

1 State of Arkansas
2 89th General Assembly
3 Regular Session, 2013
4

As Engrossed: H2/11/13

A Bill

HOUSE BILL 1217

5 By: Representatives Linck, Branscum, J. Burris, Eubanks
6 By: Senators Irvin, J. Key
7

For An Act To Be Entitled

9 AN ACT TO ESTABLISH THE ARKANSAS PADDLESPORT
10 ACTIVITIES ACT; AND FOR OTHER PURPOSES.
11

Subtitle

14 TO ESTABLISH THE ARKANSAS PADDLESPORT
15 ACTIVITIES ACT.
16
17

18 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:
19

20 SECTION 1. Arkansas Code § 27-101-201 is amended to add an additional
21 subsection to read as follows:

22 27-101-201. Liability of owner, renter, operator, or lessee of vessel
23 for injury or damage ~~— Exception.~~

24 (a) The owner, renter, operator, or lessee of a vessel ~~shall be~~ is
25 liable for any injury or damage ~~occasioned~~ caused by the negligent operation
26 of the vessel, whether negligence consists of violating ~~the provisions of the~~
27 statutes of this state or neglecting to observe such ordinary care and ~~such~~
28 operation as the rules of the common law require.

29 (b)(1) The owner ~~shall not be~~ is not liable, however, unless the
30 vessel is being used with his or her express or implied consent.

31 (2)(A) The owner ~~shall not be~~ is not strictly liable to a
32 renter, operator, or lessee for any injury or damage occasioned by the
33 negligent operation of the vessel by the renter, operator, or lessee.

34 (B) The liability of the owner for injury or damage
35 suffered by a renter, operator, or lessee shall be determined by comparing
36 the fault of the owner and the fault of the renter, operator, or lessee in



1 accordance with §§ 16-55-216 and 16-64-122.

2 (c) It shall be presumed that the vessel is being operated with the
3 knowledge and consent of the owner if at the time of the injury or damage it
4 is under the control of his or her spouse, father, mother, brother, sister,
5 son, daughter, or other immediate member of the owner's family.

6 ~~(d) Nothing contained in this section shall not be construed to~~ This
7 section does not:

8 (1) relieve Relieve any other person from any liability that he
9 or she would otherwise have, but nothing contained in this section shall not
10 be construed to; or

11 (2) authorize Authorize or permit any recovery in excess of
12 injury or damage actually incurred.

13 (e) This section does not apply to an outfitter as defined in § 27-
14 101-902.

15

16 SECTION 2. Arkansas Code Title 27, Chapter 101, is amended to add an
17 additional subchapter to read as follows:

18

19 Subchapter 9 — Arkansas Paddlesport Activities Act

20

21 27-101-901. Title.

22 This subchapter shall be known and may be cited as the "Arkansas
23 Paddlesport Activities Act".

24

25 27-101-902. Definitions.

26 As used in this subchapter:

27 (1) "Canoe" means a watercraft that has an open top and is
28 designed to hold one (1) or more participants;

29 (2) "Canoeing, rafting, kayaking, or tubing" means riding,
30 training, using, paddling, or being a passenger in or on a canoe, kayak,
31 raft, or tube, including a person assisting a participant;

32 (3) "Equipment" means an accessory to a watercraft that is used
33 for propulsion, safety, comfort, or convenience, including without limitation
34 paddles, oars, and personal flotation devices;

35 (4) "Inherent risk of paddlesport activity" means the dangers,
36 hazards, or conditions that are an integral part of paddlesport activities in

1 the free-flowing streams or rivers of this state, including without
2 limitation:

3 (A) A risk typically associated with watercraft, including
4 change in water flow or current, submerged, semisubmerged, and overhanging
5 objects, capsizing, swamping, or sinking of watercraft and resultant injury,
6 hypothermia, or drowning;

7 (B) Cold weather or heat-related injuries and illnesses,
8 including hypothermia, frostbite, heat exhaustion, heat stroke, and
9 dehydration;

10 (C) An act of nature, including without limitation rock
11 fall, inclement weather, thunder and lightning, severe or varied temperature,
12 weather conditions, winds, and tornadoes;

13 (D) Operator error or equipment failure due to operator
14 error;

