

1 SENATE BILL NO. 275

2 INTRODUCED BY J. WELBORN

3

4 A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING THE BOARD OF OUTFITTERS AND
 5 OUTFITTING LAWS AND ENFORCEMENT; REVISING THE BOARD OF OUTFITTERS MEMBERSHIP;
 6 TERMINATING THE CURRENT BOARD MEMBERSHIP; REVISING THE BOARD'S DUTIES; REVISING
 7 REGULATION OF THE PARTIAL SALE OR TEMPORARY TRANSFER OF A HUNTING OR FISHING
 8 OUTFITTER'S BUSINESS; PROVIDING AN EXCEPTION FOR THE OUTFITTERS ON THE BEAVERHEAD
 9 AND BIG HOLE RIVERS; REVISING CERTAIN OUTFITTER SERVICES; REVISING FEE DEPOSITS;
 10 CLARIFYING LIABILITY; REVISING ENFORCEMENT OF VIOLATIONS OF OUTFITTER REGULATIONS;
 11 REVISING ENFORCEMENT POWERS OF WARDENS; REVISING PENALTIES; PROVIDING FOR A
 12 TRANSITION; AMENDING SECTIONS 2-15-1773, 37-47-201, 37-47-301, 37-47-302, 37-47-310, 37-47-313,
 13 37-47-341, 37-47-344, 37-47-345, 37-47-401, 87-1-506, AND 87-6-702, MCA; REPEALING SECTION 87-6-
 14 105, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE."

15

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

17

18 **Section 1.** Section 2-15-1773, MCA, is amended to read:

19 **"2-15-1773. Board of outfitters.** (1) There is a board of outfitters.

20 (2) The board consists of the following ~~seven~~five members to be appointed by the governor with the
 21 consent of the senate:

22 (a) ~~one outfitter licensed to provide big game hunting services~~ licensed for both hunting and fishing,
 23 representing a public land hunting and fishing outfitter knowledgeable in government permitting and preferably
 24 with a packing endorsement;

25 (b) ~~one outfitter licensed to provide fishing services but not hunting services~~ licensed only as a fishing
 26 outfitter;

27 (c) ~~two outfitters licensed to provide fishing and hunting services~~ one outfitter representing a private
 28 land hunting outfit;

1 (d) ~~two sportspersons~~ one outfitter licensed for both hunting and fishing, with their business being
 2 predominately fishing; and

3 (e) one member of the general public who is a Montana-based business owner who engages in
 4 nonoutfitted business that is reliant on the local outdoor recreation industry.

5 (3) A favorable vote of at least a majority of all members of the board is required to adopt any
 6 resolution, motion, or other decision.

7 (4) A vacancy on the board must be filled in the same manner as the original appointment.

8 (5) The members shall serve staggered 3-year terms and take office on the day they are appointed.

9 (6) The board is allocated to the department of labor and industry for administrative purposes only as
 10 prescribed in 2-15-121.

11 (7) Each member of the board is entitled to receive compensation and travel expenses as provided
 12 for in 37-1-133."

13

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

15 **"37-47-201. Powers and duties of board relating to outfitters and guides.** The board shall:

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

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

19 (3) establish outfitter standards and guide standards;

20 (4) adopt:

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

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

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

28 Operations plans must:

- 1 (i) be updated at least annually if there has been a substantive change; and
- 2 (ii) ~~report~~ indicate all forms of use of private land acreage where licensed outfitters are authorized by
- 3 the landowner to operate, except for the use of private lands that allow unrestricted public access and are
- 4 managed under cooperative agreements with adjacent public lands.
- 5 (d) rules establishing outfitter reporting requirements. ~~The reports must be filed annually and report:~~
- 6 ~~(i) client names or automated licensing system numbers; and~~
- 7 ~~(ii) names or license numbers of outfitters, guides, and outfitter's assistants providing client services;~~
- 8 ~~and~~
- 9 ~~(iii) dates of client services.~~
- 10 (e) rules specifying what constitutes an emergency for which an outfitter's assistant may be hired,
- 11 standards for outfitter's assistants, and documentation standards for proof of employment or retention required
- 12 of outfitter's assistants. The rules must also identify data that may be collected regarding use of outfitter's
- 13 assistants.
- 14 (5) hold hearings and proceedings to suspend or revoke licenses of outfitters and guides for due
- 15 cause; and
- 16 (6) maintain records of net client hunter use."

17

18 **Section 3.** Section 37-47-301, MCA, is amended to read:

19 **"37-47-301. License required -- services performed -- standards.** (1) A person may not act as an

20 outfitter or guide or advertise or otherwise represent to the public that the person is an outfitter or guide without

21 first securing a license in accordance with the provisions of this part.

