

HOUSE BILL NO. 432

INTRODUCED BY SMITH, HARPER, ENDY
BY REQUEST OF THE BOARD OF OUTFITTERS

IN THE HOUSE

FEBRUARY 2, 1993	INTRODUCED AND REFERRED TO COMMITTEE ON FISH & GAME.
	FIRST READING.
FEBRUARY 18, 1993	COMMITTEE RECOMMEND BILL DO PASS AS AMENDED. REPORT ADOPTED.
FEBRUARY 19, 1993	PRINTING REPORT.
FEBRUARY 20, 1993	SECOND READING, DO PASS.
FEBRUARY 22, 1993	ENGROSSING REPORT.
FEBRUARY 23, 1993	THIRD READING, PASSED. AYES, 89; NOES, 10.
FEBRUARY 24, 1993	TRANSMITTED TO SENATE.

IN THE SENATE

MARCH 1, 1993	INTRODUCED AND REFERRED TO COMMITTEE ON FISH & GAME.
	FIRST READING.
MARCH 17, 1993	COMMITTEE RECOMMEND BILL BE CONCURRED IN. REPORT ADOPTED.
MARCH 18, 1993	SECOND READING, CONCURRED IN.
MARCH 19, 1993	THIRD READING, CONCURRED IN. AYES, 43; NOES, 4.
	RETURNED TO HOUSE.

IN THE HOUSE

MARCH 20, 1993	RECEIVED FROM SENATE.
	SENT TO ENROLLING.
	REPORTED CORRECTLY ENROLLED.

1 House BILL NO. 432
2 INTRODUCED BY Smith
3 BY REQUEST OF THE BOARD OF OUTFITTERS Engley
4
5 A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING THE
6 LAWS APPLICABLE TO THE LICENSING AND PRACTICES OF OUTFITTING
7 AND GUIDING AND THE POWERS AND DUTIES OF THE BOARD OF
8 OUTFITTERS; EXTENDING THE GENERAL TIME LIMITATION APPLICABLE
9 TO PROSECUTION OF MISDEMEANOR OUTFITTER AND GUIDE
10 VIOLATIONS; ALLOWING THE BOARD OF OUTFITTERS TO HIRE
11 QUALIFIED INVESTIGATORS; ESTABLISHING AN ADMINISTRATIVE
12 PENALTY FOR OUTFITTER AND GUIDE VIOLATIONS; AMENDING
13 SECTIONS 37-47-101, 37-47-201, 37-47-301, 37-47-302,
14 37-47-303, 37-47-304, 37-47-305, 37-47-307, 37-47-308,
15 37-47-309, 37-47-310, 37-47-341, 37-47-343, 37-47-344,
16 37-47-402, 37-47-404, AND 45-1-205, MCA; AND PROVIDING AN
17 EFFECTIVE DATE."
18
19 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:
20 **Section 1.** Section 37-47-101, MCA, is amended to read:
21 "37-47-101. Definitions. As used in this chapter,
22 unless the context requires otherwise, the following
23 definitions apply:
24 (1) "Board" means the board of outfitters provided for
25 in 2-15-1883.

1 (2) "Department" means the department of commerce
2 provided for in Title 2, chapter 15, part 18.
3 (3) "License year" means that period commencing January
4 1 and ending December 31 of the same year.
5 (4) "Nonresident" means a person other than a resident.
6 (5) "Outfitter" means any person, except a person
7 providing services on real property that he the person owns
8 for the primary pursuit of bona fide agricultural interests,
9 who:
10 (a) engages in the business of outfitting for hunting
11 or fishing parties, as the term is commonly understood;
12 (b) for consideration provides any saddle or pack
13 animal or personal service for hunting or fishing parties or
14 camping equipment, vehicles, or other conveyance, except
15 boats, for any person to hunt, trap, capture, take, or kill
16 any game and accompanies such a party or person on an
17 expedition for any of these purposes;
18 (c) for consideration furnishes a boat or other
19 floating craft and accompanies any person for the purpose of
20 catching fish or other recreational activities; or
21 (d) for consideration aids or assists any person in
22 locating or pursuing any game animal; or
23 (e) for consideration furnishes guiding services for
24 mountain, rural, or other recreational excursions, outings,
25 or trips.

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

(7) "Professional guide" and "guide" 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 for the~~ conduct of outdoor recreational activities directly related to the nature of activities for which the employing outfitter is licensed; or

(b) who has contracted independently with an outfitter and who furnishes personal guiding services and facilities, transportation, or equipment that he the person owns in assisting-a-person-to-hunt-or-take-game-birds--or--fish for the conduct of outdoor recreational activities directly related to the nature of activities for which the contracting outfitter is licensed. A guide who provides independent contractor services to an outfitter may not provide facilities, equipment, or services for overnight use.

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

Section 2. Section 37-47-201, MCA, is amended to read:

"37-47-201. Powers and duties of board relating to outfitters and guides. The board shall:

(1) prepare and publish an information pamphlet which contains the names and addresses of all licensed outfitters. This pamphlet shall must be available for free distribution as early as possible during each calendar year but not later than the second Friday in March. The pamphlet shall contain the names and addresses of only those outfitters who have a valid license for the current license year.

(2) cooperate with the federal government in matters of mutual concern regarding the business of outfitting and guiding in Montana;

(3) enforce the provisions of this chapter and rules adopted pursuant to this chapter;

(4) establish outfitter standards and professional guide standards;

(5) adopt:

(a) rules of procedure;

(b) rules to administer and enforce this chapter, including but not limited to rules prescribing all requisite qualifications for licensure. These qualifications must include training, experience in activities similar to the service to be provided, knowledge of rules of governmental bodies pertaining to outfitting, and condition and type of gear and equipment.

(c) any reasonable rules, not in conflict with this chapter, necessary for safeguarding the health, safety, and

welfare of those persons using the services of outfitters and for the protection of landowners, and the general public, and outfitters' employees, agents, and representatives;

(6) hold hearings and proceedings to suspend or revoke licenses of outfitters and professional guides for due cause."

Section 3. Section 37-47-301, MCA, is amended to read:

"37-47-301. License required -- services performed -- standards. (1) No A person may not 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 board.

(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 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 Outfitters may not willfully and substantially misrepresent his their facilities, prices, equipment, services, or hunting or fishing opportunities.

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

(7) A person may not hold more than one Montana outfitter's license or hold an outfitter's license for more than one corporation, proprietorship, or partnership."

Section 4. Section 37-47-302, MCA, is amended to read:

"37-47-302. Outfitter's qualifications. Each applicant for and holder of an outfitter's license or any renewal thereof of a license shall meet the following qualifications:

(1) be a person of at least 18 years of age who is physically capable and mentally competent to perform his the duties as of an outfitter as prescribed by the board;

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

board or its designated agent);

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

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

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

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

(7) have not been finally adjudged by a court of law guilty of any substantial breach of written or oral contract with any person utilizing the applicant's services as an outfitter or professional guide during the license-year immediately 2 years preceding that for which the application is made;

(8) have not committed any negligent act or misconduct

while acting as an outfitter or professional guide that caused a danger or unreasonable risk of danger to person or property of any client of such the outfitter or professional guide during the license year immediately preceding that for which the application is made;

(9) 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 A person may not apply for or hold an outfitter's license during any period of time in which a sentence has been deferred or suspended for a felony.

