

MINUTES OF MEETING
FISH AND GAME COMMITTEE
MONTANA STATE SENATE

February 3, 1981

The meeting was called to order by Chairman Ed B. Smith at 1:05 P.M. in Room 402 of the Capitol.

ROLL CALL. All members of the committee were present.

CONSIDERATION OF PROPOSED CHANGES TO OUTFITTERS AND GUIDES LAW, TITLE 87, CHAPTER 4. Chairman Smith recognized Mr. Tag Rittel, representing the Montana Outfitters and Guides Association, who explained the proposed changes in the law. Mr. Rittel took the existing law with the proposed changes and went through them page by page explaining the reason for each of the changes (Attachment #1).

PROPOSER. Mr. Jack Wemple, President of the Montana Outfitters and Guides Association, spoke in favor of the legislation.

Mr. Ralph Holman, representing the Montana Outfitters Council, spoke in favor of the legislation. Mr. Holman said that most of the suggested changes to the outfitters law are housekeeping measures and have been approved by the majority of the council. The bill is primarily intended for the purpose of obtaining clarity, simplifying some of the problems and providing solutions to some of the problems which have developed over the years. He spoke of 87-4-103, Responsibility for Violations of Law. He said this section, if retained in the law, should be limited to violation of fish and game laws. He said that the Department of Fish, Wildlife and Parks has agreed to the terminology of this section and will give the council a letter of intent as to how this provision would be used. The Council voted 5-1 in keeping the equal responsibility section in the law. Mr. Holman further stated that some controversy exists among the outfitters regarding this section, but that it is used by some as an effective management tool. He asked for Senate Fish and Game Committee assistance and guidance on this particular provision in the law.

Chairman Smith asked legislative researcher Andrea Merrill to study the equal responsibility section, 87-4-103.

Mr. Jim Flynn, Director of the Department of Fish, Wildlife and Parks, said that the department officials had visited with Mr. Holman about the proposed changes in the outfitters legislation and would like to work with the committee in development of the bill.

There were no opponents to the proposed changes.

Chairman Smith said that if the committee felt the proposed legislation had considerable merit, it might be introduced as a committee bill.

Senator Severson had serious questions concerning 87-4-121, License required--services performed--standards (page 8). Mr. Wemple replied that the law as written is unenforceable and that it was changed to protect people who are not outfitters by vocation.

ACTION TAKEN ON PROPOSED CHANGES TO OUTFITTERS AND GUIDES LAW, TITLE 87, CHAPTER 4. Senator Lee moved that the committee have a bill drafted reflecting the proposed changes as indicated in Attachment #1, and introduce the bill in the 1981 session. A roll call vote was taken. The motion carried unanimously. (Attachment #2.)

CONSIDERATION OF SENATE BILL 159. Chairman Smith introduced Senator Mike Anderson, sponsor of SB 159, to explain the bill. He said that the purpose of the bill is to define areas of responsibility for which outfitters and guides are liable and those risks for which a participant expressly assumes the risk of loss or damage and for which there can be no recovery. It puts the responsibility of acting in a reasonably prudent manner on both the outfitters and the participants.

PROPOSERS OF SENATE BILL 159. Mr. Jim Flynn, Director of the Department of Fish, Wildlife and Parks, spoke in favor of the bill.

Mr. Ralph Holman, Chairman of the Montana Outfitters Council, spoke in favor of the bill.

Mr. Tag Rittel, representing the Montana Outfitters and Guides Association, spoke in favor of the bill.

Mr. Smoke Elser, a self-employed outfitter, spoke in support of the bill. He stated that his liability insurance had increased 350% over the last five years.

Mr. Jack Wemple, President of the Montana Outfitters and Guides Association, spoke in support of the bill.

OPPOSERS OF SENATE BILL 159. Mr. Mike Meloy, Montana Trial Lawyers Association, spoke in opposition to the bill. He said that this bill is not necessary under the present system of dealing with accidents which may happen. He stated that in a law passed in 1975, a jury is required to compare the negligence of each of the parties in deciding whether or not to award damages. He said the bill would not solve the problem of excessive cost of liability insurance rates because those rates are based on a national scale, not on a statewide scale. He believes the bill is unfair to the consumer or the person using the services.

Chairman Smith called on Senator Anderson to close the discussion.

A considerable amount of time was spent with a question and answer period. After discussion by committee members, it was agreed that action on Senate Bill 159 would be postponed until Thursday, February 5, 1981.

