

SENATE BILL NO. 153

INTRODUCED BY RASMUSSEN, MAZUREK, YELLOWTAIL, BOYLAN,  
ANDERSON, MCLANE, CRIPPEN

IN THE SENATE

JANUARY 16, 1989	INTRODUCED AND REFERRED TO COMMITTEE ON FISH & GAME.
	FIRST READING.
JANUARY 17, 1989	ON MOTION, REREFERRED TO COMMITTEE ON BUSINESS & INDUSTRY.
JANUARY 26, 1989	COMMITTEE RECOMMEND BILL DO PASS AS AMENDED. REPORT ADOPTED.
JANUARY 27, 1989	PRINTING REPORT.
JANUARY 28, 1989	SECOND READING, DO PASS.
JANUARY 30, 1989	ENGROSSING REPORT.
JANUARY 31, 1989	THIRD READING, PASSED. AYES, 45; NOES, 5.
	TRANSMITTED TO HOUSE.

IN THE HOUSE

JANUARY 31, 1989	INTRODUCED AND REFERRED TO COMMITTEE ON LABOR & EMPLOYMENT RELATIONS.
FEBRUARY 20, 1989	FIRST READING.
MARCH 1, 1989	COMMITTEE RECOMMEND BILL BE CONCURRED IN AS AMENDED. REPORT ADOPTED.
MARCH 4, 1989	SECOND READING, CONCURRED IN.
MARCH 6, 1989	THIRD READING, CONCURRED IN. AYES, 88; NOES, 7.
	RETURNED TO SENATE WITH AMENDMENTS.

IN THE SENATE

MARCH 8, 1989

RECEIVED FROM HOUSE.

PASS CONSIDERATION FOR THE DAY.

MARCH 10, 1989

PASS CONSIDERATION FOR THE DAY.

MARCH 14, 1989

PASS CONSIDERATION FOR THE DAY.

MARCH 15, 1989

PASS CONSIDERATION FOR THE DAY.

MARCH 17, 1989

SECOND READING, AMENDMENTS NOT  
CONCURRED IN.

MARCH 21, 1989

ON MOTION, FREE CONFERENCE COMMITTEE  
REQUESTED AND APPOINTED.

IN THE HOUSE

MARCH 23, 1989

ON MOTION, FREE CONFERENCE COMMITTEE  
REQUESTED AND APPOINTED.

IN THE SENATE

MARCH 29, 1989

FREE CONFERENCE COMMITTEE REPORTED.

IN THE HOUSE

MARCH 31, 1989

FREE CONFERENCE  
COMMITTEE REPORT ADOPTED.

IN THE SENATE

MARCH 31, 1989

SECOND READING, FREE CONFERENCE  
COMMITTEE REPORT ADOPTED.

APRIL 3, 1989

THIRD READING, FREE CONFERENCE  
COMMITTEE REPORT ADOPTED.

SENT TO ENROLLING.

REPORTED CORRECTLY ENROLLED.

1  
2 INTRODUCED BY

BILL NO. <sup>153</sup>

3  
4 A BILL FOR AN ACT ENTITLED: "AN ACT TO CLARIFY THAT AN  
5 OUTFITTER LICENSED UNDER TITLE 37, CHAPTER 47, MAY RETAIN  
6 THE SERVICES OF A PROFESSIONAL GUIDE ACTING AS AN  
7 INDEPENDENT CONTRACTOR; AND AMENDING SECTIONS 37-47-101,  
8 37-47-301, 37-47-304, 37-47-309, AND 37-47-341, MCA."

9  
10 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

11 **Section 1.** Section 37-47-101, MCA, is amended to read:

12 "37-47-101. (Temporary) Definitions. As used in this  
13 chapter, unless the context requires otherwise, the  
14 following definitions apply:

15 (1) "Board" means the board of outfitters provided for  
16 in 2-15-1883.

17 (2) "Department" means the department of commerce  
18 provided for in Title 2, chapter 15, part 18.

19 (3) "License year" means that period commencing  
20 January 1 and ending December 31 of the same year.

21 (4) "Nonresident" means a person other than a  
22 resident.

