

HOUSE BILL NO. 289

INTRODUCED BY T. JACOBSON

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 REVISING OUTFITTER'S ASSISTANT LAWS; REQUIRING ADDITIONAL RULEMAKING PENALTIES AND REPORTING; ENTITLING CLIENTS TO A REFUND PRIOR TO SERVICE BY AN OUTFITTER'S ASSISTANT; AMENDING SECTIONS 37-47-101, 37-47-201, 37-47-325, AND 37-47-404, MCA; AND REPEALING SECTION 1, CHAPTER 136, LAWS OF 2015, AND SECTION 11, CHAPTER 241, LAWS OF 2013."

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

**Section 1.** Section 37-47-101, MCA, is amended to read:

**"37-47-101. (Temporary) 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) "Board" means the board of outfitters provided for in 2-15-1773.

(3) "Business entity" means any version of a proprietorship, partnership, corporation, or limited liability company.

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

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

(6) "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.

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

(8) "Net client hunter use" or "NCHU" means the number of clients authorized to be served by an outfitter on private and state land and on any federal land where an outfitter's use of the federal land is not limited by some means other than NCHU.

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

7 (10) "Outfitter's assistant" means a person who is employed or retained by and directed by a licensed  
 8 outfitter to perform the tasks of a guide in the case of an emergency, but the person may not represent to the  
 9 public that the person is an outfitter or guide.

10 (11) "Participant" means a person using the services offered by a licensed outfitter. ~~(Terminates~~  
 11 ~~December 31, 2017--sec. 1, Ch. 136, L. 2015.)~~

12 ~~————— **37-47-101. (Effective January 1, 2018) Definitions.** As used in this chapter, unless the context requires~~  
 13 ~~otherwise, the following definitions apply:~~

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

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

18 ~~————— (3) "Business entity" means any version of a proprietorship, partnership, corporation, or limited liability~~  
 19 ~~company.~~

20 ~~————— (4) "Consideration" means something of value given or done in exchange for something of value given~~  
 21 ~~or done by another.~~

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

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

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

27 ~~————— (8) "Net client hunter use" or "NCHU" means the number of clients authorized to be served by an outfitter~~  
 28 ~~on private and state land and on any federal land where an outfitter's use of the federal land is not limited by~~  
 29 ~~some means other than NCHU.~~

30 ~~————— (9) "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, 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 in accompanying that person:

~~\_\_\_\_\_ (10) "Participant" means a person using the services offered by a licensed outfitter."~~

**Section 2.** Section 37-47-201, MCA, is amended to read:

**"37-47-201. (Temporary) Powers and duties of board relating to outfitters and guides.** The board shall:

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

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

(3) establish outfitter standards and guide standards;

(4) adopt:

(a) rules to administer and enforce this chapter, including rules prescribing all requisite qualifications for licensure as an outfitter or guide. Qualifications for outfitters may include training, testing, experience, and knowledge of rules of governmental bodies pertaining to outfitting.

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

(c) rules specifying components and standards for review and approval of operations plans;

(d) rules establishing outfitter reporting requirements. The reports must be filed annually and report client names, outfitters and guides providing client services and the license numbers of those outfitters and guides, dates of client services, and private land acreage where licensed outfitters are authorized by the landowner to operate, including exclusive arrangements and lease agreements.

(e) rules specifying what constitutes an emergency for which an outfitter's assistant may be hired, standards for outfitter's assistants, and documentation standards for proof of employment or retention required of outfitter's assistants, and annual reporting and auditing related to the use of outfitter's assistants. The rules must include a penalty for outfitters who do not maintain or report outfitter's assistant information as required by

1 ~~the board.~~ The rules may also identify data that may be collected regarding use of outfitter's assistants must  
 2 include a process to collect information pertaining to:

3 (i) how often outfitter's assistants are used;

4 (ii) how outfitters are protecting the health, safety, and welfare of clients when employing outfitter's  
 5 assistants; and

6 (iii) how outfitters ensure that outfitter's assistants are qualified and competent to perform the tasks of  
 7 a guide.

