

APPROVED AND SIGNED BY THE GOVERNOR

Date 4-28-81

Time _____

710: 398

WEST VIRGINIA LEGISLATURE
REGULAR SESSION, 1981



ENROLLED

Committee Substitute for
SENATE BILL NO. 398

(By Mr. Colambo)



PASSED April 10, 1981

In Effect from Passage



ENROLLED

COMMITTEE SUBSTITUTE

FOR

Senate Bill No. 398

(MR. COLOMBO, *original sponsor*)

[Passed April 10, 1981; in effect from passage.]

AN ACT to amend and reenact section twenty-three, article two, chapter twenty of the code of West Virginia, one thousand nine hundred thirty-one, as amended; and to further amend said article by adding thereto a new section, designated section twenty-three-a, all relating to regulation of outfitters and guides by the department of natural resources; defining certain terms; defining commercial whitewater outfitters; requiring commercial whitewater outfitters to comply with same requirements as outfitters and guides; stating legislative findings and purpose; requiring the director of natural resources to investigate and study commercial whitewater rafting, outfitting and activities in zones where overcrowding, environmental misuse and safety hazards are found to exist; requiring certain fees to be paid by certain commercial whitewater outfitters; providing for a limitation on additional licenses to commercial whitewater outfitters seeking to operate in zones under study; creating an advisory board; providing for composition of board; requiring board to promulgate rules and regulations applicable to zones studied based upon study of zone by director; providing for enforcement of rules and regulations; setting certain dates by which studies are to be commenced, all rules and regulations are to be promulgated, and the board is to terminate its activities and be discontinued.

Be it enacted by the Legislature of West Virginia:

That section twenty-three, article two, chapter twenty of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted; and that said article two be amended by adding thereto a new section, designated section twenty-three-a, all to read as follows:

ARTICLE 2. WILDLIFE RESOURCES.

§20-2-23. Outfitters and guides—generally; definitions.

1 Services of outfitters and guides for the benefit and
2 convenience of hunters, fishermen and others in this state are
3 recognized as essential, and such outfitters and guides may
4 be licensed and authorized to serve as provided in this article.
5 The director is hereby authorized to promulgate rules and
6 regulations on services of outfitters and guides as herein
7 authorized and defined.

8 The term “outfitter”, as used herein, shall mean and include
9 any person who, operating from any temporary or permanent
10 camp, private or public lodge, or private or incorporated
11 home situate within this state, provides for monetary profit or
12 gain, saddle or pack animals or other animals, vehicles, boats,
13 conveyances or equipment, or guide services for any person
14 or persons hunting game animals, game birds, fishing or
15 taking expeditions, both land and water, in this state. The
16 term “outfitter” shall not include, however, any person who
17 occasionally for accommodation or favor rather than profit or
18 gain, rents equipment to hunters, fishermen or others as a
19 service incidental to his principal occupation or business
20 without advertising outfitter or guide services or holding out
21 to the public the offering of such services. The term “guide”,
22 as used herein, shall be construed to include and embrace
23 outfitter services and the term “outfitter” shall be construed
24 to include and embrace guide services, but the applicant for
25 any license hereunder may in his or her application elect to be
26 designated as an outfitter or guide.

27 The term “commercial whitewater outfitter”, as used
28 herein, shall mean and include any outfitter duly authorized
29 and operating from within or from without the state, which
30 for monetary profit or gain, provides whitewater expeditions
31 or rents whitewater craft or equipment for use in whitewater
32 expeditions on any river, portions of rivers or waters of the
33 state designated by the director as whitewater recreation
34 zones.

§20-2-23a. Special studies of whitewater rafting zones to be conducted; creation of advisory commission to promulgate rules and regulations; special fees imposed; time limitation.

1 (a) The Legislature finds that the recent increase in the
2 number of persons engaging in the sport of whitewater
3 rafting has resulted in overcrowding, safety and ecological
4 problems along areas and portions of rivers and waters in this
5 state necessitating the study, investigation and regulation of
6 whitewater rafting to promote the safe and equitable
7 enjoyment of this sport by all persons seeking to engage in it
8 as recreational activity. The Legislature further finds it
9 desirable to require the director of the department of natural
10 resources, pending such study and investigation and the
11 promulgation of necessary rules and regulations applicable to
12 such areas and portions of rivers and waters, to restrict, deny
13 or postpone the issuance of licenses to additional commercial
14 whitewater outfitters seeking to operate in such areas and
15 portions of rivers and waters in this state until the
16 promulgation of such rules and regulations applicable thereto
17 and to provide for the creation of an advisory board to
18 promulgate such rules and regulations.

19 (b) The director shall investigate and study commercial
20 whitewater rafting, outfitting and activities related thereto,
21 which rafting, outfitting or activities take place along the
22 rivers or waters of the state. The director shall designate any
23 such rivers or waters or any portions thereof, which herein
24 are referred to as "whitewater zones" for which commercial
25 whitewater rafting, outfitting and activities are to be
26 investigated and studied, and shall determine the order and
27 the periods of time within which such investigations and
28 studies are to be conducted. The director shall first
29 investigate and study those whitewater zones which the
30 director finds to present serious problems requiring
31 immediate regulation, including without limitation, safety
32 hazards and problems of overcrowding or environmental
33 misuse.