22 (2) Whenever an outfitter is engaged by a participant, the outfitter shall keep ~~and submit~~ records as

23 required by the board.

24 (3) Outfitters, guides, and other employees of an outfitter may not shoot, kill, or take big game

25 animals for or in competition with those employing them while acting as outfitters, guides, or employees of an

26 outfitter.

27 (4) Outfitters utilizing lands under the control of the United States government shall obtain the proper

28 permits required by the government office responsible for the area in which the outfitter intends to operate and

1 shall comply with all applicable rules and regulations established for these lands.

2 (5) Outfitters may not willfully and substantially misrepresent their facilities, prices, equipment,
3 services, or hunting or fishing opportunities.

4 (6) Outfitters and their contractors, employees, agents, and representatives shall take every
5 reasonable measure to provide the outfitter's advertised services.

6 (7) An outfitter may not hire or retain a guide who does not hold a current license as provided under
7 this part."

8

9 **Section 4.** Section 37-47-302, MCA, is amended to read:

10 **"37-47-302. Outfitter's qualifications.** An applicant for an outfitter's license or renewal of a license
11 must meet the following qualifications:

12 (1) be 18 years of age or older, be physically capable and mentally competent to perform the duties of
13 an outfitter, and meet experience, training, and testing requirements as prescribed by board rule; and

14 (2) own, hold under written lease, or contract for or represent a business entity who owns, holds
15 under written lease, or contracts for the equipment and facilities that are necessary to provide the services
16 advertised, contracted for, or agreed upon between the outfitter and the outfitter's clients. All equipment and
17 facilities are subject to inspection at all reasonable times and places by the board ~~or its designated agent.~~"

18

19 **Section 5.** Section 37-47-310, MCA, is amended to read:

20 **"37-47-310. Transfer or amendment of outfitter's license -- ~~transfer of river-use days to new~~**
21 **~~owner of fishing partial sale of outfitter business.~~** (1) An outfitter's license may not be transferred.

22 (2) An individual person may, upon proper showing, have that person's outfitter's ~~license operating~~
23 plan amended to indicate that the license is being held for the use and benefit of a named business entity.

24 (3) Subject to approval by the board, a person designated by the family of an outfitter who is
25 deceased or incapacitated due to physical or mental disease or injury or who is unable to carry out the
26 responsibilities of an outfitter due to the outfitter's status as an active member of the military may continue to
27 provide outfitting services for the outfitter's unexpired license year, or until the family sells the outfitting
28 business, until the designee obtains an outfitter license.

1 (4) ~~(a) (a) When a fishing outfitter's business is sold or transferred in its entirety, any river-use days~~
 2 ~~that have been allocated to that fishing outfitter through the fishing outfitter's historic use of or activities on~~
 3 ~~restricted use streams are transferable to the new owner of the fishing outfitter's business. Upon the sale or~~
 4 ~~transfer of a fishing outfitter's business, the outfitter who sells or transfers the business shall notify the new~~
 5 ~~owner that the use of any transferred river-use days is subject to change pursuant to rules adopted by the fish~~
 6 ~~and wildlife commission and that a property right does not attach to the transferred river-use days.~~

7 ~~(b) Any transferred river-use days on the Smith River are subject to change pursuant to rules adopted~~
 8 ~~by the state parks and recreation board pursuant to 23-2-408. Except as provided in subsection (4)(b), if~~
 9 ~~changes are properly reflected in an operations plan, the partial sale or temporary transfer of a hunting or~~
 10 ~~fishing outfitter's business may not be prohibited.~~

11 **(b) Transfer of river-use days for the Beaverhead and Big Hole rivers may only be sold or transferred**
 12 **as part of a business in its entirety. On the sale or transfer of a fishing outfitter business on the Beaverhead or**
 13 **Big Hole rivers, the outfitter who sells or transfers the business shall notify the new owner that the use of any**
 14 **transferred river-use days is subject to change pursuant to rules adopted by the fish and wildlife commission,**
 15 **and that a property right does not attach to the transferred river-use days."**

16
 17 **Section 6.** Section 37-47-313, MCA, is amended to read:
 18 **"37-47-313. Shuttle, and rental services, drop camp, and accompaniment -- exemption. (1)**
 19 **Nothing in this chapter prohibits the furnishing of shuttle, or rental services, drop camp, or the accompaniment**
 20 **of a customer for nonhunting activities, nonfishing activities, or both, as long as those services do not include**
 21 **in-field assistance to a customer.**

22 (2) For the purposes of this section, "in-field assistance" includes but is not limited to:
 23 ~~(a) setting up a camp;~~
 24 ~~(b) field instruction for the activity to be conducted by the customer; or~~
 25 ~~(c) other services considered to be services of an outfitter, as defined in 37-47-101 means the pursuit~~
 26 **of fish or game, including in-field instruction for the pursuit of fish or game."**

