

HB 4119 S

FILED

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OFFICE WEST VIRGINIA
SECRETARY OF STATE

WEST VIRGINIA LEGISLATURE

SECOND REGULAR SESSION, 2006



ENROLLED

COMMITTEE SUBSTITUTE
FOR

House Bill No. 4119

(By Delegates Cann, Kominar, Michael,
H. White, Browning, Craig, Stalnaker,
Poling, G. White and Azinger)



Passed March 11, 2006

In Effect Ninety Days from Passage

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H. B. 4119

(BY DELEGATES CANN, KOMINAR, MICHAEL,
H. WHITE, BROWNING, CRAIG, STALNAKER,
POLING, G. WHITE AND AZINGER)

[Passed March 11, 2006; in effect ninety days from passage.]

AN ACT to amend the Code of West Virginia, 1931, as amended, by adding thereto a new article, designated §20-15-1, §20-15-2, §20-15-3, §20-15-4, §20-15-5, §20-15-6, §20-15-7 and §20-15-8, all relating to creating the ATV responsibility act; providing for findings, definitions and scope; providing the duties of authorized outfitters and licensees; providing the duties and the responsibilities of participants; providing indemnification and liabilities of authorized outfitters, licensees and participants; and requiring authorized outfitters; and licensees to carry insurance.

Be it enacted by the Legislature of West Virginia:

That the Code of West Virginia, 1931, as amended, be amended by adding thereto a new article, designated §20-15-1, §20-15-2, §20-15-3, §20-15-4, §20-15-5, §20-15-6, §20-15-7, and §20-15-8, all to read as follows:

ARTICLE 15. ATV RESPONSIBILITY ACT.

§20-15-1. Legislative findings.

1 The West Virginia Legislature finds that trail-oriented
2 recreation for off-highway vehicle enthusiasts offered by the
3 Hatfield-McCoy Trail significantly contributes to the economy
4 of West Virginia and is enjoyed by a large and growing number
5 of residents and nonresidents alike. Since it is recognized that
6 there are inherent risks in the operation of such off-highway
7 vehicles which should be understood by each operator and
8 which cannot be eliminated by authorized outfitters or licens-
9 ees, it is the purpose of this article to define the areas of
10 responsibility and affirmative acts which authorized outfitters
11 must perform or risk being liable for loss, damage or injury
12 suffered by participants, and to define the risk which the
13 participants expressly assume and for which there can be no
14 recovery.

§20-15-2. Definitions.

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

3 (1) "All-terrain vehicle" or "ATV" shall mean any motor
4 vehicle, fifty-two inches or less in width, having an unladen
5 weight of eight hundred pounds or less, traveling on four or
6 more low pressure tires with a seat designed to be straddled by
7 the rider, designed for or capable of travel over unimproved
8 terrain.

9 (2) "Motorcycle" means any motor vehicle having a seat or
10 saddle for the use of the rider and designed to travel on not
11 more than two wheels in contact with the ground.

12 (3) "Authorized outfitter" or "licensee" means a commer-
13 cial outfitter, which is a person, partnership, limited liability

14 company (“LLC”), corporation, other organization, or any
15 combination thereof, licensed by the Hatfield-McCoy Regional
16 Recreation Authority, who operate from any temporary or
17 permanent camp, private or public lodge, or private home, who
18 provide guided tours or the rental of all-terrain vehicles or
19 motorcycles for use on assigned lands for monetary profit or
20 gain.

21 (4) “Participant” means any person using the services or
22 equipment of an authorized outfitter or licensee, including
23 passengers of an all-terrain vehicle or motorcycle.

§20-15-3. Scope.

1 The provisions of this article shall only apply to authorized
2 outfitters or licensees licensed by the Hatfield-McCoy Regional
3 Recreation Authority and any participant as defined in section
4 two.

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

1 (a) Every authorized outfitter or licensee shall:

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

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

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

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

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

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

26 (7) Make reasonable and prudent efforts to ensure that
27 participants have received the safety training required by the
28 provisions of the legislative rule for the use of the Hatfield-
29 McCoy Regional Recreation Area;

30 (8) Make certain that every guide offered to participants by
31 the authorized outfitter or licensee has a current standard first
32 aid training certificate and CPR certificate issued by the
33 American Red Cross or its equivalent and ATV safety training
34 through the ATV Safety Institute; and

35 (9) Make certain that employees carry first aid kits when
36 acting as guides.

