

CHAPTER 212

NATURAL RESOURCES

HOUSE BILL 94-1015

BY REPRESENTATIVES Knox, George, Hernandez, June, Reeser, Shoemaker, and Wright;
also SENATORS Martinez, Lacy, and L. Powers.

AN ACT**CONCERNING THE REGULATION OF RIVER OUTFITTERS, AND MAKING AN APPROPRIATION IN CONNECTION THEREWITH.**

Be it enacted by the General Assembly of the State of Colorado:

SECTION 1. 33-32-101, Colorado Revised Statutes, 1984 Repl. Vol., as amended, is amended to read:

33-32-101. Legislative declaration. The general assembly declares that it is the policy of this state to promote and encourage residents and nonresidents alike to participate in the enjoyment and use of the rivers of this state and, to that end, in the exercise of the police powers of this state for the purpose of safeguarding the health, safety, welfare, and freedom from injury or danger of such residents and nonresidents, to license and regulate those persons who ~~for compensation~~ provide RIVER-RUNNING SERVICES IN THE NATURE OF equipment or personal services to such residents and nonresidents for the purpose of floating on rivers in this state UNLESS THE PROVIDER OF SUCH RIVER-RUNNING SERVICES IS PROVIDING SUCH RIVER-RUNNING SERVICES EXCLUSIVELY FOR FAMILY OR FRIENDS. It is not the intent of the general assembly to interfere in any way with private land owner rights along rivers or to prevent the owners of whitewater equipment from using said equipment to accommodate friends when no consideration is involved; nor is it the intent of the general assembly to interfere in any way with the general public's ability to enjoy the recreational value of state rivers when the services of ~~commercial~~ river outfitters are not utilized or to interfere with the right of the United States to manage public lands and waters under its control. The general assembly recognizes that ~~commercial~~ river outfitters, as an established business on rivers flowing within and without this state, make a significant contribution to the economy of this state and that the number of residents and nonresidents who are participating in river-running is steadily increasing.

Capital letters indicate new material added to existing statutes; dashes through words indicate deletions from existing statutes and such material not part of act.

SECTION 2. 33-32-102 (1), (5), and (6), Colorado Revised Statutes, 1984 Repl. Vol., as amended, are amended, and the said 33-32-102 is further amended BY THE ADDITION OF THE FOLLOWING NEW SUBSECTIONS, to read:

33-32-102. Definitions. As used in this article, unless the context otherwise requires:

(1) ~~"Board" means the board of parks and outdoor recreation.~~ "ADVERTISE" OR "ADVERTISEMENT" MEANS ANY MESSAGE IN ANY NEWSPAPER, MAGAZINE, LEAFLET, FLYER, OR CATALOG, ON RADIO, TELEVISION, OR A PUBLIC ADDRESS SYSTEM, IN DIRECT MAIL LITERATURE OR OTHER PRINTED MATERIAL, ON ANY INTERIOR OR EXTERIOR SIGN OR DISPLAY, IN ANY WINDOW DISPLAY, OR IN ANY POINT-OF-TRANSACTION LITERATURE WHICH IS DELIVERED OR MADE AVAILABLE TO ANY PERSON INCLUDING A CUSTOMER OR PROSPECTIVE CUSTOMER IN ANY MANNER WHATSOEVER AND INCLUDES ANNOUNCEMENTS OR STATEMENTS MADE IN A CHURCH, SCHOOL, OR OTHER NONCOMMERCIAL SETTING.

(1.4) "BOARD" MEANS THE BOARD OF PARKS AND OUTDOOR RECREATION.

(5) "Person" means any individual, sole proprietorship, partnership, corporation, NONPROFIT CORPORATION OR ORGANIZATION AS DEFINED IN SECTION 13-21-115.5(3), C.R.S., LIMITED LIABILITY COMPANY, firm, association, or other legal entity either LOCATED within or ~~without~~ OUTSIDE OF this state.

