

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2007

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SENATE BILL 1279

Short Title: Limit Liability/White-Water Rafting.

(Public)

Sponsors: Senator Snow.

Referred to: Judiciary II (Criminal).

March 26, 2007

1 A BILL TO BE ENTITLED
2 AN ACT TO LIMIT THE LIABILITY OF PROVIDERS OF WHITE-WATER
3 RAFTING ACTIVITIES IN THIS STATE.

4 The General Assembly of North Carolina enacts:

5 SECTION 1. Chapter 99E of the General Statutes is amended by adding a
6 new Article to read:

7 "Article 5.

8 "White-Water Rafting Liability.

9 "**§ 99E-35. Legislative intent.**

10 (a) It is the intent of the General Assembly to encourage white-water rafting,
11 white-water kayaking, and white-water canoeing by discouraging claims based on
12 injury, death, or damages resulting from risks inherent in white-water rafting,
13 white-water kayaking, and white-water canoeing.

14 (b) This Article shall be broadly construed to effectuate the purpose of shielding
15 canoe, kayak, rafting, and rental businesses and providers of white-water boating
16 activities from liability for injuries, death, or damages caused by the inherent risk or
17 risks of white-water rafting, white-water canoeing, and white-water kayaking on the
18 rivers of North Carolina.

19 (c) The purpose of this Article is to limit or eliminate the liability of a provider of
20 a white-water rafting, white-water canoeing, or white-water kayaking activity or
21 opportunity to a participant when injury, death, or damage caused by or to the
22 participant is the result of risks inherent in white-water rafting, white-water canoeing, or
23 white-water kayaking.

24 (d) This Article shall be broadly construed to effectuate the purpose of shielding
25 white-water canoe, white-water kayak, and white-water raft instruction or training
26 businesses or providers, including their agents and employees, from liability for injuries,
27 death, or damages caused by the inherent risk or risks of white-water rafting,
28 white-water canoeing, and white-water kayaking on the rivers of North Carolina.

29 "**§ 99E-36. Definitions.**

1 As used in this Article:

- 2 (1) "Inherent risk" means those dangers or conditions that are
3 characteristic of, intrinsic to, or an integral part of white-water rafting,
4 white-water canoeing, or white-water kayaking and any supervised
5 training undertaken in these pursuits.
- 6 (2) "Provider" means a person, business, governmental, or nonprofit entity
7 and its employees and or agents that promotes, offers, or conducts
8 white-water rafting, white-water kayaking, or white-water canoeing
9 activities or opportunities.
- 10 (3) "Instructor" means a person, business, governmental, or nonprofit
11 entity and its employees and/or agents that provides training in the use
12 of a white-water raft, white-water kayak, or white-water canoe.
- 13 (4) "White-water rafting" means white-water rafting on or in a
14 multichambered inflatable craft on a fast flowing river that is located
15 within this State.
- 16 (5) "White-water canoeing" means white-water canoeing on a fast flowing
17 river that is located within this State.
- 18 (6) "White-water kayaking" means white-water kayaking on a fast flowing
19 river that is located within the State.

20 **"§ 99E-37. Acceptance of risks involved.**

21 (a) A person who participates in white-water rafting, white-water kayaking, or
22 white-water canoeing assumes the inherent risks in that sport or recreational
23 opportunity, whether those risks are known or unknown to the person, and is legally
24 responsible for all injuries, death, or damages to the person or persons or property
25 resulting from the inherent risks of white-water rafting, white-water kayaking, or
26 white-water canoeing.

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

31 (c) No participant or participant's representative shall make any claim against,
32 maintain any action against, or recover from, a white-water rafting, white-water
33 kayaking, or white-water canoeing provider for injury, death, or damages of or to the
34 participants or their property resulting from any of the inherent risks of white-water
35 rafting, white-water kayaking, or white-water canoeing.

36 (d) A person who willingly receives training or instruction in white-water-rafting,
37 white-water kayaking, or white-water canoeing assumes the inherent risks in that sport
38 or recreational opportunity, whether such risks are known or unknown to the person,
39 and is legally responsible for all injuries, death, or damages to the person or persons or
40 property resulting from the inherent risks of white-water rafting, white-water kayaking,
41 or white-water canoeing.

42 (e) An instructor is not required to eliminate, alter, or control the inherent risks of
43 white-water-rafting, white-water-kayaking, or white-water canoeing and shall not be

1 liable for injuries, death, or damages resulting from the inherent risks of white-water
2 rafting, white-water kayaking, or white-water canoeing.

3 (f) Nothing in this section shall be construed to conflict with or render
4 ineffectual a liability release or acknowledgment of risk agreement between a person
5 who participates in a white-water rafting, white-water kayaking, or white-water
6 canoeing activity and a provider.

7 **"§ 99E-38. Negligence of provider or instructor.**

8 (a) Nothing in this section precludes an action based on negligence of the
9 provider or instructor if the injury, death, or damage is not the result of an inherent risk
10 of white-water rafting, white-water kayaking, or white-water canoeing. Provider or
11 instructor negligence, for which an action is not precluded, may include:

12 (1) Improper or inadequate maintenance, repair, or replacement of
13 equipment used incidental to, or required in, white-water rafting,
14 white-water kayaking, or white-water canoeing; and

15 (2) Failure to train, or improper or inadequate training of, employees or
16 agents of the provider or instructor who are actively involved in
17 white-water rafting, white-water kayaking, or white-water canoeing.

18 (b) Nothing in this section shall apply to a cause of action based on the design or
19 manufacture of equipment, products, or safety equipment used incidental to or required
20 in white-water rafting, white-water kayaking, or white-water canoeing.

21 (c) This section shall not prevent or limit the liability of a white-water rafting,
22 white-water kayaking, or white-water canoeing provider who commits an act or
23 omission that constitutes gross negligence or willful or wanton disregard for the safety
24 of the participants, and that act or omission injures, kills, or damages a participant.

25 **"§ 99E-39. Assumption of the risk.**

26 Nothing in this Article shall be construed to negate the use of assumption of the risk
27 as an affirmative defense."

28 **SECTION 2.** This act becomes effective October 1, 2007, and applies to
29 activities engaged in on or after that date and to actions that arise on or after that date.