There being no further business, the meeting adjourned at 2:40 p.m.

Ed B. Smith

Senator Ed B. Smith, Chairman

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Attachment # 1

OUTFITTERS AND GUIDES LAW

Chapter 4. Part 1

87-4-101. Definitions. As used in this part, unless the context requires otherwise, the following definitions apply:

- (1) "Advisory Outfitter council" means the Montana outfitters' council provided for in 2-15-3403.
- (2) "License year" means that period commencing ~~May-1~~ January 1 and ending ~~April-30~~ December 31 of the next year.
- (3) "Nonresident" means a person other than a resident.
- (4) "Outfitter" means any person, persons, company, or corporation who:
 - (a) engages in the business of outfitting for hunting or fishing parties as the term is commonly understood;
 - (b) for consideration provides and accompanies any saddle or pack animal or personal service for hunting, or fishing parties or camping equipment, vehicles, or other conveyance, except boats, for any person to hunt, trap, capture, take, or kill any game;
 - (c) for consideration furnishes a boat or other floating craft and accompanies any person for the purpose of catching fish; or
 - (d) for consideration aids or assists any person in locating or pursuing any game animal.
- (5) "Professional guide" means a person who is an employee of an outfitter and who furnishes only personal guiding services in assisting a person to hunt or take game animals or fish and who does not furnish any facilities, transportation, or equipment.
- (6) "Resident" means a person who qualifies for a resident Montana hunting or fishing license under 87-2-102.
- ~~(7) -- "Resident-guide" means a resident who guides resident or nonresident friends for the purpose of hunting game animals without compensation.~~

87-4-102. Determination of what constitutes consideration. The providing of the services, property, or equipment mentioned in 87-4-101(4) shall be conclusively presumed to have been for consideration for the purposes of this part if the same or any thereof are provided by any person, company, or corporation for more than two parties or two other persons during any calendar year or on more than two occasions during any such calendar year. or advertises his services to assist other persons to hunt, pursue, or take wildlife and fish for monetary compensation, or other reward or compensation for his services.

87-4-103. Responsibility for violations of law. (1) Any person accompanying a hunting or fishing party as an outfitter or agent or employee of such outfitter shall be equally responsible with any person or party employing him as an outfitter for any violation of the ~~law~~ ^{statute}; any such outfitter or employee of such outfitter who shall willfully fail to or refuse to report any violation of the law shall be liable to the penalties as herein provided. If any professional guide commits any violation of the laws or applicable regulations relating to fish and game, outfitting, or guiding with actual or implied knowledge of an outfitter then employing such guide, the outfitter is legally responsible for such violation for all purposes under the laws or regulations if the outfitter fails to report any such violation to proper authority.

(2) No person may hire or retain any outfitter or professional guide unless the outfitter or professional guide is currently licensed in accordance with the laws of the state of Montana.

87-4-104. Powers and duties of department relating to outfitters and guides.

The department shall:

(1) prepare and publish an information pamphlet which contains the names and address of all licensed outfitters. This pamphlet shall be available for free distribution as early as possible during each calendar year but not later than the second Friday in March. The pamphlet shall contain the names and addresses of only those outfitters who have a valid license for the current license year. The costs of publication of the pamphlet shall be paid from the earmarked revenue fund, fish and game account.

(2) cooperate with the federal government through its appropriate agencies or instrumentalities in matters of mutual concern regarding the business of outfitting and guiding in Montana;

(3) establish a minimum of two meetings annually with the advisery-outfitter council;

(4) consult with the advisery outfitter council to develop policy concerning administration of outfitting;

(5) designate a warden or ~~ex-officio~~-warden with no conflict of interest whose primary duties are to administer outfitting and guiding laws and regulations.

87-4-105. Outfitters' council. The council shall have the authority and duty to make recommendations to the department and the director as to:

(1) outfitter standards, professional guide standards;

(2) rules of procedures and rules to effectuate this part, including but not limited to rules prescribing all requisite qualifications for license. These qualifications shall include training, experience, knowledge of rules of governmental bodies pertaining to outfitting, and condition and type of gear and equipment.

(3) hearings and proceedings to suspend or revoke license of outfitters and professional guides and to recommend suspension or revocation of licenses for due cause; safeguarding the health, safety, and welfare of those persons utilizing the services of outfitters and for the protection of landowners and the general public.

