

GENERAL ASSEMBLY OF NORTH CAROLINA  
SESSION 2007

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SENATE DRS35286-LL-154 (3/7)

Short Title: Limit Liability/White-Water Rafting.

(Public)

Sponsors: Senator Snow.

Referred to:

A BILL TO BE ENTITLED

AN ACT TO LIMIT THE LIABILITY OF PROVIDERS OF WHITE-WATER  
RAFTING ACTIVITIES IN THIS STATE.

The General Assembly of North Carolina enacts:

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

"Article 5.

"White-Water Rafting Liability.

**"§ 99E-35. Legislative intent.**

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

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

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

(d) This Article shall be broadly construed to effectuate the purpose of shielding white-water canoe, white-water kayak, and white-water raft instruction or training businesses or providers, including their agents and employees, from liability for injuries,

1 death, or damages caused by the inherent risk or risks of white-water rafting,  
2 white-water canoeing, and white-water kayaking on the rivers of North Carolina.

3 **"§ 99E-36. Definitions.**

4 As used in this Article:

5 (1) "Inherent risk" means those dangers or conditions that are  
6 characteristic of, intrinsic to, or an integral part of white-water rafting,  
7 white-water canoeing, or white-water kayaking and any supervised  
8 training undertaken in these pursuits.

9 (2) "Provider" means a person, business, governmental, or nonprofit entity  
10 and its employees and or agents that promotes, offers, or conducts  
11 white-water rafting, white-water kayaking, or white-water canoeing  
12 activities or opportunities.

13 (3) "Instructor" means a person, business, governmental, or nonprofit  
14 entity and its employees and/or agents that provides training in the use  
15 of a white-water raft, white-water kayak, or white-water canoe.

16 (4) "White-water rafting" means white-water rafting on or in a  
17 multichambered inflatable craft on a fast flowing river that is located  
18 within this State.

19 (5) "White-water canoeing" means white-water canoeing on a fast flowing  
20 river that is located within this State.

21 (6) "White-water kayaking" means white-water kayaking on a fast flowing  
22 river that is located within the State.

23 **"§ 99E-37. Acceptance of risks involved.**

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

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

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

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

1 (e) An instructor is not required to eliminate, alter, or control the inherent risks of  
2 white-water-rafting, white-water-kayaking, or white-water canoeing and shall not be  
3 liable for injuries, death, or damages resulting from the inherent risks of white-water  
4 rafting, white-water kayaking, or white-water canoeing.

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

9 **"§ 99E-38. Negligence of provider or instructor.**

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

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

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

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

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

27 **"§ 99E-39. Assumption of the risk.**

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

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