23 (5) "Outfitter" means any person, except a person  
24 providing services on real property that he owns for the  
25 primary pursuit of bona fide agricultural interests, who:

1 (a) engages in the business of outfitting for hunting  
2 or fishing parties, as the term is commonly understood;

3 (b) for consideration provides any saddle or pack  
4 animal or personal service for hunting or fishing parties or  
5 camping equipment, vehicles, or other conveyance, except  
6 boats, for any person to hunt, trap, capture, take, or kill  
7 any game and accompanies such a party or person on an  
8 expedition for any of these purposes;

9 (c) for consideration furnishes a boat or other  
10 floating craft and accompanies any person for the purpose of  
11 catching fish; or

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

14 (6) "Professional guide" and "guide" means mean a  
15 person:

16 (a) who is an employee of an outfitter and who  
17 furnishes only personal guiding services in assisting a  
18 person to hunt or take game animals or fish and who does not  
19 furnish any facilities, transportation, or equipment; or

20 (b) who has contracted independently with an outfitter  
21 and who furnishes only personal guiding services in  
22 assisting a person to hunt or take game animals or fish.

23 (7) "Resident" means a person who qualifies for a  
24 resident Montana hunting or fishing license under 87-2-102.

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

1 offered by a licensed outfitter or professional guide.

2 37-47-101. (Effective July 1, 1991) Definitions. As  
3 used in this part, unless the context requires otherwise,  
4 the following definitions apply:

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6 January 1 and ending December 31 of the same year.

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18 any game and accompanies such a party or person on an  
19 expedition for any of these purposes;

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21 floating craft and accompanies any person for the purpose of  
22 catching fish; or

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24 locating or pursuing any game animal.

25 (4) "Outfitters' council" means the Montana

1 outfitters' council provided for in 2-15-1883.

2 (5) "Professional guide" and "guide" means mean a  
3 person;

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12 resident Montana hunting or fishing license under 87-2-102.

13 (7) "Participant" means a person using the services  
14 offered by a license outfitter or professional guide."

15 **Section 2.** Section 37-47-301, MCA, is amended to read:

16 "37-47-301. License required -- services performed --  
17 standards. (1) No person may act as an outfitter or  
18 professional guide or advertise as an outfitter without  
19 first securing a license in accordance with the provisions  
20 of this part.

21 (2) Whenever an outfitter is engaged by any person,  
22 the outfitter shall keep and submit records as required by  
23 the department.

24 (3) Outfitters, professional guides, and their  
25 employees may not shoot, kill, or take big game animals for

1 or in competition with those employing them while acting  
2 under employment as an-outfitter outfitters or professional  
3 guides.

4 (4) Outfitters utilizing lands under the control of  
5 the United States government shall obtain the proper permits  
6 required by the government office responsible for the area  
7 in which the outfitter intends to operate and shall comply  
8 with environmental protection standards established for  
9 these lands.

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

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

16 **Section 3.** Section 37-47-304, MCA, is amended to read:

17 "37-47-304. **Application.** (1) Each applicant for an  
18 outfitter's or professional guide's license shall make  
19 application for license upon a form to be prescribed and  
20 furnished by the board which shall include:

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

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

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

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

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

14 (f) an affidavit by the outfitter to the board that  
15 the equipment listed on the application is in fact owned or  
16 leased by the applicant, is in good operating condition, and  
17 is sufficient and satisfactory for the services advertised  
18 or contemplated to be performed by such applicant;

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

21 (h) the written approval of the appropriate agency or  
22 landowner on whose lands he will establish hunting camps.

23 (2) Applications for outfitter's license shall be in  
24 the name of an individual person only. Applications  
25 involving corporations or partnerships shall be made by one

individual person who qualifies under the provisions of this part; any license issued pursuant thereto shall be in the name of that person; and the license shall specifically state that the same is issued for the use and benefit of the named corporation or partnership involved. Any revocation or suspension of such a license is binding upon the individual person and the partnership or corporation for the use and benefit of which the license was originally issued.

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

(4) Only one application for an outfitter's or professional guide's license may be made in any one license year. If any application is denied, subsequent applications by the same applicant for the license year involved are void, except as provided in 37-47-308."