(4) any reasonable rules, not in conflict with this part, necessary for safeguarding the health, safety, and welfare of those persons utilizing the services of outfitters and for the protection of landowners and the general public.

87-4-106. Authorization for rules. The department may adopt, promulgate, and enforce rules recommended by the advisery outfitter council as provided in 87-4-105 and all other rules it may consider proper for the administration and enforcement of the provisions of this part and the regulation of outfitting and guiding to provide for the services to the public.

LAW

7-4-107 through 87-4-120 reserved.

87-4-121. License required - services performed - standards. (1) No person may act as an outfitter, professional guide, ~~or resident guide~~ or advertise as an outfitter without first securing a license in accordance with the provisions of this part.

(2) Whenever an outfitter is engaged by any person ~~or a resident guide takes out nonresident friends~~, the outfitter ~~or resident guide~~ shall keep and submit records as required by the department.

(3) Outfitters and their employees may not shoot, kill, or take big game animals for or in competition with those employing them while acting under employment as an outfitter.

(4) Outfitters ~~and resident guides~~ utilizing lands under the control of the United States government shall obtain the proper permits required by the government office responsible for the area in which the outfitter ~~or resident guide~~ intends to operate and shall comply with environmental protection standards established for these lands.

(5) An outfitter may not willfully and substantially misrepresent his facilities, prices, equipment, services, or hunting or fishing opportunities.

(6) Outfitters and their employees shall take every reasonable measure to provide their advertised services to their clients.

87-4-122. Outfitter's qualifications. Each applicant for and holder of an outfitter's license or any renewal thereof shall, in the opinion of the director, meet the following qualifications;

(1) be a person of at least 18 years of age, ~~in possession of all natural faculties, or ordinary intelligence,~~ and in such physically capable, and mentally condition-as-to-be competent and able to perform his duties as an outfitter;

(2) be a citizen of the United States and a resident of Montana; ~~for a full 2-years, unless the residency requirement is waived by the department,~~

(3) own or hold under written lease or represent a company, corporation, or partnership who owns or holds under written lease the equipment and facilities as are necessary to provide the services advertised, contracted for, or agreed upon between the outfitter and his clients (all equipment and facilities shall be subject to inspection at all reasonable times and places by the department or its designated agent);

(4) be a person who has demonstrated a respect for and compliance with the laws of any state or of the United States and all rules promulgated thereunder as to matters of fish and game, conservation of natural resources, and preservation of the natural ecosystem without pollution thereof;

(5) have not been convicted or forfeited bond of \$100 or more on more than one violation of the fish and game laws or applicable regulations relating to fish and game of any state or the United States within the past 5 years;

(6) have not, at any time, practiced fraud, deception or material misrepresentation in procuring any previous outfitter's, professional guides or conservation license from the state of Montana;

(7) have not, at any time, promulgated any false or misleading advertising relating to the business of outfitting;

(8) have not been finally adjudged by a court of law guilty of any sub-

stantial breach of written or oral contract with any person utilizing the applicant's services as an outfitter or professional guide during the license year immediately preceding that for which the application is made;

(9) have not committed any negligent act of misconduct while acting as an outfitter or professional guide which negligence or misconduct caused ~~a danger or unreasonable risk or danger~~ an accident or injury to person or property of any client of such outfitter or professional guide during the license year immediately preceding that for which the application is made;

(10) have not, at any time, ~~been convicted of~~ plead guilty to or have been adjudged by a court guilty of a felony, unless civil rights have been restored pursuant to law; nor may any ~~no~~ person ~~may~~ apply for or hold an outfitter's license during any period of time in which a deferred sentence, a suspended sentence, or a deferred imposition of sentence has been imposed for a felony.

(11) have substantially complied with all department regulations and state and federal laws concerning outfitters and professional guides, if the applicant has previously held a license as an outfitter or professional guide.

87-4-123. Professional guide's qualifications. (1) an applicant for a professional guide's license shall meet the following requirements:

(a) ~~be a person of at least 18 years of age, in possession of all natural faculties or ordinary intelligence, and in such~~ physically capable, and mentally competent as to be able to perform his duties as a professional guide;

(b) ~~be a citizen of the United States; and a resident of Montana as defined in 87-4-101,~~

(c) A ~~resident~~ professional guide shall have been issued a valid ~~resident~~ wildlife conservation license.

