SENATE BILL NO. 159

INTRODUCED BY M. ANDERSON

IN THE SENATE

January 16, 1981	Introduced and referred to Committee on Judiciary.
January 21, 1981	Rereferred to Committee on Fish and Game.
February 13, 1981	Committee recommend bill do pass. Report adopted.
February 14, 1981	Bill printed and placed on members' desks.
February 16, 1981	Second reading, do pass.
February 17, 1981	Correctly engrossed.
February 18, 1991	Third reading, passed. Ayes, 41; Noes, 8. Transmitted to House.
IN THE HOU	JS E
Pebruary 19, 1981	Introduced and referred to Committee on Judiciary.
March 11, 1981	Committee recommend bill be concurred in as amended. Report adopted.
March 14, 1981	Second reading, concurred in.
March 17, 1981	Third reading, concurred in as amended. Ayes, 82; Noes, 14.

IN THE SENATE

March 18, 1981

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Returned from House with amondments.

March 19, 1981

March 20, 1981

March 23, 1981

Second reading, pass consideration.

Second reading, amendments concurred in.

Third reading, amendments concurred in. Ayes, 48; Noes, 0. Sent to enrolling.

Reported correctly enrolled.

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1	BILL NO. 159
2	INTRODUCED BY TICK William
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4	A BILL FOR AN ACT ENTITLED: MAN ACT DEFINING THE SCOPE OF
5	LIABILITY FOR OUTFITTERS AND GUIDES AND THE RESPONSIBILITY
6	AND RISK BORNE BY PARTICIPANTS; AMENDING SECTION 87-4-101,
7	MCA."
8	
9	BE IT ENACTED BY THE LEGISL/TURE OF THE STATE OF MONTANA:
LO	Saction 1. Section 87-4-101, MCA, is amended to read:
11	♥ð7-4-101₀ Definitions₀ As used in this part, unless
12	the context requires otherwise, the following definitions
13	app1y:
14	 "Advisory council" means the Montana outfitters"
15	council provided for in 2-15-3403.
6	(2) "License year" means that period commencing May 1
7	and ending April 30 of the next year.
13	(3) "Nonresident" means a person other than a
19	resident.
20	(4) "Cutfitter" means any person, persons, company, or
21	corporation who:
22	(a) engages in the business of outfitting for hunting
23	or fishing parties, as the term is commonly understood;
24	(b) for consideration provides 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 nunt, trap, capture, take, or kill
 any game;

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4 (c) for consideration furnishes a boat or other 5 floating craft and accompanies any person for the purpose of 6 catching fish; or

7 (d) aids or assists any person in locating or pursuing
8 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.

14 (6) "Resident" means a person who qualifies for a
15 resident Montana hunting or fishing license under 87-2-102.
16 (7) "Resident guide" means a resident who guides
17 resident or nonresident friends for the purpose of hunting
18 game animals without compensation.

19 (8) "Participant" means a person using the services

20 offered by a licensed outfitter or professional guide."

21 <u>NEW_SECTIONs</u> Section 2. Purpose. It is recognized 22 that some activities conducted by outfitters and guides 23 within the scope of their authorized services are inherently 24 hazardous to participants regardless of all feasible safety 25 measures that can be taken. It is the purpose of [this act]

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to define those areas of responsibility and affirmative acts for which outfitters and guides are liable for loss, damage, or injury and those risks for which the participant expressly assumes or shall be considered to have voluntarily assumed the risk of loss or damage and for which there can be no recovery.

NEW_SECTION. Section 3. Duties of outfitters and
 guides. An outfitter or guide offering professional services
 in this state shall:

10 (1) act as would a reasonably prudent member of his 11 respective profession while engaging in providing the 12 services authorized to be performed by a licensed member of 13 his profession;

14 (2) comply with all standards adopted by rule by the15 department of fish, wildlife, and parks.

16 <u>NEW_SECTION</u> Section 4. Duties of participants. (1) A 17 participant shall:

18 (a) act as would a reasonably prudent person when
19 engaging in the activities offered by a licensed outfitter
20 or quide in this state;

(b) receive permission from the outfitter or duide
prior to embarking on any self-initiated activity and inform
the outfitter or guide of his plans and intentions upon
receiving permission to engage in such self-initiated
activity.

