

# MAINE STATE LEGISLATURE

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# 126th MAINE LEGISLATURE

## FIRST REGULAR SESSION-2013

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Legislative Document

No. 618

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H.P. 437

House of Representatives, February 21, 2013

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### **An Act To Eliminate Restrictions on Affiliated Outfitters in Laws Governing Whitewater Rafting**

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Reference to the Committee on Inland Fisheries and Wildlife suggested and ordered printed.

*Millicent M. MacFarland*  
MILLICENT M. MacFARLAND  
Clerk

Presented by Representative McCABE of Skowhegan.  
Cosponsored by Senator SAVIELLO of Franklin and  
Representatives: CROCKETT of Bethel, DUNPHY of Embden, GILBERT of Jay, HARVELL  
of Farmington, Senator: WHITTEMORE of Somerset.

1           **Be it enacted by the People of the State of Maine as follows:**

2           **Sec. 1. 12 MRSA §12901, sub-§1**, as enacted by PL 2003, c. 414, Pt. A, §2 and  
3 affected by c. 614, §9, is repealed.

4           **Sec. 2. 12 MRSA §12901, sub-§2**, as affected by PL 2003, c. 614, §9 and  
5 amended by c. 655, Pt. B, §320 and affected by §422, is repealed.

6           **Sec. 3. 12 MRSA §12907, sub-§8**, as enacted by PL 2003, c. 414, Pt. A, §2 and  
7 affected by c. 614, §9, is repealed.

8           **Sec. 4. 12 MRSA §12913, sub-§2**, as amended by PL 2011, c. 68, §1, is further  
9 amended to read:

10           **2. Allocation required.** This subsection governs commercial whitewater trips on  
11 rivers subject to allocation requirements.

12           A. Except as provided in this paragraph, a person may not operate a commercial  
13 whitewater trip on the Kennebec River between Harris Station and West Forks or on  
14 the West Branch Penobscot River between McKay Station and Pockwockamus Falls  
15 without an allocation or in excess of an allocation on any day for which allocations  
16 are established under this subsection or by the department by rule.

17           (1) Allocations are not established and are not required for other rivers or for  
18 other stretches of the Kennebec River or the West Branch Penobscot River.

19           (2) Allocations are required for Saturdays on the Kennebec River between Harris  
20 Station and West Forks for the period of July 1st to August 31st. Allocations are  
21 required for Saturdays on the West Branch Penobscot River between McKay  
22 Station and Pockwockamus Falls for the period of July 1st to August 31st. The  
23 commissioner may adopt rules establishing allocations for Sundays for the period  
24 of July 1st to August 31st. If the department determines that the recreational use  
25 limit will be reached on other days, the department shall provide by rule for  
26 allocations. Rules adopted under this subparagraph are routine technical rules as  
27 defined in Title 5, chapter 375, subchapter 2-A.

28           (3-A) Under extenuating circumstances as determined by the commissioner, the  
29 commissioner may allow the emergency transfer of a commercial whitewater  
30 rafting trip from a rapidly flowing river to another rapidly flowing river as long  
31 as sufficient water is available in the river to which the commercial whitewater  
32 rafting trip is to be transferred. Notwithstanding subsection 3, the commissioner  
33 may allow the recreational use limits to be exceeded pursuant to this  
34 subparagraph. Under no circumstances is a transfer of a whitewater rafting trip  
35 allowed to the West Branch Penobscot River. The department shall report  
36 annually to the joint standing committee of the Legislature having jurisdiction  
37 over inland fisheries and wildlife matters regarding the implementation of this  
38 subparagraph.

39           (4) An outfitter may occasionally exceed the allocation by 2 passengers on a trip  
40 of up to 40 passengers, or 4 passengers on a trip of more than 40 passengers, to

1 accommodate problems in booking, as long as the average of the number of  
2 passengers carried on an outfitter's 10 best allocated days for each river and for  
3 each allocated day of the week does not exceed the outfitter's allocation for that  
4 river and day. Abuse by an outfitter of the privilege to carry additional  
5 passengers results in the loss of the privilege for a period to be determined by the  
6 commissioner.

7 (6) The following penalties apply to violations of this paragraph.

8 (a) A person who violates this paragraph commits a civil violation for which  
9 a fine of not less than \$100 nor more than \$500 may be adjudged.

10 (b) A person who violates this paragraph after having been adjudicated as  
11 having committed 3 or more civil violations under this Part within the  
12 previous 5-year period commits a Class E crime.

13 ~~B. Not more than one member of an affiliated group may conduct whitewater trips  
14 on any river or stretch of river for which a specific allocation is required, including  
15 on days for which an allocation is not required. The following penalties apply to  
16 violations of this paragraph.~~

17 ~~(1) A person who violates this paragraph commits a civil violation for which a  
18 fine of not less than \$100 nor more than \$500 may be adjudged.~~

19 ~~(2) A person who violates this paragraph after having been adjudicated as having  
20 committed 3 or more civil violations under this Part within the previous 5 year  
21 period commits a Class E crime.~~

22 ~~C. Three or more years after the period of affiliation, the department may, in its  
23 discretion, consider requests by any former member of an affiliated group to run  
24 passengers on allocated rivers. The burden rests on the former member of an  
25 affiliated group to demonstrate that the reasons for any finding of affiliation have so  
26 diminished in effect that the public interest will be served by considering the former  
27 member's request to run passengers on an allocated river.~~

## 28 SUMMARY

29 This bill eliminates those sections of law that govern the licensure of affiliated groups  
30 and affiliated outfitters as commercial whitewater outfitters, removing restrictions on  
31 their participation in the industry.