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SECRETARY OF STATE

WEST VIRGINIA LEGISLATURE

REGULAR SESSION, 1987



ENROLLED

SENATE BILL NO. 215

(By Senator McIntire, et al)



PASSED March 12, 1987

In Effect from Passage



ENROLLED
Senate Bill No. 215

(BY SENATORS WHITACRE, HOLLIDAY, SPEARS, TUCKER AND HARMAN)

[Passed March 12, 1987; in effect from 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authority of the board with respect to rivers not designated as whitewater zones; limitations; removing certain outdated provisions and the sunseting of the board; creating the whitewater responsibility act; declaring legislative purpose; definitions; setting forth duties of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.

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

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

27 (c) The term "commercial whitewater outfitter," as
28 used herein, means any person, partnership, corporation or
29 other organization, or any combination thereof, duly
30 authorized and operating from within or from without the
31 state, which for monetary profit or gain, provides
32 whitewater expeditions or rents whitewater craft or
33 equipment for use in whitewater expeditions on any river,
34 portions of rivers or waters of the state in accordance with
35 this article.

36 The term "commercial whitewater guide," as used herein,

37 means any person who is an owner, agent or employee of a
38 commercial whitewater outfitter, and who is qualified and
39 authorized to provide services for whitewater expeditions
40 in the state in accordance with this article.

**§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
5 this state necessitating the study, investigation and
6 regulation of whitewater rafting to promote the safe and
7 equitable enjoyment of this sport by all persons seeking to
8 engage in it as recreational activity. The Legislature further
9 finds it desirable to require the director of the department
10 of natural resources, pending such study and investigation
11 and the promulgation of necessary rules and regulations
12 applicable to such areas and portions of rivers and waters,
13 to restrict, deny or postpone the issuance of licenses to
14 additional commercial whitewater outfitters seeking to
15 operate in such areas and portions of rivers and waters in
16 this state until the promulgation of such rules and
17 regulations applicable thereto and to provide for the
18 creation of an advisory board to promulgate such rules and
19 regulations.

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

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

56 (d) In lieu of the annual license fee set forth in section
57 twenty-six of this article, the annual license fee shall be five
58 hundred dollars for each river on which a commercial
59 whitewater outfitter operates. Such annual per river license
60 fee shall be limited to the Cheat, Gauley, New, Shenandoah
61 and Tygart Rivers. The annual license fee for a commercial
62 whitewater outfitter operating on a river not so designated
63 shall be five hundred dollars regardless of the number of
64 rivers operated on. A commercial whitewater outfitter who
65 is operating on an above designated river and who has paid
66 the annual per river license fee may not be required to pay
67 an additional annual license fee to operate on a
68 nondesignated river. The commercial whitewater outfitter
69 license shall be issued by the director and shall be for a
70 period of ten years. Such license is subject to the bonding
71 provisions set forth in section twenty-six of this article and
72 the revocation provisions set forth in the rules and
73 regulations promulgated by the commercial whitewater
74 advisory board. In addition to such annual license fee, each
75 commercial whitewater outfitter, operating within a
76 whitewater zone under investigation and study as provided

77 in subsection (c) of this section, shall pay to the director the
78 sum of two hundred fifty dollars as a special study fee which
79 shall be paid within three months after the date of the notice
80 and designation of the whitewater zone to be studied. The
81 annual license fee and the special study fee may be used to
82 offset and pay for the expenses and costs of such
83 investigations and studies, the promulgation of rules and
84 regulations pursuant to this section, the enforcement of the
85 provisions of this section and the reimbursement of
86 expenses incurred by members of the commercial
87 whitewater advisory board.