1 (2) A participant may not:

2 (a) interfere with the running or operation of an outfitter's or auide's activities when such activities З conform to the standards of care set forth in [section 3]; 4 (b) use the outfitter's or quide's equipment, 5 facilities, or services unless the participant possesses the 6 7 ability to use such equipment, facilities, or services 8 safely or unless he has requested and received sufficient instruction from the outfitter or quide to permit safe 9 10 usage;

11 (c) engage in any dangerous or harmful conduct or 12 knowingly, purposely, or negligently engage in any type of 13 conduct that contributes to or causes injury to any other 14 person.

15 NEW SECTION. Section 5. Limitation on liability. An outfitter or quide is not liable for injuries caused by 16 17 breach of a participant's duty as defined in [section 4]. If 18 damage or injury occurs to a participant through the actions 19 of an outfitter or quide and there is no exemption from liability for such outfitter or guide, 27-1-702 and 27-1-703 20 21 apply. The limitations on liability created by this section 22 apply to a licensed outfitter or guide only when such 23 outfitter or cuide is acting within the course and scope of his employment. 24

25 Section 6. Codification. Sections 2 through 5 are

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intended to be codified as an integral part of Title 87,
 chapter 4, part 1, and the provisions of Title 87, chapter
 4, part 1, apply to sections 1 through 5.
 Section 7. Saving clause. This act does not affect
 rights and duties that matured, penalties that were
 incurred, or proceedings that were begun before the
 affective date of this act.

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Approved by Comm. on Fish and Game

hat BILL NO. 159 1 INTRODUCED BY 2 3 A BILL FOR AN ACT ENTITLED: "AN ACT DEFINING THE SCOPE OF 4 LIABILITY FOR OUTFITTERS AND GUIDES AND THE RESPONSIBILITY 5 AND RISK BORNE BY PARTICIPANTS; AMENDING SECTION 87-4-101, 6 7 MCA. 8 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA: 9 10 Section 1. Section 87-4-101, MCA, is amended to read: #87-4-101. Definitions. As used in this part, unless 11 the context requires otherwise, the following definitions 12 13 apply: (1) "Advisory council" means the Nontana outfitters" 14 15 council provided for in 2-15-3403. (2) "License year" means that period commencing May 1 16 17 and ending April 30 of the next year. 13 (3) "Nonresident" means a person other than a resident. 19 (4) "Outfitter" means any person, persons, company, or 20 21 corporation who: (a) engages in the business of outfitting for hunting 22 or fishing parties, as the term is commonly understood; 23 (b) for consideration provides any saddle or pack 24 animal or personal service for hunting or fishing parties or 25

camping equipment, vehicles, or other conveyance, except
 boats, for any person to hunt, trap, capture, take, or kill
 any game;

4 (c) for consideration furnishes a boat or other 5 floating craft and accompanies any person for the purpose of 6 catching fish; or

7 (d) aids or assists any person in locating or pursuing
8 any game animal.

9 (5) "Professional guide" means a person who is an 10 employee of an outfitter and who furnishes only personal 11 guiding services in assisting a person to hunt or take game 12 animals or fish and who does not furnish any facilities, 13 transportation, or equipment.

14 (6) "Resident" means a person who qualifies for a
15 resident Montana hunting or fishing license under 87-2-102.
16 (7) "Resident guide" means a resident who guides
17 resident or nonresident friends for the purpose of hunting
18 game animals without compensation.

19 <u>(B) "Participant" means a person using the services</u>
 20 <u>offered by a licensed outfitter or professional culde."</u>

21 <u>NEW SECTION</u> Section 2. Purpose. It is recognized 22 that some activities conducted by outfitters and guides 23 within the scope of their authorized services are inherently 24 hazardous to participants regardless of all feasible safety 25 measures that can be taken. It is the purpose of [this act]

-2- SECOND READING

SB 159

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to define those areas of responsibility and affirmative acts for which outfitters and guides are liable for loss, damage, or injury and those risks for which the participant expressly assumes or shall be considered to have voluntarily assumed the risk of loss or damage and for which there can be no recovery.

7 <u>NEW SECTION</u> Section 3. Duties of outfitters and
8 guides. An outfitter or guide offering professional services
9 in this state shall:

10 (1) act as would a reasonably prudent member of his 11 respective profession while engaging in providing the 12 services authorized to be performed by a licensed member of 13 his profession;

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prior to embarking on any self-initiated activity and inform
the outfitter or guide of his plans and intentions upon
receiving permission to engage in such self-initiated
activity.

