

SECOND REGULAR SESSION

SENATE BILL NO. 673

90TH GENERAL ASSEMBLY

INTRODUCED BY SENATOR CHILDERS.

Pre-filed December 1, 1999, and 1,000 copies ordered printed.

TERRY L. SPIELER, Secretary.

2739S.011

AN ACT

To amend chapter 537, RSMo, by adding thereto one new section relating to torts and actions for damages.

Be it enacted by the General Assembly of the State of Missouri, as follows:

Section A. Chapter 537, RSMo, is amended by adding thereto one new section, to be known as section 537.327, to read as follows:

537.327. 1. As used in this section, unless the context provides otherwise, the following terms shall mean:

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

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

(3) "Equipment", any accessory to a watercraft which is used for propulsion, safety, comfort, or convenience including but not limited to paddles, oars and personal floatation devices;

(4) "Inherent risks of paddlesport activities", those dangers, hazards or conditions which are an integral part of canoeing, rafting, kayaking or tubing in Missouri's free flowing streams or rivers, including but not limited to:

(a) Hazards from the watercraft or its occupants or others that may result in injury, harm, death, illness or permanent disability to a participant in, on or around

said watercraft;

(b) Certain known and unknown hazards such as surface and subsurface water conditions, bridges, flash flooding, trees and natural hazards;

(c) Certain known and unknown hazards that may occur while loading, launching, carrying, docking or otherwise controlling a watercraft, including but not limited to, dynamic and static hazards from weather, environment, or other natural features or forces;

(d) Collisions with other watercraft or objects in, on, or out of the waterway;

(e) The potential of a participant to act in any manner, whether negligent or not, that may contribute to injury to the participant or others, as in failing to maintain control over the watercraft or not acting within the participant's abilities;

(5) "Kayak", a watercraft similar to a canoe with a covered top which may have more than one circular opening to hold participants, or designed to permit a participant to sit on top of an enclosed formed seat;

(6) "Livery", any person, corporation, company or business entity, or employees and agents of said organization, which rents, leases, or provides to the general public, whether for a fee or not, the opportunity for use of any watercraft by a participant on Missouri's free flowing streams or rivers;

(7) "Paddlesport activity", canoeing, rafting, or kayaking in or on a watercraft as follows:

(a) A competition, exercise, or undertaking that involves a watercraft;

(b) Watercraft used for training or teaching activities;

(c) Using, inspecting or evaluating a watercraft belonging to another, whether the owner has received monetary or nonmonetary consideration for the use of the watercraft or is permitting a prospective purchaser of the same to use, inspect or evaluate said watercraft;

(d) A ride, trip, tour or other activity however informal or impromptu, whether or not a fee is paid, that is sponsored by a livery/outfitter;

(e) A guided trip, tour or other activity, whether or not a fee is paid, that is sponsored by a livery/outfitter;

(8) "Participant", any person, amateur or professional, corporation, company or business entity, organization, group, club, affiliation, or representative or agent of same, whether or not a fee is paid, which rents, leases, or uses watercraft or is a passenger on a rented, leased or used watercraft participating in a paddlesport activity;

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

(10) "Raft", an inflatable watercraft which has an open top and is designed to hold one or more participants;

(11) "Tube", an inflatable tire intertube or similar inflatable watercraft which has an open top capable of holding one or more participants;

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

2. Except as provided in subsection 3 of this section, a livery shall not be liable for any injury to or the death of a participant resulting from the inherent risks of paddlesport activities and, except as provided in subsection 3 of this section, no participant or a participant's representative shall make any claim against, maintain any action against, or recover from a livery for injury, loss, damage or death of the participant resulting from any of the inherent risks of paddlesport activities.

3. The provisions of subsection 2 of this section shall not prevent or limit the liability of a livery that:

(1) Intentionally injures the participant in a paddlesport activity;

(2) Commits an act or omission that constitutes negligence or gross negligence for the safety of a participant in a paddlesport activity and such negligence is the proximate cause of an injury or of death of a participant;

(3) Negligently provides unsafe or inappropriate equipment or watercraft to a participant; or

(4) Fails to provide a participant a United States Coast Guard approved personal floatation device.

4. Every livery shall post and maintain signs which contain the warning notice specified in this subsection. Such signs shall be placed in a clearly visible location on or near areas where the livery/outfitter conducts paddlesport activities. The warning notice specified in this subsection shall appear on the sign in black letters on a white background with each letter to be a minimum of one inch in height. Every written contract entered into by a livery for the providing of watercraft to a participant shall contain the warning notice specified in this subsection. The signs and contracts described in this subsection shall contain the following warning notice:

"WARNING

Under Missouri law, a livery is not liable for an injury to or the death of a participant in paddlesport activities resulting from the inherent risks of paddlesport activities pursuant to the Revised Statutes of Missouri."

5. This section shall not be construed to limit or modify any defense or immunity already existing in statute or common law or to affect any claim occurring prior to the effective date of this statute.