15 (E) Attack or bite by an *animal*;

16 (F) The aggravation of an injury or illness because the
17 injury or illness occurred in a remote place where medical facilities are not
18 available; and

19 (G) Nothing in this subsection is intended to circumvent
20 an outfitter's duty to provide safe equipment and watercraft;

21 (5) "Kayak" means a watercraft similar to a canoe with a covered
22 top that may have more than one (1) circular opening to hold participants or
23 is designed to permit a participant to sit on top of an enclosed formed seat;

24 (6) "Outfitter" means an individual, group, club, partnership,
25 corporation, or business entity, whether or not operating for profit, or an
26 employee or authorized agent, which sponsors, organizes, rents, or provides
27 to the public the use of a watercraft by a participant in a free-flowing
28 stream or river in this state;

29 (7) "Paddlesport activity" means canoeing, rafting, kayaking, or
30 tubing in or on a watercraft as a:

31 (A) Competition, an exercise, or an undertaking that
32 involves a watercraft;

33 (B) Training or teaching activity; or

34 (C) Ride, trip, tour, or other activity, however informal
35 or impromptu, whether or not a fee is paid, or guided or not, that is
36 sponsored by an outfitter;

1 (8) "Participant" means a person, whether amateur or
2 professional, whether or not a fee is paid, who rents, leases, or uses
3 watercraft or is a passenger on a rented, leased, or used watercraft
4 participating in a paddlesport activity;

5 (9) "Raft" means an inflatable watercraft that has an open top
6 and is designed to hold one (1) or more participants;

7 (10) "Tube" means an inflatable tire inner tube or similar
8 inflatable watercraft that has an open top capable of holding one (1) or more
9 participants; and

10 (11) "Watercraft" means a canoe, kayak, raft, or tube propelled
11 by the use of paddles, oars, hands, poles, or other nonmechanical or
12 nonmotorized means of propulsion.

13
14 27-101-903. Assumption of risk by participant — Liability of
15 outfitter — Exceptions.

16 (a) Except as provided in subsection (c) of this section:

17 (1)(A) A participant assumes the inherent risk of a paddlesport
18 activity by engaging in the paddlesport activity.

19 (B) A participant or a participant's representative shall
20 not make a claim against, maintain an action against, or recover from an
21 outfitter for the injury, loss, damage, or death of the participant resulting
22 from any of the inherent risk of a paddlesport activity; and

23 (2) An outfitter is not liable for an injury to or the death of
24 a participant resulting from the inherent risks of paddlesport activities.

25 (b) This section does not apply to a relationship between an employer
26 and employee under the Workers' Compensation Law, § 11-9-101 et seq.

27 (c) This section does not prevent or limit the liability of an
28 outfitter or its agent that:

29 (1) Intentionally injures a participant;

30 (2) Commits an act or omission of gross negligence concerning
31 the safety of a participant that proximately causes injury, damage, or death
32 to the participant;

33 (3) Provides unsafe equipment or watercraft to a participant and
34 knew or should have known that the equipment or watercraft was unsafe to the
35 extent that it could cause an injury;

36 (4) Fails to provide a participant with the equipment required

1 by § 27-101-203(a);

2 (5) Fails to use that degree of care that an ordinarily careful
3 and prudent person would use under the same or similar circumstances; or

4 (6) Commits other acts, errors, or omissions that constitute
5 willful or wanton misconduct, gross negligence, or criminal conduct that
6 proximately causes injury, damage, or death.

7 (d) The limitation of liability provided by this section is in
8 addition to any other limitation of liability provided by law.

9
10 27-101-904. Warning required.

11 An outfitter shall post and maintain signage in a clearly visible
12 location at or near areas where the outfitter conducts paddlesport activities
13 and in black letters at least one inch (1") high containing the following
14 warning:

15 "WARNING — Under Arkansas law, an outfitter is not liable for the
16 injury or death of a participant in a paddlesport activity resulting from the
17 inherent risk of paddlesport activity under the Arkansas Paddlesport
18 Activities Act, located at § 27-101-901 et seq. You are assuming the risk of
19 participating in a paddlesport activity."

20
21 */s/Linck*
22
23
24
25
26
27
28
29
30
31
32
33
34
35
36