

**SENATE BILL NO. 459**

**INTRODUCED BY E. SMITH, LEE, GALT**

**BY REQUEST OF  
THE SENATE COMMITTEE ON FISH AND GAME**

**IN THE SENATE**

<b>February 13, 1981</b>	<b>Introduced and referred to Committee on Fish and Game.</b>
<b>February 16, 1981</b>	<b>Committee recommend bill do pass as amended. Report adopted.</b>
<b>February 17, 1981</b>	<b>Bill printed and placed on members' desks.</b>
<b>February 18, 1981</b>	<b>Second reading, do pass as amended.</b>  <b>Segregated.</b>
<b>February 19, 1981</b>	<b>Second reading, do pass as amended.</b>
<b>February 21, 1981</b>	<b>Correctly engrossed.</b>
<b>February 23, 1981</b>	<b>Third reading, passed. Ayes, 48; Noes, 1. Transmitted to House.</b>

**IN THE HOUSE**

<b>February 23, 1981</b>	<b>Introduced and referred to Committee on Judiciary.</b>
<b>February 24, 1981</b>	<b>Rereferred to Committee on Fish and Game.</b>
<b>March 4, 1981</b>	<b>Committee recommend bill be concurrred in as amended. Report adopted.</b>

March 5, 1981 Motion pass consideration.  
March 6, 1981 Second reading, concurred in.  
March 10, 1981 Third reading, concurred in  
as amended. Ayes, 96; Noes, 1.

#### IN THE SENATE

March 11, 1981 Returned from House with  
amendments.  
March 13, 1981 Second reading, amendments  
concurred in.  
March 14, 1981 Third reading, amendments  
concurred in. Ayes, 46;  
Noes, 0. Sent to enrolling.  
March 18, 1981 Correctly enrolled.  
Signed by President.  
Delivered to Governor.  
March 24, 1981 Returned from Governor with  
recommended amendments.  
April 3, 1981 Second reading, Governor's  
amendments concurred in.  
April 6, 1981 Third reading, Governor's  
amendments concurred in.  
Ayes, 48; Noes, 0. Trans-  
mitted to House.

#### IN THE HOUSE

April 21, 1981 Second reading, Governor's  
amendments concurred in.  
On motion rules suspended  
and Governor's amendments  
placed on third reading this  
day.  
Third reading, Governor's  
amendments concurred in.  
Ayes, 86; Noes, 7.

**IN THE SENATE**

**April 22, 1981**

**Returned from House. Sent  
to enrolling.**

**Reported correctly enrolled.**

1 *Senate* BILL NO. *459*  
 2 INTRODUCED BY *Smith Lee* *Felt*

3 BY REQUEST OF  
 4 THE SENATE COMMITTEE ON FISH AND GAME

6 A BILL FOR AN ACT ENTITLED: "AN ACT TO GENERALLY REVISE THE  
 7 LAWS GOVERNING OUTFITTERS AND GUIDES IN THE STATE OF  
 8 MONTANA; AMENDING SECTIONS 2-15-3403, 87-4-101 THROUGH  
 9 87-4-106, 87-4-121 THROUGH 87-4-128, 87-4-130, 87-4-131, AND  
 10 87-4-141 THROUGH 87-4-144, MCA."

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

13 Section 1. Section 2-15-3403, MCA, is amended to read:  
 14 "2-15-3403. Montana outfitters' council. (1) There is  
 15 a Montana outfitters' council.

16 (2) The council consists of seven members. Each member  
 17 shall be a licensed outfitter and shall represent one of the  
 18 seven fish and game administrative districts. A member shall  
 19 be selected by the licensed outfitters residing in that  
 20 district by election at an annual meeting of the outfitters  
 21 to be held in the city where the district regional  
 22 headquarters at 1:00 p.m. on the second Friday is located  
 23 during the month of March. A majority vote cast by written  
 24 ballot of all the outfitters in attendance at the meeting  
 25 shall determine the member delegates from the district. At

1 the election an alternate member delegate shall also be  
 2 elected by written ballot to serve if the first-elected  
 3 member delegate is unable to act.

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

6 (4) The council is allocated to the department.

7 (5) The council is not subject to the provisions of  
 8 2-15-122."

9 Section 2. Section 87-4-101, MCA, is amended to read:  
 10 "87-4-101. Definitions. As used in this part, unless  
 11 the context requires otherwise, the following definitions  
 12 apply:

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

15 (2)(1) "License year" means that period commencing May  
 16 1 January 1 and ending April 30 December 31 of the next same  
 17 year.

18 (3)(2) "Nonresident" means a person other than a  
 19 resident.

20 (4)(3) "Outfitter" means any person, persons, company,  
 21 or 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

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1 camping equipment, vehicles, or other conveyance, except  
 2 boats, for any person to hunt, trap, capture, take, or kill  
 3 any game ~~and accompanies such a party or person on an~~  
 4 ~~expedition for any of these purposes;~~

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

8 (d) ~~for consideration~~ aids or assists any person in  
 9 locating or pursuing any game animal.

10 ~~(4) "Outfitters' council" means the Montana~~  
 11 ~~outfitters' council provided for in 2-15-3403.~~

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

17 (6) "Resident" means a person who qualifies for a  
 18 resident Montana hunting or fishing license under 87-2-102.

19 ~~(7) "Resident guide" means a resident who guides~~  
 20 ~~resident or nonresident friends for the purpose of hunting~~  
 21 ~~game animals without compensation."~~

22 Section 3. Section 87-4-102, MCA, is amended to read:

23 "87-4-102. Determination of what constitutes  
 24 consideration. The providing of the services, property, or  
 25 equipment mentioned in 87-4-101(4) or the advertising of

1 ~~services to assist persons to hunt, pursue, or take wildlife~~  
 2 ~~or to fish~~ shall be conclusively presumed to have been for  
 3 consideration for the purposes of this part ~~if the same or~~  
 4 ~~any thereof are provided by any person, company, or~~  
 5 ~~corporation for more than two parties or two other persons~~  
 6 ~~during any calendar year or on more than two occasions~~  
 7 ~~during any such calendar year."~~

8 Section 4. Section 87-4-103, MCA, is amended to read:

9 "87-4-103. Responsibility for violations of law. (1)  
 10 Any person accompanying a hunting or fishing party as an  
 11 outfitter or agent or employee of such outfitter shall be  
 12 equally responsible with any person or party employing him  
 13 as an outfitter for any violation of ~~the law~~ fish and game  
 14 laws; any such outfitter or employee of such outfitter who  
 15 shall willfully fail to or refuse to report any violation of  
 16 ~~the law~~ fish and game laws shall be liable to the penalties  
 17 as herein provided. If any professional guide commits any  
 18 violation of the laws or applicable regulations relating to  
 19 fish and game, outfitting, or guiding with actual or implied  
 20 knowledge of an outfitter then employing such guide, the  
 21 outfitter is legally responsible for such violation for all  
 22 purposes under the laws or regulations if the outfitter  
 23 fails to report any such violation to proper authority.

24 (2) No person may hire or retain any outfitter or  
 25 professional guide unless the outfitter or professional

1 guide is currently licensed in accordance with the laws of  
2 the state of Montana."

3 Section 5. Section 87-4-104, MCA, is amended to read:  
4 "87-4-104. Powers and duties of department relating to  
5 outfitters and guides. The department shall:

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

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

19 (3) establish a minimum of two meetings annually with  
20 the advisory outfitters' council;

21 (4) consult with the advisory outfitters' council to  
22 develop policy concerning the administration of outfitting;

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

1 Section 6. Section 87-4-105, MCA, is amended to read:  
2 "87-4-105. Outfitters' council. The council shall have  
3 the authority and duty to make recommendations to the  
4 department and the director as to:

5 (1) outfitter standards and professional guide  
6 standards;

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

13 (3) hearings and proceedings to suspend or revoke  
14 licenses of outfitters and professional guides and to  
15 recommend suspension or revocation of licenses for due  
16 cause;

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

22 Section 7. Section 87-4-106, MCA, is amended to read:  
23 "87-4-106. Authorization for rules. The department may  
24 adopt, promulgate, and enforce rules recommended by the  
25 advisory outfitters' council as provided in 87-4-105 and all

1 other rules it may consider proper for the administration  
 2 and enforcement of the provisions of this part and the  
 3 regulation of outfitting and guiding to provide for the  
 4 services to the public."

5 Section 8. Section 87-4-121, MCA, is amended to read:

6 "87-4-121. License required -- services performed --  
 7 standards. (1) No person may act as an outfitter or  
 8 professional guide ~~or resident guide~~ or advertise as an  
 9 outfitter without first securing a license in accordance  
 10 with the provisions of this part.

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

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

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

25 (5) An outfitter may not willfully and substantially

1 misrepresent his facilities, prices, equipment, services, or  
 2 hunting or fishing opportunities.

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

6 Section 9. Section 87-4-122, MCA, is amended to read:

7 "87-4-122. Outfitter's qualifications. Each applicant  
 8 for and holder of an outfitter's license or any renewal  
 9 thereof shall, in the opinion of the director, meet the  
 10 following qualifications:

11 (1) be a person of at least 18 years of age ~~in~~  
 12 ~~possession of all natural faculties, of ordinary~~  
 13 ~~intelligence, and in such physical condition as to be able~~  
 14 who is physically capable and mentally competent to perform  
 15 his duties as an outfitter;

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

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

1 designated agent);

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

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

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

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

19 (8) have not been finally adjudged by a court of law  
20 guilty of any substantial breach of written or oral contract  
21 with any person utilizing the applicant's services as an  
22 outfitter or professional guide during the license year  
23 immediately preceding that for which the application is  
24 made;

25 (9) have not committed any negligent act or misconduct

1 while acting as an outfitter or professional guide which  
2 negligence---or---misconduct that caused a danger or  
3 unreasonable risk of danger to person or property of any  
4 client of such outfitter or professional guide during the  
5 license year immediately preceding that for which the  
6 application is made;

7 (10) have not, at any time, been convicted pleaded  
8 guilty to or been adjudged by a court guilty of a felony,  
9 unless civil rights have been restored pursuant to law. No  
10 person may apply for or hold an outfitter's license during  
11 any period of time in which a deferred sentence has been  
12 imposed deferred or suspended for a felony.

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

17 Section 10. Section 87-4-123, MCA, is amended to read:

18 "87-4-123. Professional guide's qualifications. (1) An  
19 applicant for a professional guide's license shall meet the  
20 following requirements:

21 (a) be a person of at least 18 years of age ~~in~~  
22 ~~possession---of---all---natural---faculties,---of---ordinary~~  
23 ~~intelligency---and---in---such---physical---condition---as---to---be---able~~  
24 who is physically capable and mentally competent to perform  
25 his duties as a professional guide;



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

3 (c) be endorsed and recommended by an outfitter with a  
4 valid license;

5 ~~(d) have not been convicted or forfeited bond of \$100~~  
6 ~~or more on more than one violation of the fish and game laws~~  
7 ~~or applicable regulations of the state of Montana or the~~  
8 ~~United States within the past 5 years;~~

9 ~~(e) have not committed any negligent act or misconduct~~  
10 ~~while acting as a guide that caused an accident or injury to~~  
11 ~~person or property of any client of an outfitter during the~~  
12 ~~license year immediately preceding that for which the~~  
13 ~~application is made;~~

14 ~~(f) have not, at any time, pleaded guilty to or been~~  
15 ~~adjudged by a court guilty of a felony, unless civil rights~~  
16 ~~have been restored pursuant to law. No person may apply for~~  
17 ~~or hold a professional guide's license during any period of~~  
18 ~~time in which a sentence has been deferred or suspended for~~  
19 ~~a felony.~~

20 (2) A resident professional guide shall have been  
21 issued a valid resident wildlife conservation license."

22 Section 11. Section 87-4-124, MCA, is amended to read:

23 "87-4-124. Application. (1) Each applicant for an  
24 outfitter's or professional guide's license shall make  
25 application for license upon a form to be prescribed and

1 furnished by the department which shall include:

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

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

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

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

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

20 (f) ~~a statement an affidavit on a form provided by the~~  
21 ~~department by a--warden the outfitter~~ to the director that  
22 the equipment listed on the application ~~has--been--inspected~~  
23 ~~by--the--warden--and--that--the--same~~ is in fact owned or leased  
24 by the applicant, is in good operating condition, and is  
25 sufficient and satisfactory for the services advertised or

1 contemplated to be performed by such applicant;

2 (g) a statement of the maximum number of guests to be  
3 taken at any one time;

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

8 (2) Applications for outfitter's license shall be in  
9 the name of an individual person only. Applications  
10 involving corporations or partnerships shall be made by one  
11 individual person who qualifies under the provisions of this  
12 part; any license issued pursuant thereto shall be in the  
13 name of that person; and the license shall specifically  
14 state that the same is issued for the use and benefit of the  
15 named corporation or partnership involved. Any revocation or  
16 suspension of such a license is binding upon the individual  
17 person and the partnership or corporation for the use and  
18 benefit of which the license was originally issued.

