

# **WEST VIRGINIA LEGISLATURE**

## **2023 REGULAR SESSION**

**Introduced**

### **House Bill 3442**

By Delegate Howell

[Introduced February 14, 2023; Referred to the  
Committee on Economic Development and Tourism  
then the Judiciary]

1 A BILL to amend the Code of West Virginia, 1931, as amended, by adding thereto a new article,  
 2 designated as §20-19-1, §20-19-2, §20-19-3, §20-19-4, §20-19-5, §20-19-6, §20-19-7,  
 3 and §20-19-8, all relating to the creation of the Mountain Bike Responsibility Act; stating a  
 4 legislative purpose; defining terms; providing for duties of mountain operators; and  
 5 providing for duties of bicyclists and passengers on aerial passenger tramways.

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

**ARTICLE 19. MOUNTAIN BIKE RESPONSIBILITY ACT.**

**§20-19-1. Legislative findings.**

1 The West Virginia Legislature finds that our natural resources and topography provide  
 2 world class opportunities to attract both resident and nonresident bicyclists to this state to enjoy  
 3 the sport of mountain biking, significantly contributing to the economy of West Virginia. Further, it is  
 4 recognized that there are inherent risks in the sport of bicycling, and the purpose of this article is to  
 5 define those areas of responsibilities and affirmative acts for which the mountain operators shall  
 6 be liable for loss, damage, or injury and to define those risks that the bicyclist expressly assume.  
 7 Nothing in this article shall impact other defenses that may be raised by mountain operators  
 8 against claims asserted by bicyclists.

**§20-19-2. Definitions.**

1 The terms in this article have the following meaning, unless the context clearly requires a  
 2 different meaning:

3 (1) "Aerial passenger tramway" means any device operated by a mountain operator used  
 4 to transport passengers by single or double reversable tramway; chairlift or gondola lift; T-bar lift,  
 5 J-bar lift, plater lift, or similar device; a fiber rope or wire rope tow, or a conveyor.

6 (2) "Bicyclist" means any person present at a mountain area under the control of a  
 7 mountain operator for the purpose of engaging in activities, including, without limitation, bicycling  
 8 downhill or uphill, jumping on a bicycle, or any other cycling device. "Bicyclist" does not include a  
 9 person using an aerial passenger tramway.

10           (3) "Mountain area" means the property owned, leased, or authorized under a special use  
11 permit and under the control of the mountain operator.

12           (4) "Mountain operator" means any person, partnership, corporation, or other commercial  
13 entity, and its agents, officers, employees, or representatives, who has operational responsibility  
14 for bicycling activities at any mountain area and the use of an aerial passenger tramway for such  
15 purpose.

16           (5) "Passenger" means any person who is lawfully using an aerial passenger tramway or is  
17 waiting to embark or has recently disembarked from an aerial passenger tramway and is in its  
18 immediate vicinity.

**§20-19-3. Duties of mountain operators with respect to mountain areas.**

1           Every mountain operator shall:

2           (a) Maintain one or more trail boards at prominent locations at each mountain area  
3 displaying that area's network of trails, updated to show when trails are closed;

4           (b) Maintain all equipment and bicycles used in the business in such condition that the  
5 equipment and vehicles are safe to operate or use as intended and recommended by the  
6 manufacturer;

7           (c) Provide protective helmets and other safety equipment which are size appropriate, and  
8 which meet relevant performance specifications;

9           (d) Provide bicycles which are age and size appropriate as recommended by the  
10 manufacturer;

11           (e) Make reasonable and prudent efforts to ensure that participants utilizing rental bicycles  
12 and safety equipment provided by the mountain operator have received training on the proper use  
13 of such items; and

14           (f) Make known to any participant utilizing the facilities, equipment, or services of the  
15 mountain operator any dangerous condition as to trail lands, facilities, or equipment to be  
16 traversed or used which is known by the outfitter or licensee.

