

HOUSE BILL NO. 187

INTRODUCED BY FLYNN, BOULANGER, HARRIS

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29
30

A BILL FOR AN ACT ENTITLED: "AN ACT ALLOWING AND DEFINING OUTFITTER'S ASSISTANTS; PROVIDING RULEMAKING AUTHORITY; REVISING DUTIES AND RESPONSIBILITIES; MODIFYING EXEMPTIONS FROM OVERTIME COMPENSATION; AND AMENDING SECTIONS 37-47-101, 37-47-201, 37-47-401, 37-47-403, 37-47-404, AND 39-3-406, MCA."

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

NEW SECTION. Section 1. Outfitter's assistants -- exemption from licensing. (1) An outfitter may hire or retain an outfitter's assistant.

(2) An outfitter's assistant is not required to obtain a license under this chapter.

(3) The outfitter's assistant must carry proof of employment as determined by the board.

(4) AN OUTFITTER WHO EMPLOYS AN OUTFITTER'S ASSISTANT IS RESPONSIBLE FOR ENSURING THAT THE OUTFITTER'S ASSISTANT IS COMPETENT TO PERFORM THE TASKS OF A GUIDE.

~~(4)~~(5) The outfitter's assistant may not be employed by an outfitter for more than 15 days IN A CALENDAR YEAR unless the outfitter's assistant is actively obtaining a guide's license pursuant to this part AND THE BOARD DETERMINES THAT THE LICENSE APPLICATION IS ROUTINE.

(6) AN OUTFITTER MAY USE MORE THAN ONE OUTFITTER'S ASSISTANT IN A CALENDAR YEAR.

(7) AN OUTFITTER'S ASSISTANT MAY BE EMPLOYED BY AN OUTFITTER ON MORE THAN ONE OCCASION IN A CALENDAR YEAR IF:

(A) THE OUTFITTER'S ASSISTANT IS NOT EMPLOYED FOR MORE THAN 15 DAYS AS AN OUTFITTER'S ASSISTANT IN THAT CALENDAR YEAR; OR

(B) THE OUTFITTER'S ASSISTANT IS ACTIVELY OBTAINING A GUIDE'S LICENSE AND THE BOARD DETERMINES THAT THE LICENSE APPLICATION IS ROUTINE.

NEW SECTION. Section 2. Duties of outfitter's assistants. An outfitter's assistant shall:

(1) act as would a reasonably prudent member of the profession while engaging in providing the services authorized to be performed while employed by a licensed outfitter; and



1 (2) comply with all standards adopted by board rule.

2

3 **Section 3.** Section 37-47-101, MCA, is amended to read:

4 **"37-47-101. Definitions.** As used in this chapter, unless the context requires otherwise, the following
5 definitions apply:

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

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

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

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

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

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

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

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

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

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

27 (11) "Outfitter" means any person, except a person providing services on real property that the person
28 owns for the primary pursuit of bona fide agricultural interests, who for consideration provides any saddle or pack
29 animal; facilities; camping equipment; vehicle, watercraft, or other conveyance; or personal service for any person
30 to hunt, trap, capture, take, kill, or pursue any game, including fish, and who accompanies that person, either part

1 or all of the way, on an expedition for any of these purposes or supervises a licensed guide or professional guide,
 2 OR OUTFITTER'S ASSISTANT in accompanying that person.

3 (12) "Outfitter's assistant" means a person who is employed by and directed by a licensed outfitter to
 4 perform the tasks of a guide, but the person may not represent to the public that the person is an outfitter, guide,
 5 or professional guide.

6 ~~(12)~~(13) "Participant" means a person using the services offered by a licensed outfitter.

7 ~~(13)~~(14) "Professional guide" means a guide who meets experience, training, and testing qualifications
 8 for designation as a professional guide, as set by board rule.

9 ~~(14)~~(15) "Resident" means a person who qualifies for a resident Montana hunting or fishing license under
 10 87-2-102."

11

12 **Section 4.** Section 37-47-201, MCA, is amended to read:

13 **"37-47-201. Powers and duties of board relating to outfitters, guides, and professional guides.**

14 The board shall:

15 (1) cooperate with the federal government in matters of mutual concern regarding the business of
 16 outfitting and guiding in Montana;

17 (2) enforce the provisions of this chapter and rules adopted pursuant to this chapter;

18 (3) establish outfitter standards, guide standards, and professional guide standards;

19 (4) adopt:

20 (a) rules to administer and enforce this chapter, including rules prescribing all requisite qualifications for
 21 licensure as an outfitter, guide, or professional guide. Qualifications for outfitters must include training, testing,
 22 experience in activities similar to the service to be provided, knowledge of rules of governmental bodies pertaining
 23 to outfitting and condition and type of gear and equipment, and the filing of an operations plan.

