

SB 470

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REGULAR SESSION, 2009



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FOR

Senate Bill No. 470

(SENATORS KESSLER, CHAFIN, PLYMALE
AND STOLLINGS, *original sponsors*)

[Passed April 11, 2009; in effect ninety days from passage.]

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AN ACT to amend and reenact §20-15-1, §20-15-2, §20-15-3, §20-15-4, §20-15-5 and §20-15-6 of the Code of West Virginia, 1931, as amended, all relating to regulating all-terrain vehicles and utility-terrain vehicles on the Hatfield-McCoy Trail; standardizing the definition of "all-terrain vehicle"; defining and regulating "utility-terrain vehicle"; defining and regulating "motorcycle"; extending the limitations of liability of the Hatfield-McCoy Regional Recreation Authority; and making stylistic and technical corrections.

Be it enacted by the Legislature of West Virginia:

That §20-15-1, §20-15-2, §20-15-3, §20-15-4, §20-15-5 and §20-15-6 of the Code of West Virginia, 1931, as amended, be amended and reenacted, all to read as follows:

ARTICLE 15. ATV, UTV AND MOTORCYCLE RESPONSIBILITY ACT.

§20-15-1. Legislative findings.

1 The West Virginia Legislature finds that trail-oriented
2 recreation for off-highway vehicle enthusiasts offered by
3 the Hatfield-McCoy Regional Recreation Authority
4 significantly contributes to the economy of West Virginia
5 and is enjoyed by a large and growing number of residents
6 and nonresidents alike. Since it is recognized that there
7 are inherent risks in the operation of such off-highway
8 vehicles which should be understood by each operator and
9 which cannot be eliminated by the Hatfield-McCoy
10 Regional Recreation Authority or its authorized outfitters
11 or licensees, it is the purpose of this article to define the
12 areas of responsibility and affirmative acts which autho-
13 rized outfitters must perform or risk being liable for loss,
14 damage or injury suffered by participants and to define
15 the risk which the participants expressly assume and for
16 which there can be no recovery.

§20-15-2. Definitions.

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

3 (1) "All-terrain vehicle" or "ATV" means any motor
4 vehicle designed for off-highway use and designed to
5 travel on not less than three low-pressure tires, having a
6 seat designed to be straddled by the operator and handle-
7 bars for steering control and intended by the manufacturer
8 to be used by a single operator or by an operator and no
9 more than one passenger.

10 (2) "Authorized outfitter" or "licensee" means a
11 commercial outfitter, which is a person, partnership,

12 limited liability company (“LLC”), corporation, other
13 organization, or any combination thereof, licensed by the
14 Hatfield-McCoy Regional Recreation Authority who
15 operates from any temporary or permanent camp, private
16 or public lodge, or private home, who provides guided
17 tours or the rental of all-terrain vehicles, utility-terrain
18 vehicles or motorcycles for use on assigned lands for
19 monetary profit or gain.

20 (3) “Low-pressure tire” means every tire in which
21 twenty pounds per square inch or less of compressed air is
22 designed to support the load.

23 (4) “Motorcycle” means any motor vehicle manufac-
24 tured with no more than two wheels and having a seat or
25 saddle for the use of the operator.

26 (5) “Participant” means any person using the facilities
27 of the Hatfield-McCoy Regional Recreation Authority.

28 (6) “Utility-terrain vehicle” or “UTV” means any motor
29 vehicle with four or more low-pressure tires designed for
30 off-highway use having bench or bucket seating for each
31 occupant and a steering wheel for control.

§20-15-3. Scope.

1 This article shall only apply to the Hatfield-McCoy
2 Regional Recreation Authority, authorized outfitters or
3 licensees and any participant as defined in section two of
4 this article.

§20-15-4. Duties of authorized outfitters or licensees.

1 (a) Every authorized outfitter or licensee shall:

2 (1) Mark for identification purposes all equipment and
3 vehicles used in the business;

4 (2) Maintain all equipment and vehicles used in the
5 business in such condition that the equipment and vehicles

6 are safe to operate or use as intended and recommended by
7 the manufacturer;

8 (3) Provide facilities, equipment and services conform-
9 ing to safety and other requirements established by the
10 rules promulgated by the Hatfield-McCoy Regional
11 Recreation Authority;

12 (4) Provide facilities, equipment and services as adver-
13 tised or as agreed to by the authorized outfitter or licensee
14 and the participant;