~~(18) have substantially complied with all board regulations and state and federal laws concerning outfitters and professional guides, if the applicant has previously held a license as an outfitter or professional guide.~~

Section 5. Section 37-47-303, MCA, is amended to read:

"37-47-303. Professional guide's qualifications. (1) An applicant for a professional guide's license shall meet the following requirements:

(a) be a person of at least 18 years of age who is physically capable and mentally competent to perform his the duties as of a professional guide;

(b) be endorsed and recommended by an outfitter with a valid license;

(c) have not been convicted or forfeited bond of \$100

1 or more on more than one violation of this chapter or the
2 fish and game laws or applicable regulations of the state of
3 Montana or the United States within the past 5 years;

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

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

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

17 **Section 6.** Section 37-47-304, MCA, is amended to read:

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

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

25 (b) the address of his the applicant's principal place

1 of business in the state of Montana;

2 (c) the amount and kind of property and equipment owned
3 and used in the outfitting business of the applicant;

4 (d) the experience of the applicant, including years of
5 experience as an outfitter or professional guide, knowledge
6 of areas in which he the applicant has operated and intends
7 to 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 as
11 an independent contractor that the professional guide is in
12 fact to be employed or retained as an independent contractor
13 by such the outfitter and stating that the outfitter
14 recommends the applicant for his the applicant's
15 qualifications;

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

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

23 (h) the written approval of the appropriate agency or
24 landowner on whose lands he the applicant will provide
25 services or establish hunting camps.

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

15 (3) Application ~~shall~~ must be made to and filed with
 16 the board.

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

22 **Section 7.** Section 37-47-305, MCA, is amended to read:

23 "37-47-305. Outfitter's examination. Each applicant for
 24 an outfitter's license shall pass a standard examination
 25 administered by the board or its agent; ~~which~~. The

1 examination ~~shall~~ must require general and sufficient
 2 knowledge displaying and indicating ability to perform the
 3 services contemplated with efficiency and with safety to the
 4 health and welfare of persons employing such ~~the~~ services.
 5 The examination ~~shall~~ must test the applicant's knowledge of
 6 subjects ~~which--shall~~ that apply to the type of license
 7 applied for in and may include the following subjects:

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

24 **Section 8.** Section 37-47-307, MCA, is amended to read:

25 "37-47-307. Investigation of applicant -- issuance or

denial of license. (1) The board shall investigate each applicant for an outfitter's or professional guide's license and determine his the applicant's qualifications.

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

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

(4) A licensee in good standing is entitled to a new license for the ensuing license year upon complying with the provisions of this chapter and renewal deadlines and fees imposed by rule of the board and completing an application for license renewal on a form provided by the board, and payment of the renewal fee but is exempt from having to retake the written examination.

(5) An outfitter licensee must make an application for license renewal by January 1 of the license year. A penalty fee of \$50 will be charged in addition to the regular

resident or nonresident outfitter's license fee if the application for such license is not completed and made by January 1 of the license year. This subsection does not apply to a new applicant for an outfitter's license."

Section 9. Section 37-47-308, MCA, is amended to read:

"37-47-308. Kinds of licenses. (1) After receipt of the application and when When all the conditions and requirements of this part licensure have been satisfied, the board shall issue either of the following licenses, depending upon its determination of the applicant's ability and the service that the applicant can perform with the equipment listed on his application:

(a) a general license authorizing him to perform all the functions of an outfitter as that term is defined in 37-47-101, or

(b) a special license authorizing him to perform only the function of outfitting listed on the license a license stating the outfitter or guide functions that the applicant is qualified and approved to perform.

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

(3) If the application is denied, the board shall notify the applicant in writing of the reasons for the denial, and if the reasons are corrected, a license shall

1 must be issued upon reapplication thereof."

2 **Section 10.** Section 37-47-309, MCA, is amended to read:

3 "37-47-309. Professional guide's license. (1) For the
4 purposes of this part, a person may serve as a professional
5 guide under an outfitter's license, after submitting his an
6 application with the proper license fee, until the license
7 is issued or denied.

8 (2) To be valid, a professional guide's license must
9 bear the signature and outfitter's license number of the
10 endorsing outfitter and is valid only while the holder of
11 such the license is employed or retained as-an-independent
12 contractor by the endorsing outfitter."

13 **Section 11.** Section 37-47-310, MCA, is amended to read:

14 "37-47-310. Transfer or amendment of outfitter's
15 license. (1) No An outfitter's license may not be
16 transferred during any license year.

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

22 (3) Subject to approval by the board, the an immediate
23 members member of the family of a deceased licensed
24 outfitter may continue to outfit for the deceased
25 outfitter's unexpired license year or until the heirs or

1 personal representative of the estate sells the outfitting
2 business or obtains relicensure therefor of the business."

3 **Section 12.** Section 37-47-341, MCA, is amended to read:

4 "37-47-341. Grounds for suspension or revocation of
5 license. Every license or right to apply for and hold such
6 the license may be denied, suspended, or revoked upon any of
7 the following grounds:

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

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

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

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

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

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

25 (7) the willful employment of or contracting with an

unlicensed professional guide by an outfitter;

(8) negligence or misconduct while acting as an outfitter or professional guide that causes an accident or injury to person or property of any client of such the outfitter or professional guide; or

(9) misconduct as defined by board rule."

Section 13. Section 37-47-343, MCA, is amended to read:

"37-47-343. **Appeal procedure.** Any person who feels aggrieved by the--denial--of a final order of the board denying issuance of, a license or suspension or revocation of suspension of, or revocation of a license as an outfitter or professional guide may appeal to the district court of the county of his residence within 30 days after the date of such action by filing with the clerk of said court a notice of appeal briefly setting forth the action complained of and appealed from--Summons--and--copy--of the notice of appeal shall be served on the board--and--all--proceedings--shall conform to--the--code--of--civil--procedure--of the state of Montana. Upon such appeal, the action shall be by trial de novo--and--upon--demand--in--writing, either party shall be entitled to trial by jury. The court may sustain or reverse the action of the board or take such other action as the court may deem just and proper. If the board or the court has ordered a stay of any revocation or suspension and the board's revocation or suspension is thereafter sustained by

the court, the period of suspension or revocation shall begin with the first day after the court's action sustaining the decision of the board petition for judicial review as provided in Title 2, chapter 4, part 7."

Section 14. Section 37-47-344, MCA, is amended to read:

"37-47-344. **Penalties -- disposition of fines.** (1) A person who violates any provision of this chapter or rule adopted under this chapter is guilty of a misdemeanor and is punishable by a fine not exceeding \$500.

(2) A person who represents himself to the public that the person is as an outfitter or who purposely engages in outfitting without a license as required by this chapter is guilty of a misdemeanor and is punishable by a fine of not less than \$200 and not more than \$500 \$1,000, up to 1 year in the county jail, or both. Each day of violation is a separate offense. In addition, the person must be assessed and pay to the board the amount of all costs incurred by the board in investigating and preparing the case for trial and all prosecution costs, including but not limited to witness, transportation, and per diem expenses.

(3) Fifty percent of all fines paid under this section must be deposited in the general fund of the county in which the conviction is obtained, and 50% must be deposited in the state special revenue fund for the use of the board in enforcing this chapter. All investigation, preparation, and

trial costs paid under this section must be deposited in the state special revenue fund for the use of the board in enforcing the provisions of this chapter. The board may reimburse other agencies for costs reasonably incurred in the enforcement of this chapter.

(4) A person convicted of engaging in outfitting without a license shall reimburse the full amount of any fees received to the person to whom illegal outfitter services were provided."

NEW SECTION. Section 15. Administrative penalty. The board may assess an administrative penalty of not more than \$500 for each violation of this chapter or a rule adopted under this chapter, subject to the procedures set out in 37-47-342 and 37-47-343.

Section 16. Section 37-47-402, MCA, is amended to read:

"37-47-402. Duties of outfitters and guides. An outfitter or guide offering professional services in this state shall:

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

(2) comply with all standards adopted by rule by the department-of-fish-wildlife-and-parks board."

Section 17. Section 37-47-404, MCA, is amended to read:

"37-47-404. Responsibility for violations of law. (1)

Any person accompanying a hunting or fishing party as an outfitter or agent or employee of such the outfitter shall be is equally responsible with any person or party employing him the person as an outfitter for any violation of fish and game laws; ~~any--such~~ unless the violation is reported to a peace officer by the outfitter, agent, or employee and the outfitter, agent, or employee was not an active participant.

