

CERTIFICATION OF ENROLLMENT

SUBSTITUTE SENATE BILL 5483

55th Legislature
1997 Regular Session

Passed by the Senate April 21, 1997
YEAS 37 NAYS 6

President of the Senate

Passed by the House April 9, 1997
YEAS 87 NAYS 11

**Speaker of the
House of Representatives**

Approved

CERTIFICATE

I, Mike O Connell, Secretary of the Senate of the State of Washington, do hereby certify that the attached is **SUBSTITUTE SENATE BILL 5483** as passed by the Senate and the House of Representatives on the dates hereon set forth.

Secretary

FILED

Governor of the State of Washington

**Secretary of State
State of Washington**

SUBSTITUTE SENATE BILL 5483

AS AMENDED BY THE HOUSE

Passed Legislature - 1997 Regular Session

State of Washington 55th Legislature 1997 Regular Session

By Senate Committee on Natural Resources & Parks (originally sponsored by Senators Johnson, Oke, Snyder, Prentice, Kohl, Rossi, Spanel, Swecker and Schow)

Read first time 02/26/97.

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; prescribing
4 penalties; and providing an effective date.

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. A person licensed under RCW 77.32.211 or 75.28.780
17 and acting as a fishing guide is not considered a guide for the
18 purposes of this chapter.

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

22 ~~((+8))~~ (9) "Motor driven boats and vessels" means all boats and
23 vessels which are self propelled.

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

29 ~~((+10))~~ (11) "Operate" means to steer, direct, or otherwise have
30 physical control of a vessel that is underway.

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

34 ~~((+12))~~ (13) "Observer" means the individual riding in a vessel
35 who is responsible for observing a water skier at all times.

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

1 (~~(14)~~) (15) "Person" means any individual, sole proprietorship,
2 partnership, corporation, nonprofit corporation or organization,
3 limited liability company, firm, association, or other legal entity
4 located within or outside this state.

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

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

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

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

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

23 (~~(19)~~) (21) "Sewage pumpout or dump unit" means:

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

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

29 (~~(20)~~) (22) "Underway" means that a vessel is not at anchor, or
30 made fast to the shore, or aground.

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

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

1 (~~(23)~~) (25) "Waters of the state" means any waters within the
2 territorial limits of Washington state.

3 (~~(24)~~) (26) "Whitewater river outfitter" means any person who is
4 advertising to carry or carries passengers for hire on any whitewater
5 river of the state, but does not include any person whose only service
6 on a given trip is providing instruction in canoeing or kayaking
7 skills.

8 (27) "Whitewater rivers of the state" means those rivers and
9 streams, or parts thereof, within the boundaries of the state as listed
10 in RCW 88.12.265 or as designated by the commission under section 10 of
11 this act.

12 NEW SECTION. **Sec. 2.** A new section is added to chapter 88.12 RCW
13 to read as follows:

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

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

22 **Sec. 3.** 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. 4.** 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 comply with the following requirements at the
33 beginning of every trip:

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

1 (b) Ensure that all passengers (~~and operators~~) are wearing a
2 securely fastened United States coast guard-approved type V personal
3 flotation device of the proper size, and that all guides are wearing a
4 securely fastened United States coast guard-approved type III or type
5 V personal flotation device;

6 (c) Ensure that (~~each vessel has accessible~~) a spare United
7 States coast guard-approved type III or type V personal flotation
8 device in good repair is accessible to all vessels on each trip;

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

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

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

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

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

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

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

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

25 (b) Completed a program of guide training on whitewater rivers,
26 conducted by a guide instructor, which program must run for a minimum
27 of fifty hours on a whitewater river and must include at least the
28 following elements:

29 (i) Equipment preparation and boat rigging;

30 (ii) Reading river characteristics including currents, eddies,
31 rapids, and hazards;

32 (iii) Methods of scouting and running rapids;

33 (iv) River rescue techniques, including emergency procedures and
34 equipment recovery; and

35 (v) Communications with clients, including paddling and safety
36 instruction; and

37 (c) Completed at least one trip on an entire section of whitewater
38 river before carrying passengers for hire in a vessel on any such
39 section of whitewater river.

1 (3) A guide instructor must have traveled at least one thousand
2 five hundred river miles, seven hundred fifty of which must have been
3 while acting as a guide.

4 (4) Any person conducting guide training on whitewater rivers
5 shall, upon request of a guide trainee, issue proof of completion to
6 the guide completing the required training program.

7 **Sec. 5.** RCW 88.12.255 and 1993 c 244 s 31 are each amended to read
8 as follows:

9 (1) ~~((Vessel operators and passengers))~~ Whitewater river outfitters
10 and guides on any trip carrying passengers for hire on whitewater
11 rivers of the state shall not allow the use of alcohol during the
12 course of a trip on a whitewater river section in this state.

13 (2) Any vessel carrying passengers for hire on any whitewater river
14 section in this state must be accompanied by at least one other vessel
15 ~~((under the supervision of the same operator or owner or))~~ being
16 operated by a ~~((person registered under RCW 88.12.275))~~ licensed
17 whitewater river outfitter or ~~((an operator))~~ a guide under the
18 direction or control of a ~~((person registered under RCW 88.12.275))~~
19 licensed whitewater river outfitter.