27
 28 **Section 7.** Section 37-47-341, MCA, is amended to read:

1 **"37-47-341. Grounds for denial, suspension, or revocation of license.** A license or right to apply
 2 for and hold a license issued under this part may be denied, suspended, or revoked or other disciplinary
 3 conditions may be applied upon any of the following grounds:

4 (1) having ceased to meet all of the qualifications for holding a license, as required under this chapter
 5 and rules adopted pursuant to this chapter;

6 (2) fraud or deception in procuring a license;

7 (3) fraudulent, untruthful, or misleading advertising;

8 (4) having pleaded guilty to or been adjudged by a court guilty of a felony, including a case in which
 9 the sentence is suspended or imposition of the sentence is deferred, unless civil rights have been restored
 10 pursuant to law;

11 (5) one conviction or bond forfeiture for a violation of the fish and game or outfitting laws or
 12 regulations of any state, the United States, or other jurisdictions;

13 (6) a substantial breach of a contract with a participant provided that the breach is established as a
 14 matter of final judgment in a court of law;

15 (7) the willful employment of or contracting with an unlicensed guide by an outfitter;

16 (8) subject to 27-1-753, negligence or misconduct while acting as an outfitter or guide that causes an
 17 accident or injury to the person or property of a participant;

18 (9) misconduct as defined by board rule; or

19 (10) any violation of this chapter or a rule adopted pursuant to this chapter."

20

21 **Section 8.** Section 37-47-344, MCA, is amended to read:

22 **"37-47-344. Penalties --~~disposition of fines.~~** (1) A person who violates any provision of this chapter
 23 or rule adopted under this chapter is guilty of a misdemeanor and is punishable, unless otherwise specified, by
 24 a fine not exceeding \$500.

25 (2) ~~Fifty percent of all fines paid under this section must be deposited in the general fund of the~~
 26 ~~county in which the conviction is obtained, and 50% must be deposited in the state special revenue fund for the~~
 27 ~~use of the board in enforcing this chapter. All investigation, preparation, and trial costs paid under this section~~
 28 ~~must be deposited in the state special revenue fund for the use of the board in enforcing the provisions of this~~

1 ~~chapter. The board may reimburse other agencies for costs reasonably incurred in the enforcement of this~~
2 ~~chapter. "~~

3

4 **Section 9.** Section 37-47-345, MCA, is amended to read:

5 **"37-47-345. Enforcement.** Investigations and ~~arrests~~ issuance of board complaints for violations of
6 this chapter or rules adopted pursuant to this chapter may be made through department investigation and at the
7 board's request by any peace officer; warden of the department of fish, wildlife, and parks; or federal agency
8 enforcement personnel."

9

10 **Section 10.** Section 37-47-401, MCA, is amended to read:

11 **"37-47-401. Purpose.** It is recognized that some activities conducted by outfitters, guides, and
12 outfitter's assistants within the scope of their authorized services are inherently hazardous to participants
13 regardless of all feasible safety measures that may be taken. It is the purpose of this part, subject to 27-1-753,
14 to define those areas of responsibility and affirmative acts or omissions for which outfitters, guides, and
15 outfitter's assistants are liable for loss, damage, or injury and those risks for which the participant expressly
16 assumes or is considered to have voluntarily assumed the risk of loss or damage."

17

18 **Section 11.** Section 87-1-506, MCA, is amended to read:

19 **"87-1-506. Enforcement powers of wardens.** (1) A warden may:

20 (a) serve a subpoena issued by a court for the trial of a violator of the fish and game laws;

21 (b) conduct a search, with a search warrant, in accordance with Title 46, chapter 5;

22 (c) seize game, fish, game birds, and fur-bearing animals and any parts of them taken or possessed
23 in violation of the law or the rules of the department;

24 (d) seize and hold, subject to law or the orders of the department, devices that have been used to
25 unlawfully take game, fish, birds, or fur-bearing animals;

26 (e) arrest, in accordance with Title 46, chapter 6, a violator of a fish and game law or rule of the
27 department, violation of which is a misdemeanor;

28 (f) enforce the disorderly conduct and public nuisance laws, 45-8-101 and 45-8-111, as they apply to

1 the operation of motorboats on all waters of the state;

2 ~~(g) as provided for in 37-47-345, investigate and make arrests for violations of the provisions of Title~~
 3 ~~37, chapter 47, and of any rules adopted pursuant to that chapter relating to the regulation of outfitters and~~
 4 ~~guides in the state;~~

5 ~~(h)(g)~~ enforce the provisions of Title 80, chapter 7, part 10, and rules adopted under Title 80, chapter
 6 7, part 10, for those invasive species that are under the department's jurisdiction; and

7 ~~(i)(h)~~ exercise the other powers of peace officers in the enforcement of the fish and game laws, the
 8 rules of the department, and judgments obtained for violation of those laws or rules.