An outfitter or agent or employee of such an outfitter who shall willfully ~~fail-to-or-refuse~~ fails or refuses to report any violation of fish and game laws shall-be is liable to the penalties ~~as--herein~~ provided in this section. If any professional guide ~~commits-any--violation--of~~ violates the laws or applicable regulations relating to fish and game, outfitting, or guiding with actual or implied knowledge of an outfitter ~~then~~ employing such the guide, the outfitter is legally responsible for such the violation for all purposes under the laws or regulations if the outfitter fails to report ~~any-such the~~ the violation to the proper authority.

(2) An outfitter or professional guide shall report any violation or suspected violation of fish and game laws that the outfitter or guide knows or reasonably should have known has been committed by the employees, agents, representatives, clients, or participants in the outfitting or guiding activity. The violation or suspected violation

1 must be reported to a peace officer at the earliest possible
2 opportunity.

3 (3) No A person may not hire or retain any outfitter or
4 professional guide unless the outfitter or professional
5 guide is currently licensed in accordance with the laws of
6 the state of Montana."

7 **Section 18.** Section 45-1-205, MCA, is amended to read:

8 "45-1-205. General time limitations. (1) (a) A
9 prosecution for deliberate, mitigated, or negligent homicide
10 may be commenced at any time.

11 (b) A prosecution under 45-5-502 through 45-5-505,
12 45-5-507, or 45-5-625 may be commenced within 5 years after
13 the victim reaches the age of 18 if the victim was less than
14 18 years old at the time the offense occurred.

15 (2) Except as otherwise provided by law, prosecutions
16 for other offenses are subject to the following periods of
17 limitation:

18 (a) A prosecution for a felony must be commenced within
19 5 years after it is committed.

20 (b) A prosecution for a misdemeanor must be commenced
21 within 1 year after it is committed.

22 (3) The period periods prescribed in subsection (2) is
23 are extended in a prosecution for theft involving a breach
24 of fiduciary obligation to an aggrieved person as follows:

25 (a) if the aggrieved person is a minor or incompetent,

1 during the minority or incompetency or within 1 year after
2 the termination thereof of minority or incompetency;

3 (b) in any other instance, within 1 year after the
4 discovery of the offense by the aggrieved person or by a
5 person who has legal capacity to represent an aggrieved
6 person or has a legal duty to report the offense and is not
7 himself a party to the offense or, in the absence of such
8 discovery, within 1 year after the prosecuting officer
9 becomes aware of the offense.

10 (4) The period prescribed in subsection (2) ~~shall~~ must
11 be extended in a prosecution for unlawful use of a computer,
12 and prosecution ~~shall~~ must be brought within 1 year after
13 the discovery of the offense by the aggrieved person or by a
14 person who has legal capacity to represent an aggrieved
15 person or has a legal duty to report the offense and is not
16 himself a party to the offense or, in the absence of such
17 discovery, within 1 year after the prosecuting officer
18 becomes aware of the offense.

19 (5) The period prescribed in subsection (2) is extended
20 in a prosecution for misdemeanor fish and wildlife
21 violations under Title 87, and prosecution must be brought
22 within 3 years after an offense is committed.

23 (6) The period prescribed in subsection (2)(b) is
24 extended in a prosecution for misdemeanor violations of the
25 laws regulating the activities of outfitters and guides

1 under Title 37, chapter 47, and prosecution must be brought
 2 within 3 years after an offense is committed.

3 (7) An offense is committed either when every element
 4 occurs or, when the offense is based upon a continuing
 5 course of conduct, at the time when the course of conduct is
 6 terminated. Time starts to run on the day after the offense
 7 is committed.

8 (7)(8) A prosecution is commenced either when an
 9 indictment is found or an information or complaint is
 10 filed."

11 NEW SECTION. Section 19. Investigators --
 12 qualifications. (1) The department may hire investigators to
 13 assist the board in investigation of any provision of this
 14 chapter.

15 (2) An investigator must:

16 (a) be a citizen of the United States and a resident of
 17 Montana;

18 (b) have knowledge of outfitting and guiding;

19 (c) have not less than 2 years' experience as a
 20 licensed private investigator, detective, special agent, or
 21 peace officer of a city, county, or state or a federal
 22 agency; and

23 (d) meet the minimum qualifying standards for
 24 employment of peace officers promulgated by the board of
 25 crime control.

1 NEW SECTION. Section 20. Severability. If a part of
 2 [this act] is invalid, all valid parts that are severable
 3 from the invalid part remain in effect. If a part of [this
 4 act] is invalid in one or more of its applications, the part
 5 remains in effect in all valid applications that are
 6 severable from the invalid applications.

7 NEW SECTION. Section 21. Codification instruction.
 8 [Sections 15 and 19] are intended to be codified as an
 9 integral part of Title 37, chapter 47, and the provisions of
 10 Title 37, chapter 47, apply to [sections 15 and 19].

11 NEW SECTION. Section 22. Effective date. [This act] is
 12 effective July 1, 1993.

-End-

STATE OF MONTANA - FISCAL NOTE

Form BD-15

In compliance with a written request, there is hereby submitted a Fiscal Note for HB0432, as introduced.

DESCRIPTION OF PROPOSED LEGISLATION: The bill generally revises the laws applicable to the licensing practices of outfitting and guiding and the powers and duties of the Board of Outfitters; extending the general time limitation applicable to prosecution of misdemeanor outfitter and guide violations; allowing the board to hire qualified investigators; establishing an administrative penalty for outfitter and guide violations.

ASSUMPTIONS:

1. The budget level will be the current and modified levels recommended in the executive budget for FY94 and FY95 and that the revenue will be the same as in FY92.
2. The regulations of the board will expand to include persons who conduct scenic, whitewater, and other recreational excursions for compensation.
3. There will be 100 additional licensees as a result of this legislation and the costs would be covered by a total of 800 licensees at an increased cost of \$136 each.
4. The board will need one full-time investigator, grade 12, travel and other operating expenses, plus a computer, desk and file cabinet in the first year.

FISCAL IMPACT:

	FY '94			FY '95		
	Current Law	Proposed Law	Difference	Current Law	Proposed Law	Difference
Expenditures:						
FTE	0	1.00	1.00	0	1.00	1.00
Personal Services	6,860	32,602	25,742	7,360	33,102	25,742
Operating Expenses	185,881	265,181	79,300	183,924	262,524	78,600
Capital Outlay	0	3,600	3,600	0	0	0
Total	192,741	301,383	108,642	191,284	295,626	104,342
Revenues:						
Fees	150,050	258,850	108,800	150,050	258,850	108,800
Net Impact:	(42,691)	(42,533)	158	(41,234)	(36,776)	4,458

David Lewis 2-6-93

DAVID LEWIS, BUDGET DIRECTOR DATE
Office of Budget and Program Planning

Liz Smith 2-9-93
LIZ SMITH, PRIMARY SPONSOR DATE

Fiscal Note for HB0432, as introduced

HB 432

APPROVED BY COMM.
ON FISH AND GAME

HOUSE BILL NO. 432

INTRODUCED BY SMITH, HARPER, ENDY

BY REQUEST OF THE BOARD OF OUTFITTERS

A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING THE LAWS APPLICABLE TO THE LICENSING AND PRACTICES OF OUTFITTING AND GUIDING AND THE POWERS AND DUTIES OF THE BOARD OF OUTFITTERS; EXTENDING THE GENERAL TIME LIMITATION APPLICABLE TO PROSECUTION OF MISDEMEANOR OUTFITTER AND GUIDE VIOLATIONS; ALLOWING--THE--BOARD--OF--OUTFITTERS--TO--HIRE QUALIFIED--INVESTIGATORS; ESTABLISHING AN ADMINISTRATIVE PENALTY FOR OUTFITTER AND GUIDE VIOLATIONS; AMENDING SECTIONS 37-47-101, 37-47-201, 37-47-301, 37-47-302, 37-47-303, 37-47-304, 37-47-305, 37-47-307, 37-47-308, 37-47-309, 37-47-310, 37-47-341, 37-47-343, 37-47-344, 37-47-402, 37-47-404, AND 45-1-205, MCA; AND PROVIDING AN EFFECTIVE DATE."

