

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

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

8
9 AN ACT TO ESTABLISH THE ARKANSAS PADDLESPORT
10 ACTIVITIES ACT; AND FOR OTHER PURPOSES.
11

Subtitle

12
13 TO ESTABLISH THE ARKANSAS PADDLESPORT
14 ACTIVITIES ACT.
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18 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:
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20 SECTION 1. Arkansas Code § 27-101-103(11), concerning the definition
21 of "vessel", is amended to read as follows:

22 (11)(A) "Vessel" means every description of watercraft, other
23 than a seaplane on the water, used or capable of being used as a means of
24 transportation.

25 (B) "Vessel" does not include watercraft used in
26 paddlesport activities as defined in § 27-101-902;
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28 SECTION 2. Arkansas Code § 27-101-201 is amended to add an additional
29 subsection to read as follows:

30 27-101-201. Liability of owner, renter, operator, or lessee of vessel
31 for injury or damage — Exception.

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



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

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

(B) The liability of the owner for injury or damage suffered by a renter, operator, or lessee shall be determined by comparing the fault of the owner and the fault of the renter, operator, or lessee in accordance with §§ 16-55-216 and 16-64-122.

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

(d) ~~Nothing contained in this section shall not be construed to~~ This section does not relieve any other person from any liability that he or she would otherwise have, but ~~nothing contained in this section shall not be construed to~~ this section does not authorize or permit any recovery in excess of injury or damage actually incurred.

(e) This section does not apply to a paddlesport activity as defined in § 27-101-902.

SECTION 3. Arkansas Code Title 27, Chapter 101, is amended to add an additional subchapter to read as follows:

Subchapter 9 — Arkansas Paddlesport Activities Act

27-101-901. Title.

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

27-101-902. Definitions.

As used in this subchapter:

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

(2) "Canoeing, rafting, kayaking, or tubing" means riding, training, using, paddling, or being a passenger in or on a canoe, kayak,

1 raft, or tube, including a person assisting a participant;

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

5 (4) "Inherent risk of paddlesport activity" means the dangers,
6 hazards, or conditions that are an integral part of paddlesport activities in
7 the free-flowing streams or rivers of this state, including without
8 limitation:

9 (A) A risk typically associated with watercraft, including
10 change in water flow or current, submerged, semisubmerged, and overhanging
11 objects, capsizing, swamping, or sinking of watercraft and resultant injury,
12 hypothermia, or drowning;

13 (B) Cold weather or heat-related injuries and illnesses,
14 including hypothermia, frostbite, heat exhaustion, heat stroke, and
15 dehydration;

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

19 (D) Equipment failure or operator error;

20 (E) Attack or bite by an animal; and

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

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

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

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

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

36 (A) Competition, an exercise, or an undertaking that

1 involves a watercraft;

2 (B) Training or teaching activity; or

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

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

10 (9) "Personal flotation device" means a life jacket, floatable
 11 cushion, or other device approved by the United States Coast Guard;

12 (10) "Raft" means an inflatable watercraft that has an open top
 13 and is designed to hold one (1) or more participants;

14 (11) "Tube" means an inflatable tire inner tube or similar
 15 inflatable watercraft that has an open top capable of holding one (1) or more
 16 participants; and

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

20
 21 27-101-903. Assumption of risk by participant — Liability of
 22 outfitter — Exceptions.

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

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

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

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

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

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

36 (1) Intentionally injures a participant;

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

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

7 (4) Fails to provide a participant a United States Coast Guard-
8 approved personal flotation device;

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

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

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

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17 27-101-904. Warning required.

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

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