8 (5) hold hearings and proceedings to suspend or revoke licenses of outfitters and guides for due cause;  
 9 and

10 (6) maintain records of net client hunter use. ~~(Terminates December 31, 2017--sec. 1, Ch. 136, L. 2015.)~~

11 ~~————— 37-47-201. (Effective January 1, 2018) Powers and duties of board relating to outfitters and~~  
 12 ~~guides. The board shall:~~

13 ~~————— (1) cooperate with the federal government in matters of mutual concern regarding the business of~~  
 14 ~~outfitting and guiding in Montana;~~

15 ~~————— (2) enforce the provisions of this chapter and rules adopted pursuant to this chapter;~~

16 ~~————— (3) establish outfitter standards and guide standards;~~

17 ~~————— (4) adopt:~~

18 ~~————— (a) rules to administer and enforce this chapter, including rules prescribing all requisite qualifications for~~  
 19 ~~licensure as an outfitter or guide. Qualifications for outfitters may include training, testing, experience, and~~  
 20 ~~knowledge of rules of governmental bodies pertaining to outfitting.~~

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

24 ~~————— (c) rules specifying components and standards for review and approval of operations plans;~~

25 ~~————— (d) rules establishing outfitter reporting requirements. The reports must be filed annually and report client~~  
 26 ~~names, outfitters and guides providing client services and the license numbers of those outfitters and guides,~~  
 27 ~~dates of client services, and private land acreage where licensed outfitters are authorized by the landowner to~~  
 28 ~~operate, including exclusive arrangements and lease agreements.~~

29 ~~————— (5) hold hearings and proceedings to suspend or revoke licenses of outfitters and guides for due cause;~~

30 and

1 ~~\_\_\_\_\_ (6) maintain records of net client hunter use."~~

2

3 **Section 3.** Section 37-47-325, MCA, is amended to read:

4 **"37-47-325. (Temporary) Outfitter's assistants -- exemption from licensing.** (1) An outfitter may hire  
5 or retain an outfitter's assistant.

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

7 (3) As soon as possible before a scheduled activity for which an outfitter plans to use an outfitter's  
8 assistant, the outfitter shall disclose to the client:

9 (a) that the outfitter's assistant is not a licensed guide or outfitter;

10 (b) whether the outfitter's assistant has a first aid certification;

11 (c) that the client may refuse the services of an outfitter's assistant and is entitled to a full refund.

12 ~~(3)(4)~~ The outfitter's assistant must carry proof of employment as ~~provided in 37-47-404(4)(b) pending~~  
13 ~~adoption of proof of employment~~ required by the board by rule.

14 ~~(4)(5)~~ (a) An outfitter who employs or retains an outfitter's assistant is responsible for ensuring that the  
15 outfitter's assistant:

16 (i) safeguards the public health, safety, and welfare while providing services; and

17 (ii) is qualified and competent to perform the tasks of a guide.

18 (b) The board shall hold an outfitter who employs or retains an outfitter's assistant responsible under the  
19 provisions of 37-1-316, 37-47-341, and 37-47-402 for any acts or omissions by the outfitter's assistant in the  
20 ordinary course and scope of duties assigned by the outfitter.

21 ~~(5)(6)~~ The outfitter's assistant may not be employed or retained by an outfitter for more than 15 days in  
22 a calendar year unless the outfitter's assistant is actively obtaining a guide's license pursuant to this part and the  
23 board determines that the license application is routine for purposes of 37-1-101.

24 ~~(6)(7)~~ An outfitter may not use more than one employ a single outfitter's assistant or multiple outfitter's  
25 assistants more than three times in a calendar year.

26 ~~(7)(8)~~ An individual outfitter's assistant may be employed or retained by an outfitter on more than one  
27 occasion but no more than three occasions in a calendar year if:

28 ~~(a) the outfitter's assistant is not employed or retained for more than 15 days as an outfitter's assistant~~  
29 ~~in that calendar year; or~~

30 ~~\_\_\_\_\_ (b) the outfitter's assistant is actively obtaining a guide's license and the board determines that the~~

1 ~~license application is routine for purposes of 37-1-101. (Terminates December 31, 2017--sec. 1, Ch. 136, L.~~  
 2 ~~2015.)"~~

3

4 **Section 4.** Section 37-47-404, MCA, is amended to read:

5 **"37-47-404. (Temporary) Responsibility for violations of law.** (1) A person accompanying a hunting  
 6 or fishing party as an outfitter, guide, or outfitter's assistant is equally responsible with any person or party  
 7 engaging the person as an outfitter for any violation of fish and game laws unless the violation is reported to a  
 8 peace officer by the outfitter, guide, or outfitter's assistant and the outfitter, guide, or outfitter's assistant was not  
 9 an active participant. An outfitter, guide, or outfitter's assistant who willfully fails or refuses to report any violation  
 10 of fish and game laws is liable for the penalties provided in this chapter. If a guide or outfitter's assistant violates  
 11 the laws or applicable regulations relating to fish and game, outfitting, or guiding with actual knowledge of an  
 12 outfitter engaging the guide or outfitter's assistant, the outfitter is legally responsible for the violation for all  
 13 purposes under the laws or regulations if the outfitter fails to report the violation to the proper authority.

