
HOUSE BILL 1493

State of Washington 55th Legislature 1997 Regular Session

By Representatives Buck, Regala, Talcott, Ballasiotes, Kessler and Dyer

Read first time 01/28/97. Referred to Committee on Natural Resources.

1 AN ACT Relating to licensing whitewater river outfitters; amending
2 RCW 88.12.010, 88.12.235, 88.12.245, 88.12.255, 88.12.265, 88.12.275,
3 and 19.02.050; adding new sections to chapter 88.12 RCW; and
4 prescribing penalties.

5 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

6 **Sec. 1.** RCW 88.12.010 and 1993 c 244 s 5 are each amended to read
7 as follows:

8 Unless the context clearly requires otherwise, the definitions in
9 this section apply throughout this chapter.

10 (1) "Boat wastes" includes, but is not limited to, sewage, garbage,
11 marine debris, plastics, contaminated bilge water, cleaning solvents,
12 paint scrapings, or discarded petroleum products associated with the
13 use of vessels.

14 (2) "Boater" means any person on a vessel on waters of the state of
15 Washington.

16 (3) "Carrying passengers for hire" means carrying passengers in a
17 vessel on waters of the state for valuable consideration, whether given
18 directly or indirectly or received by the owner, agent, operator, or
19 other person having an interest in the vessel. This shall not include

1 trips where expenses for food, transportation, or incidentals are
2 shared by participants on an even basis. Anyone receiving compensation
3 for skills or money for amortization of equipment and carrying
4 passengers shall be considered to be carrying passengers for hire on
5 waters of the state.

6 (4) "Commission" means the state parks and recreation commission.

7 (5) "Darkness" means that period between sunset and sunrise.

8 (6) "Environmentally sensitive area" means a restricted body of
9 water where discharge of untreated sewage from boats is especially
10 detrimental because of limited flushing, shallow water, commercial or
11 recreational shellfish, swimming areas, diversity of species, the
12 absence of other pollution sources, or other characteristics.

13 (7) "Guide" means any individual, including but not limited to
14 subcontractors and independent contractors, engaged for compensation or
15 other consideration by a whitewater river outfitter for the purpose of
16 operating vessels.

17 (8) "Marina" means a facility providing boat moorage space, fuel,
18 or commercial services. Commercial services include but are not
19 limited to overnight or live-aboard boating accommodations.

20 ~~((+8))~~ (9) "Motor driven boats and vessels" means all boats and
21 vessels which are self propelled.

22 ~~((+9))~~ (10) "Muffler" or "muffler system" means a sound
23 suppression device or system, including an underwater exhaust system,
24 designed and installed to abate the sound of exhaust gases emitted from
25 an internal combustion engine and that prevents excessive or unusual
26 noise.

27 ~~((+10))~~ (11) "Operate" means to steer, direct, or otherwise have
28 physical control of a vessel that is underway.

29 ~~((+11))~~ (12) "Operator" means an individual who steers, directs,
30 or otherwise has physical control of a vessel that is underway or
31 exercises actual authority to control the person at the helm.

32 ~~((+12))~~ (13) "Observer" means the individual riding in a vessel
33 who is responsible for observing a water skier at all times.

34 ~~((+13))~~ (14) "Owner" means a person who has a lawful right to
35 possession of a vessel by purchase, exchange, gift, lease, inheritance,
36 or legal action whether or not the vessel is subject to a security
37 interest.

38 ~~((+14))~~ (15) "Person" means any individual, sole proprietorship,
39 partnership, corporation, nonprofit corporation or organization,

1 limited liability company, firm, association, or other legal entity
2 located within or outside this state.

3 (16) "Personal flotation device" means a buoyancy device, life
4 preserver, buoyant vest, ring buoy, or buoy cushion that is designed to
5 float a person in the water and that is approved by the commission.

6 ((+15+)) (17) "Personal watercraft" means a vessel of less than
7 sixteen feet that uses a motor powering a water jet pump, as its
8 primary source of motive power and that is designed to be operated by
9 a person sitting, standing, or kneeling on, or being towed behind the
10 vessel, rather than in the conventional manner of sitting or standing
11 inside the vessel.

12 ((+16+)) (18) "Polluted area" means a body of water used by boaters
13 that is contaminated by boat wastes at unacceptable levels, based on
14 applicable water quality and shellfish standards.

15 ((+17+)) (19) "Public entities" means all elected or appointed
16 bodies, including tribal governments, responsible for collecting and
17 spending public funds.