**Section 4.** Section 37-47-309, MCA, is amended to read:

"37-47-309. Professional guide's license. (1) For the purposes of this part, a person may serve as a professional guide under his-employer's an outfitter's license, after submitting his application with the proper license fee, until the license is issued or denied.

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

outfitter."

**Section 5.** Section 37-47-341, MCA, is amended to read:

"37-47-341. Grounds for suspension or revocation of license. Every license or right to apply for and hold such license may be suspended or revoked upon any of the following grounds:

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

(2) fraud or deception in procuring a license;

(3) fraudulent, untruthful, or misleading advertising;

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

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

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

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

1       (8) negligence or misconduct while acting as an  
2 outfitter or professional guide that causes an accident or  
3 injury to person or property of any client of such outfitter  
4 or professional guide."

5       NEW SECTION. **Section 6.** Extension of authority. Any  
6 existing authority to make rules on the subject of the  
7 provisions of [this act] is extended to the provisions of  
8 [this act].

-End-

STATE OF MONTANA - FISCAL NOTE

Form BD-15


In compliance with a written request, there is hereby submitted a Fiscal Note for SB153, as introduced.

DESCRIPTION OF PROPOSED LEGISLATION:

SB153 clarifies that an outfitter licensed under Title 37, Chapter 47, may retain the services of a professional guide acting as an independent contractor.

ASSUMPTIONS:

1. Nothing contained in the proposed bill will change the current operations of the board so there will be no fiscal impact on the Board of Outfitters or the Department of Commerce.

  
RAY SHACKLEFORD, BUDGET DIRECTOR      DATE  
OFFICE OF BUDGET AND PROGRAM PLANNING      1/23/89

  
TOM RASMUSSEN, PRIMARY SPONSOR      DATE  
1-24-89

Fiscal Note for SB153, as introduced

**SB 153**



APPROVED BY COMM. ON  
BUSINESS & INDUSTRY

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ANDERSON, MCLANE, CRIPPEN

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in 2-15-1883.

(2) "Department" means the department of commerce  
provided for in Title 2, chapter 15, part 18.

(3) "License year" means that period commencing  
January 1 and ending December 31 of the same year.

(4) "Nonresident" means a person other than a  
resident.

(5) "Outfitter" means any person, except a person  
providing services on real property that he owns for the

primary pursuit of bona fide agricultural interests, 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  
camping equipment, vehicles, or other conveyance, except  
boats, for any person to hunt, trap, capture, take, or kill  
any game and accompanies such a party or person on an  
expedition for any of these purposes;

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

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locating or pursuing any game animal.

(6) "Professional guide" and "guide" means mean a  
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furnish any facilities, transportation, or equipment; or

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assisting a person to hunt or take game animals or fish.

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

(8) "Participant" means a person using the services offered by a licensed outfitter or professional guide.

37-47-101. (Effective July 1, 1991) Definitions. As used in this part, unless the context requires otherwise, the following definitions apply:

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

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(7) "Participant" means a person using the services offered by a license outfitter or professional guide."

**Section 2.** Section 37-47-301, MCA, is amended to read:

"37-47-301. License required -- services performed -- standards. (1) No person may act as an outfitter or professional guide or advertise as an outfitter without first securing a license in accordance with the provisions of this part.

(2) Whenever an outfitter is engaged by any person, the outfitter shall keep and submit records as required by the department.

(3) Outfitters, professional guides, and their

employees may not shoot, kill, or take big game animals for or in competition with those employing them while acting under employment as an-outfitter outfitters or professional guides.

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

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

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**Section 3.** Section 37-47-304, MCA, is amended to read:

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(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 or retained AS AN INDEPENDENT CONTRACTOR that the professional guide is in fact to be employed or retained AS AN INDEPENDENT CONTRACTOR by such outfitter and stating that the outfitter recommends the applicant for his qualifications;

(f) an affidavit by the outfitter to the board that the equipment listed on the application is in fact owned or leased by the applicant, is in good operating condition, and is sufficient and satisfactory for the services advertised or contemplated to be performed by such applicant;

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

(h) the written approval of the appropriate agency or landowner on whose lands he will establish hunting camps.