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

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

1 Section 12. Section 87-4-125, MCA, is amended to read:

2 "87-4-125. Outfitter's examination. Each applicant for  
3 an outfitter's license shall pass a standard examination  
4 administered by the director or an agent designated by him,  
5 which examination shall require general and sufficient  
6 knowledge displaying and indicating ability to perform the  
7 services contemplated with efficiency and with safety to the  
8 health and welfare of persons employing such services. The  
9 examination shall test the applicant's knowledge of subjects  
10 which shall apply to the type of license applied for in the  
11 following subjects:

12 (1) federal and state fish and game laws and  
13 regulations;

14 (2) practical woodsmanship;

15 (3) general knowledge of big game;

16 (4) field preparation of trophies;

17 (5) care of game meat;

18 (6) use of outfitter's gear as shown listed on the  
19 application;

20 (7) knowledge of area and terrain;

21 (8) knowledge of firearms;

22 (9) federal and state regulations as applicable to  
23 outfitting;

24 (10) ~~practical~~ first aid;

25 boat safety;

1 ~~(12) water safety;~~  
 2 ~~(13) care and safety of livestock."~~  
 3 Section 13. Section 87-4-126, MCA, is amended to read:  
 4 "87-4-126. Residence requirements -- waiver and  
 5 reciprocity. (1) Residence requirements for procuring an  
 6 outfitter's license are waived as to persons who are  
 7 citizens bona fide residents of a common boundary state and  
 8 of a common county thereof to the same extent the home state  
 9 of the applicant waives such requirements for the residents  
 10 of Montana, except for fee.  
 11 (2) For the purpose of obtaining a professional  
 12 guide's license only, nonresident professional guides  
 13 employed by resident outfitters shall be considered resident  
 14 professional guides."  
 15 Section 14. Section 87-4-127, MCA, is amended to read:  
 16 "87-4-127. Fees. (1) Applications shall be accompanied  
 17 by a license fee as herein stipulated, which will be  
 18 refunded if and when the application is denied:  
 19 (a) resident outfitter's license fee.....\$50;  
 20 (b) resident professional guide's fee.....\$15;  
 21 (c) nonresident outfitter's license fee.....\$150;  
 22 (d) nonresident professional guide's fee.....\$100.  
 23 ~~(2) A resident guide's license is a valid Montana~~  
 24 ~~wildlife conservation license~~  
 25 ~~(3) If the nonresident resides in a state requiring~~

1 residents of the state of Montana to pay in excess of such  
 2 amounts for a similar license, the fee for such nonresident  
 3 ~~outfitters~~ outfitter's or ~~guides~~ professional guide's  
 4 license shall be the same amount as the higher fee charged  
 5 in the state where the nonresident resides. All fees  
 6 collected under this part shall be deposited as provided in  
 7 87-1-601.  
 8 ~~(4) (3)~~ The license fee shall be used to investigate  
 9 the applicant, to enforce this part, and for administrative  
 10 costs."  
 11 Section 15. Section 87-4-128, MCA, is amended to read:  
 12 "87-4-128. Investigation of applicant -- issuance or  
 13 denial of license. (1) The director in his discretion may  
 14 cause to be made such additional investigation and inquiry  
 15 relative to the applicant for outfitter's or professional  
 16 guide's license and an applicant's qualifications as he  
 17 considers advisable.  
 18 (2) The director may deny or refuse to issue any new  
 19 license or to renew any previous license if, in his opinion,  
 20 the applicant does not meet the qualifications herein  
 21 stated. In the event that any application for license is  
 22 denied or refused, the director shall immediately notify the  
 23 applicant, setting forth in the notice the grounds upon  
 24 which the denial or refusal is based.  
 25 (3) Final decision as to issuance of renewal licenses

1 shall be made not later than 30 days from the date of  
2 receipt of the completed application for renewal and not  
3 later than 90 days from the date of receipt of a completed  
4 application for a new license.

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

10 (5) An outfitter licensee must make an application for  
11 license renewal by January 1 of the license year. A penalty  
12 fee of \$50 will be charged in addition to the regular  
13 resident or nonresident outfitter's license if the  
14 application for such license is not completed and made by  
15 January 1 of the license year. This subsection does not  
16 apply to a new applicant for an outfitter's license."

17 Section 16. Section 87-4-130, MCA, is amended to read:

18 "87-4-130. Professional guide's license. (1) For the  
19 purposes of this part, a person may serve as a professional  
20 guide under his employer's license, after submitting his  
21 application with the proper license fee, until the license  
22 is issued ~~or for 10 days after notification of the rejection~~  
23 ~~of the license or denied.~~

24 (2) To be valid, a professional guide's license must  
25 bear the signature and outfitter's license number of an ~~the~~

1 endorsing outfitter and is valid only while the holder of  
2 such license is employed by ~~on the~~ endorsing outfitter."

3 Section 17. Section 87-4-131, MCA, is amended to read:

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

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

11 (3) If a licensed outfitter dies, the outfitter's  
12 license shall be considered to be part of the estate of the  
13 deceased outfitter and, subject to approval by the director,  
14 shall allow the immediate members of the family to outfit  
15 for the deceased outfitter's unexpired license year until  
16 the heirs or personal representative of the estate sells the  
17 outfitting business or obtains relicensure therefor."

18 Section 18. Section 87-4-141, MCA, is amended to read:

19 "87-4-141. Grounds for suspension or revocation of  
20 license. Every license or right to apply for and hold such  
21 license may be suspended or revoked upon any of the  
22 following grounds:

23 (1) having ceased to meet all of the qualifications  
24 for holding a license;

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

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

2 (4) ~~conviction having pleaded guilty to or been~~  
 3 ~~adjudged by a court guilty~~ of a felony, ~~until including a~~  
 4 ~~case in which the sentence is suspended or imposition of the~~  
 5 ~~sentence is deferred, unless~~ civil rights are ~~have been~~  
 6 ~~restored or until time of any deferred sentence for a felony~~  
 7 ~~has expired pursuant to law;~~

8 (5) two convictions or bond forfeitures of \$100 or  
 9 more as to violations of the fish and game or outfitting  
 10 laws or regulations of the state of Montana or of the United  
 11 States within the past 5 years;

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

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

18 (8) negligence or misconduct while acting as an  
 19 outfitter or professional guide ~~which---negligence---or~~  
 20 ~~misconduct that~~ causes ~~a---danger---or---unreasonable---risk---of~~  
 21 ~~danger an accident or injury~~ to person or property of any  
 22 client of such outfitter or professional guide."

23 Section 19. Section 87-4-142, MCA, is amended to read:

24 "87-4-142. Procedure for suspension or revocation of  
 25 license -- reissuance. (1) Proceedings for the revocation or

1 suspension of a license issued hereunder may be taken upon  
 2 charge or recommendation of any person. All such charges or  
 3 recommendations must be made in writing, must state the  
 4 facts upon which such charge or recommendation is based, and  
 5 must be signed and sworn to by the person making the charge  
 6 or recommendation. Any such charge or recommendation shall  
 7 be filed with the director. Thereupon, the director shall  
 8 initiate a preliminary investigation of all facts in  
 9 connection with the charge.

10 (2) A copy of all information shall be transmitted to  
 11 the advisory outfitters' council. The advisory outfitters'  
 12 council may make recommendation as to the action to be  
 13 taken. Any such recommendation shall be made in writing and  
 14 delivered to the director within 20 days after date of  
 15 transmittal of such information to the council.

16 (3) If the accusation be deemed to be unfounded or  
 17 trivial, the director shall dismiss the same and will advise  
 18 the licensee charged and the complaining party of the  
 19 action. Should the director determine the charge or  
 20 recommendation to have good cause and to be sufficiently  
 21 founded, he shall ~~recommend to the commission that the same~~  
 22 ~~be approved and the revocation or suspension be effected~~  
 23 appoint a hearing officer who shall conduct a hearing on  
 24 such charges in accordance with the Montana Administrative  
 25 Procedure Act.

1 (4) The director thereupon shall cause a copy of the  
 2 charge, recommendation of the council, and a record of the  
 3 investigation to be served upon the licensee involved not  
 4 less than 20 days prior to the day set for hearing thereon,  
 5 which said hearing shall be before ~~the commission an~~  
 6 appointed hearing officer at a time and place set by such  
 7 commission officer. At the hearing, the licensee involved  
 8 may be represented by counsel. After full, fair, and  
 9 impartial hearing, the commission director may suspend the  
 10 accused's license or his right to hold a license for a  
 11 period not to exceed 3 years, may order the license revoked,  
 12 or may dismiss the charge or recommendation based upon the  
 13 facts shown at the hearing.

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

16 Section 20. Section 87-4-143, MCA, is amended to read:  
 17 "87-4-143. Appeal procedure. Any person who feels  
 18 aggrieved by the denial of issuance of a license or  
 19 suspension or revocation of a license as an outfitter or  
 20 professional guide may appeal to the district court of the  
 21 county of his residence within 30 days after the date of  
 22 such action by filing with the clerk of said court a notice  
 23 of appeal briefly setting forth the action complained of and  
 24 appealed from. Summons and copy of the notice of appeal  
 25 shall be served on the commission director, and all

1 proceedings shall conform to the code of civil procedure of  
 2 the state of Montana. Upon such appeal, the action shall be  
 3 by trial de novo, and upon demand in writing, either party  
 4 shall be entitled to trial by jury. The court may sustain or  
 5 reverse the action of the commission director or take such  
 6 other action as the court may deem just and proper. If the  
 7 commission director or the court has ordered a stay of any  
 8 revocation or suspension and the ~~commission's~~ director's  
 9 revocation or suspension is thereafter sustained by the  
 10 court, the period of suspension or revocation shall begin  
 11 with the first day after the court's action sustaining the  
 12 decision of the commission director."

13 Section 21. Section 87-4-144, MCA, is amended to read:  
 14 "87-4-144. Enforcement. The warden ~~or ex-officio~~  
 15 warden designated by the department to primarily administer  
 16 outfitting and guiding laws and rules, other wardens, and  
 17 all peace officers shall enforce this part."

-End-

Approved by Comm.  
on Fish and Game

1 SENATE BILL NO. 459

2 INTRODUCED BY E. SMITH, LEE, GALT

3 BY REQUEST OF

4 THE SENATE COMMITTEE ON FISH AND GAME

5  
6 A BILL FOR AN ACT ENTITLED: "AN ACT TO GENERALLY REVISE THE  
7 LAWS GOVERNING OUTFITTERS AND GUIDES IN THE STATE OF  
8 MONTANA; AMENDING SECTIONS 2-15-3403, 87-4-101 THROUGH  
9 87-4-106, 87-4-121 THROUGH 87-4-128, 87-4-130, 87-4-131, AND  
10 87-4-141 THROUGH 87-4-144, MCA."

11  
12 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

13 Section 1. Section 2-15-3403, MCA, is amended to read:

14 "2-15-3403. Montana outfitters' council. (1) There is  
15 a Montana outfitters' council.

16 (2) The council consists of seven members. Each member  
17 shall be a licensed outfitter and shall represent one of the  
18 seven fish and game administrative districts. A member shall  
19 be selected by the licensed outfitters residing in that  
20 district by election at an annual meeting of the outfitters  
21 to be held in the city where the district regional  
22 headquarters at 1:00 p.m. on the second Friday is located  
23 during the month of March. A majority vote cast by written  
24 ballot of all the outfitters in attendance at the meeting  
25 shall determine the member delegate from the district. At

1 the election an alternate member delegate shall also be  
2 elected by written ballot to serve if the first-elected  
3 member delegate is unable to act.

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

6 (4) The council is allocated to the department.

7 (5) The council is not subject to the provisions of  
8 2-15-122."

9 Section 2. Section 87-4-101, MCA, is amended to read:

10 "87-4-101. Definitions. As used in this part, unless  
11 the context requires otherwise, the following definitions  
12 apply:

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

15 ~~(2) (1) "License year" means that period commencing May~~  
16 ~~1 January 1 and ending April 30 December 31 of the next same~~  
17 ~~year.~~

18 ~~(3) (2) "Nonresident" means a person other than a~~  
19 ~~resident.~~

20 ~~(4) (3) "Outfitter" means any person, persons, company,~~  
21 ~~or 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 and accompanies such a party or person on an  
 4 expedition for any of these purposes:

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

8 (d) for consideration aids or assists any person in  
 9 locating or pursuing any game animal.