18 ((+18+)) (20) "Reckless" or "recklessly" means acting carelessly
19 and heedlessly in a willful and wanton disregard of the rights, safety,
20 or property of another.

21 ((+19+)) (21) "Sewage pumpout or dump unit" means:

22 (a) A receiving chamber or tank designed to receive vessel sewage
23 from a "porta-potty" or a portable container; and

24 (b) A stationary or portable mechanical device on land, a dock,
25 pier, float, barge, vessel, or other location convenient to boaters,
26 designed to remove sewage waste from holding tanks on vessels.

27 ((+20+)) (22) "Underway" means that a vessel is not at anchor, or
28 made fast to the shore, or aground.

29 ((+21+)) (23) "Vessel" includes every description of watercraft on
30 the water, other than a seaplane, used or capable of being used as a
31 means of transportation on the water. However, it does not include
32 inner tubes, air mattresses, and small rafts or flotation devices or
33 toys customarily used by swimmers.

34 ((+22+)) (24) "Water skiing" means the physical act of being towed
35 behind a vessel on, but not limited to, any skis, aquaplane, kneeboard,
36 tube, or any other similar device.

37 ((+23+)) (25) "Waters of the state" means any waters within the
38 territorial limits of Washington state.

1 (~~(24)~~) (26) "Whitewater river outfitter" means any person who is
2 advertising to carry or carries passengers for hire on any whitewater
3 river of the state.

4 (27) "Whitewater rivers of the state" means those rivers and
5 streams, or parts thereof, within the boundaries of the state as listed
6 in RCW 88.12.265 or as designated by the commission under section 11 of
7 this act.

8 NEW SECTION. Sec. 2. A new section is added to chapter 88.12 RCW
9 to read as follows:

10 (1) No person shall act in the capacity of a paid whitewater river
11 outfitter, or advertise in any newspaper or magazine or any other trade
12 publication, or represent himself or herself as a whitewater river
13 outfitter in the state, without first obtaining a whitewater river
14 outfitter's license from the department of licensing in accordance with
15 RCW 88.12.275.

16 (2) Every whitewater river outfitter's license must, at all times,
17 be conspicuously placed on the premises set forth in the license.

18 NEW SECTION. Sec. 3. A new section is added to chapter 88.12 RCW
19 to read as follows:

20 Any attempt by a commercial whitewater river outfitter to waive
21 liability for its own negligence is void as against public policy.

22 **Sec. 4.** RCW 88.12.235 and 1993 c 244 s 27 are each amended to read
23 as follows:

24 Except as provided in RCW 88.12.275(~~(+3)~~), the commission of a
25 prohibited act or the omission of a required act under RCW
26 (~~(88.12.250)~~) 88.12.245 through 88.12.275 constitutes a misdemeanor,
27 punishable as provided under RCW 9.92.030.

28 **Sec. 5.** RCW 88.12.245 and 1993 c 244 s 30 are each amended to read
29 as follows:

30 (1) While carrying passengers for hire on whitewater rivers in this
31 state, the (~~operator and owner of the vessel~~) licensed whitewater
32 river outfitter shall:

33 (a) If using inflatable vessels, use only vessels with three or
34 more separate air chambers;

1 (b) Ensure that all passengers and (~~operators~~) guides are wearing
2 a securely fastened United States coast guard-approved type III or type
3 V personal flotation device in good serviceable condition of the proper
4 size for each person on board;

5 (c) Ensure that each vessel has accessible a spare United States
6 coast guard-approved type III or type V personal flotation device in
7 good repair;

8 (d) Ensure that each vessel has on it a bagged throwable line with
9 a floating line and bag;

10 (e) Ensure that each vessel has accessible an adequate first-aid
11 kit;

12 (f) Ensure that each vessel has a spare propelling device;

13 (g) Ensure that a repair kit and air pump are accessible to
14 inflatable vessel; (~~and~~)

15 (h) Ensure that equipment to prevent and treat hypothermia is
16 accessible to all vessels on a trip; and

17 (i) Ensure that each vessel is operated by a guide who has complied
18 with the requirements of subsection (2) of this section.

