

COMMITTEE SUBSTITUTE

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Senate Bill No. 499

(By Senators Laird, Tucker, Snyder, D. Facemire and Beach)

[Originating in the Committee on the Judiciary;
reported February 25, 2011.]

A BILL to amend the Code of West Virginia, 1931, as amended, by adding thereto a new article, designated §20-3C-1, §20-3C-2, §20-3C-3, §20-3C-4 and §20-3C-5, 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; setting forth record-keeping requirements; establishing responsibilities of participants; providing for assumption of risks; setting forth prohibited acts; and defining liability of zipline and canopy tour operators.

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 §20-3C-1, §20-3C-2, §20-3C-3, §20-3C-4 and §20-3C-5, all to read as follows:

ARTICLE 3C. ZIPLINE/CANOPY TOUR RESPONSIBILITY ACT.

§20-3C-1. Legislative purpose.

1 (a) 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 partici-
9 pant and which are essentially impossible to eliminate by the
10 zipline or canopy tour operator.

11 (b) The purpose of this article is to define those areas of
12 responsibility and affirmative acts for which zipline and
13 canopy tour operators shall be liable for loss, damage or
14 injury and those risks which the participant expressly
15 assumes responsibility and for which there can be no
16 recovery.

§20-3C-2. Definitions.

1 As used in this article:

2 (1) “ACCT” means the Association for Challenge Course
3 Technology, Seventh Edition, or substantially equivalent
4 standards.

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

12 (3) “Participant” means any person who engages in
13 activities on a zipline or canopy tour individually or in a
14 group activity supervised by a zipline or canopy tour opera-
15 tor.

16 (4) “Zipline” means a cable or rope line suspended between
17 support structures enabling a participant attached to a
18 pulley to traverse from one point to another.

19 (5) “Zipline operator” means any person, partnership,
20 corporation or other commercial entity and their agents,
21 officers, employees or representatives, who has operational
22 responsibility for any zipline or canopy tour.

§20-3C-3. Duties of zipline operators.

1 Every zipline operator shall:

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

5 (2) Ensure that ziplines and canopy tours are inspected
6 annually by a professional inspector who meets the qualifi-
7 cations set forth in ACCT or substantially equivalent
8 standards;

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

12 (4) Procure and maintain commercial general liability
13 insurance against claims for personal injury, death and
14 property damages occurring upon, in or about the zipline or
15 canopy tour which affords protection to the limit of not less
16 than \$1 million for injury or death of a single person, to the
17 limit of \$1 million for any one accident or occurrence, and to
18 the limit of not less than \$100,000 for property damage; and

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

21 (A) Proof of insurance;

- 22 (B) Inspection reports;
- 23 (C) Maintenance records; and
- 24 (D) Participant acknowledgment, assumption of risks and
- 25 release of liability.

**§20-3C-4. Responsibilities of participants; assumption of risks;
prohibited acts.**

1 (a) Each participant has the sole individual responsibility
2 for knowing the range of his or her own ability to negotiate
3 a zipline or canopy tour, and it is the duty of each partici-
4 pant to participate as instructed by the zipline operator to
5 participate within the limits of his or her own ability.

6 (b) Each participant expressly assumes the risk of and legal
7 responsibility for any injury, loss or damage to persons or
8 property which results from participation in the sport of
9 ziplining or canopy touring, including, but not limited to,
10 any injury, loss or damage caused by variation in terrain,
11 weather conditions, rocks, trees or other forms of forest
12 growth or debris: *Provided*, That the injury, loss or damage
13 is not caused by the reckless or willful misconduct of the
14 zipline operator or an agent or employee of the zipline
15 operator.

16 (c) No participant may:

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

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

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

23 (4) Engage in any harmful conduct, or willfully or negli-
24 gently engage in any type of conduct with contributes to
25 cause injury to any person.

§20-3C-5. Liability of zipline operators.

1 (a) A zipline operator may be liable for injury, loss or
2 damage caused by failure to follow the duties set forth in
3 subsection (a), section three of this article where the viola-
4 tion of duty is causally related to the injury, loss or damage
5 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 zipline operator.

(NOTE: This article is new; therefore, strike-throughs and underscoring have been omitted.)