

# MAINE STATE LEGISLATURE

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1 SECOND REGULAR SESSION  
2

3 ONE HUNDRED AND TWELFTH LEGISLATURE  
4

5 Legislative Document

No. 1795

7 H.P. 1278

House of Representatives, January 9, 1986

8 Approved for introduction by a majority of the Legislative Council  
9 pursuant to Joint Rule 26.

10 Reference to the Committee on Business and Commerce suggested and  
ordered printed.

EDWIN H. PERT, Clerk

Presented by Representative McGowan of Canaan.

12 STATE OF MAINE  
13

14 IN THE YEAR OF OUR LORD  
15 NINETEEN HUNDRED AND EIGHTY-SIX  
16

17 AN ACT to Authorize the Establishment of a  
18 Standard of Care for Commercial  
19 Whitewater Outfitters.  
20

21 Be it enacted by the People of the State of Maine as  
22 follows:

23 12 MRSA §7371-A is enacted to read:

24 §7371-A. Standard of care

25 In any action brought by any patron of a  
26 whitewater outfitter, alleging entitlement to damages  
27 as a result of injury to person or property at any  
28 time during the course of a whitewater rafting trip  
29 conducted by an outfitter, proof by the outfitter  
30 that its equipment complied with the safety standards  
31 and rules established pursuant to this subchapter and  
32 proof that the outfitter's guides were licensed pur-  
33 suant to the standards established in section 7366  
34 create a presumption that the outfitter was at all  
35 times exercising reasonable care in conducting the

1 trip. This presumption may be rebutted only by clear  
2 and convincing evidence.

3 STATEMENT OF FACT

4 It is well recognized that the recreational sport  
5 of whitewater rafting carries with it inherent dan-  
6 gers which no degree of care or preparation on the  
7 part of the outfitter can neutralize. This bill is  
8 necessary as a result of the difficulty currently be-  
9 ing experienced by outfitters in obtaining liability  
10 insurance coverage for trips. This bill places the  
11 emphasis where it should be, on promoting proper  
12 safety equipment, proper rafting equipment and highly  
13 trained professional guides. If an outfitter pro-  
14 vides this type of equipment and expert guidance down  
15 the river, there should be no liability for injuries  
16 caused by acts of nature, which constitute the inher-  
17 ent risks which go with this recreational sport.

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