(3) have not been convicted or forfeited bond of \$100 or more on more than one violation of the fish and game laws of the state of Montana or the United States within the past 5 years.

(4) have not committed any negligent act of misconduct while acting as guide which negligence or misconduct caused an accident or injury to person or property of any client of such outfitter during the license year immediately preceding that for which the application is made;

(5) have not, at any time, plead guilty to or have been adjudged by a court guilty of a felony, unless civil rights have been restored pursuant to law nor may any person apply for or hold a professional guide's license during any period of time in which a deferred sentence, a suspended sentence, or a deferred imposition of sentence has been imposed for a felony.

(6) any outfitter or professional guide's license is subject to revocation under breach of any of these regulations or upon breach of any of the laws

of Montana relating to outfitting or guiding or upon the filing of a false application, report, or record materially false in any respect, and such false application, report, or record shall be a breach of these regulations.

87-4-124. Application. (1) Each applicant for an outfitter's or professional guide's license shall make application for license upon a form to be prescribed and furnished by the department which shall include:

(a) the applicant's full name, residence, address, conservation license number, driver's license number, telephone number, birth date and physical description;

(b) the address of his principal place of business in the state of Montana;

(c) the amount and kind of property and equipment owned and used in the outfitting business of the applicant, if an outfitter's license application is involved;

(d) the experience of the applicant, including years of experience as an outfitter or professional guide, knowledge of areas in which he has operated and intends to operate, and ability to cope with weather conditions and terrain;

(e) a signed statement of the licensed outfitter by whom the professional guide is to be employed that the professional guide is in fact to be employed by such outfitter and stating that the outfitter recommends the applicant for his qualifications;

(f) an affidavit by a warden the outfitter to the director that the equipment listed on the application ~~has been inspected by the warden and that the same is~~ in fact owned or leased by the applicant, is in good operating condition, and is sufficient and satisfactory for the services advertised or contemplated to be performed by such applicant. upon a form provided by the department.

(g) the written approval of the ~~rangers in whose district~~ appropriate federal agency or landowner on whose lands he will establish hunting camps. if the applicant intends to outfit on a national forest.

(2) Applications for outfitter's license shall be in the name of an individual person only. Applications involving corporations or partnerships shall be made by one individual person who qualified under the provision of this part; any license issued pursuant thereto shall be in the name of that person; and the license shall specifically state that the same is issued for the use and benefit of the named corporation or partnership involved. Any revocation or suspension of such a license is binding upon the individual person and the partnership or corporation for the use and benefit of which the license was originally issued.

(3) Application shall be made to and filed with the director.

(4) Only one application for an outfitter's or professional guide's license may be made any one license year. If any application is denied, subsequent applications by the same applicant for the license year involved are void, except as provided in 87-4-129.

87-4-125. Outfitter's examination. Each applicant for an outfitter's license shall pass a standard examination administered by the director or an agent designated by him, which examination shall require general and sufficient knowledge displaying and indicating ability to perform the services contemplated with efficiency and with safety to the health and welfare of persons employing such services. The examination shall test the applicant's knowledge of subjects which shall apply to the type of license applied for in the following subjects:

- (1) federal and state fish and game laws and regulations;
- (2) practical woodsmanship;
- (3) general knowledge of big game;
- (4) field preparation of trophies;
- (5) care of game meat;
- (6) use of outfitter's gear as ~~shown~~ listed on the application;
- (7) knowledge of area and terrain;
- (8) knowledge of firearms;
- (9) federal and state regulations as applicable to outfitting;
- (10) ~~practical~~ first aid;
- (11) boat safety;
- (12) water safety;
- (13) care and safety of livestock.

87-4-126. Residence requirements - waiver and reciprocity. (1) Residence requirements for procuring an outfitter's license are waived as to persons who are ~~citizens~~ bona fide residents of a common boundary state and of a common county thereof to the same extent the home state of the applicant waives such requirements for the residents of Montana, except for fee.

(2) For the purpose of obtaining a guide's license only, nonresident professional guides employed by resident outfitters shall be considered resident professional guides.

87-4-127. Fees. (1) Applications shall be accompanied by a license fee as herein stipulated, which will be refunded if and when the application is denied:

- (a) resident outfitter's license fee-----\$50;
- (b) resident professional guide's fee-----\$15;
- (c) nonresident outfitter's license fee-----\$150;
- (d) nonresident professional guide's fee-----\$100;

~~(2) --A-resident-guide's-license-is-a-valid-Montana-wildlife-conservation-license-~~

~~(3)~~ (2) If the nonresident resides in a state requiring residents of the state of Montana to pay in excess of such amounts for a similar license, the fee for such nonresident outfitters or professional guide's license shall be the same amount as the higher fee charged in the state where the nonresident resides. All fees collected under this part shall be deposited as provided in 87-1-601.

