S T A T E O F N E W Y O R K

6009

2011-2012 Regular Sessions

I N A S S E M B L Y

March 3, 2011

Introduced by M. of A. BURLING, CROUCH, FINCH -- Multi-Sponsored by -- M. of A. MAGEE, MONTESANO -- read once and referred to the Committee on Judiciary

AN ACT to amend the general obligations law, in relation to the duty to keep premises safe for certain uses and the inherent risk for use of off highway recreational vehicles

THE PEOPLE OF THE STATE OF NEW YORK, REPRESENTED IN SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

Section 1. Paragraph a of subdivision 1 of section 9-103 of the general obligations law, as separately amended by chapters 141 and 286 of the laws of 1984, is amended to read as follows:

a. an owner, lessee or occupant of premises, whether or not posted as provided in section 11-2111 of the environmental conservation law, owes no duty to keep the premises safe for entry or use by others for hunting, fishing, organized gleaning as defined in section seventy-one-y of the agriculture and markets law, canoeing, boating, trapping, hiking, cross-country skiing, tobogganing, sledding, speleological activities, horseback riding, bicycle riding, hang gliding, [motorized vehicle operation for recreational purposes, snowmobile operation,] cutting or gathering of wood for non-commercial purposes [or], training of dogs OR OTHER RECREATIONAL ACTIVITIES, or to give warning of any hazardous condition or use of or structure or activity on such premises to persons entering for such purposes;

S 2. Paragraphs b and c of subdivision 2 of section 9-103 of the general obligations law, as amended by chapter 408 of the laws of 1979, are amended to read as follows:

b. for injury suffered in any case where permission to pursue any of the activities [enumerated] DESCRIBED in this section was granted for a consideration other than the consideration, if any, paid to said landowner by the state or federal government, or permission to train dogs

EXPLANATION--Matter in ITALICS (underscored) is new; matter in brackets [ ] is old law to be omitted.

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was granted for a consideration other than that provided for in section 11-0925 of the environmental conservation law; or

c. for injury caused, by acts of persons to whom permission to pursue any of the activities [enumerated] DESCRIBED in this section was granted, to other persons as to whom the person granting permission, or the owner, lessee or occupant of the premises, owed a duty to keep the premises safe or to warn of danger.

S 3. The general obligations law is amended by adding a new section 9-107 to read as follows:

S 9-107. INHERENT RISK FOR USE OF OFF HIGHWAY RECREATIONAL VEHICLES. 1. AS USED IN THIS SECTION, THE FOLLOWING TERMS SHALL HAVE THE FOLLOWING MEANINGS:

A. "OFF HIGHWAY RECREATIONAL VEHICLE" SHALL MEAN ANY MECHANICALLY PROPELLED VEHICLE USED FOR PLEASURE OR RECREATIONAL PURPOSES RUNNING ON RUBBER TIRES, BELTS, CLEATS, TRACKS, SKIS OR CUSHION OF AIR AND DEPENDENT ON THE GROUND OR SURFACE FOR TRAVEL, OR OTHER UNIMPROVED TERRAIN WHETHER COVERED BY ICE OR SNOW OR NOT, WHERE THE OPERATOR SITS IN OR ON THE VEHICLE.

B. "OHRV" SHALL MEAN OFF HIGHWAY RECREATIONAL VEHICLE.

C. "POSTED LAND" SHALL MEAN AN APPROPRIATE SIGN WITH THE DESIGNATED SYMBOL OR WARNING TO BE LEGIBLE AT A DISTANCE OF FIFTY FEET INDICATING THAT USE OF SUCH LAND IS PROHIBITED FOR THE PURPOSE SO SPECIFIED.

2. IT IS RECOGNIZED THAT OHRV OPERATION MAY BE DANGEROUS AND ANY PERSON WHO ENGAGES IN SUCH ACTIVITY FACES AN INHERENT RISK OF INJURY. ACCORDINGLY, ANY PERSON WHO IS AN OPERATOR OR PASSENGER ON AN OHRV ACCEPTS, AS A MATTER OF LAW, THE DANGERS INHERENT IN SUCH ACTIVITY, AND SHALL BE PROHIBITED FROM MAINTAINING AN ACTION, AND NO CAUSE OF ACTION SHALL ACCRUE AGAINST ANY OWNER, LESSEE, OR OCCUPANT OF LAND FOR ANY INJURIES WHICH RESULT FROM SUCH INHERENT RISKS, DANGERS, OR HAZARDS. THE CATEGORIES OF SUCH RISKS, DANGERS, OR HAZARDS WHICH THE OHRV USER ASSUMES AS A MATTER OF LAW INCLUDE, BUT ARE NOT LIMITED TO, THE FOLLOWING: VARIATIONS IN TERRAIN, TRAILS, PATHS, OR ROADS; OR SURFACE OR SUBSURFACE SNOW OR ICE CONDITIONS, BARE SPOTS, ROCKS, TREES, STUMPS, AND OTHER FORMS OF FOREST GROWTH OR DEBRIS, STRUCTURES ON THE LAND, EXISTING OR CHANGING WEATHER CONDITIONS, EQUIPMENT NOT IN USE, POLE LINES, FENCES, AND COLLISIONS WITH OTHER OPERATORS OR PERSONS.

3. AN OWNER MAY MAINTAIN POSTED LAND ON ALL OR ANY PORTION OF THE OWNER'S LAND AGAINST USE BY AN OHRV; HOWEVER, FAILURE OF AN OWNER TO MAINTAIN POSTED LAND AS PROVIDED IN THIS SECTION SHALL NOT BE CONSTRUED AS GRANTING ANY LICENSE TO USERS OF OHRVS TO ENTER SUCH LAND, NOR SHALL SUCH FAILURE BE CONSTRUED AS IMPLYING ANY DUTY OF CARE TO THE USER OF AN OHRV BY THE OWNER.

4. THIS SECTION SHALL NOT LIMIT THE LIABILITY WHICH WOULD OTHERWISE EXIST:

A. FOR INJURY SUFFERED IN ANY CASE WHERE PERMISSION TO PURSUE OHRV ACTIVITIES WAS GRANTED FOR A CONSIDERATION; OR

B. FOR INJURIES CAUSED BY WILLFUL OR MALICIOUS ACTS PERFORMED BY AN OWNER, LESSEE, OR OCCUPANT OF LAND INTENDED OR SUBSTANTIALLY LIKELY TO CAUSE INJURY OR HARM TO OPERATORS OR PASSENGERS OF AN OHRV.

S 4. This act shall take effect immediately.