

1 COMMITTEE SUBSTITUTE

2 FOR

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4 FOR

5 **Senate Bill No. 499**

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

7 _____
8 [Originating in the Committee on the Judiciary;
9 reported February 25, 2011.]
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11
12 A BILL to amend the Code of West Virginia, 1931, as amended, by
13 adding thereto a new article, designated §20-3C-1, §20-3C-2,
14 §20-3C-3, §20-3C-4 and §20-3C-5, all relating to zipline and
15 canopy tour regulation; establishing legislative purpose;
16 defining terms; setting forth duties of zipline and canopy
17 tour operators; requiring liability insurance; setting forth
18 record-keeping requirements; establishing responsibilities of
19 participants; providing for assumption of risks; setting forth
20 prohibited acts; and defining liability of zipline and canopy
21 tour operators.

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

23 That the Code of West Virginia, 1931, as amended, be amended
24 by adding thereto a new article, designated §20-3C-1, §20-3C-2,
25 §20-3C-3, §20-3C-4 and §20-3C-5, all to read as follows:

26 **ARTICLE 3C. ZIPLINE/CANOPY TOUR RESPONSIBILITY ACT.**

1 **§20-3C-1. Legislative purpose.**

2 (a) The Legislature finds that:

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

7 (2) There are inherent risks in the sport of ziplining and
8 canopy touring which should be understood by each participant and
9 which are essentially impossible to eliminate by the zipline or
10 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 canopy
13 tour operators shall be liable for loss, damage or injury and those
14 risks which the participant expressly assumes responsibility and
15 for which there can be no recovery.

16 **§20-3C-2. Definitions.**

17 As used in this article:

18 (1) "ACCT" means the Association for Challenge Course
19 Technology, Seventh Edition, or substantially equivalent standards.

20 (2) "Canopy tours" means a facility not located in an
21 amusement park or carnival which is a supervised or guided
22 educational or recreational activity including, but not limited to,
23 beams, bridges, cable traverses, climbing walls, nets, platforms,
24 ropes, swings, towers and ziplines, which may be installed on or in
25 trees, poles, portable structures or buildings, or be part of self-
26 supporting structures.

1 (3) "Participant" means any person who engages in activities
2 on a zipline or canopy tour individually or in a group activity
3 supervised by a zipline or canopy tour operator.

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

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

11 **§20-3C-3. Duties of zipline operators.**

12 Every zipline operator shall:

13 (1) Construct, install, maintain and operate all ziplines and
14 canopy tours in accordance with ACCT or substantially equivalent
15 standards;

16 (2) Ensure that ziplines and canopy tours are inspected
17 annually by a professional inspector who meets the qualifications
18 set forth in ACCT or substantially equivalent standards;

19 (3) Train employees operating ziplines and canopy tours in
20 accordance with national standards associated with their
21 profession;

22 (4) Procure and maintain commercial general liability
23 insurance against claims for personal injury, death and property
24 damages occurring upon, in or about the zipline or canopy tour
25 which affords protection to the limit of not less than \$1 million
26 for injury or death of a single person, to the limit of \$1 million

1 for any one accident or occurrence, and to the limit of not less
2 than \$100,000 for property damage; and

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

5 (A) Proof of insurance;

6 (B) Inspection reports;

7 (C) Maintenance records; and

8 (D) Participant acknowledgment, assumption of risks and
9 release of liability.

10 **§20-3C-4. Responsibilities of participants; assumption of risks;**
11 **prohibited acts.**

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

17 (b) Each participant expressly assumes the risk of and legal
18 responsibility for any injury, loss or damage to persons or
19 property which results from participation in the sport of ziplining
20 or canopy touring, including, but not limited to, any injury, loss
21 or damage caused by variation in terrain, weather conditions,
22 rocks, trees or other forms of forest growth or debris: *Provided,*
23 That the injury, loss or damage is not caused by the reckless or
24 willful misconduct of the zipline operator or an agent or employee
25 of the zipline operator.

26 (c) No participant may:

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

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

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

7 (4) Engage in any harmful conduct, or willfully or negligently
8 engage in any type of conduct which contributes to cause injury to
9 any person.

10 **§20-3C-5. Liability of zipline operators.**

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

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

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