(2) Applications for outfitter's license shall be in

1 the name of an individual person only. Applications  
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 3 individual person who qualifies under the provisions of this  
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 5 name of that person; and the license shall specifically  
 6 state that the same is issued for the use and benefit of the  
 7 named corporation or partnership involved. Any revocation or  
 8 suspension of such a license is binding upon the individual  
 9 person and the partnership or corporation for the use and  
 10 benefit of which the license was originally issued.

11 (3) Application shall be made to and filed with the  
 12 board.

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 14 professional guide's license may be made in any one license  
 15 year. If any application is denied, subsequent applications  
 16 by the same applicant for the license year involved are  
 17 void, except as provided in 37-47-308."

18 **Section 4.** Section 37-47-309, MCA, is amended to read:

19 "37-47-309. 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~~ an outfitter's license, after  
 22 submitting his application with the proper license fee,  
 23 until the license is issued or denied.

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

1 endorsing outfitter and is valid only while the holder of  
 2 such license is employed or retained AS AN INDEPENDENT  
 3 CONTRACTOR by the endorsing outfitter."

4 **Section 5.** Section 37-47-341, MCA, is amended to read:

5 "37-47-341. Grounds for suspension or revocation of  
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 7 license may be suspended or revoked upon any of the  
 8 following grounds:

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

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

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

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

18 (5) two convictions or bond forfeitures of \$100 or  
 19 more as to violations of the fish and game or outfitting  
 20 laws or regulations of the state of Montana or of the United  
 21 States within the past 5 years;

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

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

3       (8) negligence or misconduct while acting as an  
4       outfitter or professional guide that causes an accident or  
5       injury to person or property of any client of such outfitter  
6       or professional guide."

7       NEW SECTION. **Section 6.** Extension of authority. Any  
8       existing authority to make rules on the subject of the  
9       provisions of [this act] is extended to the provisions of  
10      [this act].

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

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

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

**Section 3.** Section 37-47-304, MCA, is amended to read:

"37-47-304. 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 board 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 or retained AS AN INDEPENDENT CONTRACTOR that the professional guide is in fact to be employed or retained AS AN INDEPENDENT CONTRACTOR by such outfitter and stating that the outfitter recommends the applicant for his qualifications;

(f) an affidavit by the outfitter to the board that the equipment listed on the application is in fact owned or leased by the applicant, is in good operating condition, and is sufficient and satisfactory for the services advertised or contemplated to be performed by such applicant;

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

(h) the written approval of the appropriate agency or landowner on whose lands he will establish hunting camps.

(2) Applications for outfitter's license shall be in



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

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

(4) Only one application for an outfitter's or professional guide's license may be made in any one license year. If any application is denied, subsequent applications by the same applicant for the license year involved are void, except as provided in 37-47-308."

**Section 4.** Section 37-47-309, MCA, is amended to read:

"37-47-309. Professional guide's license. (1) For the purposes of this part, a person may serve as a professional guide under his--employer's an outfitter's license, after submitting his application with the proper license fee, until the license is issued or denied.

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

endorsing outfitter and is valid only while the holder of such license is employed or retained AS AN INDEPENDENT CONTRACTOR by the endorsing outfitter."

**Section 5.** Section 37-47-341, MCA, is amended to read:

"37-47-341. Grounds for suspension or revocation of license. Every license or right to apply for and hold such license may be suspended or revoked upon any of the following grounds:

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

(2) fraud or deception in procuring a license;

(3) fraudulent, untruthful, or misleading advertising;

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

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

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

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

3       (8) negligence or misconduct while acting as an  
4       outfitter or professional guide that causes an accident or  
5       injury to person or property of any client of such outfitter  
6       or professional guide."

7       NEW SECTION. Section 6. Extension of authority. Any  
8       existing authority to make rules on the subject of the  
9       provisions of [this act] is extended to the provisions of  
10      [this act].

-End-

STANDING COMMITTEE REPORT

12:55 PM 3/1/89  
BOA

March 1, 1989

Page 1 of 1

Mr. Speaker: We, the committee on Labor report that SENATE BILL 153 (blue reference copy) be concurred in as amended.