(5.5) (a) "REGULATED TRIP" MEANS ANY RIVER TRIP FOR WHICH RIVER-RUNNING SERVICES ARE PROVIDED WHICH HAS BEEN THE SUBJECT OF AN ADVERTISEMENT OR FOR WHICH A FEE HAS BEEN CHARGED REGARDLESS OF WHETHER SUCH FEE IS:

(I) CHARGED EXCLUSIVELY FOR THE RIVER TRIP OR AS PART OF A PACKAGED TRIP, RECREATIONAL EXCURSION, OR CAMP; OR

(II) CALCULATED TO MONETARILY PROFIT THE RIVER OUTFITTER OR IS CALCULATED MERELY TO OFFSET SOME OR ALL OF THE ACTUAL COSTS OF THE RIVER TRIP.

(b) "REGULATED TRIP" DOES NOT INCLUDE A TRIP IN WHICH A PERSON IS PROVIDING RIVER-RUNNING SERVICES EXCLUSIVELY FOR FAMILY OR FRIENDS AS PART OF A SOCIAL GATHERING OF SUCH FAMILY OR FRIENDS.

(6) "River outfitter" means any person ~~soliciting~~ ADVERTISING to provide or providing ~~for compensation~~ RIVER-RUNNING SERVICES IN THE NATURE OF facilities, guide services, or transportation for the ~~primary~~ purpose of river-running; except that "river outfitter" does not include any person whose only service is providing motor vehicles, vessels, and other equipment for rent, ~~or~~ any person whose only service is providing instruction in canoeing or kayaking skills, OR ANY PERSON WHO IS PROVIDING RIVER-RUNNING SERVICES EXCLUSIVELY FOR FAMILY OR FRIENDS.

SECTION 3. 33-32-103, Colorado Revised Statutes, 1984 Repl. Vol., as amended, is amended to read:

33-32-103. Powers and duties of the board. The board shall promulgate regulations to govern the licensing of river outfitters, to regulate river outfitters,

guides, trip leaders, and guide instructors, to ensure the safety of associated river-running activities, to establish guidelines to enable a river outfitter, guide, or trip leader, to make a determination that the condition of the river constitutes a hazard to the life and safety of certain persons, and to carry out the purposes of this article. THE BOARD MAY PROMULGATE REGULATIONS SPECIFICALLY OUTLINING THE PROCEDURES TO BE FOLLOWED BY THE BOARD AND BY THE ENFORCEMENT SECTION OF THE DIVISION IN THE EVENT OF A DEATH OR SERIOUS INJURY DURING A REGULATED TRIP.

SECTION 4. Article 32 of title 33, Colorado Revised Statutes, 1984 Repl. Vol., as amended, is amended BY THE ADDITION OF A NEW SECTION to read:

33-32-103.5. Powers of the director. THE DIRECTOR OF THE DIVISION MAY GRANT VARIANCES FROM REGULATIONS ADOPTED BY THE BOARD PURSUANT TO SECTION 33-32-103 TO ANY RIVER OUTFITTER ON A CASE-BY-CASE BASIS IF THE DIRECTOR DETERMINES THAT THE HEALTH, SAFETY, AND WELFARE OF THE GENERAL PUBLIC WILL NOT BE ENDANGERED BY THE ISSUANCE OF SUCH VARIANCE.

SECTION 5. 33-32-105.5, Colorado Revised Statutes, 1984 Repl. Vol., as amended, is amended to read:

33-32-105.5. Minimum qualifications of guides, trip leaders, and guide instructors. (1) Except as provided in subsection (2) of this section, individuals providing the services of guides, trip leaders, or guide instructors shall have the following minimum qualifications and such additional qualifications as the board may establish by regulation:

(a) Guides shall be eighteen years of age or older, shall possess a valid standard first-aid card, ~~issued by the American red cross or its equivalent~~, and shall have had fifty hours of training on the river as a guide from a qualified guide instructor.

(b) Trip leaders shall be eighteen years of age or older, shall possess a valid standard first-aid card, ~~issued by the American red cross or its equivalent~~, and shall have logged a total of at least five hundred river miles as a qualified guide.