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--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--2-15-1003.

(2)--"Department"--means--the--department--of--commerce provided--for--in--Title--27--chapter--157--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--the--person--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--other--recreational--activities;--or

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

(e)--for--consideration--furnishes--guiding--services--for mountain,--rural,--or--other--recreational--excursions,--outings, or--trips.

1 (6)--"Participant"--means-a--person--using--the--services
2 offered-by-a-licensed-outfitter-or-professional-guide-

3 (7)--"Professional-guide"-and-"guide"--mean-a-person:-

4 (a)--who---is--an--employee--of--an--outfitter--and--who
5 furnishes-only-personal--guiding--services--in--assisting--a
6 person-to-hunt-or-take-game-animals-or-fish-and-who-does-not
7 furnish-any-facilities,-transportation,-or-equipment for-the
8 conduct--of-outdoor-recreational-activities-directly-related
9 to--the--nature--of--activities--for--which--the---employing
10 outfitter-is-licensed,-or

11 (b)--who--has-contracted-independently-with-an-outfitter
12 and-who-furnishes-personal-guiding-services-and--facilities,
13 transportation--or--equipment--that--he the-person owns-in
14 assisting-a-person-to-hunt-or-take-game-birds--or--fish for
15 the--conduct--of--outdoor--recreational--activities-directly
16 related--to--the--nature--of--activities--for--which--the
17 contracting--outfitter--is--licensed,-A-guide-who-provides
18 independent-contractor-services--to--an--outfitter--may--not
19 provide--facilities,-equipment,-or--services-for-overnight
20 use-

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

23 **Section 1.** Section 37-47-201, MCA, is amended to read:

24 "37-47-201. Powers and duties of board relating to
25 outfitters and guides. The board shall:

1 (1) prepare and publish an information pamphlet which
2 contains the names and addresses of all licensed outfitters.
3 This pamphlet shall must be available for free distribution
4 as early as possible during each calendar year but not later
5 than the second Friday in March. The pamphlet shall contain
6 the names and addresses of only those outfitters who have a
7 valid license for the current license year.

8 (2) cooperate with the federal government in matters of
9 mutual concern regarding the business of outfitting and
10 guiding in Montana;

11 (3) enforce the provisions of this chapter and rules
12 adopted pursuant to this chapter;

13 (4) establish outfitter standards and professional
14 guide standards;

15 (5) adopt:

16 (a) rules of procedure;

17 (b) rules to administer and enforce this chapter,
18 including but not limited to rules prescribing all requisite
19 qualifications for licensure. These qualifications must
20 include training, experience in activities similar to the
21 service to be provided, knowledge of rules of governmental
22 bodies pertaining to outfitting, and condition and type of
23 gear and equipment.

24 (c) any reasonable rules, not in conflict with this
25 chapter, necessary for safeguarding the health, safety, and

welfare of those persons using the services of outfitters and for the protection of landowners, and the general public, and outfitters' employees, agents, and representatives;

(6) hold hearings and proceedings to suspend or revoke licenses of outfitters and professional guides for due cause."

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

"37-47-301. License required -- services performed -- standards. (1) No A person may not 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 board.

(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 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 Outfitters may not willfully and substantially misrepresent his their facilities, prices, equipment, services, or hunting or fishing opportunities.

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

(7) A person may not hold more than one Montana outfitter's license or hold an outfitter's license for more than one corporation, proprietorship, or partnership."

Section 3. Section 37-47-302, MCA, is amended to read:

"37-47-302. Outfitter's qualifications. Each applicant for and holder of an outfitter's license or any renewal thereof of a license shall meet the following qualifications:

(1) be a person of at least 18 years of age who is physically capable and mentally competent to perform his the duties as of an outfitter as prescribed by the board;

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

board or its designated agent);

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

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

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

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

(7) have not been finally adjudged by a court of law guilty of any substantial breach of written or oral contract with any person utilizing the applicant's services as an outfitter or professional guide during the license-year immediately 2 years preceding that for which the application is made;

(8) have not committed any negligent act or misconduct

while acting as an outfitter or professional guide that caused a danger or unreasonable risk of danger to person or property of any client of such the outfitter or professional guide during the license year immediately preceding that for which the application is made;

(9) 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 A person may not apply for or hold an outfitter's license during any period of time in which a sentence has been deferred or suspended for a felony.

~~(10) have substantially complied with all board regulations and state and federal laws concerning outfitters and professional guides, if the applicant has previously held a license as an outfitter or professional guide.~~

Section 4. Section 37-47-303, MCA, is amended to read:

"37-47-303. Professional guide's qualifications. (1) An applicant for a professional guide's license shall meet the following requirements:

(a) be a person of at least 18 years of age who is physically capable and mentally competent to perform his the duties as of a professional guide;

(b) be endorsed and recommended by an outfitter with a valid license;

(c) have not been convicted or forfeited bond of \$100

or more on more than one violation of this chapter or the fish and game laws or applicable regulations of the state of Montana or the United States within the past 5 years;

(d) have not committed any gross 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;

(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 A person may not 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 professional guide shall have been issued a valid wildlife conservation license."

Section 5. 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 the applicant's 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;

(d) the experience of the applicant, including years of experience as an outfitter or professional guide, knowledge of areas in which he the applicant 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 the outfitter and stating that the outfitter recommends the applicant for his the applicant's 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 the 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 the applicant will provide services or establish hunting camps.

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

(3) Application ~~shall~~ must 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 6. Section 37-47-305, MCA, is amended to read:

"37-47-305. Outfitter's examination. Each applicant for an outfitter's license shall pass a standard examination administered by the board or its agent--which. The

examination ~~shall~~ must require general and sufficient knowledge displaying and indicating ability to perform the services contemplated with efficiency and with safety to the health and welfare of persons employing such the services. The examination ~~shall~~ must test the applicant's knowledge of subjects ~~which--shall~~ that apply to the type of license applied for ~~in~~ and may include the following subjects:

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

Section 7. Section 37-47-307, MCA, is amended to read:

"37-47-307. Investigation of applicant -- issuance or

denial of license. (1) The board shall investigate each applicant for an outfitter's or professional guide's license and determine his the applicant's qualifications.

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

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

(4) A licensee in good standing is entitled to a new license for the ensuing license year upon complying with the provisions of this chapter and renewal deadlines and fees imposed by rule of the board, and completing an application for license renewal on a form provided by the board, ~~and payment of the renewal fee, but is exempt from having to retake the written examination.~~

~~(5) An outfitter licensee must make an application for license renewal by January 1 of the license year. A penalty fee of \$50 will be charged in addition to the regular~~

~~resident or nonresident outfitter's license fee if the application for such license is not completed and made by January 1 of the license year. This subsection does not apply to a new applicant for an outfitter's license."~~

Section 8. Section 37-47-308, MCA, is amended to read:

"37-47-308. Kinds of licenses. (1) After receipt of the application ~~and when~~ When all the conditions and requirements of this part licensure have been satisfied, the board shall issue either of the following licenses, depending upon its determination of the applicant's ability and the service that the applicant can perform with the equipment listed on his application:

(a) a general license authorizing him to perform all the functions of an outfitter as that term is defined in 37-47-181; or

(b) a special license authorizing him to perform only the function of outfitting listed on the license a license stating the outfitter or guide functions that the applicant is qualified and approved to perform.

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

(3) If the application is denied, the board shall notify the applicant in writing of the reasons for the denial, and if the reasons are corrected, a license ~~shall~~

1 must be issued upon reapplication thereof."