Signed: \_\_\_\_\_

Angela Russell  
Angela Russell, Chairman

[REP. O'KEEFE WILL CARRY THIS BILL ON THE HOUSE FLOOR]

And, that such amendments read:

1. Page 2, line 22.

Strike: "only"

Following: "services"

Insert: "and facilities, transportation, or equipment"

2. Page 4, line 10.

Strike: "only"

Following: "services"

Insert: "and facilities, transportation, or equipment"

HOUSE

(B)

481046SC.HBV

## SENATE BILL NO. 153

INTRODUCED BY RASMUSSEN, MAZUREK, YELLOWTAIL, BOYLAN,  
ANDERSON, MCLANE, CRIPPEN

A BILL FOR AN ACT ENTITLED: "AN ACT TO CLARIFY THAT AN  
OUTFITTER LICENSED UNDER TITLE 37, CHAPTER 47, MAY RETAIN  
THE SERVICES OF A PROFESSIONAL GUIDE ACTING AS AN  
INDEPENDENT CONTRACTOR; AND AMENDING SECTIONS 37-47-101,  
37-47-301, 37-47-304, 37-47-309, AND 37-47-341, MCA."

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

**Section 1.** Section 37-47-101, MCA, is amended to read:

"37-47-101. (Temporary) Definitions. As used in this  
chapter, unless the context requires otherwise, the  
following definitions apply:

(1) "Board" means the board of outfitters provided for  
in 2-15-1883.

(2) "Department" means the department of commerce  
provided for in Title 2, chapter 15, part 18.

(3) "License year" means that period commencing  
January 1 and ending December 31 of the same year.

(4) "Nonresident" means a person other than a  
resident.

(5) "Outfitter" means any person, except a person  
providing services on real property that he owns for the

primary pursuit of bona fide agricultural interests, 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  
camping equipment, vehicles, or other conveyance, except  
boats, for any person to hunt, trap, capture, take, or kill  
any game and accompanies such a party or person on an  
expedition for any of these purposes;

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

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

(6) "Professional guide" and "guide" means mean a  
person:

(a) who is an employee of an outfitter and who  
furnishes only personal guiding services in assisting a  
person to hunt or take game animals or fish and who does not  
furnish any facilities, transportation, or equipment; or

(b) who has contracted independently with an outfitter  
and who furnishes only personal guiding services AND  
FACILITIES, TRANSPORTATION, OR EQUIPMENT in assisting a  
person to hunt or take game animals or fish.

(7) "Resident" means a person who qualifies for a

1 resident Montana hunting or fishing license under 87-2-102.

2 (8) "Participant" means a person using the services  
3 offered by a licensed outfitter or professional guide.

4 37-47-101. (Effective July 1, 1991) Definitions. As  
5 used in this part, unless the context requires otherwise,  
6 the following definitions apply:

7 (1) "License year" means that period commencing  
8 January 1 and ending December 31 of the same year.

9 (2) "Nonresident" means a person other than a  
10 resident.

11 (3) "Outfitter" means any person, except a person  
12 providing services on real property that he owns for the  
13 primary pursuit of bona fide agricultural interests, who:

14 (a) engages in the business of outfitting for hunting  
15 or fishing parties, as the term is commonly understood;

16 (b) for consideration provides any saddle or pack  
17 animal or personal service for hunting or fishing parties or  
18 camping equipment, vehicles, or other conveyance, except  
19 boats, for any person to hunt, trap, capture, take, or kill  
20 any game and accompanies such a party or person on an  
21 expedition for any of these purposes;

22 (c) for consideration furnishes a boat or other  
23 floating craft and accompanies any person for the purpose of  
24 catching fish; or

25 (d) for consideration aids or assists any person in

1 locating or pursuing any game animal.

2 (4) "Outfitters' council" means the Montana  
3 outfitters' council provided for in 2-15-1883.

4 (5) "Professional guide" and "guide" means mean a  
5 person:

6 (a) who is an employee of an outfitter and who  
7 furnishes only personal guiding services in assisting a  
8 person to hunt or take game animals or fish and who does not  
9 furnish any facilities, transportation, or equipment; or

10 (b) who has contracted independently with an outfitter  
11 and who furnishes only personal guiding services AND  
12 FACILITIES, TRANSPORTATION, OR EQUIPMENT in assisting a  
13 person to hunt or take game animals or fish.

