WEST VIRGINIA LEGISLATURE
FIRST REGULAR SESSION, 2011

ENROLLED

COMMITTEE SUBSTITUTE
FOR
House Bill No. 2532

(By Delegates Staggers, L. Phillips, Hall, Martin, Perry, Moore, Morgan, Mahan, Moye, Pino and Williams)

Passed March 12, 2011

In Effect Ninety Days From Passage
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H. B. 2532

(BY DELEGATES STAGGERS, L. PHILLIPS, HALL, MARTIN, PERRY, MOORE, MORGAN, MAHAN, MOYE, PINO AND WILLIAMS)

[Passed March 12, 2011; in effect ninety days from passage.]

permit fees; authorizing the Division of Labor to hire or contract with inspectors; authorizing the Division of Labor to certify professional inspectors; requiring notice of serious physical injury or fatality; requiring investigations of serious physical injuries or fatalities; providing for service of process; authorizing the temporary cessation of operations; providing for insurance or bond requirements; and providing for regulation of ziplines and canopy tours by cities and counties.

Be it enacted by the Legislature of West Virginia:


ARTICLE 15. ZIPLINE AND CANOPY TOUR RESPONSIBILITY ACT.

§21-15-1. Legislative purpose.

1 The Legislature finds that:

2 (1) The sport of ziplining and canopy touring is practiced
3 by a large number of citizens of West Virginia and also
4 attracts to West Virginia a large number of nonresidents,
5 significantly contributing to the economy of West Virginia;
6 and

7 (2) There are inherent risks in the sport of ziplining and
8 canopy touring which should be understood by each
9 participant and which are essentially impossible to eliminate
10 by the zipline or canopy tour operator.

As used in this article:

(1) “ACCT” means the Association for Challenge Course Technology;

(2) “Canopy tours” means a facility not located in an amusement park or carnival which is a supervised or guided educational or recreational activity including, but not limited to, beams, bridges, cable traverses, climbing walls, nets, platforms, ropes, swings, towers and ziplines, which may be installed on or in trees, poles, portable structures or buildings, or be part of self-supporting structures.

(3) “Challenge course standards” means the Challenge Course Standards: Association for Challenge Course Technology, Seventh Edition (2008), or substantially equivalent standards.

(4) “Division” means the West Virginia Division of Labor.

(5) “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 zipline operator.

(6) “Operator” means any person, partnership, corporation or other commercial entity and their agents, officers, employees or representatives, who has operational responsibility for any zipline or canopy tour.

(7) “Participant” means any person who engages in activities on a zipline or canopy tour individually or in a group activity supervised by a zipline or canopy tour operator.
(8) "Special inspector" means a professional inspector who meets the qualifications set forth in ACCT or substantially equivalent standards and is certified by the division pursuant to section eight;

(9) "Zipline" means a commercial recreational activity where participants, by the use of a permanent cable or rope line suspended between support structures, enables a participant attached to a pulley to traverse from one point to another, for the purpose of giving the participants amusement, pleasure, thrills or excitement.

§21-15-3. Duties of a zipline or canopy tour operators.

Every operator shall:

(1) Construct, install, maintain and operate all ziplines and canopy tours in accordance with ACCT challenge course standards or substantially equivalent standards;

(2) Ensure that ziplines and canopy tours are inspected at least annually by the Division or a special inspector;

(3) Train employees operating ziplines and canopy tours in accordance with national standards associated with their profession;

(4) Procure and maintain commercial general liability insurance against claims for personal injury, death and property damages occurring upon, in or about the zipline or canopy tour which affords protection to the limit of not less than $1 million for injury or death of a single person, to the limit of $2 million in the aggregate, and to the limit of not less than $50,000 for property damage; and
17 (5) Maintain records for a period of at least three years
18 from the date of the creation of the record of:

19 (A) Proof of insurance;

20 (B) Inspection reports;

21 (C) Maintenance records; and

22 (D) Participant acknowledgment of risks and duties.

§21-15-4. Responsibilities of participants; prohibited acts.

1 (a) It is the duty of each participant to participate as
2 instructed by the operator.

3 (b) Participants have a duty to act as would a reasonably
4 prudent person when engaging in the sport of ziplining or
5 canopy touring offered by a operator.

6 (c) No participant may:

7 (1) Use a zipline or canopy tour without the authority,
8 supervision and guidance of the zipline operator;

9 (2) Drop, throw or expel any object from a zipline or
10 canopy tour except as authorized by the operator;

11 (3) Perform any act which interferes with the running or
12 operation of a zipline or canopy tour; or

13 (4) Engage in any harmful conduct, or willfully or
14 negligently engage in any type of conduct with contributes to
15 cause injury to any person.

(a) A zipline operator shall be liable for injury, loss or
damage caused by failure to follow the duties and standard of
care set forth in section three of this article where the
violation of duty is causally related to the injury, loss or
damage suffered.

(b) A zipline operator 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 operator.


The Division shall promulgate rules for the safe
installation, repair, maintenance, use, operation and
inspection of all ziplines and canopy tours consistent with
ACCT Challenge Course Standards. The rules shall be in
addition to any existing applicable safety orders and shall be
concerned with the installation, repair, maintenance, use,
operation and inspection of ziplines and canopy tours
consistent with ACCT Challenge Course Standards. The
rules shall be promulgated and designed for the purpose of
developing ziplines and canopy tours as a recreational
activity and additional tourist attraction in West Virginia. All
rules shall be promulgated in accordance with the provisions
of article three, chapter twenty-nine-a of this code.


