

1 **ENROLLED**

2 COMMITTEE SUBSTITUTE

3 for

4 **H. B. 2532**

5
6 (By Delegates Staggers, L. Phillips, Hall, Martin,
7 Perry, Moore, Morgan, Mahan, Moye, Pino and Williams)

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

9

10 AN ACT to amend the Code of West Virginia, 1931, as amended, by
11 adding thereto a new article, designated §21-15-1, §21-15-2,
12 §21-15-3, §21-15-4, §21-15-5, §21-15-6, §21-15-7, §21-15-8,
13 §21-15-9, §21-15-10, §21-15-11, §21-15-12, §21-15-13 and §21-
14 15-14, all relating to zipline and canopy tour regulation;
15 establishing legislative purpose; defining terms; setting
16 forth duties of zipline and canopy tour operators; requiring
17 liability insurance; establishing responsibilities of
18 participants; defining liability of zipline and canopy tour
19 operators; authorizing the Division of Labor to regulate
20 ziplines and canopy tours; authorizing the Division of Labor
21 to propose rules for Legislative approval; requiring permits
22 and inspections; authorizing the Division of Labor to charge
23 inspection and permit fees; authorizing the Division of Labor
24 to hire or contract with inspectors; authorizing the Division
25 of Labor to certify professional inspectors; requiring notice
26 of serious physical injury or fatality; requiring

1 investigations of serious physical injuries or fatalities;
2 providing for service of process; authorizing the temporary
3 cessation of operations; providing for insurance or bond
4 requirements; and providing for regulation of ziplines and
5 canopy tours by cities and counties.

6 *Be it enacted by the Legislature of West Virginia:*

7 That the Code of West Virginia, 1931, as amended, be amended
8 by adding thereto a new article, designated §21-15-1, §21-15-2,
9 §21-15-3, §21-15-4, §21-15-5, §21-15-6, §21-15-7, §21-15-8, §21-15-
10 9, §21-15-10, §21-15-11, §21-15-12, §21-15-13 and §21-15-14 to read
11 as follows:

12 **ARTICLE 15. ZIPLINE AND CANOPY TOUR RESPONSIBILITY ACT.**

13 **§21-15-1. Legislative purpose.**

14 The Legislature finds that:

15 (1) The sport of ziplining and canopy touring is practiced by
16 a large number of citizens of West Virginia and also attracts to
17 West Virginia a large number of nonresidents, significantly
18 contributing to the economy of West Virginia; and

19 (2) There are inherent risks in the sport of ziplining and
20 canopy touring which should be understood by each participant and
21 which are essentially impossible to eliminate by the zipline or
22 canopy tour operator.

23 **§21-15-2. Definitions.**

24 As used in this article:

25 (1) "ACCT" means the Association for Challenge Course

1 Technology;

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

9 (3) "Challenge course standards" means the Challenge Course
10 Standards: Association for Challenge Course Technology, Seventh
11 Edition (2008), or substantially equivalent standards.

12 (4) "Division" means the West Virginia Division of Labor.

13 (5) "Employee" means an officer, agent, employee, servant, or
14 volunteer, whether compensated or not, whether full time or not,
15 who is authorized to act and is acting within the scope of his or
16 her employment or duties with the zipline operator.

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

21 (7) "Participant" means any person who engages in activities
22 on a zipline or canopy tour individually or in a group activity
23 supervised by a zipline or canopy tour operator.

24 (8) "Special inspector" means a professional inspector who
25 meets the qualifications set forth in ACCT or substantially
26 equivalent standards and is certified by the division pursuant to

1 section eight;

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

8 **§21-15-3. Duties of a zipline or canopy tour operators.**

9 Every operator shall:

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

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

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

18 (4) Procure and maintain commercial general liability
19 insurance against claims for personal injury, death and property
20 damages occurring upon, in or about the zipline or canopy tour
21 which affords protection to the limit of not less than \$1 million
22 for injury or death of a single person, to the limit of \$2 million
23 in the aggregate, and to the limit of not less than \$50,000 for
24 property damage; and

25 (5) Maintain records for a period of at least three years from
26 the date of the creation of the record of:

- 1 (A) Proof of insurance;
- 2 (B) Inspection reports;
- 3 (C) Maintenance records; and
- 4 (D) Participant acknowledgment of risks and duties.

5 **§21-15-4. Responsibilities of participants; prohibited acts.**

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

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

11 (c) No participant may:

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

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

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

18 (4) Engage in any harmful conduct, or willfully or negligently
19 engage in any type of conduct which contributes to cause injury to
20 any person.

21 **§21-15-5. Liability of zipline operators.**

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

26 (b) A zipline operator is not liable for any injury, loss or

1 damage caused by the negligence of any person who is not an agent
2 or employee of the operator.

3 **§21-15-6. Rules.**

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

16 **§21-15-7. Inspection and permit fees.**

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

19 (1) The annual inspection fee, if an inspection is to be done
20 by the Division, is \$100.00 for each zipline or canopy tour.

21 (2) The annual inspection fee, if an inspection is to be done
22 by the Division, is due at the time of application for the annual
23 permit.

24 (3) The Division shall waive the inspection fee for a zipline
25 or canopy tour whose operator provides proof of nonprofit business
26 status or for any zipline or canopy tour whose operator provides

1 proof that an inspection has been completed within the last year by
2 a certified special inspector as provided in section nine of this
3 article.

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

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

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

23 **§21-15-8. Inspectors.**

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

1 may hire or contract with inspectors to review the activities of
2 special inspectors.

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

11 **§21-15-9. Permits; application; annual inspection.**

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

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

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

22 (d) The Division shall inspect all zipline or canopy tours at
23 least once every year.

24 (e) The Division may conduct inspections at any
25 reasonable time without prior notice: *Provided*, That in lieu of
26 performing its own inspection, the Division shall accept inspection

1 reports from special inspectors certified by the Division.

2 **§21-15-10. Issuance of permit; certificate of inspection;**
3 **availability to public.**

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

13 **§21-15-11. Notice of serious physical injury or fatality;**
14 **investigations; records available to public.**

15 An operator of a zipline or canopy tour shall notify the
16 division not later than twenty-four hours after any fatality or
17 accident occurring as a result of the operation of the zipline or
18 canopy tour that results in a serious physical injury to any person
19 requiring medical treatment or results in a loss of consciousness
20 to any person. Notice to the division may be oral, written or by
21 electronic means, but this notice requirement in no way limits the
22 an operators responsibility to notify emergency or law enforcement
23 personnel of the incident as soon as is reasonably practicable. The
24 division shall investigate each fatality or accident and any
25 safety-related complaint involving a zipline or canopy tour in this