10 (4) "Outfitters' council" means the Montana  
 11 outfitters' council provided for in 2-15-3403.

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

17 (6) "Resident" means a person who qualifies for a  
 18 resident Montana hunting or fishing license under 87-2-102.

19 (7) ~~"Resident guide" means a resident who guides~~  
 20 ~~resident or nonresident friends for the purpose of hunting~~  
 21 ~~game animals without compensation."~~

22 Section 3. Section 87-4-102, MCA, is amended to read:

23 "87-4-102. Determination of what constitutes  
 24 consideration. The providing of the services, property, or  
 25 equipment mentioned in 87-4-101(4) or the advertising of

1 services to assist persons to hunt, pursue, or take wildlife  
 2 or to fish shall be conclusively presumed to have been for  
 3 consideration for the purposes of this part ~~if the same or~~  
 4 ~~any thereof are provided by any person, company, or~~  
 5 ~~corporation for more than two parties or two other persons~~  
 6 ~~during any calendar year or on more than two occasions~~  
 7 ~~during any such calendar year."~~

8 Section 4. Section 87-4-103, MCA, is amended to read:

9 "87-4-103. Responsibility for violations of law. (1)  
 10 Any person accompanying a hunting or fishing party as an  
 11 outfitter or agent or employee of such outfitter shall be  
 12 equally responsible with any person or party employing him  
 13 as an outfitter for any violation of ~~the law~~ fish and game  
 14 laws; any such outfitter or employee of such outfitter who  
 15 shall willfully fail to or refuse to report any violation of  
 16 ~~the law~~ fish and game laws shall be liable to the penalties  
 17 as herein provided. If any professional guide commits any  
 18 violation of the laws or applicable regulations relating to  
 19 fish and game, outfitting, or guiding with actual or implied  
 20 knowledge of an outfitter then employing such guide, the  
 21 outfitter is legally responsible for such violation for all  
 22 purposes under the laws or regulations if the outfitter  
 23 fails to report any such violation to proper authority.

24 (2) No person may hire or retain any outfitter or  
 25 professional guide unless the outfitter or professional



1 guide is currently licensed in accordance with the laws of  
2 the state of Montana."

3 Section 5. Section 87-4-104, MCA, is amended to read:  
4 "87-4-104. Powers and duties of department relating to  
5 outfitters and guides. The department shall:

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

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

19 (3) establish a minimum of two meetings annually with  
20 the advisory outfitters' council;

21 (4) consult with the advisory outfitters' council to  
22 develop policy concerning the administration of outfitting;

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

1 Section 6. Section 87-4-105, MCA, is amended to read:  
2 "87-4-105. Outfitters' council. The council shall have  
3 the authority and duty to make recommendations to the  
4 department and the director as to:

5 (1) outfitter standards and professional guide  
6 standards;

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

13 (3) hearings and proceedings to suspend or revoke  
14 licenses of outfitters and professional guides and to  
15 recommend suspension or revocation of licenses for due  
16 cause;

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

22 Section 7. Section 87-4-106, MCA, is amended to read:

23 "87-4-106. Authorization for rules. The department may  
24 adopt, promulgate, and enforce rules recommended by the  
25 advisory outfitters' council as provided in 87-4-105 and all

1 other rules it may consider proper for the administration  
2 and enforcement of the provisions of this part and the  
3 regulation of outfitting and guiding to provide for the  
4 services to the public."

5 Section 8. Section 87-4-121, MCA, is amended to read:

6 "87-4-121. License required -- services performed --  
7 standards. (1) No person may act as an outfitter, or  
8 professional guide, ~~or resident guide~~ or advertise as an  
9 outfitter without first securing a license in accordance  
10 with the provisions of this part.

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

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

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

25 (5) An outfitter may not willfully and substantially

1 misrepresent his facilities, prices, equipment, services, or  
2 hunting or fishing opportunities.

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

6 Section 9. Section 87-4-122, MCA, is amended to read:

7 "87-4-122. Outfitter's qualifications. Each applicant  
8 for and holder of an outfitter's license or any renewal  
9 thereof shall, in the opinion of the director, meet the  
10 following qualifications:

11 (1) be a person of at least 18 years of age ~~in~~  
12 ~~possession of all natural faculties of ordinary~~  
13 ~~intelligence and in such physical condition as to be able~~  
14 who is physically capable and mentally competent to perform  
15 his duties as an outfitter;

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

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

1 designated agent);

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

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

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

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

19 (8) have not been finally adjudged by a court of law  
20 guilty of any substantial breach of written or oral contract  
21 with any person utilizing the applicant's services as an  
22 outfitter or professional guide during the license year  
23 immediately preceding that for which the application is  
24 made;

25 (9) have not committed any negligent act or misconduct

1 while acting as an outfitter or professional guide which  
2 negligence---or---misconduct that caused a danger or  
3 unreasonable risk of danger to person or property of any  
4 client of such outfitter or professional guide during the  
5 license year immediately preceding that for which the  
6 application is made;

7 (10) have not, at any time, been-convicted pleaded  
8 guilty to or been adjudged by a court guilty of a felony,  
9 unless civil rights have been restored pursuant to law. No  
10 person may apply for or hold an outfitter's license during  
11 any period of time in which a deferred sentence has been  
12 imposed deferred or suspended for a felony.

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

17 Section 10. Section 87-4-123, MCA, is amended to read:  
18 "87-4-123. Professional guide's qualifications. (1) An  
19 applicant for a professional guide's license shall meet the  
20 following requirements:

21 (a) be a person of at least 18 years of age--in  
22 possession---of---all---natural---faculties---of---ordinary  
23 intelligence--and--in-such-physical-condition-as-to-be-able  
24 who is physically capable and mentally competent to perform  
25 his duties as a professional guide;

1 ~~fb)~~--be--a--citizen--of--the--United--States--and--a--resident  
2 of--Montana--as--defined--in--87-4-1011

3 ~~fe)~~(B) be endorsed and recommended by an outfitter  
4 with a valid license;

5 ~~fd)~~(C) have not been convicted or forfeited bond of  
6 \$100 or more on more than one violation of the fish and game  
7 laws or applicable regulations of the state of Montana or  
8 the United States within the past 5 years;

9 ~~fe)~~(D) have not committed any negligent act or  
10 misconduct while acting as a guide that caused an accident  
11 or injury to person or property of any client of an  
12 outfitter during the license year immediately preceding that  
13 for which the application is made;

14 ~~ff)~~(E) have not, at any time, pleaded guilty to or  
15 been adjudged by a court guilty of a felony, unless civil  
16 rights have been restored pursuant to law. No person may  
17 apply for or hold a professional guide's license during any  
18 period of time in which a sentence has been deferred or  
19 suspended for a felony.

20 (2) A resident professional guide shall have been  
21 issued a valid resident wildlife conservation license."

22 Section 11. Section 87-4-124, MCA, is amended to read:

23 "87-4-124. Application. (1) Each applicant for an  
24 outfitter's or professional guide's license shall make  
25 application for license upon a form to be prescribed and

1 furnished by the department which shall include:

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

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

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

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

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

20 (f) a statement an affidavit on a form provided by the  
21 department by a warden the outfitter to the director that  
22 the equipment listed on the application ~~has been inspected~~  
23 ~~by the warden and that the same~~ is in fact owned or leased  
24 by the applicant, is in good operating condition, and is  
25 sufficient and satisfactory for the services advertised or

1 contemplated to be performed by such applicant;

2 (g) a statement of the maximum number of guests to be  
3 taken at any one time;

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

8 (2) Applications for outfitter's license shall be in  
9 the name of an individual person only. Applications  
10 involving corporations or partnerships shall be made by one  
11 individual person who qualifies under the provisions of this  
12 part; any license issued pursuant thereto shall be in the  
13 name of that person; and the license shall specifically  
14 state that the same is issued for the use and benefit of the  
15 named corporation or partnership involved. Any revocation or  
16 suspension of such a license is binding upon the individual  
17 person and the partnership or corporation for the use and  
18 benefit of which the license was originally issued.

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

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

1 Section 12. Section 87-4-125, MCA, is amended to read:

2 "87-4-125. Outfitter's examination. Each applicant for  
3 an outfitter's license shall pass a standard examination  
4 administered by the director or an agent designated by him,  
5 which examination shall require general and sufficient  
6 knowledge displaying and indicating ability to perform the  
7 services contemplated with efficiency and with safety to the  
8 health and welfare of persons employing such services. The  
9 examination shall test the applicant's knowledge of subjects  
10 which shall apply to the type of license applied for in the  
11 following subjects:

12 (1) federal and state fish and game laws and  
13 regulations;

14 (2) practical woodsmanship;

15 (3) general knowledge of big game;

16 (4) field preparation of trophies;

17 (5) care of game meat;

18 (6) use of outfitter's gear as shown listed on the  
19 application;

20 (7) knowledge of area and terrain;

21 (8) knowledge of firearms;

22 (9) federal and state regulations as applicable to  
23 outfitting;

24 (10) ~~practiced~~ first aid;

25 (11) boat safety;

1       ~~(12) water safety;~~  
2       ~~(13) care and safety of livestock."~~  
3       Section 13. Section 87-4-126, MCA, is amended to read:  
4       "87-4-126. Residence requirements -- waiver and  
5       reciprocity. (1) Residence requirements for procuring an  
6       outfitter's license are waived as to persons who are  
7       citizens bona fide residents of a common boundary state and  
8       of a common county thereof to the same extent the home state  
9       of the applicant waives such requirements for the residents  
10       of Montana, except for fee.  
11       (2) For the purpose of obtaining a professional  
12       guide's license only, nonresident professional guides  
13       employed by resident outfitters shall be considered resident  
14       professional guides."  
15       Section 14. Section 87-4-127, MCA, is amended to read:  
16       "87-4-127. Fees. (1) Applications shall be accompanied  
17       by a license fee as herein stipulated, which will be  
18       refunded if and when the application is denied:  
19       (a) resident outfitter's license fee.....\$50;  
20       (b) resident professional guide's fee.....\$15;  
21       (c) nonresident outfitter's license fee.....\$150;  
22       (d) nonresident professional guide's fee.....\$100.  
23       ~~(2) A resident guide's license is a valid Montana~~  
24       ~~wildlife conservation license.~~  
25       ~~(3)~~(2) If the nonresident resides in a state requiring

1       residents of the state of Montana to pay in excess of such  
2       amounts for a similar license, the fee for such nonresident  
3       outfitters outfitter's or guides professional guide's  
4       license shall be the same amount as the higher fee charged  
5       in the state where the nonresident resides. All fees  
6       collected under this part shall be deposited as provided in  
7       87-1-601.  
8       ~~(4)~~(3) The license fee shall be used to investigate  
9       the applicant, to enforce this part, and for administrative  
10       costs."  
11       Section 15. Section 87-4-128, MCA, is amended to read:  
12       "87-4-128. Investigation of applicant -- issuance or  
13       denial of license. (1) The director in his discretion may  
14       cause to be made such additional investigation and inquiry  
15       relative to the applicant for outfitter's or professional  
16       guide's license and an applicant's qualifications as he  
17       considers advisable.  
18       (2) The director may deny or refuse to issue any new  
19       license or to renew any previous license if, in his opinion,  
20       the applicant does not meet the qualifications herein  
21       stated. In the event that any application for license is  
22       denied or refused, the director shall immediately notify the  
23       applicant, setting forth in the notice the grounds upon  
24       which the denial or refusal is based.  
25       (3) Final decision as to issuance of renewal licenses

1 shall be made not later than 30 days from the date of  
2 receipt of the completed application for renewal and not  
3 later than 90 days from the date of receipt of a completed  
4 application for a new license.

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

10 (5) An outfitter licensee must make an application for  
11 license renewal by January 1 of the license year. A penalty  
12 fee of \$50 will be charged in addition to the regular  
13 resident or nonresident outfitter's license if the  
14 application for such license is not completed and made by  
15 January 1 of the license year. This subsection does not  
16 apply to a new applicant for an outfitter's license."

17 Section 15. Section 87-4-130, MCA, is amended to read:

18 "87-4-130. Professional guide's license. (1) For the  
19 purposes of this part, a person may serve as a professional  
20 guide under his employer's license, after submitting his  
21 application with the proper license fee, until the license  
22 is issued ~~or-for-10-days-after-notification-of-the-rejection~~  
23 ~~of-the-license or denied.~~

24 (2) To be valid, a professional guide's license must  
25 bear the signature and outfitter's license number of on the

1 endorsing outfitter and is valid only while the holder of  
2 such license is employed by on the endorsing outfitter."