2 **Section 9.** Section 37-47-309, MCA, is amended to read:

3 "37-47-309. Professional guide's license. (1) For the
4 purposes of this part, a person may serve as a professional
5 guide under an outfitter's license, after submitting his an
6 application with the proper license fee, until the license
7 is issued or denied.

8 (2) To be valid, a professional guide's license must
9 bear the signature and outfitter's license number of the
10 endorsing outfitter and is valid only while the holder of
11 such the license is employed or retained as-an-independent
12 contractor by the endorsing outfitter."

13 **Section 10.** Section 37-47-310, MCA, is amended to read:

14 "37-47-310. Transfer or amendment of outfitter's
15 license. (1) No An outfitter's license may not be
16 transferred during any license year.

17 (2) An individual person may, upon proper showing, have
18 his that person's outfitter's license amended to indicate
19 that ~~he-is-holding~~ the license is being held for the use and
20 benefit of a named proprietorship, partnership, or
21 corporation.

22 (3) Subject to approval by the board, the an immediate
23 members member of the family of a deceased licensed
24 outfitter may continue to outfit for the deceased
25 outfitter's unexpired license year or until the heirs or

1 personal representative of the estate sells the outfitting
2 business or obtains relicensure therefor of the business."

3 **Section 11.** Section 37-47-341, MCA, is amended to read:

4 "37-47-341. Grounds for suspension or revocation of
5 license. Every license or right to apply for and hold such
6 the license may be denied, suspended, or revoked upon any of
7 the following grounds:

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

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

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

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

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

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

25 (7) the willful employment of or contracting with an

unlicensed professional guide by an outfitter;

(8) negligence or misconduct while acting as an outfitter or professional guide that causes an accident or injury to person or property of any client of such the outfitter or professional guide; or

(9) misconduct as defined by board rule."

Section 12. Section 37-47-343, MCA, is amended to read:

"37-47-343. Appeal procedure. Any person who feels aggrieved by the--denial--of a final order of the board denying issuance of, a license or suspension or revocation of suspension of, or revocation of a license as an outfitter or professional guide may appeal to the district court of the county of his residence within 30 days after the date of such action by filing with the clerk of said court a--notice of appeal briefly setting forth the action complained of and appealed--from--Summons--and--copy--of the notice of appeal shall be served on the board,--and--all--proceedings--shall conform--to--the--code--of--civil--procedure of the state of Montana. Upon such appeal, the action shall be by--trial--de novo,--and--upon--demand--in--writing, either party shall be entitled to trial by jury. The court may sustain or--reverse the--action--of--the--board or take such other action as the court may deem just and proper, if the board or--the--court has--ordered--a stay of any revocation or suspension and the board's revocation or suspension is thereafter sustained--by

the--court,--the--period--of--suspension or revocation shall begin with the first day after the court's action sustaining the decision of the board petition for judicial review as provided in Title 2, chapter 4, part 7."

Section 13. Section 37-47-344, MCA, is amended to read:

"37-47-344. Penalties -- disposition of fines. (1) A person who violates any provision of this chapter or rule adopted under this chapter is guilty of a misdemeanor and is punishable by a fine not exceeding \$500.

(2) A person who represents himself to the public that the person is as an outfitter or who purposely engages in outfitting without a license as required by this chapter is guilty of a misdemeanor and is punishable by a fine of not less than \$200 and not more than \$500 \$1,000, up to 1 year in the county jail, or both. Each day of violation is a separate offense. In addition, the person must be assessed and pay to the board the amount of all costs incurred by the board in investigating and preparing the case for trial and all prosecution costs, including but not limited to witness, transportation, and per diem expenses.

(3) Fifty percent of all fines paid under this section must be deposited in the general fund of the county in which the conviction is obtained, and 50% must be deposited in the state special revenue fund for the use of the board in enforcing this chapter. All investigation, preparation, and

trial costs paid under this section must be deposited in the state special revenue fund for the use of the board in enforcing the provisions of this chapter. The board may reimburse other agencies for costs reasonably incurred in the enforcement of this chapter.

(4) A person convicted of engaging in outfitting without a license shall reimburse the full amount of any fees received to the person to whom illegal outfitter services were provided."

NEW SECTION. Section 14. Administrative penalty. The board may assess an administrative penalty of not more than \$500 for each violation of this chapter or a rule adopted under this chapter, subject to the procedures set out in 37-47-342 and 37-47-343.

Section 15. Section 37-47-402, MCA, is amended to read:

"37-47-402. Duties of outfitters and guides. An outfitter or guide offering professional services in this state shall:

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

(2) comply with all standards adopted by rule by the department-of-fish7-wildlife7-and-parks board."

Section 16. Section 37-47-404, MCA, is amended to read:

"37-47-404. Responsibility for violations of law. (1)
Any person accompanying a hunting or fishing party as an outfitter or agent or employee of such the outfitter ~~shall~~ be is equally responsible with any person or party employing him the person as an outfitter for any violation of fish and game laws; ~~any~~ such unless the violation is reported to a peace officer by the outfitter, agent, or employee and the outfitter, agent, or employee was not an active participant. An outfitter or agent or employee of such an outfitter who ~~shall~~ willfully ~~fail-to-or-refuse~~ fails or refuses to report any violation of fish and game laws ~~shall-be~~ is liable to the penalties ~~as--herein~~ provided in this section. If any professional guide ~~commits-any--violation--of~~ violates the laws or applicable regulations relating to fish and game, outfitting, or guiding with actual or implied knowledge of an outfitter then employing such the guide, the outfitter is legally responsible for such the violation for all purposes under the laws or regulations if the outfitter fails to report ~~any-such the~~ the violation to the proper authority.

(2) An outfitter or professional guide shall report any violation or suspected violation of fish and game laws that the outfitter or guide knows or reasonably should have known has been committed by the employees, agents, representatives, clients, or participants in the outfitting or guiding activity. The violation or suspected violation

1 must be reported to a peace officer at the earliest possible
2 opportunity.

3 (3) No A person may not hire or retain any outfitter or
4 professional guide unless the outfitter or professional
5 guide is currently licensed in accordance with the laws of
6 the state of Montana."

7 **Section 17.** Section 45-1-205, MCA, is amended to read:

8 "45-1-205. General time limitations. (1) (a) A
9 prosecution for deliberate, mitigated, or negligent homicide
10 may be commenced at any time.

11 (b) A prosecution under 45-5-502 through 45-5-505,
12 45-5-507, or 45-5-625 may be commenced within 5 years after
13 the victim reaches the age of 18 if the victim was less than
14 18 years old at the time the offense occurred.

15 (2) Except as otherwise provided by law, prosecutions
16 for other offenses are subject to the following periods of
17 limitation:

18 (a) A prosecution for a felony must be commenced within
19 5 years after it is committed.

20 (b) A prosecution for a misdemeanor must be commenced
21 within 1 year after it is committed.

22 (3) The period periods prescribed in subsection (2) is
23 are extended in a prosecution for theft involving a breach
24 of fiduciary obligation to an aggrieved person as follows:

25 (a) if the aggrieved person is a minor or incompetent,

1 during the minority or incompetency or within 1 year after
2 the termination thereof of minority or incompetency;

3 (b) in any other instance, within 1 year after the
4 discovery of the offense by the aggrieved person or by a
5 person who has legal capacity to represent an aggrieved
6 person or has a legal duty to report the offense and is not
7 himself a party to the offense or, in the absence of such
8 discovery, within 1 year after the prosecuting officer
9 becomes aware of the offense.

10 (4) The period prescribed in subsection (2) shall must
11 be extended in a prosecution for unlawful use of a computer,
12 and prosecution shall must be brought within 1 year after
13 the discovery of the offense by the aggrieved person or by a
14 person who has legal capacity to represent an aggrieved
15 person or has a legal duty to report the offense and is not
16 himself a party to the offense or, in the absence of such
17 discovery, within 1 year after the prosecuting officer
18 becomes aware of the offense.