24 (b) any reasonable rules, not in conflict with this chapter, necessary for safeguarding the public health,
 25 safety, and welfare, including evidence of qualification and licensure under this chapter for any person practicing
 26 or offering to practice as an outfitter, guide, or professional guide;

27 (c) rules specifying standards for review and approval of proposed new operations plans involving
 28 hunting use. Approval is not required when part or all of an existing operations plan is transferred from one
 29 licensed outfitter to another licensed outfitter.

30 (d) rules establishing outfitter reporting requirements. The reports must be filed annually and report

1 actual leased acreage actively used by clients during that year and actual leased acres unused by clients during
 2 that year, plus any other information designated by the board and developed in collaboration with the department
 3 of fish, wildlife, and parks or the review committee established in 87-1-269 that is considered necessary to
 4 evaluate the effectiveness of the hunter management and hunting access enhancement programs.

5 (e) rules specifying documentation standards for proof of employment required of outfitter's assistants.

6 (5) hold hearings and proceedings to suspend or revoke licenses of outfitters, guides, and professional
 7 guides for due cause;

8 (6) maintain records of actual clients served by all Montana outfitters that fulfill the requirements of
 9 subsection (4)(d);

10 (7) maintain records of net client hunter use."
 11

12 **Section 5.** Section 37-47-401, MCA, is amended to read:

13 **"37-47-401. Purpose.** It is recognized that some activities conducted by outfitters, guides, and
 14 professional guides, and outfitter's assistants within the scope of their authorized services are inherently
 15 hazardous to participants regardless of all feasible safety measures that may be taken. It is the purpose of this
 16 part to define those areas of responsibility and affirmative acts or omissions for which outfitters, guides, and
 17 professional guides, and outfitter's assistants are liable for loss, damage, or injury and those risks for which the
 18 participant expressly assumes or is considered to have voluntarily assumed the risk of loss or damage."
 19

20 **Section 6.** Section 37-47-403, MCA, is amended to read:

21 **"37-47-403. Duties of participants.** (1) A participant shall:

22 (a) act as would a reasonably prudent person when engaging in the activities offered by a licensed
 23 outfitter, guide, or professional guide in this state;

24 (b) receive permission from the outfitter, guide, or professional guide prior to embarking on any
 25 self-initiated activity and inform the outfitter, guide, or professional guide of the participant's plans and intentions
 26 upon receiving permission to engage in the self-initiated activity.

27 (2) A participant may not:

28 (a) interfere with the running or operation of an outfitter's, guide's, ~~or~~ professional guide's, or outfitter's
 29 assistant's activities when those activities conform to the standards of care set forth in 37-47-402 or [section 2];

30 (b) use the outfitter's, guide's, ~~or~~ professional guide's, or outfitter's assistant's equipment, facilities, or

1 services unless the participant has requested and received permission from the outfitter, guide, or professional
2 guide, or outfitter's assistant;

3 (c) knowingly, purposely, or negligently engage in any type of conduct that contributes to or causes injury
4 to the participant or any other person."
5

6 **Section 7.** Section 37-47-404, MCA, is amended to read:

7 **"37-47-404. Responsibility for violations of law.** (1) A person accompanying a hunting or fishing party
8 as an outfitter, guide, or professional guide, or outfitter's assistant is equally responsible with any person or party
9 engaging the person as an outfitter for any violation of fish and game laws unless the violation is reported to a
10 peace officer by the outfitter, guide, or professional guide, or outfitter's assistant and the outfitter, guide, or
11 professional guide, or outfitter's assistant was not an active participant. An outfitter, guide, or professional guide,
12 or outfitter's assistant who willfully fails or refuses to report any violation of fish and game laws is liable for the
13 penalties provided in this chapter. If a guide, or professional guide, or outfitter's assistant violates the laws or
14 applicable regulations relating to fish and game, outfitting, or guiding with actual or implied knowledge of an
15 outfitter engaging the guide, or professional guide, or outfitter's assistant, the outfitter is legally responsible for
16 the violation for all purposes under the laws or regulations if the outfitter fails to report the violation to the proper
17 authority.

18 (2) An outfitter, guide, or professional guide, or outfitter's assistant shall report any violation or suspected
19 violation of fish and game laws that the outfitter, guide, or professional guide, or outfitter's assistant knows or
20 reasonably should have known has been committed by the employees, agents, representatives, clients, or
21 participants in the outfitting or guiding activity. The violation or suspected violation must be reported to a peace
22 officer at the earliest possible opportunity.

