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]

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

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

§20-19-2. Definitions.

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

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

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

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

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

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

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

Every mountain operator shall:

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

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

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

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

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

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

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

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

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

§20-19-4. Duties of passengers.

Every passenger shall have the duty to not:

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

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

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

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

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

§20-19-5. Duties of bicyclists.

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

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

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

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

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

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

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

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

§20-19-7. Liability of passengers.

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

§20-19-8. Liability of passengers.

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