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

16 (7) "Participant" means a person using the services  
17 offered by a license outfitter or professional guide."

18 **Section 2.** Section 37-47-301, MCA, is amended to read:

19 "37-47-301. License required -- services performed --  
20 standards. (1) No person may act as an outfitter or  
21 professional guide or advertise as an outfitter without  
22 first securing a license in accordance with the provisions  
23 of this part.

24 (2) Whenever an outfitter is engaged by any person,  
25 the outfitter shall keep and submit records as required by

1 the department.

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

7 (4) Outfitters utilizing lands under the control of  
8 the United States government shall obtain the proper permits  
9 required by the government office responsible for the area  
10 in which the outfitter intends to operate and shall comply  
11 with environmental protection standards established for  
12 these lands.

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

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

19 **Section 3.** Section 37-47-304, MCA, is amended to read:

20 "37-47-304. **Application.** (1) Each applicant for an  
21 outfitter's or professional guide's license shall make  
22 application for license upon a form to be prescribed and  
23 furnished by the board which shall include:

24 (a) the applicant's full name, residence, address,  
25 conservation license number, driver's license number, birth

1 date, physical description, and telephone number;

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

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

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

12 (e) a signed statement of the licensed outfitter by  
13 whom the professional guide is to be employed or retained AS  
14 AN INDEPENDENT CONTRACTOR that the professional guide is in  
15 fact to be employed or retained AS AN INDEPENDENT CONTRACTOR  
16 by such outfitter and stating that the outfitter recommends  
17 the applicant for his qualifications;

18 (f) an affidavit by the outfitter to the board that  
19 the equipment listed on the application is in fact owned or  
20 leased by the applicant, is in good operating condition, and  
21 is sufficient and satisfactory for the services advertised  
22 or contemplated to be performed by such applicant;

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

25 (h) the written approval of the appropriate agency or

1 landowner on whose lands he will establish hunting camps.

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

13 (3) Application shall be made to and filed with the  
14 board.

15 (4) Only one application for an outfitter's or  
16 professional guide's license may be made in any one license  
17 year. If any application is denied, subsequent applications  
18 by the same applicant for the license year involved are  
19 void, except as provided in 37-47-308."

20 **Section 4.** Section 37-47-309, MCA, is amended to read:

21 "37-47-309. Professional guide's license. (1) For the  
22 purposes of this part, a person may serve as a professional  
23 guide under ~~his--employer's~~ an outfitter's license, after  
24 submitting his application with the proper license fee,  
25 until the license is issued or denied.

1 (2) To be valid, a professional guide's license must  
2 bear the signature and outfitter's license number of the  
3 endorsing outfitter and is valid only while the holder of  
4 such license is employed or retained AS AN INDEPENDENT  
5 CONTRACTOR by the endorsing outfitter."

6 **Section 5.** Section 37-47-341, MCA, is amended to read:

7 "37-47-341. Grounds for suspension or revocation of  
8 license. Every license or right to apply for and hold such  
9 license may be suspended or revoked upon any of the  
10 following grounds:

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

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

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

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

20 (5) two convictions or bond forfeitures of \$100 or  
21 more as to violations of the fish and game or outfitting  
22 laws or regulations of the state of Montana or of the United  
23 States within the past 5 years;

24 (6) a substantial breach of any contract with any  
25 person utilizing the services of the license holder provided

1 that such breach is established as a matter of final  
2 judgment in a court of law;

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

5 (8) negligence or misconduct while acting as an  
6 outfitter or professional guide that causes an accident or  
7 injury to person or property of any client of such outfitter  
8 or professional guide."

9 NEW SECTION. **Section 6.** Extension of authority. Any  
10 existing authority to make rules on the subject of the  
11 provisions of [this act] is extended to the provisions of  
12 [this act].

-End-



Free Conference Committee Report  
on SB 153  
Report No. 1, March 28, 1989

Mr President and Mr. Speaker:

We, your Free Conference Committee on SB 153 met and considered:  
SB 153 (reference copy -- salmon)

We recommend that SB 153 (reference copy -- salmon) be amended as follows:

1. Title, line 8.

Following: "CONTRACTOR"

Insert: "IN THE HUNTING OR TAKING OF GAME BIRDS OR FISH"

2. Page 2, line 23.

Following: "EQUIPMENT"

Insert: "that he owns"

3. Page 2, line 24.

Strike: "animals"

Insert: "birds"

Following: "fish."