23 (3) A person may not hire or retain an outfitter unless the outfitter is currently licensed in accordance with
24 the laws of the state of Montana. A person may not use the services of a guide or professional guide and a guide
25 or professional guide may not offer services unless the services are obtained through an endorsing outfitter."
26

27 **Section 8.** Section 39-3-406, MCA, is amended to read:

28 **"39-3-406. Exclusions.** (1) The provisions of 39-3-404 and 39-3-405 do not apply with respect to:

29 (a) students participating in a distributive education program established under the auspices of an
30 accredited educational agency;

- 1 (b) persons employed in private homes whose duties consist of menial chores, such as babysitting,
2 mowing lawns, and cleaning sidewalks;
- 3 (c) persons employed directly by the head of a household to care for children dependent upon the head
4 of the household;
- 5 (d) immediate members of the family of an employer or persons dependent upon an employer for half
6 or more of their support in the customary sense of being a dependent;
- 7 (e) persons who are not regular employees of a nonprofit organization and who voluntarily offer their
8 services to a nonprofit organization on a fully or partially reimbursed basis;
- 9 (f) persons with disabilities engaged in work that is incidental to training or evaluation programs or whose
10 earning capacity is so severely impaired that they are unable to engage in competitive employment;
- 11 (g) apprentices or learners, who may be exempted by the commissioner for a period not to exceed 30
12 days of their employment;
- 13 (h) learners under the age of 18 who are employed as farm workers, provided that the exclusion may
14 not exceed 180 days from their initial date of employment and further provided that during this exclusion period,
15 wages paid the learners may not be less than 50% of the minimum wage rate established in this part;
- 16 (i) retired or semiretired persons performing part-time incidental work as a condition of their residence
17 on a farm or ranch;
- 18 (j) an individual employed in a bona fide executive, administrative, or professional capacity, as these
19 terms are defined by regulations of the commissioner, or in an outside sales capacity pursuant to 29 CFR
20 541.500;
- 21 (k) an individual employed by the United States of America;
- 22 (l) resident managers employed in lodging establishments or assisted living facilities who, under the
23 terms of their employment, live in the establishment or facility;
- 24 (m) a direct seller as defined in 26 U.S.C. 3508;
- 25 (n) a person placed as a participant in a public assistance program authorized by Title 53 into a work
26 setting for the purpose of developing employment skills. The placement may be with either a public or private
27 employer. The exclusion does not apply to an employment relationship formed in the work setting outside the
28 scope of the employment skills activities authorized by Title 53.
- 29 (o) a person serving as a foster parent, licensed as a foster care provider in accordance with 52-2-621,
30 and providing care without wage compensation to no more than six foster children in the provider's own

1 residence. The person may receive reimbursement for providing room and board, obtaining training, respite care,
2 leisure and recreational activities, and providing for other needs and activities arising in the provision of in-home
3 foster care.

4 (p) an employee employed in domestic service employment to provide companionship services, as
5 defined in 29 CFR 552.6, or respite care for individuals who, because of age or infirmity, are unable to care for
6 themselves as provided under section 213(a)(15) of the Fair Labor Standards Act, 29 U.S.C. 213, when the
7 person providing the service is employed directly by a family member or an individual who is a legal guardian.

8 (2) The provisions of 39-3-405 do not apply to:

9 (a) an employee with respect to whom the United States secretary of transportation has power to
10 establish qualifications and maximum hours of service pursuant to the provisions of 49 U.S.C. 31502;

11 (b) an employee of an employer subject to 49 U.S.C. 10501 and 49 U.S.C. 60501, the provisions of part
12 I of the Interstate Commerce Act;

13 (c) an individual employed as an outside buyer of poultry, eggs, cream, or milk, in their raw or natural
14 state;

15 (d) a salesperson, parts person, or mechanic paid on a commission or contract basis and primarily
16 engaged in selling or servicing automobiles, trucks, mobile homes, recreational vehicles, or farm implements if
17 the salesperson, parts person, or mechanic is employed by a nonmanufacturing establishment primarily engaged
18 in the business of selling the vehicles or implements to ultimate purchasers;

19 (e) a salesperson primarily engaged in selling trailers, boats, or aircraft if the salesperson is employed
20 by a nonmanufacturing establishment primarily engaged in the business of selling trailers, boats, or aircraft to
21 ultimate purchasers;

22 (f) a salesperson paid on a commission or contract basis who is primarily engaged in selling advertising
23 for a radio or television station employer;

24 (g) an employee employed as a driver or driver's helper making local deliveries who is compensated for
25 the employment on the basis of trip rates or other delivery payment plan if the commissioner finds that the plan
26 has the general purpose and effect of reducing hours worked by the employees to or below the maximum
27 workweek applicable to them under 39-3-405;

