

MAINE STATE LEGISLATURE

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(EMERGENCY)
(New Draft of S.P. 779, L.D. 2098)

SECOND REGULAR SESSION

ONE HUNDRED AND ELEVENTH LEGISLATURE

Legislative Document

No. 2367

S.P. 873

In Senate, March 26, 1984

Reported by Senator Pearson of Penobscot from the Joint Select Committee on Whitewater Rafting and printed under Joint Rule 2.

Original bill presented by Senator Pearson of Penobscot and cosponsored by Representative McGowan of Pittsfield, Senator Usher of Cumberland and Representative Jacques of Waterville.

JOY J. O'BRIEN, Secretary of the Senate

STATE OF MAINE

IN THE YEAR OF OUR LORD
NINETEEN HUNDRED AND EIGHTY-FOUR

AN ACT to Amend the Laws Concerning
Commercial Whitewater Rafting.

Emergency preamble. Whereas, Acts of the Legislature do not become effective until 90 days after adjournment unless enacted as emergencies; and

Whereas, changes in the law before the 1984 rafting season are necessary to assure that those who participate in commercial whitewater rafting trips are provided with the safest types of personal flotation devices; and

Whereas, changes are also necessary to meet the Legislature's goal of maximizing competition within the recreational use limits established for commercial whitewater rafting and to prohibit certain acts; and

1 Whereas, the 1984 rafting season will begin in
2 April; and

3 Whereas, in the judgment of the Legislature,
4 these facts create an emergency within the meaning of
5 the Constitution of Maine and require the following
6 legislation as immediately necessary for the preser-
7 vation of the public peace, health and safety; now,
8 therefore,

9 Be it enacted by the People of the State of Maine as
10 follows:

11 Sec. 1. 12 MRSA §7365, sub-§7, as enacted by PL
12 1983, c. 502, §4, is amended to read:

13 7. Affiliated outfitters. Affiliated outfitters
14 may be licensed, but are subject to additional allo-
15 cation restrictions. ~~License applications~~ Applica-
16 tions for allocations shall contain a declaration of
17 the extent of affiliation, as defined in section
18 7363, subsection 2, or a declaration of
19 nonaffiliation, and a statement disclosing any rela-
20 tionship with other licensed outfitters, including
21 the giving or receipt of equipment, materials or oth-
22 er assistance. The department may require submission
23 of any books, memoranda, papers or accounts it rea-
24 sonably believes necessary to determine whether a
25 person seeking a ~~license~~ an allocation is an affilia-
26 ted outfitter. These shall be confidential and made
27 available only to persons involved in determining af-
28 filiation and only for that purpose, unless they are
29 submitted for another purpose.

30 Sec. 2. 12 MRSA §7367, sub-§1, ¶B, as enacted by
31 PL 1983, c. 502, §4, is amended to read:

32 B. Outfitters shall ensure that each ~~person~~
33 passenger participating on a whitewater trip
34 wears a securely fastened ~~type I or type V~~ type V per-
35 sonal flotation device.

36 Sec. 3. 12 MRSA §7369, sub-§2, as enacted by PL
37 1983, c. 502, §4, is amended to read:

38 2. Allocation required; 80 passenger limit on
39 any river; affiliated outfitters restricted. Except

1 as provided in subsection 10, operation of a commer-
2 cial whitewater trip on the Kennebec River between
3 Harris Station and West Forks or on the West Branch
4 Penobscot River between McKay Station and
5 Pockwockamus Falls ~~on weekends or legal holidays or~~
6 ~~other days specified by the department by rule under~~
7 subsection 10, paragraph A, without an allocation or
8 in excess of an allocation is prohibited. No alloca-
9 tion is required for other rivers nor for other
10 stretches of those rivers, but no outfitter may carry
11 more than 80 passengers per day on any rapidly flow-
12 ing river within the State. Not more than one member
13 of an affiliated group may conduct whitewater trips
14 on any river or stretch of river for which a specific
15 allocation is required, even on days for which an al-
16 location is not required.

17 Three or more years after the period of affiliation,
18 the department may, in its discretion, consider re-
19 quests by any former members of an affiliated group
20 to run passengers on allocated rivers. The burden
21 shall rest on the former member of an affiliated
22 group to demonstrate that the reasons for any finding
23 of affiliation have been so diminished in effect that
24 the public interest will be served by considering the
25 former member's request to run passengers on an allo-
26 cated river.