Insert: "A guide who provides independent contractor services to an outfitter may not provide facilities, equipment, or services for overnight use."

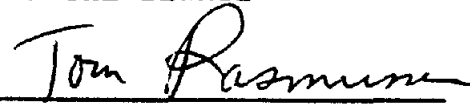
4. Page 6, lines 5 and 6.


Following: "applicant"

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

And that this Conference Committee Report be adopted.

FOR THE SENATE

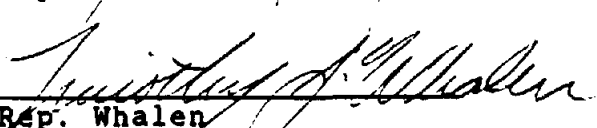
  
Sen. Rasmussen, Chairman

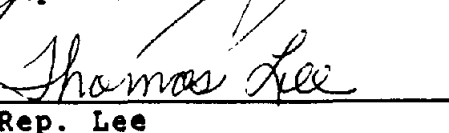
  
Sen. Mazurek

  
Sen. Thayer

FOR THE HOUSE

  
Rep. O'Keefe

  
Rep. Whalen

  
Rep. Lee

ADOPT

REJECT

**SB 153**

fccsb153.328

## SENATE BILL NO. 153

INTRODUCED BY RASMUSSEN, MAZUREK, YELLOWTAIL, BOYLAN,  
ANDERSON, MCLANE, CRIPPEN

A BILL FOR AN ACT ENTITLED: "AN ACT TO CLARIFY THAT AN  
OUTFITTER LICENSED UNDER TITLE 37, CHAPTER 47, MAY RETAIN  
THE SERVICES OF A PROFESSIONAL GUIDE ACTING AS AN  
INDEPENDENT CONTRACTOR IN THE HUNTING OR TAKING OF GAME  
BIRDS OR FISH; AND AMENDING SECTIONS 37-47-101, 37-47-301,  
37-47-304, 37-47-309, AND 37-47-341, MCA."

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

**Section 1.** Section 37-47-101, MCA, is amended to read:

"37-47-101. (Temporary) Definitions. As used in this  
chapter, unless the context requires otherwise, the  
following definitions apply:

(1) "Board" means the board of outfitters provided for  
in 2-15-1883.

(2) "Department" means the department of commerce  
provided for in Title 2, chapter 15, part 18.

(3) "License year" means that period commencing  
January 1 and ending December 31 of the same year.

(4) "Nonresident" means a person other than a  
resident.

(5) "Outfitter" means any person, except a person

providing services on real property that he owns for the  
primary pursuit of bona fide agricultural interests, 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  
camping equipment, vehicles, or other conveyance, except  
boats, for any person to hunt, trap, capture, take, or kill  
any game and accompanies such a party or person on an  
expedition for any of these purposes;

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

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

(6) "Professional guide" and "guide" means mean a  
person:

(a) who is an employee of an outfitter and who  
furnishes only personal guiding services in assisting a  
person to hunt or take game animals or fish and who does not  
furnish any facilities, transportation, or equipment; or

(b) who has contracted independently with an outfitter  
and who furnishes only personal guiding services AND  
FACILITIES, TRANSPORTATION, OR EQUIPMENT THAT HE OWNS in  
assisting a person to hunt or take game animals BIRDS or

fish. A GUIDE WHO PROVIDES INDEPENDENT CONTRACTOR SERVICES  
TO AN OUTFITTER MAY NOT PROVIDE FACILITIES, EQUIPMENT, OR  
SERVICES FOR OVERNIGHT USE.

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

(8) "Participant" means a person using the services offered by a licensed outfitter or professional guide.

37-47-101. (Effective July 1, 1991) Definitions. As used in this part, unless the context requires otherwise, the following definitions apply:

(1) "License year" means that period commencing January 1 and ending December 31 of the same year.

