

APPROVED AND SIGNED BY THE GOVERNOR

Date 4-28-81

Time \_\_\_\_\_

**WEST VIRGINIA LEGISLATURE**  
**REGULAR SESSION, 1981**

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**ENROLLED**

*Committee Substitute for*  
**SENATE BILL NO. 398**

(By Mr. Colambo)

—•—

PASSED April 10, 1981

In Effect from Passage



710: 398

**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. A. Blankenship*  
Clerk of the House of Delegates

*William R. Hoar*  
President of the Senate

*Lyndel M. Lee, Jr.*  
Speaker House of Delegates

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

*James D. B. [Signature]*  
Governor



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SECY. OF STATE