27 Sec. 4. 12 MRSA §7369, sub-§4, as enacted by PL
28 1983, c. 502, §4, is repealed.

29 Sec. 5. 12 MRSA §7369, sub-§§5 and 6, as enacted
30 by PL 1983, c. 502, §4, are amended to read:

31 5. Term of allocation; abandonment of alloca-
32 tion. All allocations shall be awarded for a ~~one-~~
33 ~~year period based on the calendar year period not to~~
34 ~~exceed 3 years as determined by rule.~~ Any outfitter
35 may abandon all or part of an allocation at any time
36 by giving the department 30 days written notice. In
37 the event that the department reissues an abandoned
38 allocation, any duplicate portion of the allocation
39 fee shall be refunded.

40 6. Allocation procedure. Except for the initial
41 allocation in 1983, which shall be governed by sub-
42 section 4, the department shall award allocations to

1 licensed outfitters on the basis of the criteria es-
2 tablished in this section. Any outfitter desiring an
3 allocation shall submit a proposal to the department
4 in the year preceding the year for which the alloca-
5 tion is desired, on or before a date specified by
6 rule. Allocations shall be awarded on or before De-
7 cember 1st, but, if any open allocation remains, it
8 may be awarded at any time. Allocations shall be
9 promulgated by rule awarded in accordance with the
10 Maine Administrative Procedure Act, Title 5, chapter
11 375, subchapter V with a public hearing required on
12 the proposed rule in the vicinity of the river in
13 question. The department shall hold at least one
14 public hearing prior to final issuance of alloca-
15 tions. The department shall promulgate rules as nec-
16 essary to facilitate the allocation process.

17 Based on the demand for noncommercial public use, the
18 department shall set aside up to 10% of the recrea-
19 tional use limit on any particular rapidly flowing
20 river for noncommercial public use of whitewater
21 craft.

22 Sec. 6. 12 MRSA §7369, sub-§7, as enacted by PL
23 1983, c. 502, §4, is repealed and the following en-
24 acted in its place:

25 7. Whitewater rafting allocation criteria. The
26 department shall review proposals and award alloca-
27 tions so that, taken as a whole, they satisfy the al-
28 location system goals of this section and contribute
29 to meeting the river management objectives of section
30 7364.

31 A. Individual proposals shall be evaluated ac-
32 ording to the following specific criteria:

33 (1) The experience of the outfitter and any
34 employee in providing whitewater trips on
35 the river or rivers for which the allocation
36 is sought, including, but not limited to,
37 such factors as the number of trips and pas-
38 sengers carried, length of time as an
39 outfitter, safety record and experience of
40 guides and staff. The company experience of
41 only one company within an affiliated group
42 at the time of that experience may be

- 1 counted as company experience for purposes
2 of allocation;
- 3 (2) The experience of the outfitter and any
4 employee in providing whitewater trips on
5 ivers other than those for which the allo-
6 cation is sought, including, but not limited
7 to, such factors as the number of trips and
8 passengers carried, length of time as an
9 outfitter, safety record and experience of
10 guides and staff. The company experience of
11 only one company within an affiliated group
12 at the time of that experience may be
13 counted as company experience for purposes
14 of allocation;
- 15 (3) The safety record of the outfitter and
16 any employee in whitewater outfitting or
17 similar enterprises;
- 18 (4) The financial investment of the
19 outfitter in equipment, training, insurance,
20 facilities and services directly related to
21 commercial whitewater rafting trips;
- 22 (5) Ability of the outfitter to serve the
23 interests of the State by providing safe,
24 economical, environmentally sound commercial
25 whitewater trips on the particular river or
26 ivers;
- 27 (6) Ability of the outfitter to serve the
28 interests of the consuming public by provid-
29 ing a type of trip experience that is in the
30 public interest as determined by the depart-
31 ment;
- 32 (7) When allocations are considered for
33 subsequent years, the performance of the
34 outfitter in providing the services proposed
35 for the previous allocations and compliance
36 with the terms of the allocations; and
- 37 (8) Other matters which in the judgment of
38 the department relate to orderly business
39 development, including growth, new entry or
40 extreme hardship on the part of an appli-
41 cant.

1 B. The department may require a surety bond in
2 an amount sufficient to cover deposits of custom-
3 ers, and may require sufficient evidence of fi-
4 ancial stability prior to granting an alloca-
5 tion, including, but not limited to, financial
6 statements and references from financial institu-
7 tions.

8 C. The department and other state employees di-
9 rectly involved in the allocation process shall
10 hold all financial information submitted under
11 this section as confidential, except that the de-
12 partment may, within its discretion, allow infor-
13 mation received under this section to be revealed
14 to attorneys for a party challenging an alloca-
15 tion decision of the department. This informa-
16 tion must be kept confidential and shall not be
17 disclosed to any unauthorized person, including
18 the attorney's client.