34 (c) Upon the filing of a written notice to be entered upon
35 the records of the department containing the designation and
36 reasonable description of the whitewater zone to be
37 investigated and studied pursuant to subsection (b) above,
38 the director may not issue licenses to additional commercial

39 whitewater outfitters seeking to operate in or for the
40 whitewater zone described in the notice. This limitation on
41 additional licenses shall continue until the director has
42 completed investigation and study of the whitewater zone
43 designated in the notice and the rules and regulations
44 applicable to such zone are promulgated in accordance with
45 this section: *Provided*, That the director may issue additional
46 licenses for such whitewater zones during the study period
47 and prior to the promulgation of the rules and regulations
48 applicable to a zone, if the director finds that such license
49 would not interfere with the conduct of the pending
50 investigation and study, and the issuance of such additional
51 license is in the best interests of persons seeking to enjoy
52 whitewater rafting and the interests of the state in promotion
53 of tourism and the recreational and ecological use of the
54 state's natural resources.

55 (d) The annual license fees set forth in section twenty-six
56 of this article for commercial whitewater outfitters and such
57 annual fee shall be two hundred fifty dollars for each
58 commercial whitewater outfitter. In addition to such annual
59 license fee, each commercial whitewater outfitter, operating
60 within a whitewater zone under investigation and study as
61 provided in subsection (c) of this section, shall pay to the
62 director the sum of two hundred fifty dollars as a special
63 study fee which shall be paid within three months after the
64 date of the notice and designation of the whitewater zone to
65 be studied. The annual license fee and the special study fee
66 may be used to offset and pay for the expenses and costs of
67 such investigations and studies and the promulgation of rules
68 and regulations pursuant to this section.

69 (e) Upon official designation by the director of the first
70 whitewater zone to be studied as provided in subsection (b) of
71 this section, the director shall appoint a commercial
72 whitewater advisory board. Such board shall consist of two
73 staff employees of the department, three persons
74 representing three different licensed commercial whitewater
75 outfitters currently operating within the state, and three
76 residents of the state who represent the consumers of
77 commercial whitewater rafting in the state: *Provided*, That,
78 for purposes of the appointment of the commercial
79 whitewater outfitters and consumer members of the board,
80 there shall be designated three regions within the state as

81 follows: region one, the counties of Jackson, Roane, Calhoun,
82 Gilmer, Lewis, Upshur, Randolph, Tucker, Barbour, Preston,
83 Taylor, Monongalia, Marion, Harrison, Doddridge, Ritchie,
84 Wirt, Wood, Pleasants, Tyler, Wetzel, Marshall, Ohio, Brooke
85 and Hancock; region two, the counties of Greenbrier,
86 Pocahontas, Pendleton, Hardy, Grant, Mineral, Hampshire,
87 Morgan, Berkeley and Jefferson; region three, the counties of
88 Mason, Putnam, Kanawha, Clay, Braxton, Webster, Nicholas,
89 Fayette, Summers, Monroe, Mercer, Raleigh, Wyoming,
90 McDowell, Mingo, Logan, Boone, Wayne, Cabell and Lincoln.
91 The director shall appoint one member representing
92 commercial whitewater outfitters operating in each of the
93 three regions. The director shall likewise appoint a citizen
94 consumer member from each of the three regions. The
95 director shall serve as an ex officio member of the board and
96 shall serve as chairperson at meetings.

97 (f) The commercial whitewater advisory board shall
98 participate in the investigations and studies conducted by the
99 director. The board shall meet upon the call of the
100 chairperson or a majority of the members of the board and
101 shall meet within a reasonable time after completion of the
102 director's investigation and study relative to each designated
103 whitewater zone. At such meetings the board shall review all
104 data, materials and relevant findings compiled by the director
105 relating to the investigation and study then under
106 consideration and, as soon as practicable thereafter, the board
107 shall promulgate rules and regulations to govern and apply to
108 that designated whitewater zone. Such rules and regulations
109 shall include, but not be limited to, the following: (1)
110 minimum safety requirements for equipment; (2) criteria for
111 increasing or limiting the number of commercial whitewater
112 outfitters operating in whitewater zones; (3) standards for the
113 size and number of rafts and numbers of persons transported
114 in rafts; and (4) qualifications of guides. Board members shall
115 be paid all reasonable and necessary expenses incurred in the
116 exercise of their duties.

117 (g) Upon promulgation of such rules and regulations, the
118 director shall immediately commence enforcement of the
119 rules and regulations promulgated by the board relative to
120 the designated whitewater zone. The promulgation of such
121 rules and regulations and any revision thereof shall be subject
122 to the provisions of chapter twenty-nine-a of this code.

123 (h) The director shall commence the first investigation
124 and study no later than the first day of July, one thousand
125 nine hundred eighty-one. All activities pursuant to all
126 investigations and studies or as may be required for the
127 promulgation of rules and regulations hereunder shall be
128 completed no later than the first day of July, one thousand
129 nine hundred eighty-four.

130 (i) The commercial whitewater advisory board shall
131 terminate and cease to exist as an entity one year following a
132 finding made by the director that all studies and
133 investigations and the promulgation of rules and regulations
134 applicable to the last designated whitewater zone have been
135 completed.

The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

R. P. Baylor
Chairman Senate Committee

Jonny E. Whitlow
Chairman House Committee

Originated in the Senate.

To take effect from passage.

Todd C. Willis
Clerk of the Senate

V. Blankenship
Clerk of the House of Delegates

William R. Hooper
President of the Senate

John M. Lee, Jr.
Speaker House of Delegates

The within *is approved* this the *29*
day of *April*, 1981.

J. D. [Signature]
Governor



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