

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, 1981	Third reading, passed. Ayes, 41; Noes, 8. Transmitted to House.

IN THE HOUSE

February 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	Returned from House with amendments.
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March 19, 1981	Second reading, pass consideration.
March 20, 1981	Second reading, amendments concurred in.
March 23, 1981	Third reading, amendments concurred in. Ayes, 48; Noes, 0. Sent to enrolling.
	Reported correctly enrolled.

*Senate* BILL NO. 159  
*Introduced by Mike Johnson*

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INTRODUCED BY Mike Johnson

A BILL FOR AN ACT ENTITLED: "AN ACT DEFINING THE SCOPE OF LIABILITY FOR OUTFITTERS AND GUIDES AND THE RESPONSIBILITY AND RISK BORNE BY PARTICIPANTS; AMENDING SECTION 87-4-101, MCA."

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

Section 1. Section 87-4-101, MCA, is amended to read:

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

(1) "Advisory council" means the Montana outfitters' council provided for in 2-15-3403.

(2) "License year" means that period commencing May 1 and ending April 30 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 any saddle or pack animal or personal service for hunting or fishing parties or

1 camping equipment, vehicles, or other conveyance, except  
2 boats, for any person to hunt, trap, capture, take, or kill  
3 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 (8) "Participant" means a person using the services  
20 offered by a licensed outfitter or professional guide."

21 NEW SECTION. 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]

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

7 NEW SECTION. 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;

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

16 NEW SECTION. 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 guide in this state;

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

1 (2) A participant may not:  
 2 (a) interfere with the running or operation of an  
 3 outfitter's or guide's activities when such activities  
 4 conform to the standards of care set forth in [section 3];  
 5 (b) use the outfitter's or guide's equipment,  
 6 facilities, or services unless the participant possesses the  
 7 ability to use such equipment, facilities, or services  
 8 safely or unless he has requested and received sufficient  
 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  
 16 outfitter or guide is not liable for injuries caused by  
 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 guide and there is no exemption from  
 20 liability for such outfitter or guide, 27-1-702 and 27-1-703  
 21 apply. The limitations on liability created by this section  
 22 apply to a licensed outfitter or guide only when such  
 23 outfitter or guide is acting within the course and scope of  
 24 his employment.

25 Section 6. Codification. Sections 2 through 5 are

1 intended to be codified as an integral part of Title 87,  
2 chapter 4, part 1, and the provisions of Title 87, chapter  
3 4, part 1, apply to sections 1 through 5.

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.

--End--

Approved by Comm.  
on Fish and Game

*Asa* BILL NO. 159

INTRODUCED BY *Mike Lundquist*

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4 A BILL FOR AN ACT ENTITLED: "AN 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 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  
12 the context requires otherwise, the following definitions  
13 apply:

14 (1) "Advisory council" means the Montana outfitters'  
15 council provided for in 2-15-3403.

16 (2) "License year" means that period commencing May 1  
17 and ending April 30 of the next year.

18 (3) "Nonresident" means a person other than a  
19 resident.

20 (4) "Outfitter" 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  
25 animal or personal service for hunting or fishing parties or

1 camping equipment, vehicles, or other conveyance, except  
2 boats, for any person to hunt, trap, capture, take, or kill  
3 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 (8) "Participant" means a person using the services  
20 offered by a licensed outfitter or professional guides."

21 NEW SECTION. 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

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

7 NEW SECTION. 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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15 department of fish, wildlife, and parks.

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17 participant shall:

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22 prior to embarking on any self-initiated activity and inform  
23 the outfitter or guide of his plans and intentions upon  
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25 activity.

1 (2) A participant may not:  
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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  
16 outfitter or guide is not liable for injuries caused by  
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18 damage or injury occurs to a participant through the actions  
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21 apply. The limitations on liability created by this section  
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4 Section 7. Saving clause. This act does not affect  
5 rights and duties that matured, penalties that were  
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-2- THIRD READING  
SB 159

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-End-

SB 159

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INTRODUCED BY M. ANDERSON

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2 boats, for any person to hunt, trap, capture, take, or kill  
3 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) FOR CONSIDERATION aids or assists any person in  
8 locating or pursuing any game animal.

9               (5) "Professional guide" means a person who is an  
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 2 OR OMISSIONS for which outfitters and guides are liable for  
 3 loss, damage, or injury and those risks for which the  
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 5 voluntarily assumed the risk of loss or damage and-for-which  
 6 there-can-be-no-recovery.

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

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 11 respective profession while engaging in providing the  
 12 services authorized to be performed by a licensed member of  
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 15 department of fish, wildlife, and parks.

16 NEW SECTION. Section 4. Duties of participants. (1) A  
 17 participant shall:

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 19 engaging in the activities offered by a licensed outfitter  
 20 or guide in this state;

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 22 prior to embarking on any self-initiated activity and inform  
 23 the outfitter or guide of his plans and intentions upon  
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 25 activity.

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

15 NEW SECTION. Section 5. Limitation on liability. An  
 16 outfitter-or-guide-is-not-liable-for-injuries-caused-by  
 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-guide-and-there-is-no-exemption-from  
 20 liability-for-such-outfitter-or-guide-27-1-702-and-27-1-703  
 21 apply--the-limitations-on-liability-created-by-this-section  
 22 apply-to-a-licensed-outfitter-or-guide-only--when-such  
 23 outfitter-or-guide-is-acting-within-the-course-and-scope-of  
 24 his employment.

25 Section 5. Codification. Sections 2 through 5 are

1 intended to be codified as an integral part of Title 87,  
2 chapter 4, part 1, and the provisions of Title 87, chapter  
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4 Section 6. 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.

-End-

HOUSE AMENDMENTS TO:

Respectfully report as follows: That.....SENATE

Bill No. .... 159

BE AMENDED AS FOLLOWS:

1. Title, line 6.

Following: ";"

Insert: "AND CLARIFYING THE DEFINITION OF OUTFITTER;"

2. Page 2, line 7.

Following: "(d)"

Insert: "for consideration"

3. Page 3, line 1.

Following: "acts"

Insert: "or omissions"

4. Page 3, lines 5 and 6.

Following: "damage" on line 5

Strike: remainder of line 5 through "recovery" on line 6

5. Page 4, lines 6 through 8.

Following: "participant" on line 6

Strike: remainder of line 6 through "he" on line 8

Following: "received" on line 8

Strike: "sufficient"

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 11.

Following: "(c)"

Strike: remainder of line 11

9. Page 4, line 13.

Following: "injury to"

Insert: "himself or"

10. Page 4, lines 15 through 24.

Strike: Section 5 in its entirety

Renumber: subsequent sections

11. Page 4, line 25.

Following: "through"

Strike: "5"

Insert: "4"

12. Page 5, line 3.

Following: "through"

Strike: "5"

Insert: "4"