

GENERAL ASSEMBLY OF NORTH CAROLINA  
SESSION 2009

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HOUSE DRH50416-ME-64 (03/26)

Short Title: Limit Liability/White-Water Rafting.

(Public)

Sponsors: Representatives Frye and West (Primary Sponsors).

Referred to:

1 A BILL TO BE ENTITLED  
2 AN ACT TO LIMIT THE LIABILITY OF PROVIDERS OF WHITE-WATER RAFTING  
3 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 new  
6 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 injury, death,  
12 or damages resulting from risks inherent in white-water rafting, white-water kayaking, and  
13 white-water canoeing.

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

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

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

27 "**§ 99E-36. Definitions.**

28 The following definitions apply in this Article:

29 (1) Inherent risk. – Those dangers or conditions that are characteristic of,  
30 intrinsic to, or an integral part of white-water boating activities and any  
31 supervised training undertaken in these pursuits.

32 (2) Provider. – A person, business, governmental, or nonprofit entity, including  
33 its employees and agents, that promotes, offers, or conducts white-water  
34 boating activities or opportunities.



- 1           (3) Instructor. – A person, business, governmental, or nonprofit entity, including  
2 its employees and agents, that provides training in the use of white-water  
3 boating activities.
- 4           (4) White-water boating activity. – Includes white-water rafting, white-water  
5 canoeing, and white-water kayaking, as defined in this section.
- 6           (5) White-water rafting. – White-water rafting on or in a multichambered  
7 inflatable craft on a fast-flowing river that is located within this State.
- 8           (6) White-water canoeing. – White-water canoeing on a fast flowing river that is  
9 located within this State.
- 10          (7) White-water kayaking. – White-water kayaking on a fast-flowing river that  
11 is located within this State.

12 **"§ 99E-37. Acceptance of risks involved.**

13          (a) A person who participates in white-water boating activities assumes the inherent  
14 risks in that sport or recreational opportunity, provided that the provider has complied with the  
15 notice requirements of G.S. 99E-38 and is legally responsible for all injuries, death, or damages  
16 to the person or persons or property resulting from the inherent risks of white-water boating  
17 activities.

18          (b) A provider is not required to eliminate, alter, or control the inherent risks of  
19 white-water boating activities and shall not be liable for injuries, death, or damages resulting  
20 from the inherent risks of white-water boating activities.

21          (c) No participant or participant's representative shall make any claim against, maintain  
22 any action against, or recover from, a white-water boating activities provider for injury, death,  
23 or damages of or to the participants or their property resulting from any of the inherent risks of  
24 white-water boating activities, provided that the provider has complied with the notice  
25 requirements of G.S. 99E-38.

26          (d) A person who willingly receives training or instruction in white-water boating  
27 activities assumes the inherent risks in that sport or recreational opportunity, provided that the  
28 instructor has complied with the notice requirements of G.S. 99E-38, and is legally responsible  
29 for all injuries, death, or damages to the person or persons or property resulting from the  
30 inherent risks of white-water boating activities.

31          (e) An instructor is not required to eliminate, alter, or control the inherent risks of  
32 white-water boating activities and shall not be liable for injuries, death, or damages resulting  
33 from the inherent risks of white-water boating activities.

34          (f) Nothing in this section shall be construed to conflict with or render ineffectual a  
35 liability release or acknowledgment of risk agreement between a person who participates in a  
36 white-water boating activity and a provider.

37 **"§ 99E-38. Warning required.**

38          (a) Every white-water boating activity provider or instructor shall post and maintain  
39 signs which contain the warning notice specified in subsection (c) of this section. The signs  
40 required by this section shall be placed in a clearly visible location where the provider or  
41 instructor conducts its white-water boating activities, including at a rental office, in a training  
42 area, and within vehicles used to transport participants. The warning notice specified in  
43 subsection (c) of this section shall be designed by the Department of Agriculture and Consumer  
44 Services and shall consist of a sign in black letters, with each letter to be a minimum of one  
45 inch in height or one-half inch if the sign is posted within a vehicle.

46          (b) Every written contract entered into by a provider or instructor for providing  
47 white-water boating activities or instruction in white-water boating activities shall contain in  
48 clearly readable print the warning notice specified in subsection (c) of this section.

49          (c) The signs and contracts described in subsections (a) and (b) of this section shall  
50 contain the following warning notice:

51 **'WARNING**

1 Under North Carolina law, a white-water boating activity provider or instructor is not liable  
2 for an injury to or the death of a participant in white-water boating activities resulting  
3 exclusively from the inherent risks of white-water boating activities. A white-water boating  
4 activity provider or instructor remains liable for injury, death, or damage that results from the  
5 provider's or the instructor's negligence. Chapter 99E of the North Carolina General Statutes.'

6 (d) Failure to comply with the requirements concerning warning signs and notices  
7 provided in this Article shall prevent a provider from invoking the privileges of immunity  
8 provided by this Article.

9 **"§ 99E-39. Negligence of provider or instructor.**

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

14 (1) Improper or inadequate maintenance, repair, or replacement of equipment  
15 used incidental to, or required in, white-water boating activities.

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

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

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

26 **"§ 99E-40. Assumption of the risk.**

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

29 **SECTION 2.** This act becomes effective October 1, 2009, and applies to activities  
30 engaged in on or after that date and to actions that arise on or after that date.