9 (2) The meat of game animals that are seized pursuant to subsection (1)(c) must be donated directly
 10 to the Montana food bank network or to public or charitable institutions to the extent reasonably feasible. Any
 11 meat that the department is unable to donate must be sold pursuant to 87-1-511, with the proceeds to be
 12 distributed as provided in 87-1-513(2)."

13

14 **Section 12.** Section 87-6-702, MCA, is amended to read:

15 **"87-6-702. Outfitting without license.** (1) (a) A person may not purposely or knowingly engage in
 16 outfitting while not licensed pursuant to Title 37, chapter 47, ~~or purposely or knowingly violate a licensing rule~~
 17 ~~adopted under Title 37, chapter 47.~~

18 (b) A person convicted of a violation of subsection (1)(a) is punishable by a fine of not less than \$200
 19 or more than \$1,000 or imprisonment in the county jail for up to 1 year, or both. In addition, the person shall
 20 forfeit any current hunting, fishing, or trapping license or permit issued by this state and the privilege to hunt,
 21 fish, or trap in this state for a period set by the court. A sentencing court that imposes a period of license
 22 revocation shall consider the provisions of subsection (3).

23 (2) (a) A person or entity that represents to any other person, any entity, or the public that the person
 24 or entity is an outfitter and who commits the offense of outfitting without a license, as described in subsection
 25 (1)(a), for any portion of 5 or more days for consideration within 1 calendar year for any person or for
 26 consideration valued in excess of \$5,000 is punishable by a fine of not more than \$50,000 or imprisonment in
 27 the state prison for up to 5 years, or both.

28 (b) A person convicted of a violation of subsection (2)(a) shall forfeit any current hunting, fishing, or

1 trapping license or permit issued by this state and the privilege to hunt, fish, or trap in this state for a minimum
2 of 5 years. A sentencing court that imposes a period of license revocation shall consider the provisions of
3 subsection (3).

4 (3) A sentencing court that imposes a period of license revocation pursuant to subsection (1)(b) or
5 (2)(b) shall consider and may impose any of the following conditions during the period of revocation:

6 (a) prohibiting the offender from:

7 (i) participating in any hunting, fishing, or trapping endeavor as a hunter, angler, trapper, scout, guide,
8 observer, or assistant;

9 (ii) brokering or participating in any lease of property for hunting, fishing, or trapping, either personally
10 or through an agent or representative;

11 (iii) participating in any seminar or show that is designed to promote hunting, fishing, or trapping;

12 (iv) purchasing or possessing any hunting, fishing, or trapping permits; and

13 (b) imposing any other reasonable condition or restriction that is related to the crime committed or that
14 is considered necessary for the rehabilitation of the offender or for the protection of the citizens or wildlife of this
15 state.

16 (4) A person convicted of a violation of this section shall reimburse the full amount of any fees
17 received to the person to whom illegal outfitting services were provided.

18 (5) As used in this section, the following definitions apply:

19 (a) "Consideration" means remuneration given in exchange for outfitting services supplied based on a
20 business relationship between parties, but not including reimbursement for shared trip expenses.

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

26 (ii) The term does not include:

27 (A) services provided by packers, wranglers, cooks, or other parties under the direct employment of
28 the outfitter;

1 (B) services provided by an outfitter's assistant who has documentation as provided in 37-47-404(4);

2 or

3 (C) the provision of the services listed in subsection (5)(b)(i) by a person on real property that the
4 person owns for the primary pursuit of bona fide agricultural interests."

5

6 **NEW SECTION. Section 13. Repealer.** The following section of the Montana Code Annotated is
7 repealed:

8 87-6-105. Penalties in addition to Title 37.

9

10 **NEW SECTION. Section 14. Transition -- application.** Within 60 days of [the effective date of this
11 act], the board membership must reflect [section 1]. All terms of all board members appointed under the
12 previous composition of the board terminate 60 days following [the effective date of this act], and all
13 appointments made, and vacancies filled after [the effective date of this act] must be in accordance with
14 [section 1]. The appointments must consist of 1, 2, or 3-year terms at the governor's discretion, so the initial
15 terms of the newly composed board members are staggered in accordance with [section 1].

16

17 **NEW SECTION. Section 15. Effective date.** [This act] is effective on passage and approval.

18

19 **NEW SECTION. Section 16. Severability.** If a part of [this act] is invalid, all valid parts that are
20 severable from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its applications,
21 the part remains in effect in all valid applications that are severable from the invalid applications.

22

- END -