19 (2) No person may (~~operate on the whitewater rivers of this state~~
20 ~~a vessel carrying passengers for hire unless the person~~) act as a
21 guide unless the individual is at least eighteen years of age and has
22 successfully completed:

23 (a) A lifesaving training course meeting standards adopted by the
24 commission;

25 (b) A swiftwater river rescue course meeting standards adopted by
26 the commission; and

27 (c) A program of guide training on whitewater rivers meeting
28 standards adopted by the commission. In adopting guide training
29 standards, the commission shall require training programs to issue
30 proof of completion to any guide successfully completing the required
31 training program. In addition, the commission shall certify as
32 acceptable each training program meeting the commission's standards and
33 maintain a list of those programs.

34 **Sec. 6.** RCW 88.12.255 and 1993 c 244 s 31 are each amended to read
35 as follows:

36 (1) (~~Vessel operators and passengers~~) Whitewater river outfitters
37 and guides on any trip carrying passengers for hire on whitewater

1 rivers of the state shall not allow the use of alcohol during the
2 course of a trip on a whitewater river section in this state.

3 (2) Any vessel carrying passengers for hire on any whitewater river
4 section in this state must be accompanied by at least one other vessel
5 (~~((under the supervision of the same operator or owner or))~~) being
6 operated by a (~~((person registered under RCW 88.12.275))~~) licensed
7 whitewater river outfitter or (~~((an operator))~~) a guide under the
8 direction or control of a (~~((person registered under RCW 88.12.275))~~)
9 licensed whitewater river outfitter.

10 **Sec. 7.** RCW 88.12.265 and 1986 c 217 s 8 are each amended to read
11 as follows:

12 Whitewater river sections include but are not limited to:

- 13 (1) Green river above Flaming Geyser state park;
- 14 (2) Klickitat river above the confluence with Summit creek;
- 15 (3) Methow river below the town of Carlton;
- 16 (4) Sauk river above the town of Darrington;
- 17 (5) Skagit river above Bacon creek;
- 18 (6) Suiattle river;
- 19 (7) Tieton river below Rimrock dam;
- 20 (8) Skykomish river below Sunset Falls and above the Highway 2
21 bridge one mile east of the town of Gold Bar;
- 22 (9) Wenatchee river above the Wenatchee county park at the town of
23 Monitor;
- 24 (10) White Salmon river; and
- 25 (11) Any other section of river designated a "whitewater river
26 section" by the (~~((interagency committee for outdoor recreation. Such
27 river sections shall be class two or greater difficulty under the
28 international scale of whitewater difficulty))~~) commission under section
29 11 of this act.

30 **Sec. 8.** RCW 88.12.275 and 1995 c 399 s 216 are each amended to
31 read as follows:

32 (1) (~~((Any person carrying passengers for hire on whitewater river
33 sections in this state may register with the department of licensing.
34 Each registration application shall be submitted annually on a form
35 provided by the department of licensing))~~) The department of licensing
36 shall issue a whitewater river outfitter's license to an applicant who

1 submits a completed application, pays the required fee, and complies
2 with the requirements of this section.

3 (2) An applicant for a whitewater river outfitter's license shall
4 make application upon a form provided by the department of licensing.
5 The form must be submitted annually and (~~shall~~) include the following
6 information:

7 (a) The name, residence address, and residence telephone number,
8 and the business name, address, and telephone number of the
9 (~~registrant~~) applicant;

10 (b) Certification that all employees, subcontractors, or
11 independent contractors hired as guides meet the training standards
12 adopted by the commission under section 11 of this act before carrying
13 any passengers for hire;

14 (c) Proof that the (~~registrant~~) applicant has liability insurance
15 for a minimum of three hundred thousand dollars per claim for
16 occurrences by the (~~registrant~~) applicant and the (~~registrant's~~)
17 applicant's employees that result in bodily injury or property damage.
18 All guides must be covered by the applicant's insurance policy; (~~and~~

19 (~~e~~)) (d) Certification that the (~~registrant~~) applicant will
20 maintain the insurance for a period of not less than one year from the
21 date of (~~registration~~) issuance of the license;

22 (e) Certification that the policy names the state and its political
23 subdivisions as insureds; and

24 (f) Certification by the applicant that for a period of not less
25 than twenty-four months immediately preceding the application the
26 applicant:

27 (i) Has not had a license, permit, or certificate to carry
28 passengers for hire on a river revoked by another state or by an agency
29 of the government of the United States for any reason related to safety
30 or insurance coverage requirements; and

31 (ii) Has not been denied the right to apply for a license, permit,
32 or certificate to carry passengers for hire on a river by another
33 state.

34 (~~(+2)~~) (3) The department of licensing shall charge a fee for each
35 application, to be set in accordance with RCW 43.24.086.