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

(3) "Outfitter" means any person, except a person providing services on real property that he owns for the primary pursuit of bona fide agricultural interests, 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 camping equipment, vehicles, or other conveyance, except boats, for any person to hunt, trap, capture, take, or kill any game and accompanies such a party or person on an expedition for any of these purposes;

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

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

(4) "Outfitters' council" means the Montana outfitters' council provided for in 2-15-1883.

(5) "Professional guide" and "guide" means mean a person:

(a) who is an employee of an outfitter and who furnishes only personal guiding services in assisting a person to hunt or take game animals or fish and who does not furnish any facilities, transportation, or equipment; or

(b) who has contracted independently with an outfitter and who furnishes only personal guiding services AND FACILITIES, TRANSPORTATION, OR EQUIPMENT in assisting a person to hunt or take game animals or fish.

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

(7) "Participant" means a person using the services offered by a license outfitter or professional guide."

**Section 2.** Section 37-47-301, MCA, is amended to read:

"37-47-301. License required -- services performed -- standards. (1) No person may act as an outfitter or professional guide or advertise as an outfitter without

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

3 (2) Whenever an outfitter is engaged by any person,  
4 the outfitter shall keep and submit records as required by  
5 the department.

6 (3) Outfitters, professional guides, and their  
7 employees may not shoot, kill, or take big game animals for  
8 or in competition with those employing them while acting  
9 under employment as ~~an-outfitter~~ outfitters or professional  
10 guides.

11 (4) Outfitters utilizing lands under the control of  
12 the United States government shall obtain the proper permits  
13 required by the government office responsible for the area  
14 in which the outfitter intends to operate and shall comply  
15 with environmental protection standards established for  
16 these lands.

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

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

23 **Section 3.** Section 37-47-304, MCA, is amended to read:

24 "37-47-304. Application. (1) Each applicant for an  
25 outfitter's or professional guide's license shall make

1 application for license upon a form to be prescribed and  
2 furnished by the board which shall include:

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

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

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

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

16 (e) a signed statement of the licensed outfitter by  
17 whom the professional guide is to be employed or retained AS  
18 AN INDEPENDENT CONTRACTOR that the professional guide is in  
19 fact to be employed or retained AS AN INDEPENDENT CONTRACTOR  
20 by such outfitter and stating that the outfitter recommends  
21 the applicant for his qualifications;

22 (f) an affidavit by the outfitter to the board that  
23 the equipment listed on the application is in fact owned or  
24 leased by the applicant, is in good operating condition, and  
25 is sufficient and satisfactory for the services advertised

or contemplated to be performed by such applicant;

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

(h) the written approval of the appropriate agency or landowner on whose lands he will establish hunting camps.

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

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

(4) Only one application for an outfitter's or professional guide's license may be made in any one license year. If any application is denied, subsequent applications by the same applicant for the license year involved are void, except as provided in 37-47-308."

**Section 4.** Section 37-47-309, MCA, is amended to read:

**"37-47-309. Professional guide's license.** (1) For the

purposes of this part, a person may serve as a professional guide under ~~his--employer's~~ an outfitter's license, after submitting his application with the proper license fee, until the license is issued or denied.

(2) To be valid, a professional guide's license must bear the signature and outfitter's license number of the endorsing outfitter and is valid only while the holder of such license is employed or retained AS AN INDEPENDENT CONTRACTOR by the endorsing outfitter."

**Section 5.** Section 37-47-341, MCA, is amended to read:

**"37-47-341. Grounds for suspension or revocation of license.** Every license or right to apply for and hold such license may be suspended or revoked upon any of the following grounds:

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

(2) fraud or deception in procuring a license;

(3) fraudulent, untruthful, or misleading advertising;

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

(5) two convictions or bond forfeitures of \$100 or more as to violations of the fish and game or outfitting

1 laws or regulations of the state of Montana or of the United  
2 States within the past 5 years;

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

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

9 (8) negligence or misconduct while acting as an  
10 outfitter or professional guide that causes an accident or  
11 injury to person or property of any client of such outfitter  
12 or professional guide."

13 NEW SECTION. **Section 6. Extension of authority.** Any  
14 existing authority to make rules on the subject of the  
15 provisions of [this act] is extended to the provisions of  
16 [this act].

-End-