

Stricken language would be deleted from and underlined language would be added to present law.

State of Arkansas  
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As Engrossed: H2/11/13  
**A Bill**

HOUSE BILL 1217

By: Representatives Linck, Branscum, J. Burris, Eubanks

By: Senators Irvin, J. Key

### For An Act To Be Entitled

AN ACT TO ESTABLISH THE ARKANSAS PADDLESPORT  
ACTIVITIES ACT; AND FOR OTHER PURPOSES.

### Subtitle

TO ESTABLISH THE ARKANSAS PADDLESPORT  
ACTIVITIES ACT.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:

SECTION 1. Arkansas Code § 27-101-201 is amended to add an additional subsection to read as follows:

27-101-201. Liability of owner, renter, operator, or lessee of vessel for injury or damage — Exception.

(a) The owner, renter, operator, or lessee of a vessel ~~shall be~~ is liable for any injury or damage ~~occasioned~~ caused by the negligent operation of the vessel, whether negligence consists of violating ~~the provisions of the~~ statutes of this state or neglecting to observe such ordinary care and ~~such~~ operation as the rules of the common law require.

(b)(1) The owner ~~shall not be~~ is not liable, however, unless the vessel is being used with his or her express or implied consent.

(2)(A) The owner ~~shall not be~~ is not strictly liable to a renter, operator, or lessee for any injury or damage occasioned by the negligent operation of the vessel by the renter, operator, or lessee.

(B) The liability of the owner for injury or damage suffered by a renter, operator, or lessee shall be determined by comparing the fault of the owner and the fault of the renter, operator, or lessee in



accordance with §§ 16-55-216 and 16-64-122.

(c) It shall be presumed that the vessel is being operated with the knowledge and consent of the owner if at the time of the injury or damage it is under the control of his or her spouse, father, mother, brother, sister, son, daughter, or other immediate member of the owner's family.

~~(d) Nothing contained in this section shall not be construed to~~ This section does not:

~~(1) relieve~~ Relieve any other person from any liability that he or she would otherwise have, ~~but nothing contained in this section shall not be construed to; or~~

~~(2) authorize~~ Authorize or permit any recovery in excess of injury or damage actually incurred.

~~(e) This section does not apply to an outfitter as defined in § 27-101-902.~~

SECTION 2. Arkansas Code Title 27, Chapter 101, is amended to add an additional subchapter to read as follows:

Subchapter 9 — Arkansas Paddlesport Activities Act

27-101-901. Title.

This subchapter shall be known and may be cited as the "Arkansas Paddlesport Activities Act".

27-101-902. Definitions.

As used in this subchapter:

(1) "Canoe" means a watercraft that has an open top and is designed to hold one (1) or more participants;

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

(3) "Equipment" means an accessory to a watercraft that is used for propulsion, safety, comfort, or convenience, including without limitation paddles, oars, and personal flotation devices;

(4) "Inherent risk of paddlesport activity" means the dangers, hazards, or conditions that are an integral part of paddlesport activities in

the free-flowing streams or rivers of this state, including without limitation:

(A) A risk typically associated with watercraft, including change in water flow or current, submerged, semisubmerged, 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, including without limitation rock fall, inclement weather, thunder and lightning, severe or varied temperature, weather conditions, winds, and tornadoes;

(D) Operator error or equipment failure due to operator error;

(E) Attack or bite by an animal;

(F) The aggravation of an injury or illness because the injury or illness occurred in a remote place where medical facilities are not available; and

(G) Nothing in this subsection is intended to circumvent an outfitter's duty to provide safe equipment and watercraft;

(5) "Kayak" means a watercraft similar to a canoe with a covered top that may have more than one (1) circular opening to hold participants or is designed to permit a participant to sit on top of an enclosed formed seat;

(6) "Outfitter" means an individual, group, club, partnership, corporation, or business entity, whether or not operating for profit, or an employee or authorized agent, which sponsors, organizes, rents, or provides to the public the use of a watercraft by a participant in a free-flowing stream or river in this state;

(7) "Paddlesport activity" means canoeing, rafting, kayaking, or tubing in or on a watercraft as a:

(A) Competition, an exercise, or an undertaking that involves a watercraft;

(B) Training or teaching activity; or

(C) Ride, trip, tour, or other activity, however informal or impromptu, whether or not a fee is paid, or guided or not, that is sponsored by an outfitter;

(8) "Participant" means a person, whether amateur or professional, whether or not a fee is paid, who rents, leases, or uses watercraft or is a passenger on a rented, leased, or used watercraft participating in a paddlesport activity;

(9) "Raft" means an inflatable watercraft that has an open top and is designed to hold one (1) or more participants;

(10) "Tube" means an inflatable tire inner tube or similar inflatable watercraft that has an open top capable of holding one (1) or more participants; and

(11) "Watercraft" means a canoe, kayak, raft, or tube propelled by the use of paddles, oars, hands, poles, or other nonmechanical or nonmotorized means of propulsion.

27-101-903. Assumption of risk by participant — Liability of outfitter — Exceptions.

(a) Except as provided in subsection (c) of this section:

(1)(A) A participant assumes the inherent risk of a paddlesport activity by engaging in the paddlesport activity.

(B) A participant or a participant's representative shall not make a claim against, maintain an action against, or recover from an outfitter for the injury, loss, damage, or death of the participant resulting from any of the inherent risk of a paddlesport activity; and

(2) An outfitter is not liable for an injury to or the death of a participant resulting from the inherent risks of paddlesport activities.

(b) This section does not apply to a relationship between an employer and employee under the Workers' Compensation Law, § 11-9-101 et seq.

(c) This section does not prevent or limit the liability of an outfitter or its agent that:

(1) Intentionally injures a participant;

(2) Commits an act or omission of gross negligence concerning the safety of a participant that proximately causes injury, damage, or death to the 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 could cause an injury;

(4) Fails to provide a participant with the equipment required

by § 27-101-203(a);

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

(6) Commits other acts, errors, or omissions that constitute willful or wanton misconduct, gross negligence, or criminal conduct that proximately causes injury, damage, or death.

(d) The limitation of liability provided by this section is in addition to any other limitation of liability provided by law.

27-101-904. Warning required.

An outfitter shall post and maintain signage in a clearly visible location at or near areas where the outfitter conducts paddlesport activities and in black letters at least one inch (1") high containing the following warning:

"WARNING — Under Arkansas law, an outfitter is not liable for the injury or death of a participant in a paddlesport activity resulting from the inherent risk of paddlesport activity under the Arkansas Paddlesport Activities Act, located at § 27-101-901 et seq. You are assuming the risk of participating in a paddlesport activity."

*/s/Linck*