17 (g) Maintain the trails in a reasonably safe condition, except that such mountain operator  
 18 shall not be responsible for any injury, loss or damage caused by the following: uneven or slippery  
 19 trail and feature conditions, varying slopes and terrain, bumps, stumps, trees, roots, forest growth,  
 20 cliffs, rock and rock drops, loose gravel and dirt, wet surfaces, holes and potholes, downed timber,  
 21 debris, depressions, other bicyclists, dark tunnels, jumps, dirt and wood features and other  
 22 constructed features, lift loading and unloading, padded and nonpadded barriers, paved surfaces,  
 23 collisions with vehicles owned and operated individuals or entities other than the mountain  
 24 operator, pedestrians, wildlife, objects or heavy equipment, and mechanical or other failure of  
 25 rental or personal equipment;

26 (h) To post a sign at all aerial passenger tramways that advises the passengers to seek  
 27 advice if not familiar with riding the aerial passenger tramway; and

28 (i) To construct, operate, maintain, and repair any aerial passenger tramway in accordance  
 29 with relevant national standards and safety requirements for such machinery.

**§20-19-4. Duties of passengers.**

1 Every passenger shall have the duty to not:

2 (a) Board or embark upon or disembark from an aerial passenger tramway except at an  
 3 area designated for such purpose;

4 (b) Drop, throw, or expel any object from an aerial passenger tramway;

5 (c) Perform any act that interferes with the running or operation of an aerial passenger  
 6 tramway;

7 (d) Use any aerial passenger tramway if the passenger does not have the ability to use it  
 8 safely without instruction, until the passenger has requested to receive sufficient instruction to  
 9 permit safe usage; and

10 (e) Embark on an aerial passenger tramway without engaging such safety or restraining  
 11 devices as may be provided.

**§20-19-5. Duties of bicyclists.**

1 (a) It is recognized that bicycling as a recreational sport is hazardous, regardless of all  
2 feasible safety measures which can be taken.

3 (b) Each bicyclist expressly assumes the risk of and legal responsibility for any injury, loss  
4 or damage to person or property which results from participation in the sport of bicycling including,  
5 but not limited to, any injury, loss or damage caused by the following: uneven or slippery trail and  
6 feature conditions, varying slopes and terrain, bumps, stumps, trees, roots, forest growth, cliffs,  
7 rock and rock drops, loose gravel and dirt, wet surfaces, holes and potholes, downed timber,  
8 debris, depressions, other bicyclists, dark tunnels, jumps, dirt and wood features and other  
9 constructed features, lift loading and unloading, padded and nonpadded barriers, paved surfaces,  
10 collisions with vehicles owned and operated individuals or entities other than the mountain  
11 operator, pedestrians, wildlife, objects or heavy equipment, and mechanical or other failure of  
12 rental or personal equipment.

13 (c) Each bicyclist shall have the sole individual responsibility for knowing the range of his or  
14 her own ability to negotiate any trail, and it shall be the duty of each bicyclist to ride within the limits  
15 of the bicyclist's own ability, to maintain reasonable control of speed and course at all times while  
16 bicycling, to heed all posted warnings, to bicycle only on a bicycling area designated by the  
17 mountain operator and to refrain from acting in a manner which may cause or contribute to the  
18 injury of anyone. If while actually bicycling, any bicyclist collides with any object or person, except  
19 an obviously intoxicated person of whom the mountain operator is aware, the responsibility for  
20 such collision shall be solely that of the bicyclist or bicyclists involved and not that of the mountain  
21 operator.

**§20-19-6. Liability of mountain operator.**

1 (a) Any mountain operator is liable for injury, loss, or damage caused by failure to follow the  
2 duties set forth in section four of this article where the violation of duty is causally related to the  
3 injury, loss, or damage suffered.

4 (b) A mountain operator is not liable for any injury, loss, or damage caused by the

5 negligence of any person who is not an agent or employee of the mountain operator.

6 (c) A mountain operator is not liable for any injury, loss, or damage caused by a bicyclist or  
7 passenger's violation of any duty described in this article.

8 (d) Every mountain operator shall carry public liability insurance in limits of no less than  
9 \$100,000 per person, \$300,000 per occurrence and \$10,000 for property damage.

**§20-19-7. Liability of passengers.**

1 Any passenger is liable for injury, loss, or damage resulting from violations of the duties  
2 established in section four of this article where the violation of duty is causally related to the injury,  
3 loss, or damage suffered.

**§20-19-8. Liability of passengers.**

1 Any bicyclist is liable for injury, loss, or damage resulting from violations of the duties  
2 established in section five of this article where the violation of duty is causally related to the injury,  
3 loss, or damage suffered.

NOTE: The purpose of this bill is to outline the duties and responsibilities of mountain operators, bicyclists, and passengers on aerial passenger tramways related to commercial bicycling activities in the State of West Virginia.

Strike-throughs indicate language that would be stricken from a heading or the present law and underscoring indicates new language that would be added.