

SENATE BILL NO. 100
INTRODUCED BY L. JENT

A BILL FOR AN ACT ENTITLED: "AN ACT REVISING THE LAW RELATING TO OUTFITTING WITHOUT A LICENSE; DEFINING "OUTFITTING"; REVISING PENALTIES AND PROVIDING FOR ADDITIONAL SENTENCING CONDITIONS THAT MAY BE APPLIED FOR VIOLATIONS; AMENDING SECTIONS ~~37-47-404~~ ~~AND SECTION~~ 37-47-344, MCA; AND PROVIDING AN EFFECTIVE DATE."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

NEW SECTION. **Section 1. Outfitting without license -- penalties -- disposition of fines.** (1) A person commits the offense of outfitting without a license if the person purposely or knowingly engages in outfitting while not licensed pursuant to ~~this chapter~~ TITLE 37, CHAPTER 47, or purposely or knowingly violates a licensing rule adopted under ~~this chapter~~ TITLE 37, CHAPTER 47. A violation of this subsection is punishable by a fine of not less than \$200 or more than \$1,000, imprisonment in the county jail for up to 1 year, or both.

(2) A person ~~WHO OR ENTITY THAT REPRESENTS TO ANY OTHER PERSON, ANY ENTITY, OR THE PUBLIC THAT THE PERSON OR ENTITY IS AN OUTFITTER AND~~ who commits the offense of outfitting without a license, as provided in subsection (1), for any portion of ~~3~~ 5 or more days FOR CONSIDERATION within 1 calendar year for any person ~~or~~ ~~AND OR~~ for consideration valued in excess of ~~\$1,000~~ \$5,000 is punishable by a fine of not ~~less than \$10,000 or~~ more than \$50,000, imprisonment in the state prison for up to 5 years, or both.

(3) (a) In addition to the penalties set out in subsection (1), a person who is convicted of violating subsection (1) loses all hunting, fishing, and trapping licenses and permits and shall forfeit all hunting, fishing, and trapping license privileges in this state for a period set by the court.

(b) In addition to the penalties provided in subsection (2), a person who is convicted of violating subsection (2) loses all hunting, fishing, and trapping licenses and permits and shall forfeit all hunting, fishing, and trapping license privileges in this state for a minimum of 5 years.

(c) The department of ~~fish, wildlife, and parks~~ shall notify the person of any loss of privileges as imposed by the court, and the person shall surrender all licenses and permits, as ordered by the court, within 10 days of notification.

(d) A sentencing court that imposes a period of license revocation pursuant to subsection (3)(a) or (3)(b) shall consider and may impose any of the following conditions during the period of revocation:

- (i) prohibiting the offender from participating in any hunting, fishing, or trapping endeavor as a hunter, angler, trapper, scout, guide, observer, or assistant;
- (ii) prohibiting the offender from brokering or participating in any lease of property for hunting, fishing, or trapping, either personally or through an agent or representative;
- (iii) prohibiting the offender from participating in any seminar or show that is designed to promote hunting, fishing, or trapping;
- (iv) prohibiting the offender from purchasing or possessing any hunting, fishing, or trapping permits; and
- (v) any other reasonable condition or restriction that is related to the crime committed or that is considered necessary for the rehabilitation of the offender or for the protection of the citizens or wildlife of this state.

(4) A person convicted of outfitting without a license shall reimburse the full amount of any fees received to the person to whom illegal outfitting services were provided. ~~In addition, the person convicted must be assessed and shall pay to the board the amount of all costs incurred by the board in investigating and preparing the case for trial and all prosecution costs, including but not limited to witness, transportation, and per diem expenses.~~

~~— (5) Fifty percent of all fines paid under this section must be deposited in the general fund of the county in which the conviction is obtained, and 50% must be deposited in the state special revenue fund for the use of the board in enforcing this chapter. All investigation, preparation, and trial costs paid under this section must be deposited in the state special revenue fund for the use of the board in enforcing the provisions of this chapter. The board may reimburse other agencies for costs reasonably incurred in the enforcement of this chapter.~~

(5) AS USED IN THIS SECTION, "CONSIDERATION" IS DEFINED AS REMUNERATION GIVEN IN EXCHANGE FOR OUTFITTING SERVICES SUPPLIED PREDICATED ON A BUSINESS RELATIONSHIP BETWEEN PARTIES. THIS DOES NOT INCLUDE REIMBURSEMENT FOR SHARED TRIP EXPENSES.

(6) (A) AS USED IN THIS SECTION, "OUTFITTING" MEANS PROVIDING HUNTING OR FISHING SERVICES FOR CONSIDERATION, INCLUDING ANY SADDLE OR PACK ANIMAL, FACILITIES, CAMPING EQUIPMENT, PERSONAL SERVICE, OR VEHICLE, WATERCRAFT, OR OTHER CONVEYANCE FOR ANY PERSON TO HUNT, FISH, TRAP, CAPTURE, TAKE, KILL, OR PURSUE ANY GAME, INCLUDING FISH. THE TERM INCLUDES ACCOMPANYING THAT PERSON, EITHER PART OR ALL OF THE WAY, ON AN EXPEDITION FOR ANY OF THESE PURPOSES OR SUPERVISION OF A LICENSED GUIDE OR PROFESSIONAL GUIDE IN ACCOMPANYING THAT PERSON.

