**South Carolina General Assembly**

118th Session, 2009-2010

**H. 3076**

**STATUS INFORMATION**

General Bill

Sponsors: Rep. Kirsh

Document Path: l:\council\bills\dka\3008dw09.docx

Introduced in the House on January 13, 2009

Currently residing in the House Committee on **Judiciary**

Summary: Kayaking, canoeing, and rafting liability immunity

**HISTORY OF LEGISLATIVE ACTIONS**

Date Body Action Description with journal page number

12/9/2008 House Prefiled

12/9/2008 House Referred to Committee on **Judiciary**

1/13/2009 House Introduced and read first time [HJ](file:///h:\HJ%20Archive\2009\01-13-09.docx)‑42

1/13/2009 House Referred to Committee on **Judiciary** [HJ](file:///h:\HJ%20Archive\2009\01-13-09.docx)‑42

**VERSIONS OF THIS BILL**

[12/9/2008](file:///p:\pprever\2009-10\3076_20081209.docx)

**A** **BILL**

TO AMEND THE CODE OF LAWS OF SOUTH CAROLINA, 1976, BY ADDING CHAPTER 22 TO TITLE 50 SO AS TO PROVIDE FOR CERTAIN KAYAKING, CANOEING, AND RAFTING LIABILITY IMMUNITY WHEREBY A KAYAKING, CANOEING, OR RAFTING ACTIVITY SPONSOR OR A KAYAKING, CANOEING, OR RAFTING PROFESSIONAL IS NOT LIABLE FOR AN INJURY TO OR THE DEATH OF A PARTICIPANT RESULTING FROM AN INHERENT RISK OF KAYAKING, CANOEING, OR RAFTING ACTIVITY ABSENT SPECIFIED FACTORS.

Be it enacted by the General Assembly of the State of South Carolina:

SECTION 1. Title 50 of the 1976 Code is amended by adding:

“CHAPTER 22

Kayaking, Canoeing, and Rafting Liability Immunity

Section 50‑22‑10. As used in this chapter:

(1) ‘Engages in a kayaking, canoeing, or rafting activity’ means riding in, training in, using, providing, paddling, or being a passenger in a kayak, canoe, or raft or a person assisting a participant.

(2) ‘Kayak’ means a hand‑powered watercraft usually propelled by paddles or oars, similar to a canoe, which may or may not have more than one circular opening in the covered top. Kayak also includes similar hand‑powered watercraft designed so that the user sits on top of a molded hull.

(3) ‘Canoe’ means a lightweight hand‑powered watercraft, usually propelled by paddles or oars, similar to a kayak, which has an open top and is designed to hold one or more people.

(4) ‘Raft’ means a hand‑powered inflatable watercraft usually propelled by paddles or oars, which has an open top and is designed to hold one or more people.

(5) ‘Kayaking, canoeing, or rafting activity’ means:

(a) a competition, an exercise, or an undertaking that involves a kayak, canoe, or raft;

(b) kayak, canoe, or raft training or teaching activities, or both;

(c) using, inspecting, or evaluating a kayak, canoe, or raft belonging to another, whether or not the owner has received monetary consideration or another thing of value for the use of the kayak, canoe, or raft or is permitting a prospective purchaser of the kayak, canoe, or raft to use, inspect, or evaluate the kayak, canoe, or raft;

(d) a ride, trip, or other kayak, canoe, or raft activity, however informal or impromptu, that is sponsored by a kayaking, canoeing, or rafting sponsor.

(6) ‘Kayaking, canoeing, or rafting activity sponsor’ means an individual, a group, a club, a partnership, or a corporation or their employee or agent, whether the sponsor is operating for profit or not for profit, which sponsors, organizes, or provides the opportunity for a kayaking, canoeing, or rafting activity, and an operator, instructor, and promoter of a kayaking, canoeing, or rafting activity or their employee or agent.

(7) ‘Kayak, canoe, or raft professional’ means a person engaged in:

(a) instructing a participant or renting to a participant a kayak, canoe, or raft for the purpose of using, operating, riding, driving, or being a passenger in the kayak, canoe, or raft;

(b) renting kayak, canoe, or raft equipment to a participant;

(c) an employee or agent of someone engaged in subitems (a) and (b).

(8) ‘Inherent risk of kayaking, canoeing, or rafting activity’ means those dangers or conditions which are an integral part of kayaking, canoeing, or rafting activities including, but not limited to:

(a) the propensity of a kayak, canoe, or raft to react in water in a way that may result in injury, harm, or death to a person in or around the kayak, canoe, or raft;

(b) certain hazards such as surface and subsurface conditions including, but not limited to, entrapment;

(c) collisions with other kayaks, canoes, rafts, trees, banks, paddles, oars, or other objects;

(d) falling or slipping on the bank, dock, or boat ramp while entering or exiting the canoe, kayak, or raft; or

(e) the potential of a participant to act in a negligent manner that may contribute to injury to the participant or others, as failing to maintain control over the kayak, canoe, or raft or not acting within the participant’s ability.

(9) ‘Participant’ means a person who engages in a kayaking, canoeing, or rafting activity, whether or not a fee is paid to participate in the kayaking, canoeing, or rafting activity.

Section 50‑22‑20. (A) Except as provided in subsection (B), a kayaking, canoeing, or rafting activity sponsor or a kayak, canoe, or raft professional is not liable for an injury to or the death of a participant resulting from an inherent risk of kayaking, canoeing, or rafting activity, and no participant or participant’s representative may make a claim against, maintain an action against, or recover from a kayaking, canoeing, or rafting activity sponsor, or a kayak, canoe, or raft professional, for injury, loss, damage, or death of the participant resulting from an inherent risk of kayaking, canoeing, or rafting activity.

(B) Nothing in subsection (A) prevents or limits the liability of a kayaking, canoeing, or rafting activity sponsor, or a kayak, canoe, or raft professional, if the sponsor or professional intentionally injures the participant.

(C) Nothing in subsection (A) prevents or limits the liability of a kayaking, canoeing, or rafting activity sponsor or a kayak, canoe, or raft professional under liability provisions as set forth in the products liability laws.

(D) The provisions of this chapter do not cover or apply to any liability arising from the ownership, maintenance, or use of any motor vehicle.

Section 50‑22‑30. (A) A kayak, canoe, or raft professional or a kayaking, canoeing, or rafting activity sponsor shall provide notice of this chapter to participants by:

(1) placing open and obvious signage in their fixed place of business or at the staging location of any event containing the warning listed in item (3);

(2) requiring participants to sign a printed form releasing the sponsor or professional from liability containing the warning listed in item (3); or

(3) the notice language as referenced in items (1) and (2) shall essentially recite:

‘WARNING

Under South Carolina law, a kayaking, canoeing, or rafting activity sponsor or kayak, canoe, or raft professional is not liable for an injury to or the death of a participant in a kayaking, canoeing, or rafting activity resulting from an inherent risk of kayaking, canoeing, or rafting activity, pursuant to Chapter 22 of Title 50, Code of Laws of South Carolina, 1976.’

(B) Failure to comply with the requirements concerning warning signs and notices provided in this section prevents a kayaking, canoeing, or rafting activity sponsor or professional from invoking the privileges of immunity provided by this chapter.

Section 50‑22‑40. Nothing contained in this chapter may be construed to limit the ability of the kayaking, canoeing, or rafting sponsor or professional and the participant from freely contracting for other release, waiver, indemnification, assumption of risk hold harmless, or similar terms.”

SECTION 2. This act takes effect upon approval by the Governor.

‑‑‑‑XX‑‑‑‑