3 Section 17. Section 87-4-131, MCA, is amended to read:

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

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

11 (3) If a licensed outfitter dies, the outfitter's  
12 license shall be considered to be part of the estate of the  
13 deceased outfitter and, subject to approval by the director,  
14 shall allow the immediate members of the family to outfit  
15 for the deceased outfitter's unexpired license year until  
16 the heirs or personal representative of the estate sells the  
17 outfitting business or obtains relicensure therefor."

18 Section 18. Section 87-4-141, MCA, is amended to read:

19 "87-4-141. Grounds for suspension or revocation of  
20 license. Every license or right to apply for and hold such  
21 license may be suspended or revoked upon any of the  
22 following grounds:

23 (1) having ceased to meet all of the qualifications  
24 for holding a license;

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

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

2 (4) conviction having pleaded guilty to or been  
 3 adjudged by a court guilty of a felony, until including a  
 4 case in which the sentence is suspended or imposition of the  
 5 sentence is deferred, unless civil rights are have been  
 6 restored or until time of any deferred sentence for a felony  
 7 has expired pursuant to law;

8 (5) two convictions or bond forfeitures of \$100 or  
 9 more as to violations of the fish and game or outfitting  
 10 laws or regulations of the state of Montana or of the United  
 11 States within the past 5 years;

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

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

18 (8) negligence or misconduct while acting as an  
 19 outfitter or professional guide ~~which--negligence--or~~  
 20 ~~misconduct that causes a--danger--or--unreasonable--risk--of~~  
 21 ~~danger an~~ accident or injury to person or property of any  
 22 client of such outfitter or professional guide."

23 Section 19. Section 87-4-142, MCA, is amended to read:

24 "87-4-142. Procedure for suspension or revocation of  
 25 license -- reissuance. (1) Proceedings for the revocation or

1 suspension of a license issued hereunder may be taken upon  
 2 charge or recommendation of any person. All such charges or  
 3 recommendations must be made in writing, must state the  
 4 facts upon which such charge or recommendation is based, and  
 5 must be signed and sworn to by the person making the charge  
 6 or recommendation. Any such charge or recommendation shall  
 7 be filed with the director. Thereupon, the director shall  
 8 initiate a preliminary investigation of all facts in  
 9 connection with the charge.

10 (2) A copy of all information shall be transmitted to  
 11 the advisory outfitters' council. The advisory outfitters'  
 12 council may make recommendation as to the action to be  
 13 taken. Any such recommendation shall be made in writing and  
 14 delivered to the director within 20 days after date of  
 15 transmittal of such information to the council.

16 (3) If the accusation be deemed to be unfounded or  
 17 trivial, the director shall dismiss the same and will advise  
 18 the licensee charged and the complaining party of the  
 19 action. Should the director determine the charge or  
 20 recommendation to have good cause and to be sufficiently  
 21 founded, he shall ~~recommend to the commission that the same~~  
 22 ~~be approved and the revocation--or--suspension--be--effected~~  
 23 appoint a hearing officer who shall conduct a hearing on  
 24 such charges in accordance with the Montana Administrative  
 25 Procedure Act.



1 (4) The director thereupon shall cause a copy of the  
 2 charge, recommendation of the council, and a record of the  
 3 investigation to be served upon the licensee involved not  
 4 less than 20 days prior to the day set for hearing thereon,  
 5 which said hearing shall be before ~~the--commission an~~  
 6 appointed hearing officer at a time and place set by such  
 7 commission officer. At the hearing, the licensee involved  
 8 may be represented by counsel. After full, fair, and  
 9 impartial hearing, the commission director may suspend the  
 10 accused's license or his right to hold a license for a  
 11 period not to exceed 3 years, may order the license revoked,  
 12 or may dismiss the charge or recommendation based upon the  
 13 facts shown at the hearing.

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

16 Section 20. Section 87-4-143, MCA, is amended to read:

17 "87-4-143. Appeal procedure. Any person who feels  
 18 aggrieved by the denial of issuance of a license or  
 19 suspension or revocation of a license as an outfitter or  
 20 professional guide may appeal to the district court of the  
 21 county of his residence within 30 days after the date of  
 22 such action by filing with the clerk of said court a notice  
 23 of appeal briefly setting forth the action complained of and  
 24 appealed from. Summons and copy of the notice of appeal  
 25 shall be served on the commission director, and all

1 proceedings shall conform to the code of civil procedure of  
 2 the state of Montana. Upon such appeal, the action shall be  
 3 by trial de novo, and upon demand in writing, either party  
 4 shall be entitled to trial by jury. The court may sustain or  
 5 reverse the action of the commission director or take such  
 6 other action as the court may deem just and proper. If the  
 7 commission director or the court has ordered a stay of any  
 8 revocation or suspension and the commission's director's  
 9 revocation or suspension is thereafter sustained by the  
 10 court, the period of suspension or revocation shall begin  
 11 with the first day after the court's action sustaining the  
 12 decision of the commission director."

13 Section 21. Section 87-4-144, MCA, is amended to read:

14 "87-4-144. Enforcement. The warden ~~or--ex--officio~~  
 15 warden designated by the department to primarily administer  
 16 outfitting and guiding laws and rules, other wardens, and  
 17 all peace officers shall enforce this part."

-End-

## SENATE BILL NO. 459

INTRODUCED BY E. SMITH, LEE, GALT

BY REQUEST OF

THE SENATE COMMITTEE ON FISH AND GAME

A BILL FOR AN ACT ENTITLED: "AN ACT TO GENERALLY REVISE THE LAWS GOVERNING OUTFITTERS AND GUIDES IN THE STATE OF MONTANA; AMENDING SECTIONS 2-15-3403, 87-4-101 THROUGH 87-4-106, 87-4-121 THROUGH 87-4-128, 87-4-130, 87-4-131, AND 87-4-141 THROUGH 87-4-144, MCA."

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

Section 1. Section 2-15-3403, MCA, is amended to read:

"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 city where the district regional headquarters at 1:00 p.m. on the second Friday is located 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 delegate 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."

Section 2. 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)~~ (1) "License year" means that period commencing May 1 January 1 and ending April ~~30~~ December 31 of the next same year.

~~(3)~~ (2) "Nonresident" means a person other than a resident.

~~(4)~~ (3) "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 and accompanies such a party or person on an  
 4 expedition for any of these purposes:

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

8 (d) for consideration aids or assists any person in  
 9 locating or pursuing any game animal.

10 (4) "Outfitters' council" means the Montana  
 11 outfitters' council provided for in 2-15-3403.

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

17 (6) "Resident" means a person who qualifies for a  
 18 resident Montana hunting or fishing license under 87-2-102.

19 ~~(7) "Resident guide" means a resident who guides~~  
 20 ~~resident or nonresident friends for the purpose of hunting~~  
 21 ~~game animals without compensation."~~

22 Section 3. Section 87-4-102, MCA, is amended to read:

23 "87-4-102. Determination of what constitutes  
 24 consideration. The providing of the services, property, or  
 25 equipment mentioned in 87-4-101~~(4)~~(3) or the advertising of

1 services to assist persons to hunt, pursue, or take wildlife  
 2 or to fish shall be conclusively presumed to have been for  
 3 consideration for the purposes of this part ~~if the same or~~  
 4 ~~any thereof are provided by any person, company, or~~  
 5 ~~corporation for more than two parties or two other persons~~  
 6 ~~during any calendar year or on more than two occasions~~  
 7 ~~during any such calendar year."~~

8 Section 4. Section 87-4-103, MCA, is amended to read:

9 "87-4-103. Responsibility for violations of law. (1)  
 10 Any person accompanying a hunting or fishing party as an  
 11 outfitter or agent or employee of such outfitter shall be  
 12 equally responsible with any person or party employing him  
 13 as an outfitter for any violation of ~~the law~~ fish and game  
 14 laws; any such outfitter or employee of such outfitter who  
 15 shall willfully fail to or refuse to report any violation of  
 16 ~~the law~~ fish and game laws shall be liable to the penalties  
 17 as herein provided. If any professional guide commits any  
 18 violation of the laws or applicable regulations relating to  
 19 fish and game, outfitting, or guiding with actual or implied  
 20 knowledge of an outfitter then employing such guide, the  
 21 outfitter is legally responsible for such violation for all  
 22 purposes under the laws or regulations if the outfitter  
 23 fails to report any such violation to proper authority.

24 (2) No person may hire or retain any outfitter or  
 25 professional guide unless the outfitter or professional

1 guide is currently licensed in accordance with the laws of  
2 the state of Montana."

3 Section 5. Section 87-4-104, MCA, is amended to read:  
4 "87-4-104. Powers and duties of department relating to  
5 outfitters and guides. The department shall:

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

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

19 (3) establish a minimum of two meetings annually with  
20 the advisory outfitters' council;

21 (4) consult with the advisory outfitters' council to  
22 develop policy concerning the administration of outfitting;

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

1 Section 6. Section 87-4-105, MCA, is amended to read:  
2 "87-4-105. Outfitters' council. The council shall have  
3 the authority and duty to make recommendations to the  
4 department and the director as to:

5 (1) outfitter standards and professional guide  
6 standards;

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

13 (3) hearings and proceedings to suspend or revoke  
14 licenses of outfitters and professional guides and to  
15 recommend suspension or revocation of licenses for due  
16 cause;

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

22 Section 7. Section 87-4-106, MCA, is amended to read:

23 "87-4-106. Authorization for rules. The department may  
24 adopt, promulgate, and enforce rules recommended by the  
25 advisory outfitters' council as provided in 87-4-105 and all

1 other rules it may consider proper for the administration  
2 and enforcement of the provisions of this part and the  
3 regulation of outfitting and guiding to provide for the  
4 services to the public."

5 Section 8. Section 87-4-121, MCA, is amended to read:

6 "87-4-121. License required -- services performed --  
7 standards. (1) No person may act as an outfitter or  
8 professional guide ~~or resident guide~~ or advertise as an  
9 outfitter without first securing a license in accordance  
10 with the provisions of this part.

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

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

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

25 (5) An outfitter may not willfully and substantially

1 misrepresent his facilities, prices, equipment, services, or  
2 hunting or fishing opportunities.

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

6 Section 9. Section 87-4-122, MCA, is amended to read:

7 "87-4-122. Outfitter's qualifications. Each applicant  
8 for and holder of an outfitter's license or any renewal  
9 thereof shall, in the opinion of the director, meet the  
10 following qualifications:

11 (1) be a person of at least 18 years of age ~~in~~  
12 ~~possession of all natural~~ ~~facilities of ordinary~~  
13 ~~intelligence and in such physical condition as to be able~~  
14 who is physically capable and mentally competent to perform  
15 his duties as an outfitter;

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

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

1 designated agent);

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

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

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

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

19 (8) have not been finally adjudged by a court of law  
20 guilty of any substantial breach of written or oral contract  
21 with any person utilizing the applicant's services as an  
22 outfitter or professional guide during the license year  
23 immediately preceding that for which the application is  
24 made;

25 (9) have not committed any negligent act or misconduct

1 while acting as an outfitter or professional guide which  
2 negligence---or---misconduct that caused a danger or  
3 unreasonable risk of danger to person or property of any  
4 client of such outfitter or professional guide during the  
5 license year immediately preceding that for which the  
6 application is made;

7 (10) have not, at any time, been---convicted pleaded  
8 guilty to or been adjudged by a court guilty of a felony,  
9 unless civil rights have been restored pursuant to law. No  
10 person may apply for or hold an outfitter's license during  
11 any period of time in which a deferred sentence has been  
12 imposed deferred or suspended for a felony.

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

17 Section 10. Section 87-4-123, MCA, is amended to read:

18 "87-4-123. Professional guide's qualifications. (1) An  
19 applicant for a professional guide's license shall meet the  
20 following requirements:

21 (a) be a person of at least 18 years of age---in  
22 possession---of---all---natural---faculties,---of---ordinary  
23 intelligence,---and---in---such---physical---condition---as---to---be---able  
24 who is physically capable and mentally competent to perform  
25 his duties as a professional guide;

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

3 ~~(c) be endorsed and recommended by an outfitter~~  
4 ~~with a valid license;~~

5 ~~(d) have not been convicted or forfeited bond of~~  
6 ~~\$100 or more on more than one violation of the fish and game~~  
7 ~~laws or applicable regulations of the state of Montana or~~  
8 ~~the United States within the past 5 years;~~

9 ~~(e) have not committed any negligent or GROSS~~  
10 ~~NEGLIGENCE or misconduct while acting as a guide that caused~~  
11 ~~an accident or injury to person or property of any client of~~  
12 ~~an outfitter during the license year immediately preceding~~  
13 ~~that for which the application is made;~~

14 ~~(f) have not, at any time, pleaded guilty to or~~  
15 ~~been adjudged by a court guilty of a felony, unless civil~~  
16 ~~rights have been restored pursuant to law. No person may~~  
17 ~~apply for or hold a professional guide's license during any~~  
18 ~~period of time in which a sentence has been deferred or~~  
19 ~~suspended for a felony.~~

20 (2) A resident professional guide shall have been  
21 issued a valid resident wildlife conservation license."