19 Sec. 7. 12 MRSA §7369 sub-§10, ¶A, as enacted by
20 PL 1983, c. 502, §4, is amended to read:

21 A. Nonholiday weekday use does not require an
22 allocation so long as the recreational use limit
23 has not been reached. If the department deter-
24 mines the recreational use limit of a river is
25 will be reached on weekdays, the department shall
26 provide by rule for allocations. For purposes of
27 this subchapter, the legal holidays are Memorial
28 Day, July 4th and Labor Day.

29 Sec. 8. 12 MRSA §7369 sub-§10, ¶D is enacted to
30 read:

31 D. No allocation may be required for use during
32 April, the first 17 days in May, the last 16 days
33 in September and October so long as the recrea-
34 tional use limit has not been reached. If the
35 department determines the recreational use limit
36 of a river will be reached during these months or
37 a portion of these months, the department shall
38 provide by rule for allocations during that peri-
39 od.

40 Sec. 9. 12 MRSA §7369, sub-§11 is enacted to
41 read:

1 11. Unauthorized use of allocation ratings. The
2 allocation system is a tool to accomplish the river
3 management objectives set forth in subsection 1 and
4 is not a measure of the comparative ability or worth
5 of outfitters. Any outfitter who represents other-
6 wise for commercial gain engages in a deceptive prac-
7 tice and abuses the public trust evidenced by the
8 outfitter's license and allocation, and, without lim-
9 itation to any other remedies, may be subjected to
10 the penalties provided in section 7370-A.

11 Sec. 10. 12 MRSA §7370-A, as enacted by PL 1983,
12 c. 502, §4, is amended to read:

13 §7370-A. Penalties

14 The penalties for failure to comply with this
15 subchapter or for providing false information under
16 this subchapter may include nonrenewal, revocation or
17 suspension of an ~~outfitters~~ outfitter's or guides
18 guide's license or an allocation or both, subject to
19 the procedures of the Maine Administrative Procedure
20 Act, Title 5, chapter 375, or may be a civil offense
21 for which a civil penalty not to exceed \$5,000 may be
22 adjudged. Operation of a commercial whitewater trip
23 without a license or operation on the river in viola-
24 tion of the safety requirements of section 7367, sub-
25 section 1, shall be a Class E crime.

26 **Emergency clause.** In view of the emergency cited
27 in the preamble, this Act shall take effect when ap-
28 proved, except that sections 5, 6 and 9 shall not
29 take effect until September 1, 1984.

1 STATEMENT OF FACT

2 The new draft clarifies the language and purpose
3 of the original bill, amends portions of the original
4 draft and adds new sections as follows.

5 Section 1 corrects a reference to "licenses" to
6 read more correctly as "allocations."

7 Section 2 amends the life jacket requirement to
8 apply only to passengers and requires type V life
9 jackets for all passengers. A type I life jacket is
10 not as safe as a type V life jacket and will no
11 longer be permitted for passengers.

12 Section 3 corrects language prohibiting operation
13 without an allocation to include a prohibition on op-
14 eration in excess of an allocation.

15 Section 4 repeals the 1983 allocation procedure
16 which is no longer needed.

17 Section 5 deletes the requirement that an
18 outfitter give 30-days notice to abandon an alloca-
19 tion. It also amends the allocation process to allow
20 allocations for a period of up to 3 years and to per-
21 mit the awarding of allocations, with at least one
22 public hearing required, instead of promulgation of
23 allocations by rule, with at least 2 public hearings
24 required. The effective date of this section is de-
25 layed to apply only to allocations awarded after the
26 1984 rafting season.

27 Section 6 deletes the mandatory evaluation of fi-
28 nancial stability as a part of the allocation process
29 and grants the department authority to require a
30 surety bond in an amount sufficient to cover custom-
31 ers' deposits and authority to require evidence of
32 financial stability, if necessary, prior to granting
33 an allocation. This section also provides confiden-
34 tiality for all financial information submitted as
35 part of the allocation process, except where neces-
36 sary, to attorneys for a party challenging an alloca-
37 tion decision of the department. To protect the com-
38 petitive integrity of each outfitter, this informa-
39 tion may not be revealed to the attorney's client.

1 Sections 7 and 8 allow unallocated use of rivers
2 during April, the first 17 days in May, the last 16
3 days in September and October so long as the recrea-
4 tional use limit has not been reached. They also
5 clarify the authority of the department to provide
6 allocations for previously unallocated periods of
7 time if the recreational use limit of a river during
8 that period is in danger of being reached.

9 Section 9 prohibits use of the department alloca-
10 tion rating for advertising purposes.

11 Section 10 creates a civil penalty for violations
12 as an alternative to loss of license or allocation.

13 This new draft also adds an emergency preamble.
14 All of the provisions except those affecting this
15 year's allocation and the prohibition on advertising
16 will take effect when approved.

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