

§20-2-23. Outfitters and guides -- Generally; definitions.

(a) Services of outfitters and guides for the benefit and convenience of hunters, fishermen and others in this state are recognized as essential, and such outfitters and guides may be licensed and authorized to serve as provided in this article. The director is hereby authorized to promulgate rules and regulations on services of outfitters and guides as herein authorized and defined.

(b) The term "outfitter," as used herein, means and includes any person who, operating from any temporary or permanent camp, private or public lodge, or private or incorporated home situate within this state, provides for monetary profit or gain, saddle or pack animals or other animals, vehicles, boats, conveyances or equipment, or guide services for any person or persons hunting game animals, game birds, fishing or taking expeditions, both land and water, in this state. The term "outfitter" shall not include, however, any person who occasionally for accommodation or favor rather than profit or gain, rents equipment to hunters, fishermen or others as a service incidental to his principal occupation or business without advertising outfitter or guide services or holding out to the public the offering of such services. The term "guide," as used herein, includes and embraces outfitter services and the term "outfitter" includes and embraces guide services, but the applicant for any license hereunder may in his or her application elect to be designated as an outfitter or guide.

(c) The term "commercial whitewater outfitter," as used herein, means any person, partnership, corporation or other organization, or any combination thereof, duly authorized and operating from within or from without the state, which for monetary profit or gain, provides whitewater expeditions or rents whitewater craft or equipment for use in whitewater expeditions on any river, portions of rivers or waters of the state in accordance with this article.

The term "commercial whitewater guide," as used herein, means any person who is an owner, agent or employee of a commercial whitewater outfitter, and who is qualified and authorized to provide services for whitewater expeditions in the state in accordance with this article.

§20-2-24. Outfitters and guides -- Qualifications.

Each outfitter and guide licensed under the provisions hereof shall be a financially responsible citizen of the United States of America. He shall possess and inventory proper and adequate materials and equipment to provide for hunters, fishermen and others the services and conveniences he advertises. All such materials and equipment shall be safe and free of infection and conditions inimical to the health and well-being of hunters, fishermen, their traveling, camping and lodging companions.

The director shall cause all outfitter and guide applicants to be investigated and shall make a determination of their qualifications prior to the issuance or refusal of licenses thereto.

§20-2-25. Same -- License applications; national forest requirements.

Each applicant for an outfitter or guide license shall file with the director a verified application setting forth the applicant's name, his address, the property possessed and to be used in the proposed outfitter and guide services, the area within which he proposes to serve, his citizenship, his age and such other data and information as may be prescribed and required by the director on the application forms to be furnished by the department. Each such application, when filed by the applicant, shall be approved and signed by three resident real property owners of the county in which such applicant resides.

Before any outfitter or guide license shall be issued for serving hunters, fishermen or others in any national forest areas within this state, the applicant shall obtain from the supervisor of such national forest area a designation of the camp site or other site from which the outfitter or guide proposes to operate therein and shall likewise obtain from such supervisor any other authority or permit to so operate in such national forest area, together with copies of any rules and regulations of the forest incident to maintenance of camps, sanitary conditions, and prevention of forest fires and water pollution. The applicant shall satisfy the director that he has obtained such designation, permit, authority and rules and regulations, as may be required, as a prerequisite to the director's consideration of the applicant's license application.

§20-2-26. Same -- License fee; bond; revocation of license; penalties.

When satisfied as to the applicant's qualifications for an outfitter's or guide's license and upon receipt of a fee of ten dollars therefor, the director shall issue such license which shall be for the calendar year therein designated.

Immediately upon the issuance of an outfitter's or guide's license and before any outfitter's or guide's services are offered or rendered thereunder, the licensee shall execute a surety bond in the penal sum of one thousand dollars payable to the state of West Virginia and conditioned upon the faithful and reliable discharge of his services under and pursuant to such license. Such bond shall be approved as to form by the attorney general and as to surety by the director, and when so executed and approved, shall be filed in the office of the director. Such bond shall be for the life of the license.