~~(4)~~ (3) The license fee shall be used to investigate the applicant, to enforce this part, and for administrative costs.

87-4-128. Investigation of applicant - issuance or denial of license.

(1) The director in his discretion may cause to be made such additional investigation and inquiry relative to the applicant for outfitter's or professional guide's license and an applicant's qualifications as he considers advisable.

(2) The director may deny or refuse to issue any new license or to renew any previous license if, in his opinion, the applicant does not meet the qualifications herein stated. In the event that any application for license is denied or refused, the director shall immediately notify the applicant, setting forth in the notice the grounds upon which the denial or refusal is based.

(3) Final decision as to issuance of renewal licenses shall be made not later than 30 days from the date of receipt of the completed application for renewal and not later than 90 days from the date of receipt of a completed application for a new license.

(4) A licensee in good standing is entitled to a new license for the ensuing license year upon complying with the provisions of this part and completing application for license renewal on form provided, but is exempt from having to retake the written examination.

(5) The outfitter licensee must make application for renewal between December 1 and January 1 annually. A penalty fee in the amount of fifty dollars shall be charged in addition to the regular resident or nonresident outfitters license whose application for such license is not complete by January 1 of the year in which the application is made; this does not apply to a new applicant for an outfitter's license.

87-4-129. Kinds of licenses. (1) After receipt of the application and when all the conditions and requirements of this part have been satisfied, the director shall issue either of the following licenses, depending upon his determination of the applicant's ability and the service that the applicant can perform with the equipment listed on his application:

(a) a general license authorizing him to perform all the functions of an outfitter as that term is defined in 87-4-101; or

(b) a special license authorizing him to perform only the function of outfitting listed on the license.

(2) The license shall be in the form prescribed and shall be valid for the licensing year in which issued.

(3) If the application is denied, the director shall notify the applicant in writing of the reasons for the denial; and if the reasons are corrected a license shall be issued upon reapplication thereof.

87-4-130. Professional guide's license. (1) For the purposes of this part, a person may serve as a professional guide under his employer's license, after submitting his application with the proper license fee, until the license is issued ~~or for 10 days after notification of the rejection of the license~~ or denied.

(2) To be valid, a professional guide's license must bear the signature and outfitter's license number of an the endorsing outfitter and is valid only while the holder of such license is employed by an the endorsing outfitter.

87-4-131. Transfer or amendment of outfitter's license. (1) No outfitter's license may be transferred during any license year.

(2) An individual person may, upon proper showing, have his outfitter's license amended to indicate that he is holding the license for the use and benefit of a named partnership or corporation.

(3) Exception - Deceased outfitter - an outfitter's license shall be deemed to be part of the estate of the deceased outfitter and subject to approval by the director, will allow the immediate family to outfit for the deceased outfitter's unexpired license year, until the heirs or administrators sell or re-license the outfitting business.

87-4-132. Limit one license. No person may hold more than one outfitter's license either for his own benefit or for the use and benefit of a partnership or corporation, nor may the name of any partnership or corporation appear on more than one current outfitter's license.

4-133. Expiration of license. Notwithstanding any other provision or law,
a license shall expire on the last day of the license year for which it was
issued.

87-4-141. Grounds for suspension or revocation of license. Every license or right to apply for and hold such license may be suspended or revoked upon any of the following grounds:

- (1) having ceased to meet all of the qualifications for holding a license;
- (2) fraud or deception in procuring a license;
- (3) fraudulent, untruthful, or misleading advertising;
- (4) ~~conviction of a felony, until civil rights are restored or until~~

~~time of any deferred sentence for a felony has expired,~~ have not, at any time, ~~been convicted of~~ plead guilty to or have been adjudged by a court guilty of a felony, unless civil rights have been restored pursuant to law; nor may any no person may apply for or hold an outfitter's license during any period of time in which a deferred sentence, a suspended sentence, or a deferred imposition of sentence has been imposed for a felony.