88 (e) Upon official designation by the director of the first
89 whitewater zone to be studied as provided in subsection (b)
90 of this section, the director shall appoint a commercial
91 whitewater advisory board. Such board shall consist of two
92 staff employees of the department; the commissioner of the
93 department of commerce; the superintendent of the New
94 River Gorge National Park or his designee; and three
95 persons representing three different licensed commercial
96 whitewater outfitters currently operating within the state:
97 *Provided*, That one person shall represent the small
98 commercial whitewater outfitters in West Virginia which
99 are those outfitters who have a license allotment, as of the
100 first day of July, one thousand nine hundred eighty-five, of
101 less than one hundred persons on streams or rivers where
102 total use is limited; and three residents of the state who
103 represent the consumers of commercial whitewater rafting
104 in the state, one of whom shall represent the private river
105 users: *Provided, however*, That for purposes of the
106 appointment of the commercial whitewater outfitters and
107 consumer members of the board, there shall be designated
108 three regions within the state as follows: Region one, the
109 counties of Jackson, Roane, Calhoun, Gilmer, Lewis,
110 Upshur, Randolph, Tucker, Barbour, Preston, Taylor,
111 Monongalia, Marion, Harrison, Doddridge, Ritchie, Wirt,
112 Wood, Pleasants, Tyler, Wetzel, Marshall, Ohio, Brooke and
113 Hancock; region two, the counties of Greenbrier,
114 Pocahontas, Pendleton, Hardy, Grant, Mineral, Hampshire,
115 Morgan, Berkeley and Jefferson; region three, the counties
116 of Mason, Putnam, Kanawha, Clay, Braxton, Webster,
117 Nicholas, Fayette, Summers, Monroe, Mercer, Raleigh,
118 Wyoming, McDowell, Mingo, Logan, Boone, Wayne, Cabell

119 and Lincoln. The director shall appoint the members
120 representing commercial whitewater outfitters operating
121 in each of the three regions so that one of such members
122 comes from each region. The director shall likewise appoint
123 the citizen consumer members so that one of such members
124 comes from each region. The director shall serve as an ex
125 officio member of the board and shall serve as chairperson
126 at meetings.

127 On the first day of July, one thousand nine hundred
128 eighty-seven, the current commercial whitewater outfitter
129 and consumer representatives on the board shall be
130 appointed by the director to serve as follows: The region one
131 representatives for a term of one year, the region two
132 representatives for a term of two years and the region three
133 representatives for a term of three years. Thereafter, as the
134 respective terms of the members expire, the director shall
135 appoint commercial whitewater outfitter and consumer
136 representatives from the respective regions, whose terms
137 shall be three years from the day on which their immediate
138 predecessors' terms expire. No commercial whitewater
139 outfitter is eligible for successive appointments to the
140 board.

141 (f) The commercial whitewater advisory board shall
142 participate in the investigations and studies conducted by
143 the director. The board shall meet upon the call of the
144 chairperson or a majority of the members of the board and
145 shall meet within a reasonable time after completion of the
146 director's investigation and study relative to each
147 designated whitewater zone. However, the board shall meet
148 at least once every six months and shall conduct business
149 when a majority of the members are present. At such
150 meetings, the board shall review all data, materials and
151 relevant findings compiled by the director relating to the
152 investigation and study then under consideration and, as
153 soon as practicable thereafter, the board shall promulgate
154 rules and regulations to govern and apply to that designated
155 whitewater zone. The board shall also promulgate rules and
156 regulations to govern and apply to commercial whitewater
157 outfitters operating on rivers not designated as whitewater
158 zones. Such rules and regulations shall include, but not be
159 limited to, the following: (1) Minimum safety requirements
160 for equipment; (2) criteria for increasing or limiting the

161 number of commercial whitewater outfitters operating in
162 whitewater zones; (3) standards for the size and number of
163 rafts and numbers of persons transported in rafts; and (4)
164 qualifications of commercial whitewater guides. However,
165 the board may not limit the number of commercial
166 whitewater outfitters operating on rivers not designated as
167 whitewater zones, nor may the board limit the number of
168 rafts or persons transported in rafts by commercial
169 whitewater outfitters on rivers not designated as
170 whitewater zones. Board members shall be paid all
171 reasonable and necessary expenses incurred in the exercise
172 of their duties.

173 (g) On rivers designated as whitewater zones, the board
174 shall set the number of persons transported in rafts,
175 pursuant to subdivision three, subsection (f) of this section,
176 at not less than the total allocation in effect on the first day
177 of July, one thousand nine hundred eighty-five.

178 (h) Upon promulgation of such rules and regulations,
179 the director shall immediately commence enforcement of
180 the rules and regulations promulgated by the board. The
181 promulgation of such rules and regulations and any
182 revision thereof shall be subject to the provisions of chapter
183 twenty-nine-a of this code.

