ENROLLED

SENATE BILL NO. 215

(By Senator...)

PASSED ...................... March 12, 1987

In Effect ..................... Passage
AN ACT to amend and reenact sections twenty-three and twenty-three-a, article two, chapter twenty of the code of West Virginia, one thousand nine hundred thirty-one, as amended; and to further amend said chapter by adding thereto a new article, designated article three-b, all relating to commercial whitewater rafting; clarifying and defining terms; prescribing the scope, amount and usage of licenses and licensing fees; term of service for certain members of the commercial whitewater advisory board; when board to meet; requiring a majority of the members to be present to conduct business; expanding the rule-making authority of the board with respect to rivers not designated as whitewater zones; limitations; removing certain outdated provisions and the sunsetting of the board; creating the whitewater responsibility act; declaring legislative purpose; definitions; setting forth duties of commercial whitewater outfitters and commercial whitewater guides; duties of participants; prohibiting certain activities of such participants; and setting forth limitations on the liability of commercial whitewater outfitters and commercial whitewater guides.

Be it enacted by the Legislature of West Virginia:

That sections twenty-three and twenty-three-a, 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 chapter be further amended by adding thereto a new article, designated article three-b, all to read as follows:

ARTICLE 2. WILDLIFE RESOURCES.

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

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

(b) The term “outfitter,” as used herein, means and includes 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, includes and embraces outfitter services and the term “outfitter” includes and embraces guide services, but the applicant for any license hereunder may in his or her application elect to be designated as an outfitter or guide.

(c) The term “commercial whitewater outfitter,” as used herein, means any person, partnership, corporation or other organization, or any combination thereof, 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 in accordance with this article.

The term “commercial whitewater guide,” as used herein,
§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 this 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) In lieu of the annual license fee set forth in section twenty-six of this article, the annual license fee shall be five hundred dollars for each river on which a commercial whitewater outfitter operates. Such annual per river license fee shall be limited to the Cheat, Gauley, New, Shenandoah and Tygart Rivers. The annual license fee for a commercial whitewater outfitter operating on a river not so designated shall be five hundred dollars regardless of the number of rivers operated on. A commercial whitewater outfitter who is operating on an above designated river and who has paid the annual per river license fee may not be required to pay an additional annual license fee to operate on a nondesignated river. The commercial whitewater outfitter license shall be issued by the director and shall be for a period of ten years. Such license is subject to the bonding provisions set forth in section twenty-six of this article and the revocation provisions set forth in the rules and regulations promulgated by the commercial whitewater advisory board. 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, the promulgation of rules and
regulations pursuant to this section, the enforcement of the
provisions of this section and the reimbursement of
expenses incurred by members of the commercial
whitewater advisory board.

(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; the commissioner of the
department of commerce; the superintendent of the New
River Gorge National Park or his designee; and three
persons representing three different licensed commercial
whitewater outfitters currently operating within the state:
Provided, That one person shall represent the small
commercial whitewater outfitters in West Virginia which
are those outfitters who have a license allotment, as of the
first day of July, one thousand nine hundred eighty-five, of
less than one hundred persons on streams or rivers where
total use is limited; and three residents of the state who
represent the consumers of commercial whitewater rafting
in the state, one of whom shall represent the private river
users: Provided, however, 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
The director shall appoint the members representing commercial whitewater outfitters operating in each of the three regions so that one of such members comes from each region. The director shall likewise appoint the citizen consumer members so that one of such members comes from each region. The director shall serve as an ex officio member of the board and shall serve as chairperson at meetings.

On the first day of July, one thousand nine hundred eighty-seven, the current commercial whitewater outfitter and consumer representatives on the board shall be appointed by the director to serve as follows: The region one representatives for a term of one year, the region two representatives for a term of two years and the region three representatives for a term of three years. Thereafter, as the respective terms of the members expire, the director shall appoint commercial whitewater outfitter and consumer representatives from the respective regions, whose terms shall be three years from the day on which their immediate predecessors’ terms expire. No commercial whitewater outfitter is eligible for successive appointments to the board.