(c) Guide instructors shall be eighteen years of age or older, shall possess a valid standard first-aid card, ~~issued by the American red cross or its equivalent~~, and shall have logged a total of at least fifteen hundred river miles, of which at least seven hundred fifty of those river miles shall have been logged while acting as a guide.

(2) The minimum qualifications set forth in subsection (1) of this section shall not apply to a designated faculty member of an institution of higher education in charge of water sport activity courses.

SECTION 6. 33-32-107 (3), Colorado Revised Statutes, 1984 Repl. Vol., as amended, is amended, and the said 33-32-107 is further amended BY THE ADDITION OF A NEW SUBSECTION, to read:

33-32-107. River outfitters - prohibited operations - penalties. (3) ~~A river outfitter, for a first offense, shall be punished as provided in section 18-4-503 or 18-4-504, C.R.S., for criminal trespass if during a commercial trip a river outfitter~~

~~or a river outfitter's trip leader, guide, or guide instructor has been convicted of or has entered a plea of nolo contendere or guilty to a violation of either of said sections, except in an emergency situation. Upon a second offense, the river outfitter's license shall be revoked.~~

(4) (a) NO RIVER OUTFITTER OR GUIDE SHALL OPERATE OR MAINTAIN PHYSICAL CONTROL OF OR ALLOW ANY OTHER PERSON TO OPERATE OR MAINTAIN PHYSICAL CONTROL OF A VESSEL ON A REGULATED TRIP IF SUCH RIVER OUTFITTER, GUIDE, OR PERSON IS UNDER THE INFLUENCE OF ALCOHOL OR ANY CONTROLLED SUBSTANCE OR ANY COMBINATION THEREOF, AS SPECIFIED IN SECTION 33-13-108.1.

(b) ANY PERSON WHO VIOLATES THIS SUBSECTION (4) COMMITS A CLASS 1 MISDEMEANOR AND SHALL BE PUNISHED AS PROVIDED IN SECTION 18-1-106, C.R.S.

SECTION 7. 33-32-108, Colorado Revised Statutes, 1984 Repl. Vol., is amended to read:

33-32-108. Enforcement. (1) (a) Every peace officer, as defined in this section, has the authority to enforce the provisions of this article and in the exercise of such authority is authorized to stop and board any vessel.

(b) As used in this section, "peace officer" means any parks and recreation officer or division of wildlife officer or any sheriff or city and county law enforcement officer certified by the Colorado law enforcement training academy.

(2) (a) Any actual expenses incurred by a governmental entity for search and rescue efforts stemming from any river running activity conducted for consideration by a river outfitter pursuant to the provisions of this article shall be reimbursed by said river outfitter. Such expenses shall include but not be limited to ~~man hours~~ HOURS WORKED, fuel, a reasonable fee for use of equipment, and equipment repair or replacement costs, if any.

(b) Pursuant to the provisions of paragraph (a) of this subsection (2), any expenses incurred by governmental entities stemming from search and rescue efforts which are reimbursed by a river outfitter shall be distributed as follows:

(I) If to local law enforcement agencies, on a pro rata basis in proportion to the amount of assistance rendered thereby;

(II) If to the division of parks and outdoor recreation, credited to the parks and outdoor recreation cash fund, CREATED IN SECTION 33-10-111;

(III) If to the division of wildlife, credited to the wildlife cash fund, CREATED IN SECTION 33-1-112.

(3) (a) (I) IF AN AUTHORIZED REPRESENTATIVE OF THE DIVISION CONDUCTS AN INSPECTION OR INVESTIGATION AND DETERMINES THAT ANY PROVISION OF THIS ARTICLE OR ANY REGULATION PROMULGATED PURSUANT TO THIS ARTICLE HAS BEEN VIOLATED AND THAT SUCH VIOLATION CREATES OR MAY CREATE AN EMERGENCY CONDITION WHICH MAY HAVE A SIGNIFICANT ADVERSE EFFECT ON THE HEALTH, SAFETY, OR WELFARE OF ANY PERSON, THEN SUCH AUTHORIZED REPRESENTATIVE

SHALL IMMEDIATELY ISSUE AN ORDER TO THE VIOLATING PARTY TO CEASE AND DESIST THE VIOLATING ACTIVITY.