37 (10) Make known to any participant any dangerous condi-
38 tion as to trail lands, facilities or equipment to be traversed or
39 used which is known by the outfitter or licensee.

40 (b) An authorized outfitter or licensee may not rent or lease
41 an all-terrain vehicles or motorcycles to a person under the age

42 of eighteen years or allow any owner-operated all-terrain
43 vehicle or motorcycle on any guided tour when operated by any
44 person under the age of eighteen years without first obtaining
45 a written statement, signed by the minor's parent or guardian
46 certifying that:

47 (1) Any machine to be operated by the minor or his parent
48 or guardian is of a model that is recommended by the manufac-
49 turer as appropriate to the minor's age and size;

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

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

57 (c) An authorized outfitter or licensee shall provide a
58 participant with written notification of his or her duties as
59 prescribed in section five of this article, and the participant shall
60 sign the notification and shall be kept on file by the outfitter or
61 licensee for not less than five years.

§20-15-5. Duties of participants.

1 (a) All participants:

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

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

8 (3) Shall, as to the operator or licensee, expressly assume
9 the risk of and legal responsibility for any injury, loss or
10 damage to person or property which results from participation
11 in operating an all-terrain vehicle or motorcycle owned by the
12 authorized outfitter or licensee, and caused by any of the
13 following:

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

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

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

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

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

26 (4) Shall obey all rules or instructions announced by the
27 authorized outfitter or licensee, with regard to the operation of
28 the all-terrain vehicle or motorcycle he or she is operating; and

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

32 (b) Each participant shall have the sole individual responsi-
33 bility for:

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

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

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

40 (4) Heeding all posted warnings;

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

43 (6) Refraining from acting in a manner which may cause or
44 contribute to the injury of any person.

45 (c) If while riding an ATV or motorcycle, any participant
46 collides with any object or person, the responsibility for the
47 collision shall be solely that of the participant or participants
48 involved and not that of the authorized outfitter or licensee
49 unless the authorized outfitter or licensee or his or her agent
50 caused the collision in a tortious manner.

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

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

55 (2) Notifying the proper authorities; and

56 (3) Obtaining assistance when he or she knows or reason-
57 ably should know that any other person involved in the accident
58 is in need of medical or other assistance.

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

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

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

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

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

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

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

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

§20-15-7. Liability of participants.

1 Any participant is liable for injury, loss or damage resulting
2 from violations of the duties established in section five of this

3 article where the violation of duty is causally related to the
4 injury, loss or damage suffered.

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

1 Every authorized outfitter or licensee shall carry public
2 liability insurance in limits of not less than three hundred
3 thousand dollars per occurrence.

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



Chairman Senate Committee



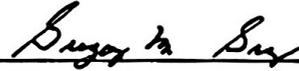
Chairman House Committee

Originating in the House.

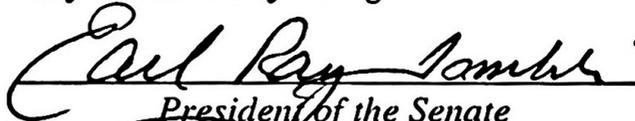
In effect ninety days from passage.



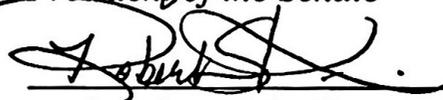
Clerk of the Senate



Clerk of the House of Delegates

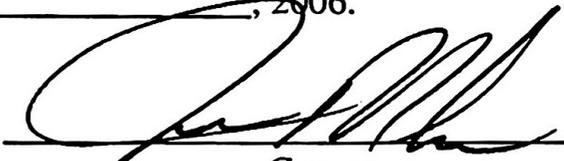


President of the Senate



Speaker of the House of Delegates

The within is appended this the 30th
day of March, 2006.



Governor

PRESENTED TO THE
GOVERNOR

MAR 29 2006

Time 10:30 am