22 Section 11. Section 87-4-124, MCA, is amended to read:

23 "87-4-124. Application. (1) Each applicant for an  
24 outfitter's or professional guide's license shall make  
25 application for license upon a form to be prescribed and

1 furnished by the department which shall include:

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

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

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

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

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

20 (f) a statement an affidavit on a form provided by the  
21 department by ~~a~~ warden the outfitter to the director that  
22 the equipment listed on the application ~~has been inspected~~  
23 ~~by the warden and that the same~~ is in fact owned or leased  
24 by the applicant, is in good operating condition, and is  
25 sufficient and satisfactory for the services advertised or

1 contemplated to be performed by such applicant;

2 (g) a statement of the maximum number of guests to be  
3 taken at any one time;

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

8 (2) Applications for outfitter's license shall be in  
9 the name of an individual person only. Applications  
10 involving corporations or partnerships shall be made by one  
11 individual person who qualifies under the provisions of this  
12 part; any license issued pursuant thereto shall be in the  
13 name of that person; and the license shall specifically  
14 state that the same is issued for the use and benefit of the  
15 named corporation or partnership involved. Any revocation or  
16 suspension of such a license is binding upon the individual  
17 person and the partnership or corporation for the use and  
18 benefit of which the license was originally issued.

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

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

1 Section 12. Section 87-4-125, MCA, is amended to read:

2 "87-4-125. Outfitter's examination. Each applicant for  
3 an outfitter's license shall pass a standard examination  
4 administered by the director or an agent designated by him,  
5 which examination shall require general and sufficient  
6 knowledge displaying and indicating ability to perform the  
7 services contemplated with efficiency and with safety to the  
8 health and welfare of persons employing such services. The  
9 examination shall test the applicant's knowledge of subjects  
10 which shall apply to the type of license applied for in the  
11 following subjects:

- 12 (1) federal and state fish and game laws and  
13 regulations;
- 14 (2) practical woodsmanship;
- 15 (3) general knowledge of big game;
- 16 (4) field preparation of trophies;
- 17 (5) care of game meat;
- 18 (6) use of outfitter's gear as ~~shown~~ listed on the  
19 application;
- 20 (7) knowledge of area and terrain;
- 21 (8) knowledge of firearms;
- 22 (9) federal and state regulations as applicable to  
23 outfitting;
- 24 (10) ~~practical~~ first aid;
- 25 (11) boat safety;



1 (12) water safety;  
2 (13) care and safety of livestock."

3 Section 13. Section 87-4-126, MCA, is amended to read:  
4 "87-4-126. Residence requirements -- waiver and  
5 reciprocity. (1) Residence requirements for procuring an  
6 outfitter's license are waived as to persons who are  
7 citizens bona fide residents of a common boundary state and  
8 of a common county thereof to the same extent the home state  
9 of the applicant waives such requirements for the residents  
10 of Montana, except for fee.

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

15 Section 14. Section 87-4-127, MCA, is amended to read:  
16 "87-4-127. Fees. (1) Applications shall be accompanied  
17 by a license fee as herein stipulated, which will be  
18 refunded if and when the application is denied:

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

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

25 ~~(3)~~(2) If the nonresident resides in a state requiring

1 residents of the state of Montana to pay in excess of such  
2 amounts for a similar license, the fee for such nonresident  
3 outfitters outfitter's or guides professional guide's  
4 license shall be the same amount as the higher fee charged  
5 in the state where the nonresident resides. All fees  
6 collected under this part shall be deposited as provided in  
7 87-1-601.

8 ~~(4)~~(3) The license fee shall be used to investigate  
9 the applicant, to enforce this part, and for administrative  
10 costs."

11 Section 15. Section 87-4-128, MCA, is amended to read:  
12 "87-4-128. Investigation of applicant -- issuance or  
13 denial of license. (1) The director in his discretion may  
14 cause to be made such additional investigation and inquiry  
15 relative to the applicant for outfitter's or professional  
16 guide's license and an applicant's qualifications as he  
17 considers advisable.

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

25 (3) Final decision as to issuance of renewal licenses

1 shall be made not later than 30 days from the date of  
2 receipt of the completed application for renewal and not  
3 later than 90 days from the date of receipt of a completed  
4 application for a new license.

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

10 (5) An outfitter licensee must make an application for  
11 license renewal by January 1 of the license year. A penalty  
12 fee of \$50 will be charged in addition to the regular  
13 resident or nonresident outfitter's license if the  
14 application for such license is not completed and made by  
15 January 1 of the license year. This subsection does not  
16 apply to a new applicant for an outfitter's license."

17 Section 16. Section 87-4-130, MCA, is amended to read:

18 "87-4-130. Professional guide's license. (1) For the  
19 purposes of this part, a person may serve as a professional  
20 guide under his employer's license, after submitting his  
21 application with the proper license fee, until the license  
22 is issued ~~or for 10 days after notification of the rejection~~  
23 ~~of the license~~ or denied.

24 (2) To be valid, a professional guide's license must  
25 bear the signature and outfitter's license number of an the

1 endorsing outfitter and is valid only while the holder of  
2 such license is employed by ~~an~~ the endorsing outfitter."

3 Section 17. Section 87-4-131, MCA, is amended to read:

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

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

11 (3) If a licensed outfitter dies, the outfitter's  
12 license shall be considered to be part of the estate of the  
13 deceased outfitter and, subject to approval by the director,  
14 shall allow the immediate members of the family MAY CONTINUE  
15 to outfit for the deceased outfitter's unexpired license  
16 year OR until the heirs or personal representative of the  
17 estate sells the outfitting business or obtains relicensure  
18 therefor."

19 Section 18. Section 87-4-141, MCA, is amended to read:

20 "87-4-141. Grounds for suspension or revocation of  
21 license. Every license or right to apply for and hold such  
22 license may be suspended or revoked upon any of the  
23 following grounds:

24 (1) having ceased to meet all of the qualifications  
25 for holding a license;

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

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

3 (4) conviction having pleaded guilty to or been  
 4 adjudged by a court guilty of a felony, until including a  
 5 case in which the sentence is suspended or imposition of the  
 6 sentence is deferred, unless civil rights are have been  
 7 restored or until time of any deferred sentence for a felony  
 8 has expired pursuant to law;

9 (5) two convictions or bond forfeitures of \$100 or  
 10 more as to violations of the fish and game or outfitting  
 11 laws or regulations of the state of Montana or of the United  
 12 States within the past 5 years;

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

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

19 (8) negligence or misconduct while acting as an  
 20 outfitter or professional guide ~~which--negligence--or~~  
 21 ~~misconduct that causes a danger--or--unreasonable--risk--of~~  
 22 danger an accident or injury to person or property of any  
 23 client of such outfitter or professional guide."

24 Section 19. Section 87-4-142, MCA, is amended to read:

25 "87-4-142. Procedure for suspension or revocation of

1 license -- reissuance. (1) Proceedings for the revocation or  
 2 suspension of a license issued hereunder may be taken upon  
 3 charge or recommendation of any person. All such charges or  
 4 recommendations must be made in writing, must state the  
 5 facts upon which such charge or recommendation is based, and  
 6 must be signed and sworn to by the person making the charge  
 7 or recommendation. Any such charge or recommendation shall  
 8 be filed with the director. Thereupon, the director shall  
 9 initiate a preliminary investigation of all facts in  
 10 connection with the charge.

11 (2) A copy of all information shall be transmitted to  
 12 the advisory outfitters' council. The advisory outfitters'  
 13 council may make recommendation as to the action to be  
 14 taken. Any such recommendation shall be made in writing and  
 15 delivered to the director within 20 days after date of  
 16 transmittal of such information to the council.

17 (3) If the accusation be deemed to be unfounded or  
 18 trivial, the director shall dismiss the same and will advise  
 19 the licensee charged and the complaining party of the  
 20 action. Should the director determine the charge or  
 21 recommendation to have good cause and to be sufficiently  
 22 founded, he shall ~~recommend to the commission that the same~~  
 23 ~~be approved and the revocation--or--suspension--be--effected~~  
 24 appoint a hearing officer who shall conduct a hearing on  
 25 such charges in accordance with the Montana Administrative

1 Procedure Act.

2 (4) The director thereupon shall cause a copy of the  
3 charge, recommendation of the council, and a record of the  
4 investigation to be served upon the licensee involved not  
5 less than 20 days prior to the day set for hearing thereon,  
6 which said hearing shall be before ~~the--commission an~~  
7 appointed hearing officer at a time and place set by such  
8 commission officer. At the hearing, the licensee involved  
9 may be represented by counsel. After full, fair, and  
10 impartial hearing, the commission director may suspend the  
11 accused's license or his right to hold a license for a  
12 period not to exceed 3 years, may order the license revoked,  
13 or may dismiss the charge or recommendation based upon the  
14 facts shown at the hearing.

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

17 Section 20. Section 87-4-143, MCA, is amended to read:

18 "87-4-143. Appeal procedure. Any person who feels  
19 aggrieved by the denial of issuance of a license or  
20 suspension or revocation of a license as an outfitter or  
21 professional guide may appeal to the district court of the  
22 county of his residence within 30 days after the date of  
23 such action by filing with the clerk of said court a notice  
24 of appeal briefly setting forth the action complained of and  
25 appealed from. Summons and copy of the notice of appeal

1 shall be served on the commission director, and all  
2 proceedings shall conform to the code of civil procedure of  
3 the state of Montana. Upon such appeal, the action shall be  
4 by trial de novo, and upon demand in writing, either party  
5 shall be entitled to trial by jury. The court may sustain or  
6 reverse the action of the commission director or take such  
7 other action as the court may deem just and proper. If the  
8 commission director or the court has ordered a stay of any  
9 revocation or suspension and the commission's director's  
10 revocation or suspension is thereafter sustained by the  
11 court, the period of suspension or revocation shall begin  
12 with the first day after the court's action sustaining the  
13 decision of the commission director."

14 Section 21. Section 87-4-144, MCA, is amended to read:  
15 "87-4-144. Enforcement. The warden ~~or--ex--officio~~  
16 warden designated by the department to primarily administer  
17 outfitting and guiding laws and rules, other wardens, and  
18 all peace officers shall enforce this part."

-End-

1                   SENATE BILL NO. 459  
2                   INTRODUCED BY E. SMITH, LEE, GALT  
3                   BY REQUEST OF  
4                   THE SENATE COMMITTEE ON FISH AND GAME  
5

6                   A BILL FOR AN ACT ENTITLED: "AN ACT TO GENERALLY REVISE THE  
7                   LAWS GOVERNING OUTFITTERS AND GUIDES IN THE STATE OF  
8                   MONTANA; AMENDING SECTIONS 2-15-3403, 87-4-101 THROUGH  
9                   87-4-106, 87-4-121 THROUGH 87-4-128, 87-4-130, 87-4-131, AND  
10                   87-4-141 THROUGH 87-4-144, MCA."  
11

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

13                   Section 1. Section 2-15-3403, MCA, is amended to read:  
14                   "2-15-3403. Montana outfitters' council. (1) There is  
15                   a Montana outfitters' council.  
16

17                   (2) The council consists of seven members. Each member  
18                   shall be a licensed outfitter and shall represent one of the  
19                   seven fish and game administrative districts. A member shall  
20                   be selected by the licensed outfitters residing in that  
21                   district by election at an annual meeting of the outfitters  
22                   to be held in the city where the district regional  
23                   headquarters at 1:00 p.m. on the second Friday is located  
24                   during the month of March. A majority vote cast by written  
25                   ballot of all the outfitters in attendance at the meeting  
                    shall determine the member delegate from the district. At

1                   the election an alternate member delegate shall also be  
2                   elected by written ballot to serve if the first-elected  
3                   member delegate is unable to act.

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

6                   (4) The council is allocated to the department.

7                   (5) The council is not subject to the provisions of  
8                   2-15-122."

9                   Section 2. Section 87-4-101, MCA, is amended to read:  
10                   "87-4-101. Definitions. As used in this part, unless  
11                   the context requires otherwise, the following definitions  
12                   apply:

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

15                   ~~(2) "License year" means that period commencing May~~  
16                   ~~1 January 1 and ending April 30 December 31 of the next same~~  
17                   year.

