

WEST VIRGINIA LEGISLATURE

FIRST REGULAR SESSION, 2011



ENROLLED

COMMITTEE SUBSTITUTE

FOR

House Bill No. 2532

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



Passed March 12, 2011

In Effect Ninety Days From Passage

E N R O L L E D

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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.]

AN ACT to amend the Code of West Virginia, 1931, as amended, by adding thereto a new article, designated §21-15-1, §21-15-2, §21-15-3, §21-15-4, §21-15-5, §21-15-6, §21-15-7, §21-15-8, §21-15-9, §21-15-10, §21-15-11, §21-15-12, §21-15-13 and §21-15-14, all relating to zipline and canopy tour regulation; establishing legislative purpose; defining terms; setting forth duties of zipline and canopy tour operators; requiring liability insurance; establishing responsibilities of participants; defining liability of zipline and canopy tour operators; authorizing the Division of Labor to regulate ziplines and canopy tours; authorizing the Division of Labor to propose rules for Legislative approval; requiring permits and inspections; authorizing the Division of Labor to charge inspection and

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:

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

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.

§21-15-2. Definitions.

1 As used in this article:

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

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

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

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

17 (5) “Employee” means an officer, agent, employee,
18 servant, or volunteer, whether compensated or not, whether
19 full time or not, who is authorized to act and is acting within
20 the scope of his or her employment or duties with the zipline
21 operator.

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

26 (7) “Participant” means any person who engages in
27 activities on a zipline or canopy tour individually or in a
28 group activity supervised by a zipline or canopy tour
29 operator.

30 (8) “Special inspector” means a professional inspector
31 who meets the qualifications set forth in ACCT or
32 substantially equivalent standards and is certified by the
33 division pursuant to section eight;

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

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

1 Every operator shall:

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

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

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

10 (4) Procure and maintain commercial general liability
11 insurance against claims for personal injury, death and
12 property damages occurring upon, in or about the zipline or
13 canopy tour which affords protection to the limit of not less
14 than \$1 million for injury or death of a single person, to the
15 limit of \$2 million in the aggregate, and to the limit of not
16 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.

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

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

6 (b) A zipline operator is not liable for any injury, loss or
7 damage caused by the negligence of any person who is not an
8 agent or employee of the operator.

§21-15-6. Rules.

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

§21-15-7. Inspection and permit fees.

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

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

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

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

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

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

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

§21-15-8. Inspectors.

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

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

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

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

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

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

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

15 (e) The Division may conduct inspections at any
16 reasonable time without prior notice: *Provided*, That in lieu
17 of performing its own inspection, the Division shall accept
18 inspection reports from special inspectors certified by the
19 Division.

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

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

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

1 An operator of a zipline or canopy tour shall notify the
2 Division not later than twenty-four hours after any fatality or
3 accident occurring as a result of the operation of the zipline
4 or canopy tour that results in a serious physical injury to any
5 person requiring medical treatment or results in a loss of
6 consciousness to any person. Notice to the division may be
7 oral, written or by electronic means, but this notice
8 requirement in no way limits the an operators responsibility
9 to notify emergency or law enforcement personnel of the
10 incident as soon as is reasonably practicable. The Division
11 shall investigate each fatality or accident and any
12 safety-related complaint involving a zipline or canopy tour in
13 this state about which the Division receives notice. Every

14 operator of a zipline or canopy tour shall keep a record of
15 each accident or fatality and the record shall be kept with the
16 certificate of inspection required by this article and shall be
17 readily accessible to the public for inspection at any
18 reasonable time at the place where the zipline or canopy tour
19 is located.

§21-15-12. Service of process.

1 Any person, firm or corporation operating a zipline may
2 be served with civil process in the same manner as if the
3 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.

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

§21-15-14. Regulation of ziplines by cities and counties.

1 Nothing contained in this article prevents cities and
2 counties from regulating a zipline or canopy tour with regard
3 to any aspect not relating to installation, repair, maintenance,
4 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.

Chairman, House Committee

Chairman, Senate Committee

Originating in the House.

To take effect ninety days from passage.

Clerk of the House of Delegates

Clerk of the Senate

Speaker of the House of Delegates

President of the Senate

The within _____ this the _____
day of _____, 2011.

Governor