15 (5) Provide protective helmets which are size appropri-
16 ate and which meet the current performance specifications
17 established by the American National Standards Institute
18 standard, z 90.1, the United States Department of Trans-
19 portation federal motor vehicle safety standard no. 218 or
20 Snell safety standards for protective headgear for vehicle
21 users as defined by subdivision (5), subsection (a), section
22 one, article one, chapter seventeen-f of this code to all
23 persons using all-terrain vehicles, utility-terrain vehicles
24 or motorcycles;

25 (6) Provide all-terrain vehicles or motorcycles which are
26 age and size appropriate as recommended by the manufac-
27 turer;

28 (7) Make reasonable and prudent efforts to ensure that
29 participants utilizing the facilities, equipment or services
30 of the authorized outfitter or licensee have received the
31 safety training required by the provisions of the legislative
32 rule for the use of the Hatfield-McCoy Regional Recre-
33 ation Area;

34 (8) Make certain that every guide offered to partici-
35 pants by the authorized outfitter or licensee has a current
36 standard first aid training certificate and CPR certificate
37 issued by the American Red Cross or its equivalent and

38 ATV safety training by the Hatfield-McCoy Recreation
39 Authority or its designee;

40 (9) Make certain that employees carry first aid kits
41 when acting as guides; and

42 (10) Make known to any participant utilizing the
43 facilities, equipment or services of the authorized outfitter
44 or licensee any dangerous condition as to trail lands,
45 facilities or equipment to be traversed or used which is
46 known by the outfitter or licensee.

47 (b) An authorized outfitter or licensee may not rent or
48 lease an all-terrain vehicle, utility-terrain vehicle or
49 motorcycle to a person under the age of eighteen years or
50 allow any owner-operated all-terrain vehicle, utility-
51 terrain vehicle or motorcycle on any guided tour when
52 operated by any person under the age of eighteen years
53 without first obtaining a written statement, signed by the
54 minor's parent or guardian certifying that:

55 (1) Any machine to be operated by the minor or his or
56 her parent or guardian is of a model that is recommended
57 by the manufacturer as appropriate to the minor's age and
58 size;

59 (2) All rules governing the use of the vehicle and the
60 Hatfield-McCoy Recreation Area have been explained to
61 the minor in sufficient detail to enable the minor to abide
62 by the rules; and

63 (3) Any minor under the age of sixteen will remain
64 under the supervision of and the sight of the parent or
65 guardian at all times.

66 (c) An authorized outfitter or licensee may not rent or
67 lease a utility-terrain vehicle to any person who is not at
68 least sixteen years of age and in possession of a valid
69 driver's license.

70 (d) An authorized outfitter or licensee shall provide a
71 participant utilizing the facilities, equipment or services
72 of the authorized outfitter or licensee with written notifi-
73 cation of his or her duties as prescribed in section five of
74 this article. The participant shall sign the notification
75 prior to using the equipment. The signed notification, or
76 an electronically stored copy thereof, shall be kept on file
77 by the outfitter or licensee for not less than five years.

§20-15-5. Duties of participants.

1 (a) All participants:

2 (1) Shall comply with any requirements established by
3 law, including those in section one, article one, chapter
4 seventeen-f of this code which defines those acts prohib-
5 ited by operators of all-terrain vehicles;

6 (2) Shall comply with the rules or regulations estab-
7 lished for use of the Hatfield-McCoy Recreation Area;

8 (3) Shall, as to the Hatfield-McCoy Regional Recreation
9 Authority, authorized outfitter or licensee, expressly
10 assume the risk of and legal responsibility for any injury,
11 loss or damage to person or property which results from
12 participation in operating an all-terrain vehicle, utility-
13 terrain vehicle or motorcycle and caused by any of the
14 following:

15 (A) Variations in terrain, slope or angle of terrain;

16 (B) Surface or subsurface conditions including: Rocks,
17 trees or other forms of forest growth or debris;

18 (C) Collisions with signs, markers, width restrictors,
19 culverts, bridges, pipes, equipment, vehicles or any other
20 objects or fixtures used in trail management, maintenance,
21 construction or development;

22 (D) Collisions with signs, markers, pipes, equipment,
23 vehicles or any component thereof used in natural resource
24 maintenance, development or extraction;

25 (E) Collisions with electrical transmission poles, towers,
26 lines, guy wires or any component thereof;

27 (4) Shall obey all rules or instructions announced by the
28 Hatfield-McCoy Regional Recreation Authority, autho-
29 rized outfitter or licensee with regard to the operation of
30 the all-terrain vehicle or motorcycle he or she is operating;
31 and

32 (5) Shall wear all safety equipment provided by the
33 authorized outfitter or licensee, or which might otherwise
34 be required by law.