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

20                   ~~(4) "Outfitter" means any person, persons, company,~~  
21                   or 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 and accompanies such a party or person on an  
 4 expedition for any of these purposes;

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

8 (d) for consideration aids or assists any person in  
 9 locating or pursuing any game animal.

10 (4) "Outfitters' council" means the Montana  
 11 outfitters' council provided for in 2-15-3403.

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

17 (6) "Resident" means a person who qualifies for a  
 18 resident Montana hunting or fishing license under 87-2-102.

19 ~~(7) "Resident guide" means a resident who guides~~  
 20 ~~resident or nonresident friends for the purpose of hunting~~  
 21 ~~game animals without compensation."~~

22 Section 3. Section 87-4-102, MCA, is amended to read:

23 "87-4-102. Determination of what constitutes  
 24 consideration. The providing of the services, property, or  
 25 equipment mentioned in 87-4-101 ~~(4)~~ (3) or the advertising of

1 services to assist persons to hunt, pursue, or take wildlife  
 2 or to fish shall be conclusively presumed to have been for  
 3 consideration for the purposes of this part ~~if the same or~~  
 4 ~~any thereof are provided by any person, company, or~~  
 5 ~~corporation for more than two parties or two other persons~~  
 6 ~~during any calendar year or on more than two occasions~~  
 7 ~~during any such calendar year."~~

8 Section 4. Section 87-4-103, MCA, is amended to read:

9 "87-4-103. Responsibility for violations of law. (1)  
 10 Any person accompanying a hunting or fishing party as an  
 11 outfitter or agent or employee of such outfitter shall be  
 12 equally responsible with any person or party employing him  
 13 as an outfitter for any violation of ~~the law~~ fish and game  
 14 laws; any such outfitter or employee of such outfitter who  
 15 shall willfully fail to or refuse to report any violation of  
 16 ~~the law~~ fish and game laws shall be liable to the penalties  
 17 as herein provided. If any professional guide commits any  
 18 violation of the laws or applicable regulations relating to  
 19 fish and game, outfitting, or guiding with actual or implied  
 20 knowledge of an outfitter then employing such guide, the  
 21 outfitter is legally responsible for such violation for all  
 22 purposes under the laws or regulations if the outfitter  
 23 fails to report any such violation to proper authority.

24 (2) No person may hire or retain any outfitter or  
 25 professional guide unless the outfitter or professional

1 guide is currently licensed in accordance with the laws of  
2 the state of Montana."

3 Section 5. Section 87-4-104, MCA, is amended to read:

4 "87-4-104. Powers and duties of department relating to  
5 outfitters and guides. The department shall:

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

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

19 (3) establish a minimum of two meetings annually with  
20 the advisory outfitters' council;

21 (4) consult with the advisory outfitters' council to  
22 develop policy concerning the administration of outfitting;

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

1 Section 6. Section 87-4-105, MCA, is amended to read:

2 "87-4-105. Outfitters' council. The council shall have  
3 the authority and duty to make recommendations to the  
4 department and the director as to:

5 (1) outfitter standards and professional guide  
6 standards;

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

13 (3) hearings and proceedings to suspend or revoke  
14 licenses of outfitters and professional guides and to  
15 recommend suspension or revocation of licenses for due  
16 cause;

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

22 Section 7. Section 87-4-106, MCA, is amended to read:

23 "87-4-106. Authorization for rules. The department may  
24 adopt, promulgate, and enforce rules recommended by the  
25 advisory outfitters' council as provided in 87-4-105 and all

1 other rules it may consider proper for the administration  
2 and enforcement of the provisions of this part and the  
3 regulation of outfitting and guiding to provide for the  
4 services to the public."

5 Section 8. Section 87-4-121, MCA, is amended to read:

6 "87-4-121. License required -- services performed --  
7 standards. (1) No person may act as an outfitter or  
8 professional guide, ~~or resident guide~~ or advertise as an  
9 outfitter without first securing a license in accordance  
10 with the provisions of this part.

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

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

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

25 (5) An outfitter may not willfully and substantially

1 misrepresent his facilities, prices, equipment, services, or  
2 hunting or fishing opportunities.

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

6 Section 9. Section 87-4-122, MCA, is amended to read:

7 "87-4-122. Outfitter's qualifications. Each applicant  
8 for and holder of an outfitter's license or any renewal  
9 thereof shall, in the opinion of the director, meet the  
10 following qualifications:

11 (1) be a person of at least 18 years of age ~~in~~  
12 ~~possession of all natural faculties of ordinary~~  
13 ~~intelligence and in such physical condition as to be able~~  
14 who is physically capable and mentally competent to perform  
15 his duties as an outfitter;

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

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



1 designated agent);

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

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

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

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

19 (8) have not been finally adjudged by a court of law  
20 guilty of any substantial breach of written or oral contract  
21 with any person utilizing the applicant's services as an  
22 outfitter or professional guide during the license year  
23 immediately preceding that for which the application is  
24 made;

25 (9) have not committed any negligent act or misconduct

1 while acting as an outfitter or professional guide which  
2 negligence---or---misconduct that caused a danger or  
3 unreasonable risk of danger to person or property of any  
4 client of such outfitter or professional guide during the  
5 license year immediately preceding that for which the  
6 application is made;

7 (10) have not, at any time, been ~~convicted~~ pleaded  
8 guilty to or been adjudged by a court guilty of a felony,  
9 unless civil rights have been restored pursuant to law. No  
10 person may apply for or hold an outfitter's license during  
11 any period of time in which a deferred sentence has been  
12 imposed deferred or suspended for a felony.

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

17 Section 10. Section 87-4-123, MCA, is amended to read:

18 "87-4-123. Professional guide's qualifications. (1) An  
19 applicant for a professional guide's license shall meet the  
20 following requirements:

21 (a) be a person of at least 18 years of age; ~~in~~  
22 ~~possession---of---all---natural---faculties,---of---ordinary~~  
23 ~~intelligence,---and---in---such---physical---condition---as---to---be---able~~  
24 who is physically capable and mentally competent to perform  
25 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)~~(B) be endorsed and recommended by an outfitter with a valid license;

~~(d)~~(C) 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 of the state of Montana or the United States within the past 5 years;

~~(e)~~(D) have not committed any negligent--act GROSS NEGLIGENCE or misconduct while acting as a guide that caused an accident or injury to person or property of any client of an outfitter during the license year immediately preceding that for which the application is made;

~~(f)~~(E) have not, at any time, pleaded guilty to or been adjudged by a court guilty of a felony, unless civil rights have been restored pursuant to law. No person may apply for or hold a professional guide's license during any period of time in which a sentence has been deferred or suspended for a felony.

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

Section 11. Section 87-4-124, MCA, is amended to read:

"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, birth date, physical description, and telephone number;

(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) a statement an affidavit on a form provided by the department 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

1 contemplated to be performed by such applicant;

2 (g) a statement of the maximum number of guests to be  
3 taken at any one time;

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

8 (2) Applications for outfitter's license shall be in  
9 the name of an individual person only. Applications  
10 involving corporations or partnerships shall be made by one  
11 individual person who qualifies under the provisions of this  
12 part; any license issued pursuant thereto shall be in the  
13 name of that person; and the license shall specifically  
14 state that the same is issued for the use and benefit of the  
15 named corporation or partnership involved. Any revocation or  
16 suspension of such a license is binding upon the individual  
17 person and the partnership or corporation for the use and  
18 benefit of which the license was originally issued.

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

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

1 Section 12. Section 87-4-125, MCA, is amended to read:

2 "87-4-125. Outfitter's examination. Each applicant for  
3 an outfitter's license shall pass a standard examination  
4 administered by the director or an agent designated by him,  
5 which examination shall require general and sufficient  
6 knowledge displaying and indicating ability to perform the  
7 services contemplated with efficiency and with safety to the  
8 health and welfare of persons employing such services. The  
9 examination shall test the applicant's knowledge of subjects  
10 which shall apply to the type of license applied for in the  
11 following subjects:

12 (1) federal and state fish and game laws and  
13 regulations;

14 (2) practical woodsmanship;

15 (3) general knowledge of big game;

16 (4) field preparation of trophies;

17 (5) care of game meat;

18 (6) use of outfitter's gear as shown listed on the  
19 application;

20 (7) knowledge of area and terrain;

21 (8) knowledge of firearms;

22 (9) federal and state regulations as applicable to  
23 outfitting;

24 (10) ~~practical~~ first aid;

25 (11) boat safety;

1 ~~(12) water safety;~~

2 ~~(13) care and safety of livestock."~~

3 Section 13. Section 87-4-126, MCA, is amended to read:

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

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

15 Section 14. Section 87-4-127, MCA, is amended to read:

16 "87-4-127. Fees. (1) Applications shall be accompanied  
17 by a license fee as herein stipulated, which will be  
18 refunded if and when the application is denied:

19 (a) resident outfitter's license fee.....\$50;

20 (b) resident ~~professional~~ guide's fee.....\$15;

21 (c) nonresident outfitter's license fee.....\$150;

22 (d) nonresident professional guide's fee.....\$100.

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

25 ~~(3)~~ (2) If the nonresident resides in a state requiring

1 residents of the state of Montana to pay in excess of such  
2 amounts for a similar license, the fee for such nonresident  
3 outfitters outfitter's or guides professional guide's  
4 license shall be the same amount as the higher fee charged  
5 in the state where the nonresident resides. All fees  
6 collected under this part shall be deposited as provided in  
7 87-1-601.

8 ~~(4)~~ (3) The license fee shall be used to investigate  
9 the applicant, to enforce this part, and for administrative  
10 costs."

11 Section 15. Section 87-4-128, MCA, is amended to read:

12 "87-4-128. Investigation of applicant -- issuance or  
13 denial of license. (1) The director in his discretion may  
14 cause to be made such additional investigation and inquiry  
15 relative to the applicant for outfitter's or professional  
16 guide's license and an applicant's qualifications as he  
17 considers advisable.

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

25 (3) Final decision as to issuance of renewal licenses

1 shall be made not later than 30 days from the date of  
2 receipt of the completed application for renewal and not  
3 later than 90 days from the date of receipt of a completed  
4 application for a new license.

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

10 (5) An outfitter licensee must make an application for  
11 license renewal by January 1 of the license year. A penalty  
12 fee of \$50 will be charged in addition to the regular  
13 resident or nonresident outfitter's license if the  
14 application for such license is not completed and made by  
15 January 1 of the license year. This subsection does not  
16 apply to a new applicant for an outfitter's license."

17 Section 16. Section 87-4-130, MCA, is amended to read:

18 "87-4-130. Professional guide's license. (1) For the  
19 purposes of this part, a person may serve as a professional  
20 guide under his employer's license, after submitting his  
21 application with the proper license fee, until the license  
22 is issued ~~or for 10 days after notification of the rejection~~  
23 of the license or denied.

24 (2) To be valid, a professional guide's license must  
25 bear the signature and outfitter's license number of ~~an~~ the

1 endorsing outfitter and is valid only while the holder of  
2 such license is employed by ~~an~~ the endorsing outfitter."

3 Section 17. Section 87-4-131, MCA, is amended to read:

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

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

11 (3) If a licensed outfitter dies, the outfitter's  
12 license shall be considered to be part of the estate of the  
13 deceased outfitter and, subject to approval by the director,  
14 shall allow the immediate members of the family MAY CONTINUE  
15 to outfit for the deceased outfitter's unexpired license  
16 year OR until the heirs or personal representative of the  
17 estate sells the outfitting business or obtains relicensure  
18 therefor."

19 Section 18. Section 87-4-141, MCA, is amended to read:

20 "87-4-141. Grounds for suspension or revocation of  
21 license. Every license or right to apply for and hold such  
22 license may be suspended or revoked upon any of the  
23 following grounds:

24 (1) having ceased to meet all of the qualifications  
25 for holding a license;

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

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

3 (4) conviction having pleaded guilty to or been  
4 adjudged by a court guilty of a felony, unti+ including a  
5 case in which the sentence is suspended or imposition of the  
6 sentence is deferred, unless civil rights are have been  
7 restored or unti+ time of any deferred sentence for a felony  
8 has expired pursuant to law;

9 (5) two convictions or bond forfeitures of \$100 or  
10 more as to violations of the fish and game or outfitting  
11 laws or regulations of the state of Montana or of the United  
12 States within the past 5 years;

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

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

19 (8) negligence or misconduct while acting as an  
20 outfitter or ~~professional~~ guide which--negligence--or  
21 misconduct that causes a--danger--or--unreasonable--risk--of  
22 danger an accident or injury to person or property of any  
23 client of such outfitter or professional guide."