(5) have not been convicted or forfeited bond of \$100 or more on more than one violation of the fish and game laws or applicable regulations relating to fish and game of any state or the United States within the past 5 years;

(6) a substantial breach of any contract with any person utilizing services of the license holder provided that such breach is established as a matter of final judgement in a court of law;

(7) the willful employment of an unlicensed professional guide by an outfitter;

(8) negligence or misconduct while acting as an outfitter or professional guide which negligence or misconduct causes ~~a danger or unreasonable risk or danger~~ an accident or injury to person or property of any client of such outfitter or professional guide.

87-4-142. Procedure for suspension or revocation of license - reissuance.

(1) Proceedings for the revocation or suspension of a license issued hereunder may be taken upon charge or recommendation of any person. All such charges or recommendations must be made in writing, must state the facts upon which such charges or recommendation is based, and must be signed and sworn to by the person making the charge or recommendation. Any such charge or recommendation shall be filed with the director or his agent, the supervisor of outfitting. Thereupon, the director or his agent shall initiate a preliminary investigation of all facts in connection with the charge.

(2) A copy of all information shall be transmitted to the advisory-outfitter council. The advisory outfitter council may make recommendation as to the action to be taken. Any such recommendation shall be made in writing and delivered to the director within 20 days after date of transmittal of such information to the council.

(3) If the accusation be deemed to be unfounded or trivial, the director shall dismiss the same and will advise the licensee charged and the complaining party of the action. Should the director determine the charge or recommendation to have good cause and to be sufficiently founded he shall appoint a hearing officer who shall conduct a hearing on such charges in accordance with the administrative procedure act.

(4) The director thereupon shall cause a copy of the charge, recommendation of the council, and a record of the investigation to be served upon the licensee involved not less than 20 days prior to the day set for hearing thereon, which said hearing shall be before ~~the commission~~ an appointed hearing officer at a time and place set by such ~~commission~~ officer. At the hearing, the licensee involved may be represented by counsel. After full, fair, and impartial hearing, the ~~commission~~ director may suspend the accused's license.

or his right to hold a license for a period not to exceed 3 years, may order the license revoked, or may dismiss the charge or recommendation based upon the facts shown at the hearing.

(5) A revoked or suspended license may be reissued or reinstated at the discretion of the ~~commission~~ director.

87-4-143. Appeal procedure. Any person who feels aggrieved by the denial of issuance of a license or suspension or revocation of a license as an out-fitter or professional guide may appeal to the district court of the county of his residence within 30 days after the date of such action by filing with the clerk of said court a notice of appeal briefly setting forth the action complained of an appealed from. Summons and copy of the notice of appeal shall be served on the ~~commission~~ director, and all proceedings shall conform to the code of civil procedure of the state of Montana. Upon such appeal, the action shall be by trial de novo, and upon demand in writing, either party shall be entitled to trial by jury. The court may sustain or reverse the action of the ~~commission~~ director or take such other action as the court may deem just and proper. If the ~~commission~~ or the court has ordered a stay of any revocation or suspension and the ~~commission's~~ director's revocation or suspension is thereafter sustained by the court, the period of suspension or revocation shall begin with the first day after the court's action sustaining the decision of the ~~commission~~ director.

97-4-144. Enforcement. The warden or ~~ex-officio-warden~~ designated by the department to primarily administer outfitting and guiding laws and rules, other wardens, and all peace officers shall enforce this part.

2-15-3403. Montana outfitters' council. (1) There is a Montana outfitters' council.

(2) The council consists of seven members. Each member shall be a licensed outfitter and shall represent one of the seven fish and game administrative districts. A member shall be selected by the licensed outfitters residing in that district by election at an annual meeting of the outfitters to be held in the ~~district~~ regional headquarters city at ~~1:00-p.m.--on-the-second-Friday~~ during the month of March. A majority vote cast by written ballot of all the outfitters in attendance at the meeting shall determine the ~~member~~ delegate from the district. At the election an alternate member shall also be elected by written ballot to serve if the ~~first-elected member~~ ^{delegate} is unable to act.

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

(4) The council is allocated to the department.

(5) The council is not subject to the provisions of 2-15-122.

SENATE COMMITTEE FISH AND GAMEDate 2-3-81 1:00 PM Bill No. 1000 Time 1:00 PM

NAME	YES	NO
Smith, Ed, Chairman	✓	
Galt, Jack, Vice Chairman	✓	
Severson, Elmer	✓	
Lee, Gary	✓	
Eck, Dorothy	✓	
Berg, Harry	✓	
Jacobson, Judy	✓	

Jeanette G. Thornton
Secretary

Ed B. Smith
Chairman

Motion: Senator Lee moved that the committee have a bill
drafted reflecting the proposed changes as indicated in
Attachment #1, and introduce the bill in the 1981 session.