19 (5) The period prescribed in subsection (2) is extended
20 in a prosecution for misdemeanor fish and wildlife
21 violations under Title 87, and prosecution must be brought
22 within 3 years after an offense is committed.

23 (6) The period prescribed in subsection (2)(b) is
24 extended in a prosecution for misdemeanor violations of the
25 laws regulating the activities of outfitters and guides

under Title 37, chapter 47, and prosecution must be brought within 3 years after an offense is committed.

(7) An offense is committed either when every element occurs or, when the offense is based upon a continuing course of conduct, at the time when the course of conduct is terminated. Time starts to run on the day after the offense is committed.

(7)(8) A prosecution is commenced either when an indictment is found or an information or complaint is filed."

~~NEW SECTION. Section 19. investigators-----
qualifications:--(1)--The department may hire investigators to
assist the board in investigation of any provision of--this
chapter.~~

~~(2)--An investigator must:~~

~~(a)--be a citizen of the United States and a resident of
Montana;~~

~~(b)--have knowledge of outfitting and guiding;~~

~~(c)--have not less than 2 years' experience as a
licensed private investigator, detective, special agent or
peace officer of a city, county, or state or a federal
agency; and~~

~~(d)--meet the minimum qualifying standards for
employment of peace officers promulgated by the board of
crime control.~~

NEW SECTION. Section 18. Severability. If a part of [this act] is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

NEW SECTION. Section 19. Codification instruction. [Sections--15--and--19]--are [SECTION 14] IS intended to be codified as an integral part of Title 37, chapter 47, and the provisions of Title 37, chapter 47, apply to [sections 15--and--19] [SECTION 14].

NEW SECTION. Section 20. Effective date. [This act] is effective July 1, 1993.

-End-

HOUSE BILL NO. 432

INTRODUCED BY SMITH, HARPER, ENDY

BY REQUEST OF THE BOARD OF OUTFITTERS

A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING THE LAWS APPLICABLE TO THE LICENSING AND PRACTICES OF OUTFITTING AND GUIDING AND THE POWERS AND DUTIES OF THE BOARD OF OUTFITTERS; EXTENDING THE GENERAL TIME LIMITATION APPLICABLE TO PROSECUTION OF MISDEMEANOR OUTFITTER AND GUIDE VIOLATIONS; ALLOWING--THE--BOARD--OF--OUTFITTERS--TO--HIRE QUALIFIED--INVESTIGATORS; ESTABLISHING AN ADMINISTRATIVE PENALTY FOR OUTFITTER AND GUIDE VIOLATIONS; AMENDING SECTIONS 37-47-101, 37-47-201, 37-47-301, 37-47-302, 37-47-303, 37-47-304, 37-47-305, 37-47-307, 37-47-308, 37-47-309, 37-47-310, 37-47-341, 37-47-343, 37-47-344, 37-47-402, 37-47-404, AND 45-1-205, MCA; AND PROVIDING AN EFFECTIVE DATE."

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. 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 2-15-1003.~~

~~(2) "Department" means the department of commerce provided for in Title 2, chapter 15, part 10.~~

~~(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 the person 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~~

THERE ARE NO CHANGES IN THIS BILL
AND WILL NOT BE REPRINTED. PLEASE
REFER TO YELLOW COPY FOR COMPLETE TEXT.

HOUSE BILL NO. 432

INTRODUCED BY SMITH, HARPER, ENDY

BY REQUEST OF THE BOARD OF OUTFITTERS

A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING THE LAWS APPLICABLE TO THE LICENSING AND PRACTICES OF OUTFITTING AND GUIDING AND THE POWERS AND DUTIES OF THE BOARD OF OUTFITTERS; EXTENDING THE GENERAL TIME LIMITATION APPLICABLE TO PROSECUTION OF MISDEMEANOR OUTFITTER AND GUIDE VIOLATIONS; ALLOWING--THE--BOARD--OF--OUTFITTERS--TO--HIRE QUALIFIED--INVESTIGATORS; ESTABLISHING AN ADMINISTRATIVE PENALTY FOR OUTFITTER AND GUIDE VIOLATIONS; AMENDING SECTIONS 37-47-101, 37-47-201, 37-47-301, 37-47-302, 37-47-303, 37-47-304, 37-47-305, 37-47-307, 37-47-308, 37-47-309, 37-47-310, 37-47-341, 37-47-343, 37-47-344, 37-47-402, 37-47-404, AND 45-1-205, MCA; AND PROVIDING AN EFFECTIVE DATE."

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

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"37-47-101. 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 2-15-1003.

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{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 the person 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 other recreational activities; or

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

(e)--for consideration furnishes guiding services for mountain, rural, or other recreational excursions, outings, or trips.

1 {6}--"Participant"--means-a--person--using--the--services
2 offered-by-a-licensed-outfitter-or-professional-guide;

3 {7}--"Professional-guide"-and-"guide"--mean-a-person;

4 {a}--who---is--an--employee--of--an--outfitter--and--who
5 furnishes-only-personal--guiding--services--in--assisting--a
6 person-to-hunt-or-take-game-animals-or-fish-and-who-does-not
7 furnish-any-facilities,-transportation,-or-equipment for-the
8 conduct--of-outdoor-recreational-activities-directly-related
9 to--the--nature--of--activities--for--which--the--employing
10 outfitter-is-licensed,-or

11 {b}--who--has-contracted-independently-with-an-outfitter
12 and-who-furnishes-personal-guiding-services-and--facilities,
13 transportation,-or--equipment--that--he the-person owns-in
14 assisting-a-person-to-hunt-or-take-game-birds--or--fish for
15 the--conduct--of--outdoor--recreational--activities-directly
16 related--to--the--nature--of--activities--for--which--the
17 contracting--outfitter--is--licensed,-A--guide-who-provides
18 independent-contractor-services--to--an--outfitter--may--not
19 provide--facilities,-equipment,-or--services-for-overnight
20 use;

21 {8}--"Resident"--means--a--person--who--qualifies--for--a
22 resident-Montana-hunting-or-fishing-license-under-87-2-102,"

23 **Section 1.** Section 37-47-201, MCA, is amended to read:

24 "37-47-201. Powers and duties of board relating to
25 outfitters and guides. The board shall:

1 (1) prepare and publish an information pamphlet which
2 contains the names and addresses of all licensed outfitters.
3 This pamphlet shall must be available for free distribution
4 as early as possible during each calendar year but not later
5 than the second Friday in March. The pamphlet shall contain
6 the names and addresses of only those outfitters who have a
7 valid license for the current license year.

8 (2) cooperate with the federal government in matters of
9 mutual concern regarding the business of outfitting and
10 guiding in Montana;

11 (3) enforce the provisions of this chapter and rules
12 adopted pursuant to this chapter;

13 (4) establish outfitter standards and professional
14 guide standards;

15 (5) adopt:

16 (a) rules of procedure;

17 (b) rules to administer and enforce this chapter,
18 including but not limited to rules prescribing all requisite
19 qualifications for licensure. These qualifications must
20 include training, experience in activities similar to the
21 service to be provided, knowledge of rules of governmental
22 bodies pertaining to outfitting, and condition and type of
23 gear and equipment.

24 (c) any reasonable rules, not in conflict with this
25 chapter, necessary for safeguarding the health, safety, and

1 welfare of those persons using the services of outfitters
2 and for the protection of landowners, and the general
3 public, and outfitters' employees, agents, and
4 representatives;

5 (6) hold hearings and proceedings to suspend or revoke
6 licenses of outfitters and professional guides for due
7 cause."

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

9 "37-47-301. License required -- services performed --
10 standards. (1) No A person may not act as an outfitter or
11 professional guide or advertise as an outfitter without
12 first securing a license in accordance with the provisions
13 of this part.