(a) The Division shall charge inspection and permit fees.
The annual permit fee is $100.00 for each zipline or canopy
tour.

(1) The annual inspection fee, if an inspection is to be
done by the Division, is $100.00 for each zipline or canopy
tour.
(2) The annual inspection fee, if an inspection is to be done by the Division, is due at the time of application for the annual permit.

(3) The Division shall waive the inspection fee for a zipline or canopy tour whose operator provides proof of nonprofit business status or for any zipline or canopy tour whose operator provides proof that an inspection has been completed within the last year by a certified special inspector as provided in section nine of this article.

(b) The Division may charge additional inspection fees equal to the annual inspection fee for additional inspections required as the result of the condemnation of a device for safety standards violations and for inspections required as a result of accidents involving serious or fatal injury. If any operator requires an inspection as the result of a violation of the permitting requirements of section nine of this article, the Division shall charge the operator $75.00 per hour in addition to the established inspection fee, including travel time.

(c) All fees received shall be deposited in a special revenue account in the State Treasury known as the "Amusement Rides and Amusement Attractions Safety Fund". The Division may use moneys from the fund for the purpose of enforcement of the provisions of this article. Expenditures are not authorized from collections, but are to be made only in accordance with appropriation by the Legislature and in accordance with the provisions of article three, chapter twelve of this code and upon fulfillment of the provisions of article two, chapter eleven-b of this code.

(d) No inspection fee may be charged public agencies.

(a) The Division may hire or contract with inspectors to inspect zipline or canopy tours. The Division is responsible for oversight and review of the activities of special inspectors and may hire or contract with inspectors to review the activities of special inspectors.

(b) The Division shall certify all special inspectors. The Division may suspend or revoke any certification of a special inspector upon a showing of good cause. The Division shall propose rules for legislative approval in accordance with the provisions of article three, chapter twenty-nine-a of this code providing an application process and minimum qualifications for certification of special inspectors. The Division may charge an annual certification fee not to exceed $50.00.


(a) No operator may knowingly permit the operation of a zipline or canopy tour without a permit issued by the Division.

(b) Each year and at least fifteen days before the first time the zipline or canopy tour is made available in this state for public use, an operator shall apply for a permit to the Division on a form furnished by the Division and containing any information the Division may require.

(c) The Division shall, upon application and within ten days of the first time the zipline or canopy tour is made available in this state for public use, inspect the zipline or canopy tour.

(d) The Division shall inspect all zipline or canopy tours at least once every year.
(e) The Division may conduct inspections at any reasonable time without prior notice: Provided, That in lieu of performing its own inspection, the Division shall accept inspection reports from special inspectors certified by the Division.

§21-15-10. Issuance of permit; certificate of inspection; availability to public.

If, after inspection, a zipline or canopy tour, is found to comply with the rules of the Division, the Division shall issue a permit to operate. The permit shall be in the form of a certificate of inspection and shall be kept in the records of any operator for a three-year period and shall be readily accessible to the public for inspection at any reasonable time at the zipline location. A copy of the certificate, showing the last date of inspection, shall be affixed to the zipline upon issuance, or at any other location designated by the commissioner of the Division.

§21-15-11. Notice of serious physical injury or fatality; investigations; records available to public.

An operator of a zipline or canopy tour shall notify the Division not later than twenty-four hours after any fatality or accident occurring as a result of the operation of the zipline or canopy tour that results in a serious physical injury to any person requiring medical treatment or results in a loss of consciousness to any person. Notice to the division may be oral, written or by electronic means, but this notice requirement in no way limits the an operators responsibility to notify emergency or law enforcement personnel of the incident as soon as is reasonably practicable. The Division shall investigate each fatality or accident and any safety-related complaint involving a zipline or canopy tour in this state about which the Division receives notice. Every
operator of a zipline or canopy tour shall keep a record of
each accident or fatality and the record shall be kept with the
certificate of inspection required by this article and shall be
readily accessible to the public for inspection at any
reasonable time at the place where the zipline or canopy tour
is located.


Any person, firm or corporation operating a zipline may
be served with civil process in the same manner as if the
owner or operator was a domestic or foreign corporation.

§21-15-13. Temporary cessation of the operation of a zipline or
canopy tour determined to be unsafe.

The Division may order, in writing, a temporary cessation
of operation of a zipline if it has been determined after
inspection to be hazardous or unsafe. Operation may not
resume until the conditions are corrected to the satisfaction of
the Division.


Nothing contained in this article prevents cities and
counties from regulating a zipline or canopy tour with regard
to any aspect not relating to installation, repair, maintenance,
use, operation and inspection of a zipline or canopy tour.
The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

Michael J.aca
Chairman, House Committee

Ralph J.aca
Chairman, Senate Committee

Originating in the House.

To take effect ninety days from passage.

Sara A. ay
Clerk of the House of Delegates

Darrell Holmes
Clerk of the Senate

Speaker of the House of Delegates

Acting President of the Senate

The within approved this the 15th day of April, 2011.

Earl Ray Tomblin
Governor
PRESENTED TO THE GOVERNOR

MAR 21 2011

Time 11:05 AM