(II) ANY ORDER ISSUED PURSUANT TO THIS PARAGRAPH (a) SHALL SET FORTH:

(A) THE SECTION OF THIS ARTICLE OR THE REGULATION PROMULGATED PURSUANT TO THIS ARTICLE ALLEGEDLY VIOLATED;

(B) THE FACTUAL BASIS FOR THE ALLEGATION OF A VIOLATION; AND

(C) A MANDATE THAT ALL VIOLATING ACTIVITIES CEASE IMMEDIATELY.

(III) (A) THE RECIPIENT OF ANY CEASE AND DESIST ORDER ISSUED PURSUANT TO THIS PARAGRAPH (a) MAY REQUEST A HEARING TO DETERMINE WHETHER A VIOLATION OF THIS ARTICLE OR OF ANY REGULATION PROMULGATED PURSUANT TO THIS ARTICLE HAS ACTUALLY OCCURRED IF SUCH REQUEST IS MADE IN WRITING WITHIN THIRTY DAYS AFTER THE DATE OF THE SERVICE OF THE CEASE AND DESIST ORDER.

(B) ANY HEARING CONDUCTED PURSUANT TO THIS SUBPARAGRAPH (III) SHALL BE IN ACCORDANCE WITH ARTICLE 4 OF TITLE 24, C.R.S.

(b) IF A PERSON FAILS TO COMPLY WITH A CEASE AND DESIST ORDER ISSUED PURSUANT TO PARAGRAPH (a) OF THIS SUBSECTION (3), THE DIRECTOR MAY REQUEST THE ATTORNEY GENERAL OR THE DISTRICT ATTORNEY FOR THE JUDICIAL DISTRICT IN WHICH THE ALLEGED VIOLATION OCCURRED TO BRING AN ACTION FOR A TEMPORARY RESTRAINING ORDER AND FOR INJUNCTIVE RELIEF TO ENFORCE SUCH CEASE AND DESIST ORDER.

(c) NO STAY OF A CEASE AND DESIST ORDER MAY BE ISSUED UNTIL A HEARING AT WHICH ALL PARTIES ARE PRESENT HAS BEEN HELD.

SECTION 8. 33-32-109, Colorado Revised Statutes, 1984 Repl. Vol., as amended, is amended to read:

33-32-109. Denial, suspension, or revocation of license - disciplinary actions.

(1) The board may deny, suspend, or revoke a river outfitter's OUTFITTER license, PLACE A LICENSED RIVER OUTFITTER ON PROBATION, OR ISSUE A LETTER OF ADMONITION TO A LICENSED RIVER OUTFITTER if the applicant or holder:

(a) VIOLATES SECTION 33-32-105 OR 33-32-106 OR USES FRAUD, MISREPRESENTATION, OR DECEIT IN APPLYING FOR OR ATTEMPTING TO APPLY FOR LICENSURE;

(b) UNLAWFULLY ACTS AS A RIVER OUTFITTER IF SUCH VIOLATION RESULTS IN A CONVICTION;

(c) ADVERTISES AS A RIVER OUTFITTER IN THIS STATE WITHOUT FIRST OBTAINING A RIVER OUTFITTER LICENSE;

(d) VIOLATES ANY PROVISION OF LAW REGULATING THE PRACTICE OF RIVER OUTFITTING IN ANOTHER JURISDICTION IF SUCH VIOLATION RESULTED IN DISCIPLINARY

ACTION AGAINST THE APPLICANT OR HOLDER. EVIDENCE OF SUCH DISCIPLINARY ACTION SHALL BE PRIMA FACIE EVIDENCE FOR THE POSSIBLE DENIAL OF A LICENSE OR OTHER DISCIPLINARY ACTION IN THIS STATE IF THE VIOLATION RESULTING IN THE DISCIPLINARY ACTION IN SUCH OTHER JURISDICTION WOULD BE GROUNDS FOR DISCIPLINARY ACTION IN THIS STATE.