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

17 (3) Outfitters, professional guides, and their
18 employees may not shoot, kill, or take big game animals for
19 or in competition with those employing them while acting
20 under employment as outfitters or professional guides.

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

1 these lands.

2 (5) An--outfitter Outfitters may not willfully and
3 substantially misrepresent his their facilities, prices,
4 equipment, services, or hunting or fishing opportunities.

5 (6) Outfitters and their employees, agents, and
6 representatives shall take every reasonable measure to
7 provide their advertised services to their clients.

8 (7) A person may not hold more than one Montana
9 outfitter's license or hold an outfitter's license for more
10 than one corporation, proprietorship, or partnership."

11 **Section 3.** Section 37-47-302, MCA, is amended to read:

12 "37-47-302. Outfitter's qualifications. Each applicant
13 for and holder of an outfitter's license or any renewal
14 thereof of a license shall meet the following
15 qualifications:

16 (1) be a person of at least 18 years of age who is
17 physically capable and mentally competent to perform his the
18 duties as of an outfitter as prescribed by the board;

19 (2) 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 the outfitter's
24 clients (all equipment and facilities shall be are subject
25 to inspection at all reasonable times and places by the

1 board or its designated agent);

2 (3) 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 under those laws
5 as to matters of fish and game, conservation of natural
6 resources, and preservation of the natural ecosystem without
7 pollution thereof of the ecosystem;

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

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

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

19 (7) 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 2 years preceding that for which the application
24 is made;

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

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

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

12 ~~{10} have substantially complied with all board~~
13 ~~regulations and state and federal laws concerning outfitters~~
14 ~~and professional guides, if the applicant has previously~~
15 ~~held a license as an outfitter or professional guide."~~

16 **Section 4.** Section 37-47-303, MCA, is amended to read:

17 "37-47-303. Professional guide's qualifications. (1) An
18 applicant for a professional guide's license shall meet the
19 following requirements:

20 (a) be a person of at least 18 years of age who is
21 physically capable and mentally competent to perform his the
22 duties as of a professional guide;

23 (b) be endorsed and recommended by an outfitter with a
24 valid license;

25 (c) have not been convicted or forfeited bond of \$100

or more on more than one violation of this chapter or the fish and game laws or applicable regulations of the state of Montana or the United States within the past 5 years;

(d) have not committed any gross 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;

(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 A person may not 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 professional guide shall have been issued a valid wildlife conservation license."

Section 5. 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 the applicant's 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;

(d) the experience of the applicant, including years of experience as an outfitter or professional guide, knowledge of areas in which he the applicant 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 the outfitter and stating that the outfitter recommends the applicant for his the applicant's 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 the 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 the applicant will provide services or establish hunting camps.

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

15 (3) Application ~~shall~~ must be made to and filed with
 16 the board.

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

22 **Section 6.** Section 37-47-305, MCA, is amended to read:

23 "37-47-305. Outfitter's examination. Each applicant for
 24 an outfitter's license shall pass a standard examination
 25 administered by the board or its agent; ~~which~~. The

1 examination ~~shall~~ must require general and sufficient
 2 knowledge displaying and indicating ability to perform the
 3 services contemplated with efficiency and with safety to the
 4 health and welfare of persons employing such the services.
 5 The examination ~~shall~~ must test the applicant's knowledge of
 6 subjects ~~which--shall~~ that apply to the type of license
 7 applied for in and may include the following subjects:

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

24 **Section 7.** Section 37-47-307, MCA, is amended to read:

25 "37-47-307. Investigation of applicant -- issuance or

1 denial of license. (1) The board shall investigate each
2 applicant for an outfitter's or professional guide's license
3 and determine his the applicant's qualifications.

4 (2) The board may deny or refuse to issue any new
5 license or to renew any previous license if the applicant
6 does not meet the qualifications herein stated in this
7 section. In the event that any application for license is
8 denied or refused, the board shall immediately notify the
9 applicant, setting forth in the notice the grounds upon
10 which the denial or refusal is based.

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

16 (4) A licensee in good standing is entitled to a new
17 license for the ensuing license year upon complying with the
18 provisions of this chapter and renewal deadlines and fees
19 imposed by rule of the board, and completing an application
20 for license renewal on a form provided by the board,--and
21 payment--of--the--renewal--fee,--but--is--exempt--from--having--to
22 retake--the--written--examination.

23 {5}--An-outfitter-licensee-must-make-an-application--for
24 license--renewal-by-January-1-of-the-license-year--A-penalty
25 fee-of-\$50-will-be-charged-in-addition-to-the-regular

1 resident--or--nonresident--outfitter's--license--fee--if-the
2 application-for-such-license-is-not-completed--and--made--by
3 January--1--of--the--license--year--This-subsection-does-not
4 apply-to-a-new-applicant-for-an-outfitter's-license."

5 **Section 8.** Section 37-47-308, MCA, is amended to read:

6 "37-47-308. Kinds of licenses. (1) After-receipt-of-the
7 application--and--when When all the conditions and
8 requirements of this-part licensure have been satisfied, the
9 board shall issue either--of--the--following--licenses,
10 depending-upon-its-determination-of-the-applicant's--ability
11 and--the--service--that--the--applicant-can-perform-with-the
12 equipment-listed-on-his-application:

13 {a}--a-general-license-authorizing-him--to--perform--all
14 the--functions--of--an--outfitter-as-that-term-is-defined-in
15 37-47-101;--or

16 {b}--a-special-license-authorizing-him-to--perform--only
17 the--function--of--outfitting-listed-on-the-license a license
18 stating the outfitter or guide functions that the applicant
19 is qualified and approved to perform.

20 (2) The license shall must be in the form prescribed
21 and shall-be is valid for the licensing year in which
22 issued.

23 (3) If the application is denied, the board shall
24 notify the applicant in writing of the reasons for the
25 denial, and if the reasons are corrected, a license shall

1 must be issued upon reapplication thereof."

2 **Section 9.** Section 37-47-309, MCA, is amended to read:

3 "37-47-309. Professional guide's license. (1) For the
4 purposes of this part, a person may serve as a professional
5 guide under an outfitter's license, after submitting his an
6 application with the proper license fee, until the license
7 is issued or denied.

8 (2) To be valid, a professional guide's license must
9 bear the signature and outfitter's license number of the
10 endorsing outfitter and is valid only while the holder of
11 such the license is employed or retained as-an-independent
12 contractor by the endorsing outfitter."

13 **Section 10.** Section 37-47-310, MCA, is amended to read:

14 "37-47-310. Transfer or amendment of outfitter's
15 license. (1) No An outfitter's license may not be
16 transferred during any license year.

17 (2) An individual person may, upon proper showing, have
18 his that person's outfitter's license amended to indicate
19 that ~~he-is-holding~~ the license is being held for the use and
20 benefit of a named proprietorship, partnership, or
21 corporation.

22 (3) Subject to approval by the board, the an immediate
23 members member of the family of a deceased licensed
24 outfitter may continue to outfit for the deceased
25 outfitter's unexpired license year or until the heirs or

1 personal representative of the estate sells the outfitting
2 business or obtains relicensure therefor of the business."

3 **Section 11.** Section 37-47-341, MCA, is amended to read:

4 "37-47-341. Grounds for suspension or revocation of
5 license. Every license or right to apply for and hold such
6 the license may be denied, suspended, or revoked upon any of
7 the following grounds:

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

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

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

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

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

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

25 (7) the willful employment of or contracting with an

1 unlicensed professional guide by an outfitter;

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

6 (9) misconduct as defined by board rule."