28 (h) an employee employed in agriculture or in connection with the operation or maintenance of ditches,
29 canals, reservoirs, or waterways that are not owned or operated for profit, that are not operated on a sharecrop
30 basis, and that are used exclusively for supply and storing of water for agricultural purposes;

- 1 (i) an employee employed in agriculture by a farmer, notwithstanding other employment of the employee
2 in connection with livestock auction operations in which the farmer is engaged as an adjunct to the raising of
3 livestock, either alone or in conjunction with other farmers, if the employee is:
- 4 (i) primarily employed during a workweek in agriculture by a farmer; and
5 (ii) paid for employment in connection with the livestock auction operations at a wage rate not less than
6 that prescribed by 39-3-404;
- 7 (j) an employee of an establishment commonly recognized as a country elevator, including an
8 establishment that sells products and services used in the operation of a farm if no more than five employees are
9 employed by the establishment;
- 10 (k) a driver employed by an employer engaged in the business of operating taxicabs;
- 11 (l) an employee who is employed with the employee's spouse by a nonprofit educational institution to
12 serve as the parents of children who are orphans or one of whose natural parents is deceased or who are
13 enrolled in the institution and reside in residential facilities of the institution so long as the children are in
14 residence at the institution and so long as the employee and the employee's spouse reside in the facilities and
15 receive, without cost, board and lodging from the institution and are together compensated, on a cash basis, at
16 an annual rate of not less than \$10,000;
- 17 (m) an employee employed in planting or tending trees; cruising, surveying, or felling timber; or
18 transporting logs or other forestry products to a mill, processing plant, railroad, or other transportation terminal
19 if the number of employees employed by the employer in the forestry or lumbering operations does not exceed
20 eight;
- 21 (n) an employee of a sheriff's office who is working under an established work period in lieu of a
22 workweek pursuant to 7-4-2509(1);
- 23 (o) an employee of a municipal or county government who is working under a work period not exceeding
24 40 hours in a 7-day period established through a collective bargaining agreement when a collective bargaining
25 unit represents the employee or by mutual agreement of the employer and employee when a bargaining unit is
26 not recognized. Employment in excess of 40 hours in a 7-day, 40-hour work period must be compensated at a
27 rate of not less than 1 1/2 times the hourly wage rate for the employee.
- 28 (p) an employee of a hospital or other establishment primarily engaged in the care of the sick, disabled,
29 aged, or mentally ill or defective who is working under a work period not exceeding 80 hours in a 14-day period
30 established through either a collective bargaining agreement when a collective bargaining unit represents the

1 employee or by mutual agreement of the employer and employee when a bargaining unit is not recognized.
 2 Employment in excess of 8 hours a day or 80 hours in a 14-day period must be compensated for at a rate of not
 3 less than 1 1/2 times the hourly wage rate for the employee.

4 (q) a firefighter who is working under a work period established in a collective bargaining agreement
 5 entered into between a public employer and a firefighters' organization or its exclusive representative;

6 (r) an officer or other employee of a police department in a city of the first or second class who is working
 7 under a work period established by the chief of police under 7-32-4118;

8 (s) an employee of a department of public safety working under a work period established pursuant to
 9 7-32-115;

10 (t) an employee of a retail establishment if the employee's regular rate of pay exceeds 1 1/2 times the
 11 minimum hourly rate applicable under section 206 of the Fair Labor Standards Act of 1938, 29 U.S.C. 206, and
 12 if more than half of the employee's compensation for a period of not less than 1 month is derived from
 13 commissions on goods and services;

14 (u) a person employed as a guide, cook, camp tender, ~~or~~ outfitter's assistant, or livestock handler by a
 15 licensed outfitter as defined in 37-47-101;

16 (v) an employee employed as a radio announcer, news editor, or chief engineer by an employer in a
 17 second- or third-class city or a town;

18 (w) an employee of the consolidated legislative branch as provided in 5-2-503;

19 (x) an employee of the state or its political subdivisions employed, at the employee's option, on an
 20 occasional or sporadic basis in a capacity other than the employee's regular occupation. Only the hours that the
 21 employee was employed in a capacity other than the employee's regular occupation may be excluded from the
 22 calculation of hours to determine overtime compensation."
 23

24 **NEW SECTION. Section 9. Codification instruction.** (1) [Section 1] is intended to be codified as an
 25 integral part of Title 37, chapter 47, part 3, and the provisions of Title 37, chapter 47, part 3, apply to [section 1].

26 (2) [Section 2] is intended to be codified as an integral part of Title 37, chapter 47, part 4, and the
 27 provisions of Title 37, chapter 47, part 4, apply to [section 2].
 28

- END -