The director is hereby authorized to revoke and cancel any such license for failure of the licensee to give the bond herein required, for licensee's violation or disregard of any of the provisions of this chapter, upon licensee's conviction of crime, or for any other reason or cause justifying refusal of the license to the licensee upon a new application therefor. The director shall afford a licensee an opportunity to be heard upon the revocation and cancellation of the license.

No person shall act or serve as a guide or outfitter, as defined in this article, without procuring and having on his person at the time a valid license from the director authorizing him so to do. Any person violating this provision shall be guilty of a misdemeanor, and, upon conviction thereof, may be fined not exceeding one hundred dollars or confined in the county jail not exceeding ninety days, or, in the discretion of the court, be both fined and imprisoned within the limits herein prescribed.

§20-7-16. Boat liveries.

(a) The owner or operator of a boat livery or rental facility shall cause to be kept a record of the name and address of the person or persons hiring any vessel including personal watercrafts which is designed or permitted by him or her to be operated as a motorboat, identification number thereof, and the departure date and time, and the expected time of return. The record shall be preserved for at least six months.

(b) Neither the owner or operator of a boat livery or rental facility, nor his or her agent or employee, shall permit any motorboat, personal watercraft or any vessel designed or permitted by him or her to be operated as a motorboat or personal watercraft to depart from his or her premises unless it shall have been provided, either by owner or renter, with the equipment required pursuant to section thirteen of this article and any rules made pursuant thereto.

(c) The owner or operator of a boat livery or rental facility, or his or her agent or employee, shall provide boating safety orientation for all persons that rent any vessel, including personal watercrafts, unless that person holds a certificate as required by section twelve-b, article seven of this chapter. The owner of a boat livery or rental facility, or his or her agent or employee, shall also provide to the operator or operators in print, prior to rental, the operational characteristics of personal watercrafts.

(d) The owner or operator of a boat livery or rental facility, or his or her agent or employee, may not lease, hire or rent a personal watercraft to any person under eighteen years of age.

(e) The owner or operator of a boat livery or rental facility, or his or her agent or employee, shall provide to the operator or operators of rental vessels, boats or personal watercrafts, in print, all pertinent boating rules including, but not limited to, those rules that may be peculiar to the area of the rental, such as no-wake zones, restricted areas, channel markers, water hazard markers and swimming zones.

(f) The owner or operator of a boat livery or rental facility shall carry liability insurance of at least three hundred thousand dollars and possess the license and surety bond as required by section twenty-three-d, article two of this chapter.

§20-2-23d. Bond; revocation of license; licensing carrying requirement; criminal penalties.

(a) Immediately upon the issuance of a whitewater outfitter's license and before any whitewater outfitter's services are offered or rendered thereunder, the licensee shall execute a surety bond in the penal sum of one thousand dollars payable to the state of West Virginia and conditioned upon the faithful and reliable discharge of his or her services under and pursuant to the license. The bond shall be approved as to form by the attorney general and as to surety by the director, and when so executed and approved, shall be filed in the office of the director of the division of natural resources. The bond shall be for the life of the license.

(b) The whitewater commission is hereby authorized to revoke and cancel any whitewater outfitter's license for failure of the licensee to give the bond required by this section, for a licensee's violation or disregard of any of the provisions of this chapter, upon a licensee's conviction of a crime, or for any other reason or cause justifying refusal of the whitewater outfitter's license to the licensee upon a new application therefor. The commission shall

afford a licensee an opportunity to be heard upon the revocation and cancellation of the license.

(c) No person shall act or serve as a whitewater outfitter, as defined in this article, without procuring and having on his or her person at the time a valid whitewater outfitter's license from the commission authorizing them to do so.

(d) Any person who violates any of the provisions of this section or of section twenty-three-a of this article, or any rule promulgated by the director of the division of natural resources or who misrepresents any material fact in an application, record, report or other document filed or required to be maintained under the provisions of this article, or any rules promulgated hereunder by the director of the division of natural resources, is guilty of a misdemeanor, and upon conviction thereof, shall be punished by a fine of not less than five hundred dollars per violation not to exceed a total penalty of seventy-five hundred dollars or by imprisonment in the county jail not exceeding six months, or both fined and imprisoned.

20-3B-1. Legislative purposes.

