

CHAPTER NO. 169

SENATE BILL NO. 325

By Miller, Southerland, Crowe

Substituted for: House Bill No. 29

By Newton, Hawk, DuBois

AN ACT to amend Tennessee Code Annotated, Title 70, Chapter 7, Part 2, to enact the "Tennessee White Water Rafting Responsibility Act".

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. Tennessee Code Annotated, Title 70, Chapter 7, is amended by deleting Part 2 in its entirety, and by substituting instead the following language:

70-7-201. This part may be cited as the "Tennessee White Water Rafting Responsibility Act".

70-7-202. (a) The general assembly recognizes that white water rafting, in both its commercial and non-commercial applications, is a major industry and recreational activity in Tennessee and that among the attractions of the activity of white water rafting are risks, inherent and otherwise. The general assembly recognizes that the State of Tennessee has a legitimate interest in maintaining the economic viability of commercial white water rafting operations and in maintaining the availability of non-commercial white water rafting opportunities because it recognizes that the state and its citizens derive numerous economic and personal benefits from the activity of white water rafting. It is, therefore, the intent of the general assembly to encourage white water rafting by discouraging claims based on injury, death or damages resulting from risks inherent in white water rafting.

(b) The purpose of this part is to limit or eliminate the liability of a provider of a white water rafting activity or opportunity to a participant when injury, death or damage caused by or to the participant is the result of risks inherent in white water rafting.

(c) The general assembly intends that this part be broadly construed to effectuate the purpose of shielding canoe and kayak rental businesses, and providers of white water rafting activities from liability for injuries, death or damages caused by the inherent risk or risks of white water rafting, canoeing and kayaking on the rivers of Tennessee.

70-7-203. As used in this part, the following definitions apply:

(1) "Inherent risk or risks" mean those dangers or conditions that are characteristic of, intrinsic to or an integral part of white water rafting.

(2) "Provider" means a person or business entity or governmental entity that promotes, offers or conducts white water rafting activities or opportunities.

(3) "White water rafting" means white water rafting on a fast flowing river which is located within the State of Tennessee.

70-7-204. (a) A person who participates in white water rafting assumes the inherent risks in that sport or recreational opportunity, whether such risks are known or unknown, and is legally responsible for all injuries, death or damages to the person or persons resulting from the inherent risks of white water rafting.

(b) A provider is not required to eliminate, alter or control the inherent risks of white water rafting and shall not be liable for injuries, death or damages resulting from the inherent risks of white water rafting.

(c) No participant or participant's representative shall make any claim against, maintain any action against or recover from a white water rafting provider for injury, death or damages of or to the participant resulting from any of the inherent risks of white water rafting.

(d) Nothing in this part shall be construed to conflict with or render as ineffectual a liability release or acknowledgment of risk agreement between a person who participates in a white water rafting activity and a provider.

70-7-205. (a) Nothing in this part precludes an action based on negligence of the provider if the injury, death or damage is not the result of an inherent risk of white water rafting. Provider negligence, for which an action is not precluded, may include, but is not limited to the:

(1) Improper or inadequate maintenance, repair or replacement of equipment used incidental to or required in white water rafting; and

(2) Failure to train, or the improper or inadequate training of, employees of the provider who are actively involved in white water rafting.

(b) Nothing in this part shall apply to a cause of action based on the design or manufacture of equipment or products or safety equipment used incidental to or required in white water rafting.

(c) This part shall not prevent or limit the liability of a white water rafting provider who or which commits an act or omission that constitutes gross negligence or willful or wanton disregard for the safety of the participant and that act or omission injures, kills or damages the participant.

70-7-206. Nothing in this part shall be construed so as to negate that assumption of the risk is an affirmative defense.

70-7-207. The commissioner of commerce and insurance is requested to conduct a study of the provision and availability of surplus lines of insurance for these and similar entities and to provide a report of recommendations on or before January 1, 2008.

SECTION 2. This act shall take effect upon becoming a law, the public welfare requiring it and shall cease to be effective on July 1, 2008.

PASSED: April 27, 2005



JOHN S. WILDER
SPEAKER OF THE SENATE



JIMMY NAIFEH, SPEAKER
HOUSE OF REPRESENTATIVES

APPROVED this 17th day of May 2005



PHIL BREDESEN, GOVERNOR