(e) VIOLATES SECTION 18-4-503 OR 18-4-504, C.R.S., RESULTING IN TWO OR MORE SECOND OR THIRD DEGREE CRIMINAL TRESPASS CONVICTIONS WITHIN ANY THREE- TO FIVE-YEAR PERIOD WHILE ACTING AS A RIVER OUTFITTER OR GUIDE; EXCEPT THAT THE BOARD SHALL BE GOVERNED BY SECTION 24-5-101, C.R.S., WHEN CONSIDERING ANY SUCH CONVICTION;

(f) VIOLATES SECTION 33-32-105.5 (1) BY EMPLOYING ANY PERSON AS A GUIDE WHO FAILS TO MEET THE REQUIREMENTS OF SUCH SECTION; OR

(g) VIOLATES ANY ORDER OF THE DIVISION OR BOARD OR ANY OTHER PROVISION OF THIS ARTICLE OR ANY REGULATIONS ESTABLISHED UNDER THIS ARTICLE.

(2) A plea of nolo contendere or a deferred prosecution shall be considered a violation for the purposes of this section. ~~The board may deny an application for a river outfitter's license or a renewal of a river outfitter's license if the applicant does not meet the requirements specified in section 33-32-105 or 33-32-106.~~

(3) (a) Any proceeding to deny, suspend, or revoke a license granted under this article OR TO PLACE A LICENSEE ON PROBATION shall be pursuant to sections 24-4-104 and 24-4-105, C.R.S. Such proceeding may be conducted by an administrative law judge designated pursuant to part 10 of article 30 of title 24, C.R.S.

(b) ANY PROCEEDING CONDUCTED PURSUANT TO THIS SUBSECTION (3) SHALL BE DEEMED FINAL FOR PURPOSES OF JUDICIAL REVIEW. ANY APPEAL OF ANY SUCH PROCEEDING SHALL BE MADE TO THE COURT OF APPEALS PURSUANT TO SECTION 24-4-106 (11), C.R.S.

(4) THE BOARD MAY DENY AN APPLICATION FOR A RIVER OUTFITTER LICENSE OR A RENEWAL OF A RIVER OUTFITTER'S LICENSE IF THE APPLICANT DOES NOT MEET THE REQUIREMENTS SPECIFIED IN SECTION 33-32-105 OR 33-32-106.

SECTION 9. 33-32-110, Colorado Revised Statutes, 1984 Repl. Vol., is RECREATED AND REENACTED, WITH AMENDMENTS, to read:

33-32-110. Advisory committee on river outfitter regulations. (1) THE BOARD SHALL APPOINT AN ADVISORY COMMITTEE TO MAKE RECOMMENDATIONS CONCERNING REGULATIONS REQUIRED UNDER SECTION 33-32-105 (1) (c). THE ADVISORY COMMITTEE SHALL CONSIST OF THREE MEMBERS, TWO OF WHOM SHALL BE RIVER OUTFITTERS AND ONE OF WHOM SHALL REPRESENT THE DIVISION. THE ADVISORY COMMITTEE SHALL SERVE AT THE REQUEST AND PLEASURE OF THE BOARD.

(2) (a) THIS SECTION IS REPEALED, EFFECTIVE JULY 1, 2000.

(b) PRIOR TO SAID REPEAL, THE ADVISORY COMMITTEE SHALL BE REVIEWED AS PROVIDED FOR IN SECTION 2-3-1203, C.R.S.

SECTION 10. 33-32-111, Colorado Revised Statutes, 1984 Repl. Vol., is amended to read:

33-32-111. Fees - river outfitters cash fund. All fees collected under this article shall be ~~credited~~ TRANSMITTED TO THE STATE TREASURER WHO SHALL CREDIT THE SAME TO THE ~~parks and outdoor recreation cash fund~~ RIVER OUTFITTERS CASH FUND, WHICH FUND IS HEREBY CREATED. The general assembly shall make annual appropriations from such fund for the direct and indirect costs of administration of this article.

