

1 **H. B. 2532**

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

5 [Introduced January 18, 2011; referred to the
6 Committee on Energy, Industry and Labor, Economic
7 Development and Small Business then the Judiciary.]
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10 A BILL to amend the Code of West Virginia, 1931, as amended, by
11 adding thereto a new article, designated §20-3D-1, §20-3D-2,
12 §20-3D-3, §20-3D-4 and §20-3D-5, all relating to zipline
13 regulation; establishing legislative purpose; defining terms;
14 setting forth duties of zipline operators; requiring liability
15 insurance; setting forth recordkeeping requirements;
16 establishing responsibilities of participants; providing for
17 assumption of risks; setting forth prohibited acts; and
18 defining liability of zipline operators.

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

20 That the Code of West Virginia, 1931, as amended, be amended
21 by adding thereto a new article, designated §20-3D-1, §20-3D-2,
22 §20-3D-3, §20-3D-4 and §20-3D-5, to read as follows:

23 **ARTICLE 3D. ZIPLINE RESPONSIBILITY ACT.**

24 **§20-3D-1. Legislative purpose.**

25 (a) The Legislature finds that:

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

5 (2) There are inherent risks in the sport of ziplining which
6 should be understood by each participant and which are essentially
7 impossible to eliminate by the zipline operator.

8 (b) The purpose of this article is to define those areas of
9 responsibility and affirmative acts for which zipline operators are
10 liable for loss, damage or injury and those risks which the
11 participant expressly assumes for which there can be no recovery.

12 **§20-3D-2. Definitions.**

13 The following terms have the following meanings:

14 (1) "ACCT" means the Association for Challenge Course
15 Technology, Seventh Edition.

16 (2) "Challenge course" means a facility or facilities not
17 located in an amusement park or carnival consisting of one or more
18 elements that challenge participants as part of a supervised or
19 guided educational or recreational curriculum, including, but not
20 limited to, beams, bridges, cable traverses, climbing walls, nets
21 platforms, ropes, swings, towers and zip wires, which may be
22 installed on or in trees, poles, portable structures or buildings,
23 or be part of a self-supporting structure.

24 (3) "Participant" means any person who engages in activities
25 on a challenge course or in a group activity supervised by a

1 challenge course operator.

2 (4) "Zipline" means a cable or rope line suspended between
3 support structures enabling a participant attached to a pulley to
4 traverse from one point to another.

5 (5) "Zipline operator" means any person, partnership,
6 corporation or other commercial entity and their agents, officers,
7 employees or representatives, who has operational responsibility
8 for any zipline.

9 **§20-3D-3. Duties of zipline operators.**

10 Every zipline operator shall:

11 (1) Construct, install, maintain and operate all ziplines in
12 accordance with ACCT standards or substantially equivalent
13 standards;

14 (2) Ensure that ziplines are inspected annually by a
15 professional inspector who meets the qualifications set forth in
16 ACCT standards or substantially equivalent standards;

17 (3) Procure and maintain commercial general liability
18 insurance against claims for personal injury, death and property
19 damages occurring upon, in or about the zipline course, written by
20 an insurance company or companies authorized to do business in West
21 Virginia, which affords protection to the limit of not less than \$1
22 million for injury or death of a single person, to the limit of \$1
23 million for any one accident or occurrence and to the limit of not
24 less than \$100,000 for property damage; and

25 (4) Maintain records for a period of at least three years from

1 the date of the creation of the record, in a manner reasonably
2 accessible to the public, including, but not limited to:

3 (A) Proof of insurance;

4 (B) Inspection reports;

5 (C) Corrective action reports, if any;

6 (D) Maintenance repair logs;

7 (E) Local operating procedures manual;

8 (F) Staff training plan;

9 (G) Daily equipment inspection logs; and

10 (H) Participant acknowledgment, assumption of risks and
11 release of liability.

12 **§20-3D-4. Responsibilities of participants; assumption of risks;**
13 **prohibited acts.**

14 (a) Each participant has the sole individual responsibility
15 for knowing the range of his or her own ability to negotiate a
16 zipline course, and it is the duty of each participant to
17 participate as instructed by the zipline operator and within the
18 limits of his or her own ability.

19 (b) Each participant expressly assumes the risk of and legal
20 responsibility for any injury, loss or damage to persons or
21 property which results from participation in the sport of
22 ziplining, including, but not limited to, any injury, loss or
23 damage caused by variations in terrain, weather conditions, rocks,
24 trees or other forms of forest growth or debris: *Provided, That*
25 the injury, loss or damage is not caused by the willful and wanton

1 misconduct of the zipline operator or an agent or employee of the
2 zipline operator.

3 (c) No participant may:

4 (1) Use a zipline without the authority, supervision and
5 guidance of the zipline operator;

6 (2) Drop, throw or expel any object from a zipline course;

7 (3) Perform any act which interferes with the running or
8 operation of a zipline course; or

9 (4) Engage in any harmful conduct, or willfully or negligently
10 engage in any type of conduct which contributes to or causes injury
11 to any person.

12 **§20-3D-5. Liability of zipline operators.**

13 (a) A zipline operator is liable for injury, loss or damage
14 caused by failure to follow the duties set forth in subdivision
15 (1), section three of this article where the violation of duty is
16 causally related to the injury, loss or damage suffered.

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

NOTE: The purpose of this bill is to regulate ziplines. It sets forth duties of zipline operators and participants; establishes standards for the construction, installation, maintenance and operation of ziplines; requires liability insurance, inspections, recordkeeping and staff training; and limits liability for injury to participants in the absence of failure to follow the duties set forth in the bill.

This article is new; therefore, it has been completely underscored.