WEST VIRGINIA LEGISLATURE
REGULAR SESSION, 1981

ENROLLED
Committee Substitute for
SENATE BILL NO. 391

(By Mr. Clinton)

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 convenience of hunters, fishermen and others in this state are recognized as essential, and such outfitters and guides may be licensed and authorized to serve as provided in this article.

2 The director is hereby authorized to promulgate rules and regulations on services of outfitters and guides as herein authorized and defined.

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

4 The term "commercial whitewater outfitter", as used herein, shall mean and include any outfitter duly authorized and operating from within or from without the state, which for monetary profit or gain, provides whitewater expeditions or rents whitewater craft or equipment for use in whitewater expeditions on any river, portions of rivers or waters of the state designated by the director as whitewater recreation 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.

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

(b) The director shall investigate and study commercial whitewater rafting, outfitting and activities related thereto, which rafting, outfitting or activities take place along the rivers or waters of the state. The director shall designate any such rivers or waters or any portions thereof, which herein are referred to as “whitewater zones” for which commercial whitewater rafting, outfitting and activities are to be investigated and studied, and shall determine the order and the periods of time within which such investigations and studies are to be conducted. The director shall first investigate and study those whitewater zones which the director finds to present serious problems requiring immediate regulation, including without limitation, safety hazards and problems of overcrowding or environmental misuse.

(c) Upon the filing of a written notice to be entered upon the records of the department containing the designation and reasonable description of the whitewater zone to be investigated and studied pursuant to subsection (b) above, the director may not issue licenses to additional commercial
whitewater outfitters seeking to operate in or for the
whitewater zone described in the notice. This limitation on
additional licenses shall continue until the director has
completed investigation and study of the whitewater zone
designated in the notice and the rules and regulations
applicable to such zone are promulgated in accordance with
this section: Provided, That the director may issue additional
licenses for such whitewater zones during the study period
and prior to the promulgation of the rules and regulations
applicable to a zone, if the director finds that such license
would not interfere with the conduct of the pending
investigation and study, and the issuance of such additional
license is in the best interests of persons seeking to enjoy
whitewater rafting and the interests of the state in promotion
of tourism and the recreational and ecological use of the
state's natural resources.

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

(e) Upon official designation by the director of the first
whitewater zone to be studied as provided in subsection (b) of
this section, the director shall appoint a commercial
whitewater advisory board. Such board shall consist of two
staff employees of the department, three persons
representing three different licensed commercial whitewater
outfitters currently operating within the state, and three
residents of the state who represent the consumers of
commercial whitewater rafting in the state: Provided, That,
for purposes of the appointment of the commercial
whitewater outfitters and consumer members of the board,
there shall be designated three regions within the state as
follows: region one, the counties of Jackson, Roane, Calhoun, Gilmer, Lewis, Upshur, Randolph, Tucker, Barbour, Preston, Taylor, Monongalia, Marion, Harrison, Doddridge, Ritchie, Wirt, Wood, Pleasants, Tyler, Wetzel, Marshall, Ohio, Brooke and Hancock; region two, the counties of Greenbrier, Pocahontas, Pendleton, Hardy, Grant, Mineral, Hampshire, Morgan, Berkeley and Jefferson; region three, the counties of Mason, Putnam, Kanawha, Clay, Braxton, Webster, Nicholas, Fayette, Summers, Monroe, Mercer, Raleigh, Wyoming, McDowell, Mingo, Logan, Boone, Wayne, Cabell and Lincoln.

The director shall appoint one member representing commercial whitewater outfitters operating in each of the three regions. The director shall likewise appoint a citizen consumer member from each of the three regions. The director shall serve as an ex officio member of the board and shall serve as chairperson at meetings.

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

(g) Upon promulgation of such rules and regulations, the director shall immediately commence enforcement of the rules and regulations promulgated by the board relative to the designated whitewater zone. The promulgation of such rules and regulations and any revision thereof shall be subject to the provisions of chapter twenty-nine-a of this code.
(h) The director shall commence the first investigation and study no later than the first day of July, one thousand nine hundred eighty-one. All activities pursuant to all investigations and studies or as may be required for the promulgation of rules and regulations hereunder shall be completed no later than the first day of July, one thousand nine hundred eighty-four.

(i) The commercial whitewater advisory board shall terminate and cease to exist as an entity one year following a finding made by the director that all studies and investigations and the promulgation of rules and regulations applicable to the last designated whitewater zone have been completed.
The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

Chairman Senate Committee

Chairman House Committee

Originated in the Senate.

To take effect from passage.

Clerk of the Senate

Clerk of the House of Delegates

President of the Senate

Speaker House of Delegates

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

Governor