24 Section 19. Section 87-4-142, MCA, is amended to read:

25 "87-4-142. Procedure for suspension or revocation of

1 license -- reissuance. (1) Proceedings for the revocation or  
2 suspension of a license issued hereunder may be taken upon  
3 charge or recommendation of any person. All such charges or  
4 recommendations must be made in writing, must state the  
5 facts upon which such charge or recommendation is based, and  
6 must be signed and sworn to by the person making the charge  
7 or recommendation. Any such charge or recommendation shall  
8 be filed with the director. Thereupon, the director shall  
9 initiate a preliminary investigation of all facts in  
10 connection with the charge.

11 (2) A copy of all information shall be transmitted to  
12 the advisory outfitters' council. The advisory outfitters'  
13 council may make recommendation as to the action to be  
14 taken. Any such recommendation shall be made in writing and  
15 delivered to the director within 20 days after date of  
16 transmittal of such information to the council.

17 (3) If the accusation be deemed to be unfounded or  
18 trivial, the director shall dismiss the same and will advise  
19 the licensee charged and the complaining party of the  
20 action. Should the director determine the charge or  
21 recommendation to have good cause and to be sufficiently  
22 founded, he shall ~~recommend to the commission that the same~~  
23 ~~be approved and the revocation or suspension be effected~~  
24 appoint a hearing officer who shall conduct a hearing on  
25 such charges in accordance with the Montana Administrative

1 Procedure Act-

2 (4) The director thereupon shall cause a copy of the  
 3 charge, recommendation of the council, and a record of the  
 4 investigation to be served upon the licensee involved not  
 5 less than 20 days prior to the day set for hearing thereon,  
 6 which said hearing shall be before ~~the--commission~~ an  
 7 appointed hearing officer at a time and place set by such  
 8 commission officer. At the hearing, the licensee involved  
 9 may be represented by counsel. After full, fair, and  
 10 impartial hearing, the commission director may suspend the  
 11 accused's license or his right to hold a license for a  
 12 period not to exceed 3 years, may order the license revoked,  
 13 or may dismiss the charge or recommendation based upon the  
 14 facts shown at the hearing.

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

17 Section 20. Section 87-4-143, MCA, is amended to read:

18 "87-4-143. Appeal procedure. Any person who feels  
 19 aggrieved by the denial of issuance of a license or  
 20 suspension or revocation of a license as an outfitter or  
 21 professional guide may appeal to the district court of the  
 22 county of his residence within 30 days after the date of  
 23 such action by filing with the clerk of said court a notice  
 24 of appeal briefly setting forth the action complained of and  
 25 appealed from. Summons and copy of the notice of appeal

1 shall be served on the commission director, and all  
 2 proceedings shall conform to the code of civil procedure of  
 3 the state of Montana. Upon such appeal, the action shall be  
 4 by trial de novo, and upon demand in writing, either party  
 5 shall be entitled to trial by jury. The court may sustain or  
 6 reverse the action of the commission director or take such  
 7 other action as the court may deem just and proper. If the  
 8 commission director or the court has ordered a stay of any  
 9 revocation or suspension and the commission's director's  
 10 revocation or suspension is thereafter sustained by the  
 11 court, the period of suspension or revocation shall begin  
 12 with the first day after the court's action sustaining the  
 13 decision of the commission director."

14 Section 21. Section 87-4-144, MCA, is amended to read:  
 15 "87-4-144. Enforcement. The warden ~~or--ex--officio~~  
 16 warden designated by the department to primarily administer  
 17 outfitting and guiding laws and rules, other wardens, and  
 18 all peace officers shall enforce this part."

-End-

HOUSE AMENDMENTS TO

Respectfully report as follows: That.....SENATE Bill No. 459  
be amended as follows:

1. Page 12, line 20.  
Following: "affidavit"  
Strike: "on a form provided"
2. Page 12, line 21.  
Following: line 20  
Strike: "department by"
3. Page 13, line 5.  
Following: "appropriate"  
Strike: "federal"
4. Page 13, line 22.  
Following: "made"  
Insert: "in"

~~DO PASS~~ BE CONCURRED IN AS AMENDED  
~~XXXXXX~~

.....  
Orval Ellison  
ORVAL ELLISON, Chairman.



March 23, 1981

PROPOSED GOVERNOR'S AMENDMENTS TO SB 459; REFERENCE  
COPY, AS FOLLOWS:

1. P. 18, L. 11  
Following: (3)  
Delete: If a licensed outfitter dies,
2. P. 18, L. 13  
Following: and;  
Delete: subject  
Insert: Subject
3. P. 18, L. 14  
Following: family  
Insert: of a deceased licensed outfitter
4. P. 11, L. 10  
Following: GROSS  
Delete: NEGLIGENCE  
Insert: negligent act

## 1 SENATE BILL NO. 459

2 INTRODUCED BY E. SMITH, LEE, GALT

3 BY REQUEST OF

4 THE SENATE COMMITTEE ON FISH AND GAME

5  
6 A BILL FOR AN ACT ENTITLED: "AN ACT TO GENERALLY REVISE THE  
7 LAWS GOVERNING OUTFITTERS AND GUIDES IN THE STATE OF  
8 MONTANA; AMENDING SECTIONS 2-15-3403, 87-4-101 THROUGH  
9 87-4-106, 87-4-121 THROUGH 87-4-128, 87-4-130, 87-4-131, AND  
10 87-4-141 THROUGH 87-4-144, MCA."

11  
12 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

13 Section 1. Section 2-15-3403, MCA, is amended to read:

14 "2-15-3403. Montana outfitters' council. (1) There is  
15 a Montana outfitters' council.

16 (2) The council consists of seven members. Each member  
17 shall be a licensed outfitter and shall represent one of the  
18 seven fish and game administrative districts. A member shall  
19 be selected by the licensed outfitters residing in that  
20 district by election at an annual meeting of the outfitters  
21 to be held in the city where the district regional  
22 headquarters at 1:00 p.m. on the second Friday is located  
23 during the month of March. A majority vote cast by written  
24 ballot of all the outfitters in attendance at the meeting  
25 shall determine the member delegate from the district. At

1 the election an alternate member delegate shall also be  
2 elected by written ballot to serve if the first-elected  
3 member delegate is unable to act.

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

6 (4) The council is allocated to the department.

7 (5) The council is not subject to the provisions of  
8 2-15-122."

9 Section 2. Section 87-4-101, MCA, is amended to read:  
10 "87-4-101. Definitions. As used in this part, unless  
11 the context requires otherwise, the following definitions  
12 apply:

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

15 ~~(2)(1)~~ (1) "License year" means that period commencing May  
16 ~~1~~ January 1 and ending ~~April 30~~ December 31 of the next same  
17 year.

18 ~~(3)(2)~~ (2) "Nonresident" means a person other than a  
19 resident.

20 ~~(4)(3)~~ (3) "Outfitter" means any person, persons, company,  
21 or 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 and accompanies such a party or person on an  
 4 expedition for any of these purposes:

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

8 (d) for consideration aids or assists any person in  
 9 locating or pursuing any game animal.

10 (4) "Outfitters' council" means the Montana  
 11 outfitters' council provided for in 2-15-3403.

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

17 (6) "Resident" means a person who qualifies for a  
 18 resident Montana hunting or fishing license under 87-2-102.

19 ~~(7) "Resident guide" means a resident who guides~~  
 20 ~~resident or nonresident friends for the purpose of hunting~~  
 21 ~~game animals without compensation."~~

22 Section 3. ~~Section 87-4-102, MCA, is amended to read:~~

23 "87-4-102. Determination of what constitutes  
 24 consideration. The providing of the services, property, or  
 25 equipment mentioned in 87-4-101(4)(3) or the advertising of

1 services to assist persons to hunt, pursue, or take wildlife  
 2 or to fish shall be conclusively presumed to have been for  
 3 consideration for the purposes of this part ~~if the same or~~  
 4 ~~any thereof are provided by any person, company, or~~  
 5 ~~corporation for more than two parties or two other persons~~  
 6 ~~during any calendar year or on more than two occasions~~  
 7 ~~during any such calendar year."~~

8 Section 4. Section 87-4-103, MCA, is amended to read:

9 "87-4-103. Responsibility for violations of law. (1)  
 10 Any person accompanying a hunting or fishing party as an  
 11 outfitter or agent or employee of such outfitter shall be  
 12 equally responsible with any person or party employing him  
 13 as an outfitter for any violation of the fish and game  
 14 laws; any such outfitter or employee of such outfitter who  
 15 shall willfully fail to or refuse to report any violation of  
 16 the fish and game laws shall be liable to the penalties  
 17 as herein provided. If any professional guide commits any  
 18 violation of the laws or applicable regulations relating to  
 19 fish and game, outfitting, or guiding with actual or implied  
 20 knowledge of an outfitter then employing such guide, the  
 21 outfitter is legally responsible for such violation for all  
 22 purposes under the laws or regulations if the outfitter  
 23 fails to report any such violation to proper authority.

24 (2) No person may hire or retain any outfitter or  
 25 professional guide unless the outfitter or professional

1 guide is currently licensed in accordance with the laws of  
2 the state of Montana."

3 Section 5. Section 87-4-104, MCA, is amended to read:

4 "87-4-104. Powers and duties of department relating to  
5 outfitters and guides. The department shall:

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

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

19 (3) establish a minimum of two meetings annually with  
20 the advisory outfitters' council;

21 (4) consult with the advisory outfitters' council to  
22 develop policy concerning the administration of outfitting;

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

1 Section 6. Section 87-4-105, MCA, is amended to read:

2 "87-4-105. Outfitters' council. The council shall have  
3 the authority and duty to make recommendations to the  
4 department and the director as to:

5 (1) outfitter standards and professional guide  
6 standards;

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

13 (3) hearings and proceedings to suspend or revoke  
14 licenses of outfitters and professional guides and to  
15 recommend suspension or revocation of licenses for due  
16 cause;

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

22 Section 7. Section 87-4-106, MCA, is amended to read:

23 "87-4-106. Authorization for rules. The department may  
24 adopt, promulgate, and enforce rules recommended by the  
25 advisory outfitters' council as provided in 87-4-105 and all

1 other rules it may consider proper for the administration  
2 and enforcement of the provisions of this part and the  
3 regulation of outfitting and guiding to provide for the  
4 services to the public."

5 Section 8. Section 87-4-121, MCA, is amended to read:

6 "87-4-121. License required -- services performed --  
7 standards. (1) No person may act as an outfitter, or  
8 professional guide, ~~or resident guide~~ or advertise as an  
9 outfitter without first securing a license in accordance  
10 with the provisions of this part.

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

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

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

25 (5) An outfitter may not willfully and substantially

1 misrepresent his facilities, prices, equipment, services, or  
2 hunting or fishing opportunities.

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

6 Section 9. Section 87-4-122, MCA, is amended to read:

7 "87-4-122. Outfitter's qualifications. Each applicant  
8 for and holder of an outfitter's license or any renewal  
9 thereof shall, in the opinion of the director, meet the  
10 following qualifications:

11 (1) be a person of at least 18 years of age, ~~in~~  
12 ~~possession of all natural faculties, of ordinary~~  
13 ~~intelligence and in such physical condition as to be able~~  
14 who is physically capable and mentally competent to perform  
15 his duties as an outfitter;

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

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

1 designated agent);

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

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

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

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

19 (8) have not been finally adjudged by a court of law  
20 guilty of any substantial breach of written or oral contract  
21 with any person utilizing the applicant's services as an  
22 outfitter or professional guide during the license year  
23 immediately preceding that for which the application is  
24 made;

25 (9) have not committed any negligent act or misconduct

1 while acting as an outfitter or professional guide which  
2 negligence---or---misconduct that caused a danger or  
3 unreasonable risk of danger to person or property of any  
4 client of such outfitter or professional guide during the  
5 license year immediately preceding that for which the  
6 application is made;

7 (10) have not, at any time, been-convicted pleaded  
8 guilty to or been adjudged by a court guilty of a felony,  
9 unless civil rights have been restored pursuant to law. No  
10 person may apply for or hold an outfitter's license during  
11 any period of time in which a deferred sentence has been  
12 imposed deferred or suspended for a felony.