20 **Sec. 6.** RCW 88.12.265 and 1986 c 217 s 8 are each amended to read
21 as follows:

22 Whitewater river sections include but are not limited to:

23 (1) Green river above Flaming Geyser state park;

24 (2) Klickitat river above the confluence with Summit creek;

25 (3) Methow river below the town of Carlton;

26 (4) Sauk river above the town of Darrington;

27 (5) Skagit river above Bacon creek;

28 (6) Suiattle river;

29 (7) Tieton river below Rimrock dam;

30 (8) Skykomish river below Sunset Falls and above the Highway 2
31 bridge one mile east of the town of Gold Bar;

32 (9) Wenatchee river above the Wenatchee county park at the town of
33 Monitor;

34 (10) White Salmon river; and

35 (11) Any other section of river designated a "whitewater river
36 section" by the ~~((interagency committee for outdoor recreation. Such~~
37 ~~river sections shall be class two or greater difficulty under the~~

1 ~~international scale of whitewater difficulty~~) commission under section
2 10 of this act.

3 **Sec. 7.** RCW 88.12.275 and 1995 c 399 s 216 are each amended to
4 read as follows:

5 (1) ~~((Any person carrying passengers for hire on whitewater river~~
6 ~~sections in this state may register with the department of licensing.~~
7 ~~Each registration application shall be submitted annually on a form~~
8 ~~provided by the department of licensing))~~ The department of licensing
9 shall issue a whitewater river outfitter's license to an applicant who
10 submits a completed application, pays the required fee, and complies
11 with the requirements of this section.

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

16 (a) The name, residence address, and residence telephone number,
17 and the business name, address, and telephone number of the
18 ~~((registrant))~~ applicant;

19 (b) Certification that all employees, subcontractors, or
20 independent contractors hired as guides meet training standards under
21 RCW 88.12.245(2) before carrying any passengers for hire;

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

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

30 (e) Certification by the applicant that for a period of not less
31 than twenty-four months immediately preceding the application the
32 applicant:

33 (i) Has not had a license, permit, or certificate to carry
34 passengers for hire on a river revoked by another state or by an agency
35 of the government of the United States due to a conviction for a
36 violation of safety or insurance coverage requirements no more
37 stringent than the requirements of this chapter; and

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

4 ~~((+2))~~ (3) The department of licensing shall charge a fee for each
5 application, to be set in accordance with RCW 43.24.086.

6 ~~((+3))~~ (4) Any person advertising or representing ~~((themselves))~~
7 himself or herself as ~~((having registered under this section))~~ a
8 whitewater river outfitter who is not currently ~~((registered))~~ licensed
9 is guilty of a gross misdemeanor.

10 ~~((+4))~~ (5) The department of licensing shall submit annually a
11 list of ~~((registered))~~ licensed persons and companies to the department
12 of community, trade, and economic development, tourism promotion
13 division.

14 ~~((+5))~~ (6) If an insurance company cancels or refuses to renew
15 insurance for a ~~((registrant during the period of registration))~~
16 licensee, the insurance company shall notify the department of
17 licensing in writing of the termination of coverage and its effective
18 date not less than thirty days before the effective date of
19 termination.

20 (a) Upon receipt of an insurance company termination notice, the
21 department of licensing shall send written notice to the ~~((registrant))~~
22 licensee that on the effective date of termination the department of
23 licensing will suspend the ~~((registration))~~ license unless proof of
24 insurance as required by this section is filed with the department of
25 licensing before the effective date of the termination.

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

29 (c) The department of licensing may suspend ~~((or—revoke~~
30 ~~registration))~~ a license under this section if the ~~((registrant))~~
31 licensee fails to maintain in full force and effect the insurance
32 required by this section.

33 ~~((+6))~~ (7) The state of Washington shall be immune from any civil
34 action arising from ~~((a registration))~~ the issuance of a license under
35 this section.

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

1 Within five days after conviction for any of the provisions of RCW
2 88.12.245 through 88.12.275, the court shall forward a copy of the
3 judgment to the department of licensing. After receiving proof of
4 conviction, the department of licensing may suspend the license of any
5 whitewater river outfitter for a period not to exceed one year or until
6 proof of compliance with all licensing requirements and correction of
7 the violation under which the whitewater river outfitter was convicted.

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

10 The department of licensing may adopt and enforce such rules,
11 including the setting of fees, as may be consistent with and necessary
12 to implement RCW 88.12.275. The fees must approximate the cost of
13 administration. The fees must be deposited in the master license
14 account.

15 NEW SECTION. **Sec. 10.** A new section is added to chapter 88.12 RCW
16 to read as follows:

17 The commission shall adopt rules that designate as whitewater
18 rivers all sections of rivers with at least one class III rapid or
19 greater, as described in the American Whitewater Affiliation's
20 whitewater safety code. The commission is authorized to consider the
21 imposition of a schedule of fines for minor violations.

22 **Sec. 11.** RCW 19.02.050 and 1994 c 264 s 8 are each amended to read
23 as follows:

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

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

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

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

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

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

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

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

33 (~~(h)~~) (8) Department of community, trade, and economic
34 development;

35 (~~(i)~~) (9) Liquor control board;

36 (~~(j)~~) (10) Department of health;

1 (~~(k)~~) (11) Department of licensing;
2 (~~(l)~~) (12) Parks and recreation commission;
3 (13) Utilities and transportation commission; and
4 (~~(m)~~) (14) Other agencies as determined by the governor.

5 NEW SECTION. **Sec. 12.** Sections 2, 4, 5, 7, and 8 of this act take
6 effect January 1, 1998.

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