

WEST VIRGINIA LEGISLATURE

2024 REGULAR SESSION

Introduced

Senate Bill 774

By Senators Woodrum and Jeffries

[Introduced February 13, 2024; referred
to the Committee on Outdoor Recreation; and then to
the Committee on the Judiciary]

1 A BILL to amend the Code of West Virginia, 1931, as amended, by adding thereto a new article,
 2 designated §20-19-1, §20-19-2, §20-19-3, §20-19-4, §20-19-5, §20-19-6, §20-19-7, and
 3 §20-19-8, all relating to the creation of the Mountain Bike Responsibility Act; stating a
 4 legislative purpose; defining terms; and providing for duties of trail system operators,
 5 mountain 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 trail system operator
 4 used to transport passengers by single or double reversable tramway; chairlift or gondola lift; T-bar
 5 lift, J-bar lift, platter lift, or similar device; a fiber rope or wire rope tow, or a conveyor.

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

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

12 (4) "Trail system operator" means any person, partnership, corporation, or other
13 commercial entity, and its agents, officers, employees, or representatives, who, as part of a
14 commercial, private, or for-profit endeavor, operational responsibility for mountain bicycling
15 activities at any trail system area and the use of an aerial passenger tramway for such purpose.
16 Trail system operator does not include any public or non-profit corporation, and its agents, officers,
17 employees, or representatives, who has operational responsibility of mountain bicycling activities
18 at any trail system area.

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

22 (6) "Mountain Bike trails" means all mountain bike trails designated by the trail system
23 operator to be used by mountain bicyclists for the purpose of participating in the sport of mountain
24 biking including but not limited to downhill trails, cross-country trails, free ride trails, pump tracks,
25 and skills areas.

§20-19-3. Duties of trail system operators with respect to trail system.

1 Every trail system operator shall:

2 (1) Maintain a trail board at a prominent location at the trail system area displaying that
3 area's network of mountain bike trails.

4 (2) Designate and mark conspicuously all mountain bike trails with a name and color or
5 symbol recognized in the mountain biking industry reflecting the relative degree of difficulty of the
6 mountain bike trail. Such designation shall be at or near the top or entrance of the mountain bike
7 trail. Any mountain bike trail which is closed shall be so marked at the trailhead.

8 (3) Follow published operational industry standards and guidelines.

9 (4) Provide internal trained and dedicated emergency response personnel, or enter into an

10 adequate emergency response plan with a local fire or EMS agency, or post at the trail board
11 maintained under subdivision (1) of this section instructions on how to contact emergency
12 response personnel.

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

22 (6) Post at the trail board maintained under subdivision (1) of this section the following
23 language:

24 "WARNING – ASSUMPTION OF RISKS:

25 Under West Virginia law, every mountain bicyclist is considered to have accepted and to
26 have knowledge of the risk of injury (including death) to the mountain bicyclist, as well as damage
27 to property of the mountain bicyclist. Under West Virginia law, every mountain bicyclist has the
28 duty to take the precautions that are necessary to avoid injury or death, as well as damage to
29 property. West Virginia law sets forth certain limitations on the liability of trail system operators for
30 injury or death to a bicyclist, as well as damage to property.

31 (7) Post a sign at all aerial passenger tramways that advises the passengers to seek
32 advice if not familiar with riding the aerial passenger tramway; and

33 (8) Construct, operate, maintain, and repair any aerial passenger tramway in accordance
34 with relevant and published national standards and safety requirements for such machinery.

§20-19-4. Duties of passengers.

1 No passenger shall:

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

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

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

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

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

12 (6) Embark on an aerial passenger tramway without the authority, expressed or implied, of
13 the trail system operator.

14 (7) Embark on an aerial passenger tramway while impaired by alcohol or drugs.

§20-19-5. Duties of mountain bicyclists.

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

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

12 equipment.

13 (c) Each mountain bicyclist shall have the sole individual responsibility for knowing the
14 range of his or her own ability to negotiate any trail. Further, it shall be the duty of each mountain
15 bicyclist to ride within the limits of the mountain bicyclist's own ability; to maintain reasonable
16 control of speed and course at all times while mountain bicycling; to heed all posted warnings; to
17 mountain bicycle only on a bike trail area designated by the trail system operator; to assess the
18 difficulty of mountain bike trails; to be able to stop or avoid other individuals and objects; and to
19 refrain from acting in a manner which may cause or contribute to the injury of anyone.

20 (d) If involved in a collision with another individual that results in injury, it shall be the duty of
21 a mountain bicyclist to remain in the vicinity of the collision until giving his or her name and current
22 address to a representative of the trail system operator or to all other parties to the collision except
23 to secure aid for a person injured in a collision. A mountain bicyclist who leaves the vicinity to
24 secure aid shall provide his or her name and current address after securing the aid.

25 (e) If while mountain bicycling any mountain bicyclist collides with any object or person,
26 except an obviously intoxicated person of whom the trail system operator is aware, the
27 responsibility for such collision shall be solely that of the mountain bicyclist or mountain bicyclists
28 involved and not that of the trail system operator.

§20-19-6. Liability of trail system operator.

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

4 (b) A trail system 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 trail system operator.

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

8 (d) Every trail system 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 may be liable for injury, loss, or damage resulting from violations of the
2 duties established in section four of this article where the violation of duty is causally related to the
3 injury, loss, or damage suffered.

§20-19-8. Liability of mountain bicyclist.

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

NOTE: The purpose of this bill is to outline the duties and responsibilities of trail system 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.