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
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:

ARTICLE 15. ATV RESPONSIBILITY ACT.

§20-15-1. Legislative findings.

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


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

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

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

(3) "Authorized outfitter" or "licensee" means a commercial outfitter, which is a person, partnership, limited liability
company ("LLC"), corporation, other organization, or any combination thereof, licensed by the Hatfield-McCoy Regional Recreation Authority, who operate from any temporary or permanent camp, private or public lodge, or private home, who provide guided tours or the rental of all-terrain vehicles or motorcycles for use on assigned lands for monetary profit or gain.

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


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

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

(a) Every authorized outfitter or licensee shall:

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

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

(3) Provide facilities, equipment and services, conforming to safety and other requirements established by the rules promulgated by the Hatfield-McCoy Regional Recreation Authority;
(4) Provide facilities, equipment and services as advertised or as agreed to by the authorized outfitter or licensee and the participant;

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

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

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

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

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

(10) Make known to any participant any dangerous condition as to trail lands, facilities or equipment to be traversed or used which is known by the outfitter or licensee.

(b) An authorized outfitter or licensee may not rent or lease an all-terrain vehicles or motorcycles to a person under the age
of eighteen years or allow any owner-operated all-terrain
vehicle or motorcycle on any guided tour when operated by any
person under the age of eighteen years without first obtaining
a written statement, signed by the minor’s parent or guardian
certifying that:

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

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

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

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

§20-15-5. Duties of participants.

(a) All participants:

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

(2) Shall comply with the rules or regulations established
for use of the Hatfield-McCoy Recreation Area;
(3) Shall, as to the operator or licensee, expressly assume the risk of and legal responsibility for any injury, loss or damage to person or property which results from participation in operating an all-terrain vehicle or motorcycle owned by the authorized outfitter or licensee, and caused by any of the following:

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

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

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

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

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

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

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

(b) Each participant shall have the sole individual responsibility for:

(1) Knowing the range of his or her own ability to negotiate any slope or trail;
(2) Operating the ATV or motorcycle within the limits of the participant's own ability;

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

(4) Heeding all posted warnings;

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

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

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

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

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

(2) Notifying the proper authorities; and

(3) Obtaining assistance when he or she knows or reasonably should know that any other person involved in the accident is in need of medical or other assistance.

(e) Where a participant is a lawful passenger, that participant may not distract or perform any act which might interfere with the safe operation of the all-terrain vehicle or motorcycle of which he or she is a passenger.
(f) Any person under the age of sixteen years shall remain under the direct supervision and within sight of a parent or guardian both of whom must otherwise comply with state or federal laws and any rules or regulations promulgated thereunder.

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


(a) Any authorized outfitter or licensee is 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.

(b) An authorized outfitter or licensee 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 authorized outfitter or licensee.

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

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


Any participant is liable for injury, loss or damage resulting from violations of the duties established in section five of this
article where the violation of duty is causally related to the injury, loss or damage suffered.


Every authorized outfitter or licensee shall carry public liability insurance in limits of not less than three hundred thousand dollars per occurrence.
That Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

Randy White  
Chairman Senate Committee

K.B. Bay  
Chairman House Committee

Originating in the House.

In effect ninety days from passage.

Russell E. Keene  
Clerk of the Senate

Gregg W. Phillips  
Clerk of the House of Delegates

Earl Ray Tomblin  
President of the Senate

Robert C. Byrd  
Speaker of the House of Delegates

The within was approved this the 30th day of March 2006.

Robert L. Wise  
Governor