(include enough information on motion--put with yellow copy of committee report.)

Montana State Senate
State Capitol
Helena, Montana
Senator Ed Smith: Chairman

Re: Proposed amendment to Outfitter law.

This is a housecleaning proposal. Amendments to the Outfitter law have been thoroughly discussed during the past two years and it has been generally agreed to by the vast majority of Outfitters that these amendments are needed in order to clarify provisions of the law.

- 1- We do have serious problems with illegal, unlicensed Outfitters who are working out of their back pockets as "just a group of friends." The Forest Service estimated that nearly 50 per cent of the Outfitting on National Forest lands is being performed by the unlicensed Outfitter at a great loss of revenue to the economy of Montana. We need to strengthen the law to slow up illegal Outfitting.
- 2- A number of complaints are received by the Department of Fish, Wildlife and Parks complaining of unqualified Outfitters and Guides, amendments will assure higher qualifications of Outfitters and Guides.
- 3- Extensive delays in working through the Commission in order to obtain approval of investigations (the Commission only meet a few times a year) have resulted in causing several cases to be lost because time allowed by statutes had expired. One case was lost because of a felony sentence that had been deferred. Amendments close this loophole and permit expeditious handling of complaints.
- 4- Equal responsibility in the current law is too broad as it includes all laws of the United States. We have proposed that it should be limited to Montana Fish and Game laws.

Some controversy exists regarding the "Equal Responsibility" requirement. Some Outfitters object to this section on the basis that it should be a moral obligation. A few Outfitters involved in a violation and cited under this section also object.

Outfitters who like this section use it very effectively as an important management tool by informing clients that if the client commits a violation the Outfitter is required by law to turn in the violation and

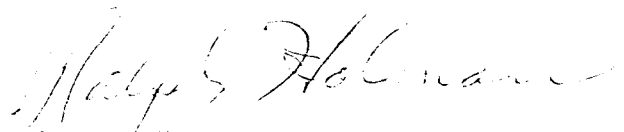
If the Outfitter doesn't his Outfitter license is in jeopardy.

The Montana Outfitters Council, after receiving assurance from the Department of Fish, Wildlife and Parks that they concur with terminology limiting same to Fish and Game laws of Montana and (2) that they would give us a letter of intent as to how this provision would be used voted 5 to 4 to retain Equal Responsibility.

Equal Responsibility has been a part of Fish and Game laws since 1917 and to the best of our knowledge no Outfitter has been cited under this provision if he reported a violation. We also agreed at our meeting this morning to ask your Committee to take a look at this provision and give us assistance and guidance on same.

It is our intent that by these amendments we will strengthen the Outfitter law, assure qualified Outfitters and Guides and upgrade our industry which is an important segment of Montana tourism and economy.

It is not our intent to interfere with the pleasures of a group of friends enjoying a field trip, and sharing expenses.



Ralph Holman, Chairman

Montana Outfitters Council

PRESENTED BY: James W. Flynn, Director
Dept. Fish, Wildlife, & Parks

February 3, 1981

SB 159

Mr. Chairman, members of the committee, my name is Jim Flynn. I appear today on behalf of the Montana Department of Fish, Wildlife, & Parks, and I speak in support of SB 159.

The department does receive complaints each year regarding the performance of some outfitters. Some of these complaints are relative to the areas covered by SB 159. The language of this bill, as it is presented, would assist the department to clarify some of the areas which are currently difficult to determine. For example, SB 159 provides for duties of outfitters and guides, as well as duties of their clients. There is a means for material understanding of outfitter and guide responsibilities, as well as the participant's responsibilities, before the services are provided.

I urge a do pass on SB 159. Thank you.

Montana State Senate
State Capital
Helena, Montana
Senate Fish and Game Committee

Senator Ed Smith: Chairman

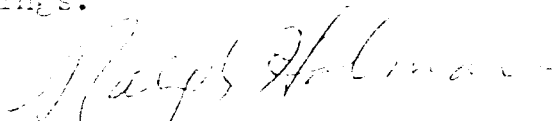
Re: S.B. 159

Members of the Montana Outfitters Council fully support this Bill. Outfitters on various occasions have problems with clients who want to dictate terms or rules to be applied at hunting and/or fishing camps, and actions of Guides.

