



# WINTER SPORTS SAFETY ACT

## **Virginia Acts of Assembly - 2012 Session**

Chapter 713

An Act to amend the Code of Virginia by adding in Chapter 3 of Title 8.01 an article numbered 25, consisting of sections numbered 8.01-227.11 through 8.01-227.23, relating to the limitation of liability for winter sports area operators.

[S 246]

Approved April 9, 2012

**Be it enacted by the General Assembly of Virginia:**



## WINTER SPORTS SAFETY ACT CONT.

“Freestyle terrain” and “freestyle terrain park” means any portion of a winter sports area that has been designated as such by the operator for freestyle skiing, freestyle snowboarding, or similar freestyle winter sports and includes, but is not limited to, the terrain park itself and features such as rails, boxes, jumps, hits, jibs,





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“Tubing” means sliding on inflatable tubes, minibobs, sleds, toboggans, or any other comparable devices down a prepared course or lanes at a winter sports area.

“Tubing park” means an area designated by an operator for tubing.



## WINTER SPORTS SAFETY ACT CONT.

“WARNING: Under Virginia law, a ski area operator or other winter sports area operator is not liable for an injury to or death of a winter sports participant in a winter sport conducted at this location, or for damage to property, if such injury, death, or damage results from the inherent risks of the winter sport or from the participant’s own negligence. The inherent risks of a winter sport include, among others, risks associated with the land, equipment, other participants, and animals, as well as the potential for you or another participant to act in a negligent manner that may contribute to the injury, death, or damage. You are assuming the inherent risks of participating in a winter sport at this location. Complete copies of the applicable Virginia law and the participant responsibility code published by the National Ski Areas Association are available for review at each ticket sales office of this winter sports area and online at [www.massresort.com/wintersportssafetyact](http://www.massresort.com/wintersportssafetyact).”

Every ticket, season pass, and written contract for professional services, instruction, or the rental of equipment to a participant shall contain the warning required by this subsection in clearly readable print. Every sign required by this section shall contain the warning required by this subsection in black letters, with each letter to be a minimum of one inch in height. An operator also may print on a ticket; season pass; written contract for professional services, instruction, or rental of equipment to a participant; or any sign required by this section any additional warning it deems appropriate. The warning required by this section does not constitute a preinjury contractual release and nothing in this section alters the common law of Virginia with regard to preinjury contractual releases.

B. Each operator shall install and maintain a sign containing the warning set forth in subsection A (i) at each designated ticketing office, (ii) at each front desk at each building or facility at which guests check in, (iii) at or near each ticket sales office of the winter sports area, and (iv) at, near, or en route to the loading area of each passenger tramway.

C. Each operator shall install and maintain at or near the beginning of each designated trail a sign that contains the name of the trail and any of the applicable difficulty-level words and emblems contained in this subsection, as determined by the operator. Directional arrows may be included on any sign, but shall be included if the sign is located at such a distance or position relative to the beginning of a trail that it would not be understandable by a reasonably prudent participant without directional arrows. As applicable, the signs shall indicate: (i) “Easiest” and include a green circle emblem, (ii) “More Difficult” and include a blue square emblem, (iii) “Most Difficult” and include a black diamond emblem, (iv) “Expert” or “Extreme Terrain” and include a two black diamond emblem, (v) “Freestyle Terrain” and include an orange oval emblem, or (vi) “Closed” and include a border around a black figure in the shape of a skier inside with a band running diagonally across the sign.

D. Each operator shall install and maintain at, near, or en route to the loading area for each passenger tramway that does not service trails that are designated by the operator as “Easiest” a sign that includes the following warning:

“WARNING. This lift does not service any trails that are designated Easiest (green circle emblem). All of the trails serviced by this lift are designated [as applicable, More Difficult (blue square emblem), Most Difficult (black diamond emblem), Expert (two black diamond emblem), or Freestyle Terrain (orange oval emblem)].”





## WINTER SPORTS SAFETY ACT CONT.

### **§ 8.01-227.14. Freestyle terrain.**

In addition to providing the signage and warnings set forth in subsections C and E of § 8.01-227.12, an operator shall construct a barricade through use of fencing, tagging, or similar means at the entrance to any trail containing freestyle terrain. The barricade shall contain an entrance opening not wider than 30 feet.