(2) A participant may not:

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2 (a) interfere with the running or operation of an 3 outfitter's or quide's activities when such activities conform to the standards of care set forth in [section 3]; 4 5 (b) use the outfitter's or quide's equipment, facilities, or services unless the participant possesses the 6 7 ability to use such equipment, facilities, or services safely or unless he has requested and received sufficient 8 9 instruction from the outfitter or guide to permit safe 10 usage;

11 (c) engage in any dangerous or harmful conduct or 12 knowingly, purposely, or negligently engage in any type of 13 conduct that contributes to or causes injury to any other 14 person.

15 NEW_SECTION. Section 5. Limitation on liability. An outfitter or guide is not liable for injuries caused by 16 17 breach of a participant's duty as defined in [section 4]. If 18 damage or injury occurs to a participant through the actions of an outfitter or quide and there is no exemption from 19 liability for such outfitter or guide, 27-1-702 and 27-1-703 20 apply. The limitations on liability created by this section 21 22 apply to a licensed outfitter or guide only when such 23 outfitter or quide is acting within the course and scope of his employment. 24

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 chapter 4, part 1, and the provisions of Title 87, chapter
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4 Section 7. Saving clause. This act does not affect 5 rights and duties that matured, penalties that were 6 incurred, or proceedings that were begun before the 7 effective date of this act.

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-2- THIRD READING 5B 159

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SB 0159/02

1 SENATE BILL NO. 159 2 INTRODUCED BY M. ANDERSON 3 any game; 4 A BILL FOR AN ACT ENTITLED: "AN ACT DEFINING THE SCOPE OF 5 LIABILITY FOR OUTFITTERS AND GUIDES AND THE RESPONSIBILITY 6 catching fish; or AND RISK BORNE BY PARTICIPANTS; AND CLARIFYING THE 7 DEFINITION OF OUTFITTER; AMENDING SECTION 87-4-101, MCA." A 9 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA: 10 Section 1. Section 87-4-101, MCA, is amended to read: 11 *87-4-101. Definitions. As used in this part, unless the context requires otherwise, the following definitions 12 13 apply: (1) "Advisory council" means the Montana outfitters' 14 council provided for in 2-15-3403. 15 (2) "License year" means that period commencing May 1 16 and ending April 30 of the next year. 17 (3) "Nonresident" means a person other than a 18 resident. 19 (4) "Outfitter" means any person+ persons, company, or 20 offered by a licensed outfitter or professional guide." 21 corporation who: (a) engages in the business of outfitting for hunting 22 23 or fishing parties, as the term is commonly understood; (b) for consideration provides any saddle or pack 24 25 animal or personal service for hunting or fishing parties or

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REFERENCE BILL

SB 159

SB 0159/02

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rights and duties that matured, penalties that were
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effective date of this act.

-End-

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JUDICIARY COMMITTEE	March 10, 1981		
HOUSE AMENDMENTS TO:			
Respectfully report as follows: That SENATE	Bill No		
BE AMENDED AS FOLLOWS:	•		
<pre>1. Title, line 6. Following: ";" Insert: "AND CLARIFYING THE DEFINITION</pre>	OF OUTFITTER;"		
2. Page 2, line 7. Following: "(d)" Insert: "for consideration"			
3. Page 3, line l. Following: "acts" Insert: "or omissions"			
4. Page 3, lines 5 and 6. Following: "damage" on line 5 Strike: remainder of line 5 through "r	ecovery" on line 6		
5. Page 4, lines 6 through 8. Following: "participant" on line 6 Strike: remainder of line 6 through " Following: "received" on line 8 Strike: "sufficient"	he" on line 8		
6. Page 4, line 9. Following: line 8 Strike: "instruction" Insert: "permission" Following: "guide" Strike: "to permit safe"			
7. Page 4, line 10. Following: line 9 Strike: "usage"			
8. Page 4, line ll. Following: "(c)" Strike: remainder of line ll			
9. Page 4, line 13. Following: "injury to" Insert: "himself or"			
<pre>10. Page 4, lines 15 through 24. Strike: Section 5 in its entirety Renumber: subsequent sections</pre>			
<pre>11. Page 4, line 25. Following: "through" Strike: "5" Insert: "4"</pre>			
12. Page 5, line 3. Following: "through" Strike: "5" Insert: "4"			

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