Danger to client is generally involved, a client decides he wants to ride a certain horse, goes out and saddles him and gets bucked off or performs other acts which may be dangerous to himself and/or others.

Senate Bill 159 separates and defines liability and puts both the Outfitter and client on proper notice as to what liability each has.

Reply to question: We want to notify the client that he has a responsibility and a liability. We want to avoid the cost of going to Court, attorney fees, Court costs, lost time, etc. if possible. Senate Bill 159 will prevent many misunderstandings.



Ralph Holman, Chairman
Montana Outfitters Council

NAME: TAC RITTEL DATE: 2/3/81

ADDRESS: MONTANA OUTRITTERS AND GUIDES ASSOC
WOOD CREEK MT.

PHONE: 235-4370

REPRESENTING WHOM? M.O.G.A

APPEARING ON WHICH PROPOSAL: S.B. 159

DO YOU: SUPPORT? AMEND? OPPOSE?

COMMENTS: WE SUPPORT THIS BILL. THIS
BILL IS LONG IN COMING. WE ARE BEING
PRESSED BY HIGHER INSURANCE COST -
YEAR BY YEAR.

Mont. Outfitters & Guides Assn.

NAME: JACK Wemple, President DATE: Feb. 3, 1981

ADDRESS: RT 1, Box 100A-39 - Victor, Mont. 59875

PHONE: 406/642-3262

REPRESENTING WHOM? Montana Outfitters & Guides Assn.

APPEARING ON WHICH PROPOSAL: SB 159

DO YOU: SUPPORT? AMEND? OPPOSE?

COMMENTS: Our ^{Association} ~~industry~~ feels that SB159 is very beneficial to our industry. It is our belief that with this legislation it will be much easier for Outfitters to acquire liability insurance. As you are aware, Outfitters who operate on National Forest Lands are required to have liability insurance and are required to coinsure the U.S. Govt. In the past, this has made it difficult for new Outfitters to obtain insurance. With SB159, if passed, we are sure this problem will be sufficiently solved.

PLEASE LEAVE ANY PREPARED STATEMENTS WITH THE COMMITTEE SECRETARY

OUTIFTTTERS AND GUIDES LAW (A PROPOSAL)

SUMMARY--

Suggested changes in laws governing outfitters and guides. The revised copy would make the following changes:

1. 87-4-101
 - (a) "Advisory council" changed to "outfitter council."
 - (b) "License year" changed from May 1 through April 30, to January 1 through December 31.
 - (c) Deletes definitions of "resident guide."
2. Clarifies the language of 87-4-102 to consider advertising of services.
3. 87-4-104 deletes reference to "ex officio warden."
4. 87-4-105 adds "professional guide" along with reference to outfitters.
5. 87-4-121 deletes reference to "resident guides."
6. 87-4-122 clarifies qualifications of outfitter and inserts "professional" guide where necessary.
7. 87-4-123 clarifies qualifications of professional guide and adds requirements concerning any criminal record or other misconduct.
8. 87-4-128 provides for penalty fee of \$50 for any license renewal not complete by January 1.
9. 87-4-131 provides that license of deceased outfitter may become part of his estate and the Department may allow family members to complete license year.
10. 87-4-144 deletes reference to "ex officio warden."
11. 82-15-3403 revises section creating Montana Outfitters Council.

Changes in other sections appear to be "housekeeping" measures to conform to any substantive changes as mentioned above.

SENATE BILL 159 (Anderson)

SUMMARY--

As outlined in the "purpose" section of this bill, "some activities conducted by outfitters and guides within the scope of their activities are inherently hazardous to participants regardless of all feasible safety measures that can be taken." This bill would define the areas of responsibility and affirmative acts for which outfitters and guides are liable and those risks for which a participant expressly assumes the risks of loss or damage and for which there can be no recovery.

The duties of an outfitter or guide would include: acting reasonably prudent; and complying to all standards adopted by the department.

The duties of a participant would include: acting reasonably prudent; receiving permission from the outfitter or guide to embark on any self-initiated activity; not interfering with the operation of an outfitter or guide when he is performing his duties; not using equipment or facilities unless he possesses the ability to do so or has received sufficient instruction to permit safe usage; and not engaging in dangerous or harmful conduct.