Every year, in rapidly increasing numbers, the inhabitants of the state of West Virginia and nonresidents are enjoying the recreational value of West Virginia rivers and streams. The tourist trade is of vital importance to the state of West Virginia and the services offered by commercial whitewater outfitters and commercial whitewater guides significantly contribute to the economy of the state of West Virginia. The Legislature recognizes that there are inherent risks in the recreational activities provided by commercial whitewater outfitters and commercial whitewater guides which should be understood by each participant. It is essentially impossible for commercial whitewater outfitters and commercial whitewater guides to eliminate these risks. It is the purpose of this article to define those areas of responsibility and affirmative acts for which commercial whitewater outfitters and commercial whitewater guides are liable for loss, damage or injury.

20-3B-2. Definitions.

Unless the context of usage clearly requires otherwise:

(a) "Commercial whitewater outfitter" means any person, partnership, corporation or other organization, or any combination thereof, as defined in section twenty-three [§ 20-2-23], article two of this chapter.

(b) "Commercial whitewater guide" means any person as defined in section twenty-three [§ 20-2-23], article two of this chapter.

(c) "Participant" means any person using the services of a commercial whitewater outfitter or commercial whitewater guide on any river, portions of rivers or waters of the state.

20-3B-3. Duties of commercial whitewater outfitters and commercial whitewater guides.

(a) All commercial whitewater outfitters and commercial whitewater guides offering professional services in this state shall provide facilities, equipment and services as advertised or as agreed to by the commercial whitewater outfitter, commercial whitewater guide and the participant. All services, facilities and equipment provided by commercial whitewater outfitters and commercial whitewater guides in this state shall conform to safety and other requirements set forth in article two [§ 20-2-1 et seq.] of this chapter and in the rules promulgated by the commercial whitewater advisory board created by section twenty-three-a [§ 20-2-23a], article two of this chapter.

(b) In addition to the duties set forth in subsection (a) of this section, all commercial whitewater guides providing services for whitewater expeditions in this state shall, while providing such services, conform to the standard of care expected of members of their profession.

20-3B-4. Duties of participants.

(a) Participants have a duty to act as would a reasonably prudent person when engaging in recreational activities offered by commercial whitewater outfitters and commercial whitewater guides in this state.

(b) No participant may:

(1) Board upon or embark upon any commercial whitewater expedition when intoxicated or under the influence of nonintoxicating beer, intoxicating beverages or controlled substances; or

(2) Fail to advise the trip leader or the trip guide of any known health problems or medical disability and any prescribed medication that may be used in the treatment of such health problems during the course of the commercial whitewater expedition; or

(3) Engage in harmful conduct or willfully or negligently engage in any type of conduct which contributes to or causes injury to any person or personal property; or

(4) Perform any act which interferes with the safe running and operation of the expedition, including failure to use safety equipment provided by the commercial whitewater outfitter or failure to follow the instructions of the trip leader or trip guide in regard to the safety measures and conduct requested of the participants; or

(5) Fail to inform or notify the trip guide or trip leader of any incident or accident involving personal injury or illness experienced during the course of any commercial whitewater expedition. If such injury or illness occurs, the participant shall leave personal identification, including name and address, with the commercial whitewater outfitter's agent or employee.

20-3B-5. Liability of commercial whitewater outfitters and commercial whitewater guides.

It is recognized that some recreational activities conducted by commercial whitewater outfitters and commercial whitewater guides are hazardous to participants regardless of all feasible safety measures

which can be taken.

(a) No licensed commercial whitewater outfitter or commercial whitewater guide acting in the course of his employment is liable to a participant for damages or injuries to such participant unless such damage or injury was directly caused by failure of the commercial whitewater outfitter or commercial whitewater guide to comply with duties placed on him by article two [§ 20-2-1 et seq.] of this chapter, by the rules of the commercial whitewater advisory board, or by the duties placed on such commercial whitewater outfitter or commercial whitewater guide by the provisions of this article.

(b) The limitations on liability created by this article apply only to commercial whitewater outfitters licensed under the provisions of article two of this chapter and to commercial whitewater guides who are agents or employees of licensed commercial whitewater outfitters, and only when the commercial whitewater outfitter or commercial whitewater guide is acting within the course of his employment.