(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. However, the board shall meet at least once every six months and shall conduct business when a majority of the members are present. 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. The board shall also promulgate rules and regulations to govern and apply to commercial whitewater outfitters operating on rivers not designated as whitewater zones. 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 commercial whitewater guides. However,
the board may not limit the number of commercial
whitewater outfitters operating on rivers not designated as
whitewater zones, nor may the board limit the number of
rafts or persons transported in rafts by commercial
whitewater outfitters on rivers not designated as
whitewater zones. Board members shall be paid all
reasonable and necessary expenses incurred in the exercise
of their duties.
(g) On rivers designated as whitewater zones, the board
shall set the number of persons transported in rafts,
pursuant to subdivision three, subsection (f) of this section,
at not less than the total allocation in effect on the first day
of July, one thousand nine hundred eighty-five.
(h) Upon promulgation of such rules and regulations,
the director shall immediately commence enforcement of
the rules and regulations promulgated by the board. 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.
ARTICLE 3B. WHITEWATER RESPONSIBILITY ACT.
§20-38-1. Legislative purposes.
Every year, in rapidly increasing numbers, the
inhabitants of the state of West Virginia and nonresidents
are enjoying the recreational value of West Virginia rivers
and streams. The tourist trade is of vital importance to the
state of West Virginia and the services offered by
commercial whitewater outfitters and commercial
whitewater guides significantly contribute to the economy
of the state of West Virginia. The Legislature recognizes
that there are inherent risks in the recreational activities
provided by commercial whitewater outfitters and
commercial whitewater guides which should be understood
by each participant. It is essentially impossible for
commercial whitewater outfitters and commercial
whitewater guides to eliminate these risks. It is the purpose
of this article to define those areas of responsibility and
affirmative acts for which commercial whitewater
outfitters and commercial whitewater guides are liable for loss, damage or injury.

§20-3B-2. Definitions.

Unless the context of usage clearly requires otherwise:

(a) "Commercial whitewater outfitter" means any person, partnership, corporation or other organization, or any combination thereof, as defined in section twenty-three, article two of this chapter.

(b) "Commercial whitewater guide" means any person as defined in section twenty-three, article two of this chapter.

(c) "Participant" means any person using the services of a commercial whitewater outfitter or commercial whitewater guide on any river, portions of rivers or waters of the state.

§20-3B-3. Duties of commercial whitewater outfitters and commercial whitewater guides.

(a) All commercial whitewater outfitters and commercial whitewater guides offering professional services in this state shall provide facilities, equipment and services as advertised or as agreed to by the commercial whitewater outfitter, commercial whitewater guide and the participant. All services, facilities and equipment provided by commercial whitewater outfitters and commercial whitewater guides in this state shall conform to safety and other requirements set forth in article two of this chapter and in the rules promulgated by the commercial whitewater advisory board created by section twenty-three-a, article two of this chapter.

(b) In addition to the duties set forth in subsection (a) of this section, all commercial whitewater guides providing services for whitewater expeditions in this state shall, while providing such services, conform to the standard of care expected of members of their profession.

§20-3B-4. Duties of participants.

(a) Participants have a duty to act as would a reasonably prudent person when engaging in recreational activities offered by commercial whitewater outfitters and commercial whitewater guides in this state.
(b) No participant may:
(1) Board upon or embark upon any commercial whitewater expedition when intoxicated or under the influence of nonintoxicating beer, intoxicating beverages or controlled substances; or
(2) Fail to advise the trip leader or the trip guide of any known health problems or medical disability and any prescribed medication that may be used in the treatment of such health problems during the course of the commercial whitewater expedition; or
(3) Engage in harmful conduct or willfully or negligently engage in any type of conduct which contributes to or causes injury to any person or personal property; or
(4) Perform any act which interferes with the safe running and operation of the expedition, including failure to use safety equipment provided by the commercial whitewater outfitter or failure to follow the instructions of the trip leader or trip guide in regard to the safety measures and conduct requested of the participants; or
(5) Fail to inform or notify the trip guide or trip leader of any incident or accident involving personal injury or illness experienced during the course of any commercial whitewater expedition. If such injury or illness occurs, the participant shall leave personal identification, including name and address, with the commercial whitewater outfitter's agent or employee.

§20-3B-5. Liability of commercial whitewater outfitters and commercial whitewater guides.

It is recognized that some recreational activities conducted by commercial whitewater outfitters and commercial whitewater guides are hazardous to participants regardless of all feasible safety measures which can be taken.

(a) No licensed commercial whitewater outfitter or commercial whitewater guide acting in the course of his employment is liable to a participant for damages or injuries to such participant unless such damage or injury was directly caused by failure of the commercial whitewater outfitter or commercial whitewater guide to comply with duties placed on him by article two of this chapter, by the rules of the commercial whitewater
(b) The limitations on liability created by this article apply only to commercial whitewater outfitters licensed under the provisions of article two of this chapter and to commercial whitewater guides who are agents or employees of licensed commercial whitewater outfitters, and only when the commercial whitewater outfitter or commercial whitewater guide is acting within the course of his employment.
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.

In effect from passage.

Clerk of the Senate

Clerk of the House of Delegates

President of the Senate

Speaker House of Delegates

The within approved this the 19th day of March, 1987.

Governor