ARTICLE 3B. WHITEWATER RESPONSIBILITY ACT.

§20-3B-1. Legislative purposes.

1 Every year, in rapidly increasing numbers, the
2 inhabitants of the state of West Virginia and nonresidents
3 are enjoying the recreational value of West Virginia rivers
4 and streams. The tourist trade is of vital importance to the
5 state of West Virginia and the services offered by
6 commercial whitewater outfitters and commercial
7 whitewater guides significantly contribute to the economy
8 of the state of West Virginia. The Legislature recognizes
9 that there are inherent risks in the recreational activities
10 provided by commercial whitewater outfitters and
11 commercial whitewater guides which should be understood
12 by each participant. It is essentially impossible for
13 commercial whitewater outfitters and commercial
14 whitewater guides to eliminate these risks. It is the purpose
15 of this article to define those areas of responsibility and
16 affirmative acts for which commercial whitewater

17 outfitters and commercial whitewater guides are liable for
18 loss, damage or injury.

§20-3B-2. Definitions.

1 Unless the context of usage clearly requires otherwise:

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

6 (b) “Commercial whitewater guide” means any person
7 as defined in section twenty-three, article two of this
8 chapter.

9 (c) “Participant” means any person using the services of
10 a commercial whitewater outfitter or commercial
11 whitewater guide on any river, portions of rivers or waters
12 of the state.

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

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

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

§20-3B-4. Duties of participants.

1 (a) Participants have a duty to act as would a reasonably
2 prudent person when engaging in recreational activities
3 offered by commercial whitewater outfitters and
4 commercial whitewater guides in this state.

5 (b) No participant may:

6 (1) Board upon or embark upon any commercial
7 whitewater expedition when intoxicated or under the
8 influence of nonintoxicating beer, intoxicating beverages
9 or controlled substances; or

10 (2) Fail to advise the trip leader or the trip guide of any
11 known health problems or medical disability and any
12 prescribed medication that may be used in the treatment of
13 such health problems during the course of the commercial
14 whitewater expedition; or

15 (3) Engage in harmful conduct or willfully or
16 negligently engage in any type of conduct which
17 contributes to or causes injury to any person or personal
18 property; or

19 (4) Perform any act which interferes with the safe
20 running and operation of the expedition, including failure
21 to use safety equipment provided by the commercial
22 whitewater outfitter or failure to follow the instructions of
23 the trip leader or trip guide in regard to the safety measures
24 and conduct requested of the participants; or

25 (5) Fail to inform or notify the trip guide or trip leader of
26 any incident or accident involving personal injury or illness
27 experienced during the course of any commercial
28 whitewater expedition. If such injury or illness occurs, the
29 participant shall leave personal identification, including
30 name and address, with the commercial whitewater
31 outfitter's agent or employee.

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

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

6 (a) No licensed commercial whitewater outfitter or
7 commercial whitewater guide acting in the course of his
8 employment is liable to a participant for damages or
9 injuries to such participant unless such damage or injury
10 was directly caused by failure of the commercial
11 whitewater outfitter or commercial whitewater guide to
12 comply with duties placed on him by article two of this
13 chapter, by the rules of the commercial whitewater

14 advisory board, or by the duties placed on such commercial
15 whitewater outfitter or commercial whitewater guide by
16 the provisions of this article.

17 (b) The limitations on liability created by this article
18 apply only to commercial whitewater outfitters licensed
19 under the provisions of article two of this chapter and to
20 commercial whitewater guides who are agents or employees
21 of licensed commercial whitewater outfitters, and only
22 when the commercial whitewater outfitter or commercial
23 whitewater guide is acting within the course of his
24 employment.

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

James O. Williams
.....
Chairman Senate Committee

Bernard V. Kelly
.....
Chairman House Committee

Originated in the Senate.

In effect from passage.

Todd C. Wich
.....
Clerk of the Senate

Donald L. Kopp
.....
Clerk of the House of Delegates

Sam Tanenhaus
.....
President of the Senate

W. H. Hall
.....
Speaker House of Delegates

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

Arthur A. Shaughnessy
.....
Governor

PRESENTED TO THE

GOVERNOR

Date 3/17/87

Time 4:15 p.m.