36 (~~(+3)~~) (4) Any person advertising or representing (~~themselves~~)
37 himself or herself as (~~having registered under this section~~) a
38 whitewater river outfitter who is not currently (~~registered~~) licensed
39 is guilty of a gross misdemeanor.

1 (~~(4)~~) (5) The department of licensing shall submit annually a
2 list of (~~registered~~) licensed persons and companies to the department
3 of community, trade, and economic development, tourism promotion
4 division.

5 (~~(5)~~) (6) If an insurance company cancels or refuses to renew
6 insurance for a (~~registrant during the period of registration~~)
7 licensee, the insurance company shall notify the department of
8 licensing in writing of the termination of coverage and its effective
9 date not less than thirty days before the effective date of
10 termination.

11 (a) Upon receipt of an insurance company termination notice, the
12 department of licensing shall send written notice to the (~~registrant~~)
13 licensee that on the effective date of termination the department of
14 licensing will (~~suspend~~) cancel the (~~registration~~) license unless
15 proof of insurance as required by this section is filed with the
16 department of licensing before the effective date of the termination.

17 (b) If an insurance company fails to give notice of coverage
18 termination, this failure shall not have the effect of continuing the
19 coverage.

20 (c) The department of licensing may (~~suspend or revoke~~
21 ~~registration~~) cancel a license under this section if the
22 (~~registrant~~) licensee fails to maintain in full force and effect the
23 insurance required by this section.

24 (~~(6)~~) (7) The state of Washington shall be immune from any civil
25 action arising from (~~a registration~~) the issuance of a license under
26 this section.

27 NEW SECTION. Sec. 9. A new section is added to chapter 88.12 RCW
28 to read as follows:

29 The department of licensing may cancel the license of any
30 whitewater river outfitter upon receipt of a court judgment for
31 violation of any of the provisions of RCW 88.12.245 through 88.12.275.
32 Local law enforcement officials shall forward a copy of the judgment to
33 the department of licensing.

34 NEW SECTION. Sec. 10. A new section is added to chapter 88.12 RCW
35 to read as follows:

36 The commission, in cooperation with the department of licensing,
37 may adopt and enforce such rules, including the setting of fees, as may

1 be consistent with and necessary to implement this chapter. The fees
2 must approximate the cost of administration.

3 NEW SECTION. **Sec. 11.** A new section is added to chapter 88.12 RCW
4 to read as follows:

5 The commission shall adopt rules that designate as whitewater
6 rivers all sections of rivers with at least one class III rapid or
7 greater, as described in the American whitewater affiliation's
8 whitewater safety code. Additionally, the commission shall adopt rules
9 pertaining to guide training and certification of training programs as
10 required by RCW 88.12.245(2). The commission is authorized to consider
11 the imposition of a schedule of fines for minor violations.

12 NEW SECTION. **Sec. 12.** A new section is added to chapter 88.12 RCW
13 to read as follows:

14 (1) The governor shall appoint an ad hoc advisory committee
15 consisting of:

16 (a) Two representatives of whitewater river outfitters or guides,
17 each of whom is engaged in commercial river rafting in this state;

18 (b) One representative of the department of licensing;

19 (c) One representative of local law enforcement; and

20 (d) Three members of the public.

21 (2) The committee shall assist and advise the commission in the
22 development of rules necessary to implement this chapter. The
23 appointments to the committee expire at the time of adoption of the
24 rules.

25 **Sec. 13.** RCW 19.02.050 and 1994 c 264 s 8 are each amended to read
26 as follows:

27 ~~((1))~~ The legislature hereby directs the full participation by
28 the following agencies in the implementation of this chapter:

29 ~~((a))~~ (1) Department of agriculture;

30 ~~((b))~~ (2) Secretary of state;

31 ~~((c))~~ (3) Department of social and health services;

32 ~~((d))~~ (4) Department of revenue;

33 ~~((e))~~ (5) Department of fish and wildlife;

34 ~~((f))~~ (6) Department of employment security;

35 ~~((g))~~ (7) Department of labor and industries;

1 (~~(h)~~) (8) Department of community, trade, and economic
2 development;
3 (~~(i)~~) (9) Liquor control board;
4 (~~(j)~~) (10) Department of health;
5 (~~(k)~~) (11) Department of licensing;
6 (~~(l)~~) (12) Parks and recreation commission;
7 (13) Utilities and transportation commission; and
8 (~~(m)~~) (14) Other agencies as determined by the governor.

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