7 **Section 12.** Section 37-47-343, MCA, is amended to read:

8 "37-47-343. Appeal procedure. Any person who feels
9 aggrieved by the--denial--of a final order of the board
10 denying issuance of, a license or suspension or revocation
11 of suspension of, or revocation of a license as an outfitter
12 or professional guide may appeal to the district court of
13 the county of his residence within 30 days after the date of
14 such action by filing with the clerk of said court a notice
15 of appeal briefly setting forth the action complained of and
16 appealed from--Summons--and--copy--of the notice of appeal
17 shall be served on the--board,--and--all--proceedings--shall
18 conform to the code of civil procedure of the state of
19 Montana. Upon such appeal, the action shall be by--trial--de
20 novor--and--upon--demand--in--writing, either party shall be
21 entitled to trial by jury. The court may sustain or--reverse
22 the--action--of--the--board or take such other action as the
23 court may deem just and proper, if the board--or--the--court
24 has--ordered--a stay of any revocation or suspension and the
25 board's revocation or suspension is thereafter sustained--by

1 the--court,--the--period--of--suspension or revocation shall
2 begin with the first day after the court's action sustaining
3 the decision of the board petition for judicial review as
4 provided in Title 2, chapter 4, part 7."

5 **Section 13.** Section 37-47-344, MCA, is amended to read:

6 "37-47-344. Penalties -- disposition of fines. (1) A
7 person who violates any provision of this chapter or rule
8 adopted under this chapter is guilty of a misdemeanor and is
9 punishable by a fine not exceeding \$500.

10 (2) A person who represents himself to the public that
11 the person is as an outfitter or who purposely engages in
12 outfitting without a license as required by this chapter is
13 guilty of a misdemeanor and is punishable by a fine of not
14 less than \$200 and not more than \$500 \$1,000, up to 1 year
15 in the county jail, or both. Each day of violation is a
16 separate offense. In addition, the person must be assessed
17 and pay to the board the amount of all costs incurred by the
18 board in investigating and preparing the case for trial and
19 all prosecution costs, including but not limited to witness,
20 transportation, and per diem expenses.

21 (3) Fifty percent of all fines paid under this section
22 must be deposited in the general fund of the county in which
23 the conviction is obtained, and 50% must be deposited in the
24 state special revenue fund for the use of the board in
25 enforcing this chapter. All investigation, preparation, and

trial costs paid under this section must be deposited in the state special revenue fund for the use of the board in enforcing the provisions of this chapter. The board may reimburse other agencies for costs reasonably incurred in the enforcement of this chapter.

(4) A person convicted of engaging in outfitting without a license shall reimburse the full amount of any fees received to the person to whom illegal outfitter services were provided."

NEW SECTION. Section 14. Administrative penalty. The board may assess an administrative penalty of not more than \$500 for each violation of this chapter or a rule adopted under this chapter, subject to the procedures set out in 37-47-342 and 37-47-343.

Section 15. Section 37-47-402, MCA, is amended to read:

"37-47-402. Duties of outfitters and guides. An outfitter or guide offering professional services in this state shall:

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

(2) comply with all standards adopted by rule by the department-of-fish,-wildlife,-and-parks board."

Section 16. Section 37-47-404, MCA, is amended to read:

"37-47-404. Responsibility for violations of law. (1)

Any person accompanying a hunting or fishing party as an outfitter or agent or employee of such the outfitter ~~shall~~ be is equally responsible with any person or party employing him the person as an outfitter for any violation of fish and game laws;--any--such unless the violation is reported to a peace officer by the outfitter, agent, or employee and the outfitter, agent, or employee was not an active participant.

An outfitter or agent or employee of such an outfitter who shall willfully fail-to-or-refuse fails or refuses to report any violation of fish and game laws shall-be is liable to the penalties as--herein provided in this section. If any professional guide commits-any--violation--of violates the laws or applicable regulations relating to fish and game, outfitting, or guiding with actual or implied knowledge of an outfitter then employing such the guide, the outfitter is legally responsible for such the violation for all purposes under the laws or regulations if the outfitter fails to report any-such the violation to the proper authority.

(2) An outfitter or professional guide shall report any violation or suspected violation of fish and game laws that the outfitter or guide knows or reasonably should have known has been committed by the employees, agents, representatives, clients, or participants in the outfitting or guiding activity. The violation or suspected violation

1 must be reported to a peace officer at the earliest possible
2 opportunity.

3 (3) No A person may not hire or retain any outfitter or
4 professional guide unless the outfitter or professional
5 guide is currently licensed in accordance with the laws of
6 the state of Montana."

7 **Section 17.** Section 45-1-205, MCA, is amended to read:

8 "45-1-205. General time limitations. (1) (a) A
9 prosecution for deliberate, mitigated, or negligent homicide
10 may be commenced at any time.

11 (b) A prosecution under 45-5-502 through 45-5-505,
12 45-5-507, or 45-5-625 may be commenced within 5 years after
13 the victim reaches the age of 18 if the victim was less than
14 18 years old at the time the offense occurred.

15 (2) Except as otherwise provided by law, prosecutions
16 for other offenses are subject to the following periods of
17 limitation:

18 (a) A prosecution for a felony must be commenced within
19 5 years after it is committed.

20 (b) A prosecution for a misdemeanor must be commenced
21 within 1 year after it is committed.

22 (3) The period periods prescribed in subsection (2) is
23 are extended in a prosecution for theft involving a breach
24 of fiduciary obligation to an aggrieved person as follows:

25 (a) if the aggrieved person is a minor or incompetent,

1 during the minority or incompetency or within 1 year after
2 the termination thereof of minority or incompetency;

3 (b) in any other instance, within 1 year after the
4 discovery of the offense by the aggrieved person or by a
5 person who has legal capacity to represent an aggrieved
6 person or has a legal duty to report the offense and is not
7 himself a party to the offense or, in the absence of such
8 discovery, within 1 year after the prosecuting officer
9 becomes aware of the offense.

10 (4) The period prescribed in subsection (2) ~~shall~~ must
11 be extended in a prosecution for unlawful use of a computer,
12 and prosecution ~~shall~~ must be brought within 1 year after
13 the discovery of the offense by the aggrieved person or by a
14 person who has legal capacity to represent an aggrieved
15 person or has a legal duty to report the offense and is not
16 himself a party to the offense or, in the absence of such
17 discovery, within 1 year after the prosecuting officer
18 becomes aware of the offense.

19 (5) The period prescribed in subsection (2) is extended
20 in a prosecution for misdemeanor fish and wildlife
21 violations under Title 87, and prosecution must be brought
22 within 3 years after an offense is committed.

23 (6) The period prescribed in subsection (2)(b) is
24 extended in a prosecution for misdemeanor violations of the
25 laws regulating the activities of outfitters and guides

under Title 37, chapter 47, and prosecution must be brought within 3 years after an offense is committed.

(7) An offense is committed either when every element occurs or, when the offense is based upon a continuing course of conduct, at the time when the course of conduct is terminated. Time starts to run on the day after the offense is committed.

(7)(8) A prosecution is commenced either when an indictment is found or an information or complaint is filed."

~~NEW SECTION. Section 19. Investigators-----~~
~~qualifications:--(1)--The department may hire investigators to~~
~~assist the board in investigation of any provision of this~~
~~chapter:~~

~~(2)--An investigator must:~~

~~(a)--be a citizen of the United States and a resident of~~
~~Montana;~~

~~(b)--have knowledge of outfitting and guiding;~~

~~(c)--have not less than 2 years' experience as a~~
~~licensed private investigator, detective, special agent, or~~
~~peace officer of a city, county, or state or a federal~~
~~agency; and~~

~~(d)--meet the minimum qualifying standards for~~
~~employment of peace officers promulgated by the board of~~
~~crime control;~~

NEW SECTION. Section 18. Severability. If a part of [this act] is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

NEW SECTION. Section 19. Codification instruction.
~~{Sections--15--and--19}--are [SECTION 14] IS~~ intended to be
 codified as an integral part of Title 37, chapter 47, and
 the provisions of Title 37, chapter 47, apply to ~~{sections~~
~~15-and-19} [SECTION 14].~~

NEW SECTION. Section 20. Effective date. [This act] is
 effective July 1, 1993.

-End-