WEST VIRGINIA LEGISLATURE
SEVENTY-NINTH LEGISLATURE
REGULAR SESSION, 2010

ENROLLED
COMMITTEE SUBSTITUTE
FOR
Senate Bill No. 567
(Senators Laird, White and Kessler, original sponsors)

[Passed March 13, 2010; in effect ninety days from passage.]
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AN ACT to amend the Code of West Virginia, 1931, as amended, by adding thereto a new article, designated §20-16-1, §20-16-2, §20-16-3, §20-16-4, §20-16-5, §20-16-6, §20-16-7 and §20-16-8, all relating to responsibility and liability of nonprofit youth organizations, participants and providers in adventure or recreational activities; providing a short title, legislative purpose and definitions; providing the duties and liabilities of nonprofit youth organizations or providers; and providing duties and liabilities of participants.

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 §20-16-1, §20-16-2, §20-16-3, §20-16-4, §20-16-5, §20-16-6, §20-16-7 and §20-16-8, all to read as follows:

ARTICLE 16. NONPROFIT ADVENTURE AND RECREATIONAL ACTIVITY RESPONSIBILITY ACT.
§20-16-1. Short title.

This article may be cited as the Nonprofit Adventure and Recreational Activity Responsibility Act.

§20-16-2. Legislative purpose.

The Legislature finds that West Virginia is blessed by geography and natural features that make it ideal for a host of adventure and recreational activities attractive to nonprofit youth organizations interested in training and inspiring thousands of young people from other parts of the United States and throughout the world. The location by these organizations of facilities within the state will contribute significantly to the economy of West Virginia, and enhance the state's reputation as a place to visit and transact business. Because it is recognized that there are inherent risks in various adventure and recreational activities which should be understood by participants therein and which are essentially impossible for the organizations and their providers to eliminate, it is the purpose of this article to define those areas of responsibility and those affirmative acts for which these nonprofit organizations and their providers of adventure and recreational activities shall be liable for loss, damage or injury suffered by participants, and to further define those risks which the participants expressly assume and for which there can be no recovery.

§20-16-3. Definitions.

In this article, unless a different meaning plainly is required:

(1) "Adventure or recreational activity" means any program or activity sponsored by a nonprofit youth organization and conducted by the organization or its provider that involves inherent risks, including, but not limited to:
(A) All-terrain vehicle activities and similar activities, including all activities within the ATV Responsibility Act in article fifteen of this chapter;

(B) Biking, mountain-biking and similar activities;

(C) Canopy activities, zip-lines and similar activities;

(D) Climbing and repelling and similar activities in improved and natural areas, including climbing walls;

(E) Equestrian activities and similar activities, including all activities within the Equestrian Activities Responsibility Act in article four of this chapter;

(F) Firearms training and similar activities;

(G) Hiking, backpacking, camping and similar activities;

(H) Paintball and similar activities;

(I) Rope initiatives, cope and confidence courses, challenge courses, slacklines, challenge courses and similar activities;

(J) Skating, including ice skating, rollerblading, and similar activities;

(K) Snow activities, including snowshoeing, snow skiing, sledding, snowmobiling, and similar activities, including all activities within the Skiing Responsibility Act in article three-A of this chapter;

(L) Spelunking, caving, and similar activities;

(M) Water sports, including swimming, diving, canoeing, kayaking, boating, sailing, scuba diving, water skiing, and similar activities, including all activities within the Whitewater Responsibility Act in article three-B of this chapter;

(N) Windsurfing and similar activities.
(2) "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 nonprofit youth organization or provider.

(3) "Nonprofit youth organization" means any nonprofit organization, including any subsidiary, affiliate or other related entity within its corporate or other business structure, that has been chartered by the United States Congress to train young people to do things for themselves and others, and that has established an area of at least six thousand contiguous acres within West Virginia in which to provide adventure or recreational activities for these young people and others.

(4) "Participant" means any person engaging in an adventure or recreational activity.

(5) "Provider" means any individual, sole proprietorship, partnership, association, public or private corporation, the United States or any federal agency, this state or any political subdivision of this state, and any other legal entity which engages, with or without compensation, in organizing, promoting, presenting or providing or assisting in providing an adventure or recreational activity sponsored by a nonprofit youth organization, including one that allows the nonprofit youth organization the use of its land for the adventure or recreational activity.

§20-16-4. Duties of a nonprofit youth organization or provider.

Every nonprofit youth organization or provider shall:

(1) Make reasonable and prudent efforts to determine the ability of a participant to safely engage in the adventure or recreational activity;

(2) Make known to any participant any dangerous traits or characteristics or any physical impairments or condi-
7 tions related to a particular adventure or recreational
8 activity, of which the nonprofit youth organization or
9 provider knows or through the exercise of due diligence
10 could know;

11 (3) Make known to any participant any dangerous
12 condition as to land or facilities under the lawful posses-
13 sion and control of the nonprofit youth organization or
14 provider, of which the nonprofit youth organization or
15 provider knows or through the exercise of due diligence
16 could know, by advising the participant in writing or by
17 conspicuously posting warning signs upon the premises;

18 (4) Assure that each participant has or is provided all
19 equipment reasonably necessary for all activities covered
20 by this article and, in providing equipment to a partici-
21 pant, make reasonable and prudent efforts to inspect such
22 equipment to assure that it is in proper working condition
23 and safe for use in the adventure or recreational activity;

24 (5) Prepare and present to each participant or prospec-
25 tive participant, for his or her inspection and signature, a
26 statement which clearly and concisely explains the
27 liability limitations, restrictions and responsibilities set
28 forth in this article: Provided, That said statement shall
29 not contain nor have the effect of a waiver of a nonprofit
30 youth organization or provider's duties set forth in this
31 section;

32 (6) Make reasonable efforts to provide supervision of
33 participants while engaged in activities under this article.

§20-16-5. Duties of participants.

1 It is recognized that the adventure and recreational
2 activities described in this article are hazardous to partici-
3 pants, regardless of all feasible safety measures which can
4 be taken.

5 Each participant in an adventure or recreational activity
6 expressly assumes the risk of and legal responsibility for
any injury, loss or damage to person or property which results from participation in an activity. Each participant shall have the sole individual responsibility for knowing the range of his or her own ability to participate in a particular adventure or recreational activity, and it shall be the duty of each participant to act within the limits of the participant’s own ability, to heed all posted warnings, to act in accordance with the instructions of any employee of the non-profit youth organization or provider, to perform an adventure or recreational activity only in an area or facility designated by the nonprofit youth organization or provider and to refrain from acting in a manner which may cause or contribute to the injury of anyone. There is a rebuttable presumption that any participant under the age of fourteen is incapable of comparative negligence or assumption of the risk. There is an irrebuttable presumption that any participant under the age of seven is incapable of comparative negligence or assumption of the risk. Any participant over the age of fourteen will be subject to the common law presumptions as to their acts and or omissions.

A participant involved in an accident shall not depart from the area or facility where the adventure or recreational activity took place without leaving personal identification, including name and address, or without notifying the proper authorities, or without obtaining assistance when that person knows or reasonably should know that any other person involved in the accident is in need of medical or other assistance.

§20-16-6. Liability of nonprofit youth organization or provider.

(a) A nonprofit youth organization or provider shall be 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. A nonprofit youth organization or provider shall not be liable for any injury, loss or damage
The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

Chairman Senate Committee

Chairman House Committee

Originated in the Senate.

In effect ninety days from passage.

Clerk of the Senate

Clerk of the House of Delegates

President of the Senate

Speaker House of Delegates

The within is approved this the 3rd Day of April, 2010.

Governor