(B) THE TERM DOES NOT INCLUDE THE PROVISION OF THE SERVICES LISTED IN SUBSECTION (6)(A) BY A PERSON ON REAL PROPERTY THAT THE PERSON OWNS FOR THE PRIMARY PURSUIT OF BONA FIDE AGRICULTURAL INTERESTS.

~~Section 2.~~ Section 37-47-101, MCA, is amended to read:

~~"37-47-101. Definitions.~~ As used in this chapter, unless the context requires otherwise, the following definitions apply:

~~(1) "Accompany" means to go with or be together with a participant as an escort, companion, or other service provider, with an actual physical presence in the area where the activity is being conducted and within sight or sound of the participant at some time during the furnishing of service.~~

~~(2) "Base of operations" means the primary physical location where an outfitter receives mail and telephone calls, conducts regular daily business, and bases livestock, equipment, and staff during the hunting season.~~

~~(3) "Board" means the board of outfitters provided for in 2-15-1773.~~

~~(4) "Camp" means each individual facility or group of facilities that an outfitter uses to lodge a client for a client's trip or uses to lodge a client in the operating area designated in the outfitter's operations plan, including a motel, campground, bed and breakfast, lodge, tent camp, cabin, camper, trailer, or house.~~

~~(5) "Consideration" means something of value given or done in exchange for something of value given or done by another.~~

~~(6) "Department" means the department of labor and industry provided for in Title 2, chapter 15, part 17.~~

~~(7) "Guide" means a person who is employed by or who has contracted independently with a licensed outfitter and who accompanies a participant during outdoor recreational activities that are directly related to activities for which the outfitter is licensed.~~

~~(8) "License year" means the period indicated on the face of the license for which the license is valid.~~

~~(9) "Net client hunter use" or "NCHU" means the most actual clients served by an outfitter in any NCHU license category in any license year, as documented by verifiable client logs or other documents maintained by the board pursuant to 37-47-201.~~

~~(10) "Nonresident" means a person other than a resident.~~

~~(11) "Outfitter" means any person, except a person providing services on real property that the person owns for the primary pursuit of bona fide agricultural interests, who for consideration provides any saddle or pack animal, facilities, camping equipment, personal service, or vehicle, watercraft, or other conveyance; or personal service for any person to hunt, trap, capture, take, kill, or pursue any game, including fish, and who accompanies that person, either part or all of the way, on an expedition for any of these purposes or supervises a licensed guide or professional guide in accompanying that person.~~

~~(12)(a) "Outfitting" means providing hunting or fishing services for consideration, including any saddle or pack animal, facilities, camping equipment, personal service, or vehicle, watercraft, or other conveyance for any person to hunt, fish, trap, capture, take, kill, or pursue any game, including fish. The term includes accompanying that person, either part or all of the way, on an expedition for any of these purposes or supervision of a licensed guide or professional guide in accompanying that person.~~

~~(b) The term does not include the provision of the services listed in subsection (12)(a) by a person on real property that the person owns for the primary pursuit of bona fide agricultural interests.~~

~~(12)(13) "Participant" means a person using the services offered by a licensed outfitter.~~

~~(13)(14) "Professional guide" means a guide who meets experience, training, and testing qualifications for designation as a professional guide, as set by board rule.~~

~~(14)(15) "Resident" means a person who qualifies for a resident Montana hunting or fishing license under 87-2-102."~~

Section 2. Section 37-47-344, MCA, is amended to read:

"37-47-344. Penalties -- disposition of fines. (1) A person who violates any provision of this chapter or rule adopted under this chapter is guilty of a misdemeanor and is punishable, unless otherwise specified, by a fine not exceeding \$500.

(2) A person who represents to the public that the person is an outfitter or who purposely engages in outfitting without a license as required by this chapter is guilty of a misdemeanor and is punishable by a fine of not less than \$200 and not more than \$1,000, up to 1 year in the county jail, or both. Each day of violation is a separate offense. In addition, the person must be assessed and pay to the board the amount of all costs incurred by the board in investigating and preparing the case for trial and all prosecution costs, including but not limited to witness, transportation, and per diem expenses.

(3)(2) Fifty percent of all fines paid under this section must be deposited in the general fund of the county in which the conviction is obtained, and 50% must be deposited in the state special revenue fund for the use of the board in enforcing this chapter. All investigation, preparation, and trial costs paid under this section must be deposited in the state special revenue fund for the use of the board in enforcing the provisions of this chapter. The board may reimburse other agencies for costs reasonably incurred in the enforcement of this chapter.

(4) A person convicted of engaging in outfitting without a license shall reimburse the full amount of any fees received to the person to whom illegal outfitter services were provided."

NEW SECTION. **Section 3. Codification instruction.** [Section 1] is intended to be codified as an integral part of Title ~~37~~ 87, chapter ~~47~~ 3, part ~~3~~ 1, and the provisions of Title ~~37~~ 87, chapter ~~47~~ 3, part ~~3~~ 1, apply to [section 1].

NEW SECTION. **Section 4. Effective date.** [This act] is effective July 1, 2007.

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