

FIRST REGULAR SESSION

SENATE BILL NO. 128

91ST GENERAL ASSEMBLY

INTRODUCED BY SENATOR CHILDERS,

Pre-filed December 1, 2000, and 1,000 copies ordered printed.

TERRY L. SPIELER, Secretary.

0323S.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 paddlesport activities in Missouri's free flowing streams or rivers, including but not limited to:

(a) Risks typically associated with watercraft including change in water flow or current, submerged, semi-submerged and overhanging objects, capsizing, swamping or sinking of watercraft and resultant injury, hypothermia, and/or drowning;

(b) Cold weather or heat related injuries and illnesses including hypothermia, frostbite, heat exhaustion, heat stroke, and dehydration;

(c) An "act of nature" which may include rock fall, inclement weather, thunder and lightening, severe and/or varied temperature, weather conditions, and winds including tornadoes;

(d) Equipment failure or operator error;

(e) Attack and/or bite by animals;

(f) Accidents of illnesses occurring in remote places where there are no available medical facilities;

(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) "Outfitter", any individual, group, club, partnership, corporation or business entity, whether or not operating for profit or not for profit, or any employee or agent, which sponsors, organizes, rents, or provides to the general public, the opportunity to use 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) Training or teaching activities;

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

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

(8) "Participant", any person, whether amateur or professional, 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 4 of this section, an outfitter 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 4 of this section, no participant or a participant's representative shall make any claim against, maintain

any action against, or recover from an outfitter for injury, loss, damage or death of the participant resulting from any of the inherent risks of paddlesport activities.

3. This section shall not apply to any employer-employee relationship governed by the provisions of chapter 287, RSMo.

4. The provisions of subsection 2 of this section shall not prevent or limit the liability of an outfitter that:

(1) Intentionally injures the participant;

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

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

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

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

5. Every outfitter 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 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 an outfitter 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, an outfitter 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."

6. 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.