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

17 Section 10. Section 87-4-123, MCA, is amended to read:

18 "87-4-123. Professional guide's qualifications. (1) An  
19 applicant for a professional guide's license shall meet the  
20 following requirements:

21 (a) be a person of at least 18 years of age--in  
22 possession---of---all---natural---faculties---of---ordinary  
23 intelligence--and--in--such--physical--condition--as--to--be--able  
24 who is physically capable and mentally competent to perform  
25 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)(B) be endorsed and recommended by an outfitter with a valid license;~~

~~(d)(C) 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 of the state of Montana or the United States within the past 5 years;~~

~~(e)(D) have not committed any negligent--act GROSS NEGLIGENCE NEGLIGENT ACT or misconduct while acting as a guide that caused an accident or injury to person or property of any client of an outfitter during the license year immediately preceding that for which the application is made;~~

~~(f)(E) have not, at any time, pleaded guilty to or been adjudged by a court guilty of a felony, unless civil rights have been restored pursuant to law. No person may apply for or hold a professional guide's license during any period of time in which a sentence has been deferred or suspended for a felony.~~

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

Section 11. Section 87-4-124, MCA, is amended to read:

"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, birth date, physical description, and telephone number;

(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) ~~a statement an affidavit on a form provided by the department 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

1 sufficient and satisfactory for the services advertised or  
2 contemplated to be performed by such applicant;

3 (g) a statement of the maximum number of guests to be  
4 taken at any one time;

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

9 (2) Applications for outfitter's license shall be in  
10 the name of an individual person only. Applications  
11 involving corporations or partnerships shall be made by one  
12 individual person who qualifies under the provisions of this  
13 part; any license issued pursuant thereto shall be in the  
14 name of that person; and the license shall specifically  
15 state that the same is issued for the use and benefit of the  
16 named corporation or partnership involved. Any revocation or  
17 suspension of such a license is binding upon the individual  
18 person and the partnership or corporation for the use and  
19 benefit of which the license was originally issued.

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

22 (4) Only one application for an outfitter's or  
23 professional guide's license may be made IN any one license  
24 year. If any application is denied, subsequent applications  
25 by the same applicant for the license year involved are

1 void, except as provided in 87-4-129."

2 Section 12. Section 87-4-125, MCA, is amended to read:

3 "87-4-125. Outfitter's examination. Each applicant for  
4 an outfitter's license shall pass a standard examination  
5 administered by the director or an agent designated by him,  
6 which examination shall require general and sufficient  
7 knowledge displaying and indicating ability to perform the  
8 services contemplated with efficiency and with safety to the  
9 health and welfare of persons employing such services. The  
10 examination shall test the applicant's knowledge of subjects  
11 which shall apply to the type of license applied for in the  
12 following subjects:

13 (1) federal and state fish and game laws and  
14 regulations;

15 (2) practical woodsmanship;

16 (3) general knowledge of big game;

17 (4) field preparation of trophies;

18 (5) care of game meat;

19 (6) use of outfitter's gear as shown listed on the  
20 application;

21 (7) knowledge of area and terrain;

22 (8) knowledge of firearms;

23 (9) federal and state regulations as applicable to  
24 outfitting;

25 (10) ~~practical~~ first aid;



1       ~~(1) boat safety;~~  
2       ~~(2) water safety;~~  
3       ~~(3) care and safety of livestock."~~  
4       Section 13. Section 87-4-126, MCA, is amended to read:  
5       "87-4-126. Residence requirements -- waiver and  
6 reciprocity. (1) Residence requirements for procuring an  
7 outfitter's license are waived as to persons who are  
8 citizens bona fide residents of a common boundary state and  
9 of a common county thereof to the same extent the home state  
10 of the applicant waives such requirements for the residents  
11 of Montana, except for fee.  
12       (2) For the purpose of obtaining a professional  
13 guide's license only, nonresident professional guides  
14 employed by resident outfitters shall be considered resident  
15 professional guides."  
16       Section 14. Section 87-4-127, MCA, is amended to read:  
17       "87-4-127. Fees. (1) Applications shall be accompanied  
18 by a license fee as herein stipulated, which will be  
19 refunded if and when the application is denied:  
20       (a) resident outfitter's license fee.....\$50;  
21       (b) resident professional guide's fee.....\$15;  
22       ~~(c) nonresident outfitter's license fee.....\$150;~~  
23       (d) nonresident professional guide's fee.....\$100.  
24       ~~(2) A resident guide's license is a valid Montana~~  
25 ~~wildlife-conservation license.~~

1       ~~(2)~~ If the nonresident resides in a state requiring  
2 residents of the state of Montana to pay in excess of such  
3 amounts for a similar license, the fee for such nonresident  
4 ~~outfitters~~ outfitter's or ~~guides~~ professional guide's  
5 license shall be the same amount as the higher fee charged  
6 in the state where the nonresident resides. All fees  
7 collected under this part shall be deposited as provided in  
8 87-1-601.  
9       ~~(3)~~ The license fee shall be used to investigate  
10 the applicant, to enforce this part, and for administrative  
11 costs."  
12       Section 15. Section 87-4-128, MCA, is amended to read:  
13       "87-4-128. Investigation of applicant -- issuance or  
14 denial of license. (1) The director in his discretion may  
15 cause to be made such additional investigation and inquiry  
16 relative to the applicant for outfitter's or professional  
17 guide's license and an applicant's qualifications as he  
18 considers advisable.  
19       (2) The director may deny or refuse to issue any new  
20 license or to renew any previous license if, in his opinion,  
21 the applicant does not meet the qualifications herein  
22 stated. In the event that any application for license is  
23 denied or refused, the director shall immediately notify the  
24 applicant, setting forth in the notice the grounds upon  
25 which the denial or refusal is based.

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

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

11 (5) An outfitter licensee must make an application for  
12 license renewal by January 1 of the license year. A penalty  
13 fee of \$50 will be charged in addition to the regular  
14 resident or nonresident outfitter's license if the  
15 application for such license is not completed and made by  
16 January 1 of the license year. This subsection does not  
17 apply to a new applicant for an outfitter's license."

18 Section 16. Section 87-4-130, MCA, is amended to read:

19 "87-4-130. Professional guide's license. (1) For the  
20 purposes of this part, a person may serve as a professional  
21 guide under his employer's license, after submitting his  
22 application with the proper license fee, until the license  
23 is issued ~~or for 10 days after notification of the rejection~~  
24 ~~of the license or denied.~~

25 (2) To be valid, a professional guide's license must

1 bear the signature and outfitter's license number of an the  
2 endorsing outfitter and is valid only while the holder of  
3 such license is employed by an the endorsing outfitter."

4 Section 17. Section 87-4-131, MCA, is amended to read:

5 "87-4-131. Transfer or amendment of outfitter's  
6 license. (1) No outfitter's license may be transferred  
7 during any license year.

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

12 ~~(3) If a licensed outfitter dies, the outfitter's~~  
13 ~~license shall be considered to be part of the estate of the~~  
14 ~~deceased outfitter and, subject SUBJECT to approval by the~~  
15 ~~director, shall allow the immediate members of the family OF~~  
16 A DECEASED LICENSED OUTFITTER MAY CONTINUE to outfit for the  
17 deceased outfitter's unexpired license year OR until the  
18 heirs or personal representative of the estate sells the  
19 outfitting business or obtains relicensure therefor."

20 Section 18. Section 87-4-141, MCA, is amended to read:

21 "87-4-141. Grounds for suspension or revocation of  
22 license. Every license or right to apply for and hold such  
23 license may be suspended or revoked upon any of the  
24 following grounds:

25 (1) having ceased to meet all of the qualifications

1 for holding a license;

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

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

4 (4) conviction having pleaded guilty to or been  
 5 adjudged by a court guilty of a felony, until including a  
 6 case in which the sentence is suspended or imposition of the  
 7 sentence is deferred, unless civil rights are have been  
 8 restored or until time of any deferred sentence for a felony  
 9 has expired pursuant to law;

10 (5) two convictions or bond forfeitures of \$100 or  
 11 more as to violations of the fish and game or outfitting  
 12 laws or regulations of the state of Montana or of the United  
 13 States within the past 5 years;

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

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

20 (8) negligence or misconduct while acting as an  
 21 outfitter or professional guide ~~which--negligence--or~~  
 22 ~~misconduct that causes a--danger--or--unreasonable--risk--of~~  
 23 danger an accident or injury to person or property of any  
 24 client of such outfitter or professional guide."

25 Section 19. Section 87-4-142, MCA, is amended to read:

1 "87-4-142. Procedure for suspension or revocation of  
 2 license -- reissuance. (1) Proceedings for the revocation or  
 3 suspension of a license issued hereunder may be taken upon  
 4 charge or recommendation of any person. All such charges or  
 5 recommendations must be made in writing, must state the  
 6 facts upon which such charge or recommendation is based, and  
 7 must be signed and sworn to by the person making the charge  
 8 or recommendation. Any such charge or recommendation shall  
 9 be filed with the director. Thereupon, the director shall  
 10 initiate a preliminary investigation of all facts in  
 11 connection with the charge.

12 (2) A copy of all information shall be transmitted to  
 13 the advisory outfitters' council. The advisory outfitters'  
 14 council may make recommendation as to the action to be  
 15 taken. Any such recommendation shall be made in writing and  
 16 delivered to the director within 20 days after date of  
 17 transmittal of such information to the council.

18 (3) If the accusation be deemed to be unfounded or  
 19 trivial, the director shall dismiss the same and will advise  
 20 the licensee charged and the complaining party of the  
 21 action. Should the director determine the charge or  
 22 recommendation to have good cause and to be sufficiently  
 23 founded, he shall ~~recommend to the commission that the same~~  
 24 ~~be approved and the revocation--or--suspension--be--effected~~  
 25 appoint a hearing officer who shall conduct a hearing on

1 such charges in accordance with the Montana Administrative  
2 Procedure Act.

3 (4) The director thereupon shall cause a copy of the  
4 charge, recommendation of the council, and a record of the  
5 investigation to be served upon the licensee involved not  
6 less than 20 days prior to the day set for hearing thereon,  
7 which said hearing shall be before ~~the--commission~~ an  
8 appointed hearing officer at a time and place set by such  
9 commission officer. At the hearing, the licensee involved  
10 may be represented by counsel. After full, fair, and  
11 impartial hearing, the ~~commission~~ director may suspend the  
12 accused's license or his right to hold a license for a  
13 period not to exceed 3 years, may order the license revoked,  
14 or may dismiss the charge or recommendation based upon the  
15 facts shown at the hearing.

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

18 Section 20. Section 87-4-143, MCA, is amended to read:

19 "87-4-143. Appeal procedure. Any person who feels  
20 aggrieved by the denial of issuance of a license or  
21 suspension or revocation of a license as an outfitter or  
22 professional guide may appeal to the district court of the  
23 county of his residence within 30 days after the date of  
24 such action by filing with the clerk of said court a notice  
25 of appeal briefly setting forth the action complained of and

1 appealed from. Summons and copy of the notice of appeal  
2 shall be served on the commission director, and all  
3 proceedings shall conform to the code of civil procedure of  
4 the state of Montana. Upon such appeal, the action shall be  
5 by trial de novo, and upon demand in writing, either party  
6 shall be entitled to trial by jury. The court may sustain or  
7 reverse the action of the commission director or take such  
8 other action as the court may deem just and proper. If the  
9 commission director or the court has ordered a stay of any  
10 revocation or suspension and the ~~commission's~~ director's  
11 revocation or suspension is thereafter sustained by the  
12 court, the period of suspension or revocation shall begin  
13 with the first day after the court's action sustaining the  
14 decision of the commission director."

15 Section 21. Section 87-4-144, MCA, is amended to read:

16 "87-4-144. Enforcement. The warden ~~or--ex--officio~~  
17 warden designated by the department to primarily administer  
18 outfitting and guiding laws and rules, other wardens, and  
19 all peace officers shall enforce this part."

-End-

March 23, 1981

The Honorable Jean A. Turnage  
President of the Senate  
State Capitol  
Helena, Montana 59620

The Honorable Robert L. Marks  
Speaker of the House  
State Capitol  
Helena, Montana 59620

Dear Senator Turnage and Representative Marks:

In accordance with the power vested in me as Governor by the Constitution and the laws of the State of Montana, I hereby return Senate Bill No. 459, "AN ACT TO GENERALLY REVISE THE LAWS GOVERNING OUTFITTERS AND GUIDES IN THE STATE OF MONTANA; AMENDING SECTIONS 2-15-3403, 87-4-101 THROUGH 87-4-106, 87-4-121 THROUGH 87-4-123, 87-4-130, 87-4-131, AND 87-4-141 THROUGH 87-4-144, MCA," without my signature and recommend the attached amendments.

It is the intent of SB 459, in part, to allow immediate family members of a deceased licensed outfitter to continue to outfit for the term of the deceased outfitter's unexpired license, if the director of the Department of Fish, Wildlife and Parks approves. The Bill as written, does not clearly accomplish this task. The problem can be solved by clarifying the language in Section 17 (Section 87-4-131(3)) of the bill.

Further, I am also proposing an amendment to Section 10 (Section 87-4-123(1)(D)) of the bill in order to clarify the language. Neither the substance nor intent of the cited section has been changed by my proposed amendment.

I urge your concurrence in these amendments.

Sincerely,

TED SCHWINDEN  
Governor