SECTION 11. 33-32-112, Colorado Revised Statutes, 1984 Repl. Vol., as amended, is amended to read:

33-32-112. Repeal of article. This article is repealed, effective ~~October 1, 1994~~ OCTOBER 1, 2004. The licensing function of the division shall also terminate on ~~October 1, 1994~~ OCTOBER 1, 2004. Prior to such termination, the licensing function shall be reviewed as provided for in section 24-34-104, C.R.S.

SECTION 12. 2-3-1203 (3), Colorado Revised Statutes, 1980 Repl. Vol., as amended, is amended BY THE ADDITION OF A NEW PARAGRAPH to read:

2-3-1203. Sunset review of advisory committees. (3) The following dates are the dates for which the statutory authorization for the designated advisory committees is scheduled for repeal:

(m) JULY 1, 2000: THE ADVISORY COMMITTEE ON RIVER OUTFITTERS, APPOINTED PURSUANT TO SECTION 33-32-110, C.R.S.

SECTION 13. 24-34-104 (23.2), Colorado Revised Statutes, 1988 Repl. Vol., is repealed as follows:

24-34-104. General assembly review of regulatory agencies and functions for termination, continuation, or reestablishment. (23.2) ~~The following boards and the functions of the specified agencies shall terminate on October 1, 1994: The function of licensing of river outfitters through the board of parks and outdoor recreation and the division of parks and outdoor recreation in accordance with article 32 of title 33, C.R.S.~~

SECTION 14. 24-34-104, Colorado Revised Statutes, 1988 Repl. Vol., as amended, is amended BY THE ADDITION OF A NEW SUBSECTION to read:

24-34-104. General assembly review of regulatory agencies and functions for termination, continuation, or reestablishment. (34) THE FOLLOWING FUNCTION OF THE SPECIFIED AGENCIES SHALL TERMINATE ON OCTOBER 1, 2004: THE FUNCTION OF LICENSING OF RIVER OUTFITTERS THROUGH THE BOARD OF PARKS AND OUTDOOR RECREATION AND THE DIVISION OF PARKS AND OUTDOOR RECREATION IN ACCORDANCE WITH ARTICLE 32 OF TITLE 33, C.R.S.

SECTION 15. Repeal of rules. To further the general assembly's intent to rescind or delete rules unnecessary for the administrative functions of an agency as expressed in section 24-34-914, Colorado Revised Statutes, and to require the board of parks

and outdoor recreation in the department of natural resources to repromulgate necessary rules, all rules of the board of parks and outdoor recreation concerning river outfitters found in chapter 3 of 2 CCR 405-1, are hereby expressly repealed, effective January 1, 1995.

SECTION 16. Appropriation. (1) In addition to any other appropriation, there is hereby appropriated, out of any moneys in the river outfitters cash fund not otherwise appropriated, to the department of natural resources, for allocation to the division of parks and outdoor recreation, for the fiscal year beginning July 1, 1994, the sum of five thousand six hundred twenty-five dollars (\$5,625), or so much thereof as may be necessary, for the implementation of this act.

(2) In addition to any other appropriation, there is hereby appropriated, to the department of administration, for the fiscal year beginning July 1, 1994, the sum of three thousand four hundred seventy-three dollars (\$3,473), or so much thereof as may be necessary, for the implementation of this act. Such appropriation shall be from cash funds received by the department of natural resources from the river outfitters cash fund.

(3) In addition to any other appropriation, there is hereby appropriated, to the department of law, for the fiscal year beginning July 1, 1994, the sum of one thousand one hundred fifty-eight dollars (\$1,158), or so much thereof as may be necessary, for the implementation of this act. Such appropriation shall be from cash funds received by the department of natural resources from the river outfitters cash fund.

SECTION 17. Effective date. This act shall take effect July 1, 1994.

SECTION 18. Safety clause. The general assembly hereby finds, determines, and declares that this act is necessary for the immediate preservation of the public peace, health, and safety.

Approved: May 22, 1994