14 (2) An outfitter, guide, or outfitter's assistant shall report any violation or suspected violation of fish and  
 15 game laws that the outfitter, guide, or outfitter's assistant knows has been committed by the employees,  
 16 contractors, agents, representatives, clients, or participants in the outfitting or guiding activity. The violation or  
 17 suspected violation must be reported to a peace officer at the earliest possible opportunity.

18 (3) A person may not hire or retain an outfitter unless the outfitter is currently licensed in accordance with  
 19 the laws of the state of Montana. A person may not use the services of a guide, and a guide may not offer  
 20 services unless the services are obtained through an endorsing outfitter.

21 (4) ~~(a) Except as provided in subsection (4)(b), an~~ An outfitter may not place a hired or retained outfitter's  
 22 assistant in a position of providing services to participants until the outfitter has documentation as specified by  
 23 board rule under 37-47-201(4)(e).

24 ~~(b) (i) Prior to adoption of the rules, an outfitter may use temporary documentation to place a hired or~~  
 25 ~~retained outfitter's assistant in a position of providing services to participants. The temporary documentation must~~  
 26 ~~be mailed to the board within the time period of the outfitter's assistant's service, and a copy must be provided~~  
 27 ~~to the outfitter's assistant. The outfitter's assistant shall carry the temporary documentation at all times in the field.~~

28 ~~\_\_\_\_\_ (ii) The temporary documentation must include the following:~~

29 ~~\_\_\_\_\_ (A) the outfitter's name, license number, and contact information;~~

30 ~~\_\_\_\_\_ (B) the outfitter's assistant's name and home address and the starting date and expiration date for the~~

1 period of service;

2 ~~—— (C) a brief explanation of why an emergency replacement is needed; and~~

3 ~~—— (D) the outfitter's signature, which must be on the original and on the copy of the temporary~~  
4 ~~documentation and must affirm the provisions in this subsection (4)(b)(ii).~~

5 ~~—— (iii) The outfitter shall collect the temporary documentation from the outfitter's assistant after the period~~  
6 ~~of service.~~

7 ~~—— (iv) The temporary documentation may not be used after adoption of the rules under 37-47-201(4)(e).~~  
8 ~~(Terminates December 31, 2017--sec. 1, Ch. 136, L. 2015.)~~

9 ~~—— **37-47-404. (Effective January 1, 2018) Responsibility for violations of law.** (1) A person~~  
10 ~~accompanying a hunting or fishing party as an outfitter or guide is equally responsible with any person or party~~  
11 ~~engaging the person as an outfitter for any violation of fish and game laws unless the violation is reported to a~~  
12 ~~peace officer by the outfitter or guide and the outfitter or guide was not an active participant. An outfitter or guide~~  
13 ~~who willfully fails or refuses to report any violation of fish and game laws is liable for the penalties provided in this~~  
14 ~~chapter. If a guide violates the laws or applicable regulations relating to fish and game, outfitting, or guiding with~~  
15 ~~actual knowledge of an outfitter engaging the guide, the outfitter is legally responsible for the violation for all~~  
16 ~~purposes under the laws or regulations if the outfitter fails to report the violation to the proper authority.~~

17 ~~—— (2) An outfitter or guide shall report any violation or suspected violation of fish and game laws that the~~  
18 ~~outfitter or guide knows has been committed by the employees, contractors, agents, representatives, clients, or~~  
19 ~~participants in the outfitting or guiding activity. The violation or suspected violation must be reported to a peace~~  
20 ~~officer at the earliest possible opportunity.~~

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

24  
25 **NEW SECTION. Section 5. Repealer.** Section 1, Chapter 136, Laws of 2015, and section 11, Chapter  
26 241, Laws of 2013, are repealed.

27 - END -