35 (b) Each participant shall have the sole individual
36 responsibility for:

37 (1) Knowing the range of his or her own ability to
38 negotiate any slope or trail;

39 (2) Operating the ATV, UTV or motorcycle within the
40 limits of the participant's own ability;

41 (3) Maintaining reasonable control of speed and course
42 at all times;

43 (4) Heeding all posted warnings;

44 (5) Operating only on trails designated by the Hatfield-
45 McCoy Regional Recreation Authority; and

46 (6) Refraining from acting in a manner which may
47 cause or contribute to the injury of any person.

48 (c) If while riding an ATV, UTV or motorcycle any
49 participant collides with any object or person, the respon-
50 sibility for the collision shall be solely that of the partici-
51 pant or participants involved and not that of the Hatfield-

52 McCoy Regional Recreation Authority, authorized outfit-
53 ter or licensee unless the Hatfield-McCoy Regional
54 Recreation Authority, authorized outfitter or licensee or
55 their agent caused the collision in a tortious manner.

56 (d) After an accident, a participant may not leave the
57 area where the accident took place without:

58 (1) Leaving personal identification, including his or her
59 name and address;

60 (2) Notifying the proper authorities; and

61 (3) Obtaining assistance when he or she knows or
62 reasonably should know that any other person involved in
63 the accident is in need of medical or other assistance.

64 (e) Where a participant is a lawful passenger, that
65 participant may not distract or perform any act which
66 might interfere with the safe operation of the all-terrain
67 vehicle, utility-terrain vehicle or motorcycle of which he
68 or she is a passenger.

69 (f) Any person under the age of sixteen years shall
70 remain under the direct supervision and within sight of a
71 parent or guardian both of whom must otherwise comply
72 with state or federal laws and any rules or regulations
73 promulgated thereunder.

74 (g) A participant may not make any alterations or
75 tamper with the all-terrain vehicle, utility-terrain vehicle
76 or motorcycle he or she is operating or of which he or she
77 is a passenger in any way which would interfere with the
78 continued safe operation of that machine.

§20-15-6. Liability of authorized outfitters and licensees.

1 (a) Any authorized outfitter or licensee is liable for
2 injury, loss or damage caused by failure to follow the
3 duties set forth in section four of this article where the

4 violation of duty is causally related to the injury, loss or
5 damage suffered.

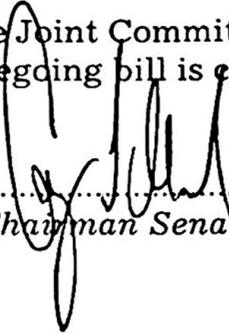
6 (b) An authorized outfitter or licensee is not liable for
7 any injury, loss or damage caused by the negligence of any
8 person who is not an agent or employee of the authorized
9 outfitter or licensee.

10 (c) An authorized outfitter or licensee is not liable for
11 any injury, loss or damage caused by a participant's
12 violation of any duty described in section five of this
13 article.

14 (d) An authorized outfitter or licensee is not liable for
15 any injury, loss or damage caused solely by the partici-
16 pant's failure to negotiate the terrain or environment over
17 which or through which the participant is operating his or
18 her all-terrain vehicle, utility-terrain vehicle or motorcy-
19 cle as described in section five of this article.

Enr. Com. Sub. for Com. Sub. for S. B. No. 470] 10

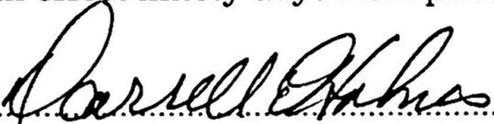
The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.


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Chairman Senate Committee


.....
Chairman House Committee

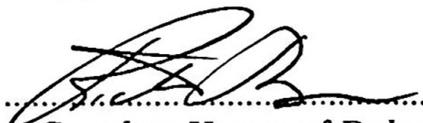
Originated in the Senate.

In effect ninety days from passage.


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Clerk of the Senate


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Clerk of the House of Delegates


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President of the Senate


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Speaker House of Delegates

The within *is approved* this the *11th*
Day of *May*, 2009.


.....
Governor

PRESENTED TO THE
GOVERNOR

MAY 7 2009

Time 11:20am