### **§ 8.01-227.15. Winter sports area vehicles.**

An operator shall install and maintain on or near the top of each winter sports area vehicle that is present on any designated trail of a winter sports area during the operating hours of any passenger tramway serving that trail a flashing or rotating light that flashes or rotates whenever the vehicle is on any such trail. An operator also shall install and maintain on any snowmobile, all-terrain vehicle, or any other similarly sized vehicle that is present on any designated trail during the operating hours of any passenger tramway serving that trail a red or orange flag that is at least 40 square inches in size and is mounted at least five feet from the bottom of the vehicle's tracks or tires.

### **§ 8.01-227.16. Passenger tramways.**

A. Each operator shall be responsible for the safe operation and maintenance of each passenger tramway in its winter sports area whenever the tramway is in use, and for the safe construction of any passenger tramway that the operator constructed. At least once during each calendar year, each operator shall have all passenger tramways within the operator's winter sports area inspected by an individual who is qualified pursuant to Virginia law to inspect passenger tramways for compliance with the requirements of the ANSI Ski Lift Code and shall not operate a passenger tramway that is not in compliance until that passenger tramway is certified by such an individual as being in compliance. An operator's compliance with this inspection requirement does not by itself preclude potential liability on the part of the operator for any failure to operate or maintain a passenger tramway safely.

B. If a participant or a passenger using a passenger tramway at a winter sports area with the permission of the operator is unfamiliar with the use of a passenger tramway and asks for instruction on its use, the operator shall provide a reasonable opportunity for such instruction. In addition to the signs required by subsections A, B, and D of § 8.01-227.12, an operator shall install and maintain at or near the loading area for each passenger tramway in the winter sports area a sign stating that if a participant or other passenger is unfamiliar with the use of the passenger tramway and asks for instruction for its use, the operator will provide a reasonable opportunity for such instruction.



# WINTER SPORT







## WINTER SPORTS SAFETY ACT CONT.

### **§ 8.01-227.19. Assumption of risks.**

A. A winter sports participant shall be presumed to have known the inherent risks of the winter sport in which he participates, to have fully appreciated the nature and extent of such risks, and to have voluntarily exposed himself to such risks, even if a particular risk was not specifically presented or stated to the participant by the operator. A passenger who uses a passenger tramway with the permission of an operator shall be presumed to have known the risks of winter sports that are applicable to the use of passenger tramways, to have fully appreciated the nature and extent of such risks, and to have voluntarily exposed himself to such risks, even if a particular risk was not specifically presented or stated to the individual by the operator. Such presumption may be rebutted by the participant or passenger by proving that the participant or passenger did not know the particular inherent risk of winter sports that proximately caused the injury or death or damage to property at issue, did not fully appreciate the nature and extent of such risk, or did not voluntarily expose himself to such risk.

B. An operator's negligence is not an inherent risk of winter sports, and a participant or passenger is not presumed to have accepted the risk of such negligence and the injuries proximately caused therefrom.

C. In determining if the presumption set forth in subsection A applies in a particular case, whether a particular circumstance or set of circumstances constitutes an inherent risk of winter sports shall be a question of law, and whether the participant or passenger assumed the particular inherent risk of winter sports shall be a question of fact.

D. Nothing herein shall prevent a participant or passenger from offering evidence that he did not know the particular inherent risk of winter sports that proximately caused the injury or death or damage to property at issue, did not fully appreciate the nature and extent of such risk, or did not voluntarily expose himself to such risk.

### **§ 8.01-227.20. Liability of winter sports area operator.**

A. A winter sports area operator shall be liable if the operator does any of the following:

1. Commits an act or omission related to a winter sport that constitutes negligence or gross negligence regarding the safety of an individual, or of property, and that act or omission proximately causes injury to or the death of the individual or damage to property; or
2. Recklessly, knowingly, or intentionally commits an act or omission related to a winter sport that proximately causes injury to or the death of a winter sports participant or other individual or damage to property.



## WINTER SPORT