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**WEST VIRGINIA LEGISLATURE** WEST VIRGINIA  
**SEVENTY-NINTH LEGISLATURE** SECRETARY OF STATE  
**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.]

SB 567

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OFFICE OF THE CLERK  
SECRETARY OF STATE

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COMMITTEE SUBSTITUTE

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# Senate Bill No. 567

(SENATORS LAIRD, WHITE AND KESSLER, *original sponsors*)

[Passed March 13, 2010; 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 §20-16-1, §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.**

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

**§20-16-2. Legislative purpose.**

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

**§20-16-3. Definitions.**

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

3 (1) "Adventure or recreational activity" means any  
4 program or activity sponsored by a nonprofit youth  
5 organization and conducted by the organization or its  
6 provider that involves inherent risks, including, but not  
7 limited to:

- 8 (A) All-terrain vehicle activities and similar activities,  
9 including all activities within the ATV Responsibility Act  
10 in article fifteen of this chapter;
- 11 (B) Biking, mountain-biking and similar activities;
- 12 (C) Canopy activities, zip-lines and similar activities;
- 13 (D) Climbing and repelling and similar activities in  
14 improved and natural areas, including climbing walls,;
- 15 (E) Equestrian activities and similar activities, including  
16 all activities within the Equestrian Activities Responsibil-  
17 ity Act in article four of this chapter;
- 18 (F) Firearms training and similar activities;
- 19 (G) Hiking, backpacking, camping and similar activities;
- 20 (H) Paintball and similar activities;
- 21 (I) Rope initiatives, cope and confidence courses, chal-  
22 lenge courses, slacklines, challenge courses and similar  
23 activities;
- 24 (J) Skating, including ice skating, rollerblading, and  
25 similar activities;
- 26 (K) Snow activities, including snowshoeing, snow skiing,  
27 sledding, snowmobiling, and similar activities, including  
28 all activities within the Skiing Responsibility Act in article  
29 three-A of this chapter;
- 30 (L) Spelunking, caving, and similar activities;
- 31 (M) Watersports, including swimming, diving, canoeing,  
32 kayaking, boating, sailing, scuba diving, water skiing, and  
33 similar activities, including all activities within the  
34 Whitewater Responsibility Act in article three-B of this  
35 chapter;
- 36 (N) Windsurfing and similar activities.

37 (2) "Employee" means an officer, agent, employee,  
38 servant, or volunteer, whether compensated or not,  
39 whether full time or not, who is authorized to act and is  
40 acting within the scope of his or her employment or duties  
41 with the nonprofit youth organization or provider.

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

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

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

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

1 Every nonprofit youth organization or provider shall:

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

5 (2) Make known to any participant any dangerous traits  
6 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

7 any injury, loss or damage to person or property which  
8 results from participation in an activity. Each participant  
9 shall have the sole individual responsibility for knowing  
10 the range of his or her own ability to participate in a  
11 particular adventure or recreational activity, and it shall  
12 be the duty of each participant to act within the limits of  
13 the participant's own ability, to heed all posted warnings,  
14 to act in accordance with the instructions of any employee  
15 of the non-profit youth organization or provider, to  
16 perform an adventure or recreational activity only in an  
17 area or facility designated by the nonprofit youth organi-  
18 zation or provider and to refrain from acting in a manner  
19 which may cause or contribute to the injury of anyone.  
20 There is a rebuttable presumption that any participant  
21 under the age of fourteen is incapable of comparative  
22 negligence or assumption of the risk. There is an  
23 irrebuttable presumption that any participant under the  
24 age of seven is incapable of comparative negligence or  
25 assumption of the risk. Any participant over the age of  
26 fourteen will be subject to the common law presumptions  
27 as to their acts and or omissions.

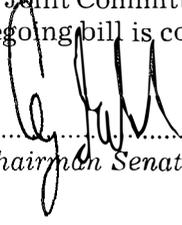
28 A participant involved in an accident shall not depart  
29 from the area or facility where the adventure or recre-  
30 ational activity took place without leaving personal  
31 identification, including name and address, or without  
32 notifying the proper authorities, or without obtaining  
33 assistance when that person knows or reasonably should  
34 know that any other person involved in the accident is in  
35 need of medical or other assistance.

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

1 (a) A nonprofit youth organization or provider shall be  
2 liable for injury, loss or damage caused by failure to follow  
3 the duties set forth in section four of this article where the  
4 violation of duty is causally related to the injury, loss or  
5 damage suffered. A nonprofit youth organization or  
6 provider shall not be liable for any injury, loss or damage

Enr. Com. Sub. for S. B. No. 567] 8

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

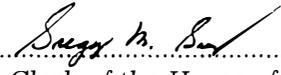
  
.....  
Chairman Senate Committee

  
.....  
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 *2nd* .....  
Day of *April* ....., 2010.

  
.....  
Governor

PRESENTED TO THE  
GOVERNOR

APR 01 2010

Time 11:30am