this article and as may thereafter be modified by the
14 association.

15 (4) Maintain one or more trail boards at prominent lo-
16 cations at each ski area displaying that area's network of
17 ski trails and slopes with each trail and slope rated thereon
18 in accordance with the aforementioned symbols' code and
19 containing a key to the code in accordance with designations
20 in subdivision (3) herein.

21 (5) Designate by trail board or otherwise which trails
22 or slopes are open or closed.

23 (6) Place, or cause to be placed, whenever snow grooming
24 or snowmaking operations are being undertaken upon any trail
25 or slope while such trail or slope is open to the public, a
26 conspicuous notice to that effect at or near the top of the
27 trail or slope.

28 (7) Post notice at prominent locations of the require-
29 ments of this article concerning the use of ski retention devices.
30 This obligation shall be the sole requirement imposed upon
31 the ski area operator regarding the requirement for or use
32 of ski retention devices.

33 (8) Maintain the ski areas in a reasonably safe con-
34 dition, except that such operator shall not be responsible
35 for any injury, loss or damage caused by the following:

36 variations in terrain; surface or subsurface snow or ice con-
37 ditions; bare spots, rocks, trees, other forms of forest growth
38 or debris; collisions with pole lines, lift towers or any com-
39 ponent thereof; or, collisions with snowmaking equipment
40 which is marked by a visible sign or other warning implement
41 in compliance with subdivision two of this section.

42 (9) When no certified ambulance service is available in
43 the vicinity, have on duty at or near the skiing area, during
44 all times that skiing areas are open for skiing, at least one
45 trained and currently certified emergency medical technician.

§20-3A-4. Responsibilities of passengers.

1 No passenger shall:

2 (1) Board or embark upon or disembark from an aerial
3 passenger tramway except at an area designated for such
4 purpose;

5 (2) Drop, throw or expel any object from an aerial pas-
6 senger tramway;

7 (3) Perform any act which interferes with the running or
8 operation of an aerial passenger tramway;

9 (4) Enter the boarding area of or use any aerial passenger
10 tramway without requesting and receiving instruction on its
11 use from the ski area operator, unless the passenger has the
12 ability to use it safely without instruction.

13 (5) Engage in any harmful conduct, or willfully or negli-
14 gently engage in any type of conduct which contributes to or
15 causes injury to any person; or

16 (6) Embark on an aerial passenger tramway without the
17 authority, express or implied, of the ski area operator.

§20-3A-5. Duties of skiers.

1 It is recognized that skiing as a recreational sport is haz-
2 ardous to skiers, regardless of all feasible safety measures
3 which can be taken.

4 Each skier expressly assumes the risk of and legal respon-
5 sibility for any injury, loss of damage to person or property

6 which results from participation in the sport of skiing includ-
7 ing, but not limited to, any injury, loss or damage caused by
8 the following: Variations in terrain; surface or subsurface
9 snow or ice conditions; bare spots, rocks, trees, other forms
10 of forest growth or debris; collisions with pole lines, lift
11 towers or any component thereof; or, collisions with snow-
12 making equipment which is marked by a visible sign or other
13 warning implement in compliance with section three of this
14 article. Each skier shall have the sole individual responsibility
15 for knowing the range of his own ability to negotiate any slope
16 or trail, and it shall be the duty of each skier to ski within
17 the limits of the skier's own ability, to maintain reasonable
18 control of speed and course at all times while skiing, to heed
19 all posted warnings, to ski only on a skiing area designated by
20 the ski area operator and to refrain from acting in a manner
21 which may cause or contribute to the injury of anyone. If
22 while actually skiing, any skier collides with any object or
23 person, except an obviously intoxicated person of whom the
24 ski area operator is aware, the responsibility for such collision
25 shall be solely that of the skier or skiers involved and not that
26 of the ski area operator.

27 No person shall place any object in the skiing area or on the
28 uphill track or on any aerial passenger tramway which may
29 cause a passenger or skier to fall; or which crosses the track
30 of any T-bar lift, J-bar lift, platter lift or similar device, or a
31 fiber rope tow except at a designated location; nor shall any
32 person involved in a skiing accident depart the ski area with-
33 out leaving personal identification, including name and ad-
34 dress, or without notifying the proper authorities or without
35 obtaining assistance when that person knows or reasonably
36 should know that any other person involved in the accident
37 is in need of medical or other assistance. No skier shall fail
38 to wear retention straps or other devices to help prevent run-
39 away skis.

§20-3A-6. Liability of ski area operators.

1 Any ski area operator shall be liable for injury, loss or
2 damage caused by failure to follow the duties set forth in
3 section three of this article where the violation of duty is

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4 ^{causally}~~casually~~ related to the injury, loss or damage suffered. A ski
5 area operator shall not be liable for any injury, loss or damage
6 caused by the negligence of any person who is not an agent or
7 employee of such operator, nor shall a ski area operator be
8 liable for any injury, loss or damage caused by any object
9 dropped, thrown or expelled by a passenger from an aerial
10 passenger tramway. Every ski area operator shall carry public
11 liability insurance in limits of no less than one hundred thou-
12 sand dollars per person, three hundred thousand dollars per
13 occurrence, and ten thousand dollars for property damage.

§20-3A-7. Liability of passengers.

1 Any passenger shall be liable for injury, loss or damage
2 resulting from violations of the duties set forth in section
3 four.

§20-3A-8. Liability of skiers.

1 Any skier shall be liable for injury, loss or damage re-
2 sulting from violations of the duties set forth in section five.

The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

Harrell E. Allen

Chairman Senate Committee

Donald Anello

Chairman House Committee

Originating in the House.

Takes effect ninety days from passage.

Fred C. Wulke

Clerk of the Senate

Donald L. Stopp

Clerk of the House of Delegates

Warren R. Wilson

President of the Senate

W. M. Lee, Jr.

Speaker House of Delegates

The within is approved this the 30
day of March, 1984.

John M. Rhyne

Governor

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