

MAINE STATE LEGISLATURE

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LAWS
OF THE
STATE OF MAINE

AS PASSED BY THE
ONE HUNDRED AND ELEVENTH LEGISLATURE

SECOND SPECIAL SESSION

November 18, 1983

AND AT THE

SECOND REGULAR SESSION

January 4, 1984 to April 25, 1984

AND AT THE

THIRD SPECIAL SESSION

September 4, 1984 to September 11, 1984

PUBLISHED BY THE DIRECTOR OF LEGISLATIVE RESEARCH
IN ACCORDANCE WITH MAINE REVISED STATUTES
ANNOTATED, TITLE 3, SECTION 164, SUBSECTION 6.

J.S. McCarthy Co., Inc.
Augusta, Maine
1986

PUBLIC LAWS
OF THE
STATE OF MAINE

AS PASSED AT THE
SECOND REGULAR SESSION
of the
ONE HUNDRED AND ELEVENTH LEGISLATURE
JANUARY 4, 1984 TO APRIL 25, 1984

Sec. 15. Allocation. The following funds are allocated from the Maine Coastal Protection Fund for the purposes of this Act.

1984-85

ENVIRONMENTAL PROTECTION, DEPARTMENT OF

Positions	(4)
Personal Services	\$ 90,000
All Other	10,000
Capital Expenditures	<u>25,000</u>
 Total	 \$125,000

Emergency clause. In view of the emergency cited in the preamble, sections 1 to 6 and 15 of this Act shall take effect when approved and sections 7 to 14 shall take effect on March 1, 1985.

Effective April 18, 1984, unless otherwise indicated.

CHAPTER 786

S.P. 873 - L.D. 2367

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

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

Whereas, in the judgment of the Legislature, these facts create an emergency within the meaning of

the Constitution of Maine and require the following legislation as immediately necessary for the preservation of the public peace, health and safety; now, therefore,

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

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

7. Affiliated outfitters. Affiliated outfitters may be licensed, but are subject to additional allocation restrictions. License applications Applications for allocations shall contain a declaration of the extent of affiliation, as defined in section 7363, subsection 2, or a declaration of nonaffiliation, and a statement disclosing any relationship with other licensed outfitters, including the giving or receipt of equipment, materials or other assistance. The department may require submission of any books, memoranda, papers or accounts it reasonably believes necessary to determine whether a person seeking a ~~license~~ an allocation is an affiliated outfitter. These shall be confidential and made available only to persons involved in determining affiliation and only for that purpose, unless they are submitted for another purpose.

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

B. Outfitters shall ensure that each ~~person~~ passenger participating on a whitewater trip wears a securely fastened ~~type I or~~ type V personal flotation device.

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

2. Allocation required; 80 passenger limit on any river; affiliated outfitters restricted. Except as provided in subsection 10, operation of a commercial whitewater trip on the Kennebec River between Harris Station and West Forks or on the West Branch Penobscot River between McKay Station and Pockwockamus Falls ~~on weekends or legal holidays or other days specified by the department by rule under subsection 10, paragraph A,~~ without an allocation or in excess of an allocation is prohibited. No allocation is required for other rivers nor for other stretches of those rivers, but no outfitter may carry more than 80 passengers per day on any rapidly flowing river within the State. Not more than one member

of an affiliated group may conduct whitewater trips on any river or stretch of river for which a specific allocation is required, even on days for which an allocation is not required.

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

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

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

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

6. Allocation procedure. Except for the initial allocation in 1983, which shall be governed by subsection 4, the department shall award allocations to licensed outfitters on the basis of the criteria established in this section. Any outfitter desiring an allocation shall submit a proposal to the department in the year preceding the year for which the allocation is desired, on or before a date specified by rule. Allocations shall be awarded on or before December 1st, but, if any open allocation remains, it may be awarded at any time. Allocations shall be promulgated by rule awarded in accordance with the Maine Administrative Procedure Act, Title 5, chapter 375, subchapter V with a public hearing required on the proposed rule in the vicinity of the river in question. The department shall hold at least one public hearing prior to final issuance of allocations. The department shall promulgate rules as necessary to facilitate the allocation process.

Based on the demand for noncommercial public use, the department shall set aside up to 10% of the recrea-

tional use limit on any particular rapidly flowing river for noncommercial public use of whitewater craft.

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

7. Whitewater rafting allocation criteria. The department shall review proposals and award allocations so that, taken as a whole, allocations provide a level and quality of service which satisfies the allocation system goals of this section and contribute to meeting the river management objectives of section 7364.

