

SECOND REGULAR SESSION

SENATE BILL NO. 1033

92ND GENERAL ASSEMBLY

INTRODUCED BY SENATORS CLEMENS, CHILDERS, KENNEDY, NODLER AND RUSSELL.

Read 1st time January 12, 2004, and ordered printed.

TERRY L. SPIELER, Secretary.

3675S.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 or on, training in or on, using, paddling, or being a passenger in or 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, 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 lightning, severe or varied temperature, weather conditions, and

winds including tornadoes;

(d) Equipment failure or operator error;

(e) Attack or bite by animals;

(f) The aggravation of injuries or illnesses because they occurred 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 inner tube 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 flotation 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 August 28, 2004.