

SECOND REGULAR SESSION

SENATE BILL NO. 1075

94TH GENERAL ASSEMBLY

INTRODUCED BY SENATOR ENGLER.

Read 1st time February 4, 2008, and ordered printed.

TERRY L. SPIELER, Secretary.

4935S.011

AN ACT

To repeal section 537.327, RSMo, and to enact in lieu thereof one new section relating to immunity from liability for outfitters of watercraft.

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

Section A. Section 537.327, RSMo, is repealed and one new section
2 enacted in lieu thereof, to be known as section 537.327, to read as follows:

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

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

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

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

11 (4) "Inherent risks of [paddlesport] **watercraft** activities", those dangers,
12 hazards, or conditions which are an integral part of [paddlesport] **watercraft**
13 activities in [Missouri's free-flowing streams or rivers], including, but not limited
14 to:

15 (a) Risks typically associated with watercraft, including **but not limited**
16 **to** change in water flow or current, submerged, semi-submerged, and overhanging
17 objects, capsizing, swamping, or sinking of watercraft and resultant injury,
18 hypothermia, or drowning;

19 (b) Cold weather or heat-related injuries and illnesses, including

EXPLANATION—Matter enclosed in bold-faced brackets [thus] in this bill is not enacted and is intended to be omitted in the law.

20 hypothermia, frostbite, heat exhaustion, heat stroke, and dehydration;

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

24 (d) Equipment failure or operator error;

25 (e) Attack or bite by animals;

26 (f) The aggravation of injuries or illnesses because they occurred in remote
27 places where there are no available medical facilities;

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

31 (6) "Outfitter", any individual, group, club, partnership, corporation, or
32 business entity, whether or not operating for profit or not for profit, or any
33 employee or agent, which sponsors, organizes, rents, **sells**, or provides to the
34 general public the opportunity to use any watercraft by a participant on
35 Missouri's free-flowing streams or rivers;

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

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

39 (b) Training or teaching activities;

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

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

44 (8) "Participant", any person, whether amateur or professional, whether
45 or not a fee is paid, [which] **who purchases**, rents, leases, or uses watercraft or
46 is a passenger on a **purchased**, rented, leased, or used watercraft participating
47 in a [paddlesport] **watercraft** activity;

48 [(9)] (8) "Personal floatation device", a life jacket, floatable cushion, or
49 other device approved by the United States Coast Guard;

50 [(10)] (9) "Raft", an inflatable watercraft which has an open top and is
51 designed to hold one or more participants;

52 [(11)] (10) "Tube", an inflatable tire inner tube or similar inflatable
53 watercraft which has an open top capable of holding one or more participants;

54 [(12)] (11) "Watercraft", any canoe, kayak, raft, or tube propelled by the
55 use of paddles, oars, hands, poles, or other nonmechanical, nonmotorized means

56 of propulsion, and any small recreational water vessel that uses an
57 inboard water jet pump powered by an internal combustion engine as
58 its primary source of propulsion that is operated by a person or
59 persons sitting, standing, or kneeling on such vessel;

60 (12) "Watercraft activity", canoeing, rafting, kayaking, or using
61 any other watercraft as follows:

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

64 (b) Training or teaching activities;

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

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

70 2. Except as provided in subsection 4 of this section, an outfitter shall not
71 be liable for any injury to or the death of a participant resulting from the
72 inherent risks of [paddlesport] **watercraft** activities and, except as provided in
73 subsection 4 of this section, no participant or a participant's representative shall
74 make any claim against, maintain any action against, or recover from an outfitter
75 for injury, loss, damage, or death of the participant resulting from any of the
76 inherent risks of [paddlesport] **watercraft** activities. **Additionally, an**
77 **outfitter shall not be liable for any injury or death of a participant**
78 **resulting from any nondefective watercraft component part or**
79 **accessory that is sold, leased, or otherwise provided to a participant,**
80 **and which is installed or integrated into the watercraft by such**
81 **participant.**

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

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

86 (1) Intentionally injures the participant;

87 (2) Commits an act or omission that constitutes negligence for the safety
88 of a participant in a [paddlesport] **watercraft** activity and that negligence is the
89 proximate cause of the injury or death of a participant;

90 (3) Provides unsafe equipment or watercraft to a participant and knew or
91 should have known that the equipment or watercraft was unsafe to the extent

92 that it did cause the injury;

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

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

97 5. Every outfitter shall post and maintain signs which contain the
98 warning notice specified in this subsection. Such signs shall be placed in a
99 clearly visible location on or near areas where the outfitter conducts
100 [paddlesport] **watercraft** activities. The warning notice specified in this
101 subsection shall appear on the sign in black letters on a white background with
102 each letter to be a minimum of one inch in height. Every written contract entered
103 into by an outfitter for the providing of watercraft to a participant shall contain
104 the warning notice specified in this subsection. The signs and contracts described
105 in this subsection shall contain the following warning notice:

106

"WARNING

107 Under Missouri law, an outfitter is not liable for an injury to or the death of a
108 participant in [paddlesport] **watercraft** activities resulting from the inherent
109 risks of [paddlesport] **watercraft** activities pursuant to the Revised Statutes of
110 Missouri."

111 6. This section shall not be construed to limit or modify any defense or
112 immunity already existing in statute or common law or to affect any claim
113 occurring prior to August 28, 2005.

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