A. Individual proposals shall be evaluated according to the following specific criteria:

(1) The experience of the outfitter and any employee in providing whitewater trips on the river or rivers for which the allocation is sought, including, but not limited to, such factors as the number of trips and passengers carried, length of time as an outfitter, safety record and experience of guides and staff. The company experience of only one company within an affiliated group at the time of that experience may be counted as company experience for purposes of allocation;

(2) The experience of the outfitter and any employee in providing whitewater trips on rivers other than those for which the allocation is sought, including, but not limited to, such factors as the number of trips and passengers carried, length of time as an outfitter, safety record and experience of guides and staff. The company experience of only one company within an affiliated group at the time of that experience may be counted as company experience for purposes of allocation;

(3) The safety record of the outfitter and any employee in whitewater outfitting or similar enterprises;

(4) The financial investment of the outfitter in equipment, training, insurance, facilities and services directly related to commercial whitewater rafting trips;

(5) Ability of the outfitter to serve the interests of the State by providing safe, economical, environmentally sound commercial whitewater trips on the particular river or rivers;

(6) Ability of the outfitter to serve the interests of the consuming public by providing a type of trip experience that is in the public interest as determined by the department;

(7) When allocations are considered for subsequent years, the performance of the outfitter in providing the services proposed for the previous allocations and compliance with the terms of the allocations; and

(8) Other matters which in the judgment of the department relate to orderly business development, including growth, new entry or extreme hardship on the part of an applicant.

B. The department may require a surety bond in an amount sufficient to cover deposits of customers, and may require sufficient evidence of financial stability prior to granting an allocation, including, but not limited to, financial statements and references from financial institutions.

C. The department and other state employees directly involved in the allocation process shall hold all financial information submitted under this section as confidential, except that the department may, within its discretion, allow information received under this section to be revealed to attorneys for a party challenging an allocation decision of the department. This information must be kept confidential and shall not be disclosed to any unauthorized person, including the attorney's client.

D. Allocations shall be issued on condition that the level and quality of service indicated by the prospectus shall be maintained by the outfitter during the term of the allocation. Substantial failure to maintain the level and quality of service may result in suspension, revocation or reduction in all or part of an allocation.

(1) The department may provide by rule for review of an outfitter's provision of ser-

vice. Reviews may be made, as provided by rule, within an allocation period or when a majority of the ownership of an outfitter is sold or otherwise transferred. Sale or transfer of majority ownership shall not be cause for reduction or revocation of an allocation without a showing that the sale or transfer creates a significant possibility of a failure to substantially maintain the level and quality of service.

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

A. Nonholiday weekday use does not require an allocation so long as the recreational use limit has not been reached. If the department determines the recreational use limit of a river will be reached on weekdays, the department shall provide by rule for allocations. For purposes of this subchapter, the legal holidays are Memorial Day, July 4th and Labor Day.

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

D. No allocation may be required for use during April, the first 17 days in May, the last 16 days in September and October so long as the recreational use limit has not been reached. If the department determines the recreational use limit of a river will be reached during these months or a portion of these months, the department shall provide by rule for allocations during that period.

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

11. Unauthorized use of allocation ratings. The allocation system is a tool to accomplish the river management objectives set forth in subsection 1 and is not a measure of the comparative ability or worth of outfitters. Any outfitter who represents otherwise for commercial gain engages in a deceptive practice and abuses the public trust evidenced by the outfitter's license and allocation, and, without limitation to any other remedies, may be subjected to the penalties provided in section 7370-A.

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

§7370-A. Penalties

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

Emergency clause. In view of the emergency cited in the preamble, this Act shall take effect when approved, except that sections 5, 6 and 9 shall not take effect until September 1, 1984.

Effective April 18, 1984, unless otherwise indicated.

CHAPTER 787

H.P. 1695 - L.D. 2250

AN ACT to Amend the Laws Relating to
Criminal History Record Information.

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

Whereas, both the control of public access to and the dissemination of written information in the possession or control of criminal justice agencies relative to security operations, whenever created, is inadequate; and

Whereas, the inadequacies constitute a serious threat both now and in the future to the ability of criminal justice agencies to provide proper protection to persons, places and things; and

Whereas, such a threat is inimical to the paramount interests of the State; and

Whereas, in the judgment of the Legislature, these facts create an emergency within the meaning of the Constitution of Maine and require the following