

STATE OF MAINE

IN THE YEAR OF OUR LORD
TWO THOUSAND AND THIRTEEN

S.P. 114 - L.D. 281

An Act To Reform Maine's Whitewater Rafting Laws

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

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 A, §2 and affected by c. 614, §9, is repealed.

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 B, §320 and affected by §422, is repealed.

Sec. 3. 12 MRSA §12907, sub-§2-A is enacted to read:

2-A. Number of licenses. A commercial whitewater outfitter is allowed to possess up to 3 commercial whitewater outfitter's licenses on allocated rivers.

Sec. 4. 12 MRSA §12907, sub-§8, as enacted by PL 2003, c. 414, Pt. A, §2 and affected by c. 614, §9, is repealed.

Sec. 5. 12 MRSA §12912, sub-§3, ¶A, as enacted by PL 2003, c. 655, Pt. B, §336 and affected by §422, is amended to read:

A. Except as provided in this subsection, an outfitter may not carry:

(1) On any unallocated rapidly flowing river more than ~~92~~ 120 passengers per day; or

(2) On any allocated rapidly flowing river more than ~~92~~ 120 passengers per day ~~or more than the allocations for that outfitter's largest single day on that river, whichever number is greater~~ except on allocated days when a licensed outfitter may carry only up to the number of allocations the outfitter has been allocated.

On allocated days, that limit may be exceeded only as provided in section 12913, subsection 2, paragraph A, subparagraph 4. On unallocated days, an outfitter may occasionally carry up to 4 additional passengers to accommodate problems in booking. Abuse of the privilege to carry 4 additional passengers results in its loss for a period to be determined by the commissioner.

Sec. 6. 12 MRSA §12913, sub-§2, as amended by PL 2011, c. 68, §1, is further amended to read:

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

A. Except as provided in this paragraph, a person may not operate 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 without an allocation or in excess of an allocation on any day for which allocations are established under this subsection or by the department by rule.

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

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

(3-A) Under extenuating circumstances as determined by the commissioner, the commissioner may allow the emergency transfer of a commercial whitewater rafting trip from a rapidly flowing river to another rapidly flowing river as long as sufficient water is available in the river to which the commercial whitewater rafting trip is to be transferred. Notwithstanding subsection 3, the commissioner may allow the recreational use limits to be exceeded pursuant to this subparagraph. Under no circumstances is a transfer of a whitewater rafting trip allowed to the West Branch Penobscot River. The department shall report annually to the joint standing committee of the Legislature having jurisdiction over inland fisheries and wildlife matters regarding the implementation of this subparagraph. A transfer authorized under this subparagraph is not restricted to an outfitter holding an allocation.

(4) An outfitter may occasionally exceed the allocation by 2 passengers on a trip of up to 40 passengers, or 4 passengers on a trip of more than 40 passengers, to accommodate problems in booking, as long as the average of the number of passengers carried on an outfitter's 10 best allocated days for each river and for each allocated day of the week does not exceed the outfitter's allocation for that river and day. Abuse by an outfitter of the privilege to carry additional passengers results in the loss of the privilege for a period to be determined by the commissioner.

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

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

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

~~B. 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, including on days for which an allocation is not required. The following penalties apply to violations of this paragraph.~~

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

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

~~C. Three or more years after the period of affiliation, the department may, in its discretion, consider requests by any former member of an affiliated group to run passengers on allocated rivers. The burden rests on the former member of an affiliated group to demonstrate that the reasons for any finding of affiliation have 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.~~